

GATS & FTAA SERVICES RULES: Q&A

What are the GATS and the FTAA? The GATS is one of many separate agreements included in the WTO package of agreements. The U.S. has already signed the GATS agreement, but negotiations are underway to make it much more advantageous to large corporations. The GATS contains rules governing trade and investment in services for all WTO members, currently over 140 countries around the world.

The Free Trade Area of the Americas (FTAA) is currently under negotiation. It is a trade agreement that would expand the rules of NAFTA, the North American Free Trade Agreement, to cover the entire Western Hemisphere except Cuba. The draft FTAA contains powerful rules on services, along with a number of other topics.

What services are covered? While individual rules may not apply to all services, the GATS and the FTAA in principle cover 160 separate services, which involve a broad spectrum of activity in our society. Services include health care, education, water delivery, telecommunications, construction, mail delivery, banking, food preparation, transportation and much more. One way to determine whether something is a service is to keep in mind that services include everything that you can't drop on your foot.

Whose conduct is covered? Though negotiated by only a few international negotiators, GATS rules apply broadly to all government actions by local, state and national governments. The FTAA will also probably cover all types of government action at all levels of government. While these agreements contain extensive constraints and obligations for governments, they create only privileges and protections for multinational corporations. These privileges and protections include rights to invest (open up shop) and rights to challenge democratically enacted laws in the U.S. and other countries.

What rules do the agreements impose? While these agreements are lengthy and written in inaccessible language, you can get a long way toward understanding their impacts with knowledge of a few key rules:

- 1) National treatment: under the national treatment rule, countries are required to treat foreign service providers just as well as domestic service providers, even if the foreign service provider is private and the domestic service provider is public.
- 2) Domestic regulation: provisions on domestic regulation may require that countries limit domestic regulations to those "based on objective and transparent criteria" and "not more burdensome than necessary to ensure the quality of the service."
- 3) Market access: under market access rules, governments are prohibited from limiting the number of service providers or the total amount of service provided in a particular sector.
- 4) Services procurement rules: these rules are presently under negotiation in both WTO and FTAA contexts and would restrict the factors that governments may consider when they purchase services for their own use.

Do these rules automatically apply to all 160 services covered by the GATS and FTAA? No. A particular kind of service may or may not be covered by one or more of these rules depending on what specific commitments and/or exceptions

apply. Investigation is required to determine the exact status of a particular service. The trend of ongoing services negotiations is to bring more and more services under the coverage of these rules. In addition, the FTAA services rules will probably apply more broadly than the GATS rules due to a difference in the way the two agreements are structured. For the most part, the GATS rules cover only services that countries specifically commit to coverage ("bottom up"), whereas the FTAA services rules will likely cover all services that countries do not specifically negotiate to exempt ("top down").

Are there protections for labor and the environment? Not really. Both the GATS and the draft FTAA lack specific language to protect labor laws and worker interests from negative impacts due to the rules contained in these agreements. While these agreements do contain language that could theoretically shield some environmental laws from challenge through services rules, thus far similar language in NAFTA and various WTO agreements has failed to adequately protect environmental laws.

Are there effective protections for government services? Once again, not really. The GATS contains, and the FTAA likely will also contain, a provision that is purportedly intended to safeguard public services from privatization. However, most public services in the U.S. will likely not qualify for this exemption because they are provided in competition with private service providers or because a fee is charged for them.

Is it possible to withdraw a service from coverage? Again, not really. The GATS contains language designed to make it extremely difficult for governments to withdraw a service from coverage under its rules. The FTAA will probably also include similar strict rules to prevent governments from withdrawing commitments in response to democratic public pressure or other factors.

How are the services rules enforced? The rules of the GATS are enforced through the same powerful dispute settlement panels that enforce other WTO agreements. These panels are closed to the public but have the power to rule against laws and then impose costly sanctions to force the losing country to remove the law. Dispute settlement for the FTAA services rules promises to be similar but more advantageous to transnational business in one major respect. Some of the FTAA provisions may be enforceable through an "investor state suit" provision like the one in NAFTA. While only governments can bring suits under the WTO agreements, the NAFTA "investor state suit" provision allows corporations to bring suits themselves. This provision has enabled corporations to sue governments for millions, and sometimes billions, of dollars when government actions negatively impact expected profits.

Where can I get more information? For more information on trade in services, read the report, "Trade and Investment in Services: The Stakes for Workers and the Environment," which can be obtained from ASJE at 503-736-9777 (www.asje.org).

THE ALLIANCE FOR SUSTAINABLE JOBS AND THE ENVIRONMENT

1125 SE Madison, Suite 100-D, Portland, OR 97214
503-736-9777

