

## TRADE & INVESTMENT IN SERVICES

### The Stakes for Workers and the Environment

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## TRADE IN SERVICES: WORKERS' RIGHTS AND THE ENVIRONMENT AT RISK

When we think of trade, most of us think of goods, not services. We think of wheat, steel, textiles and televisions, not health care, education, phone service and water delivery. The fact is, though, that trade in services has become a big deal in today's global economy.

According to the Office of the United States Trade Representative, services account for almost 80% of the U.S. Gross Domestic Product and 80% of U.S. employment.<sup>i</sup> Changes in the way services are provided around the globe could generate huge sums of money for large and powerful corporations. For example, tremendous profits could result if some of the services currently provided by the public sector were shifted into the private sector in a process called **privatization**.<sup>ii</sup> Corporations could also benefit by clearing away some of the public interest laws that regulate how services are provided, through **deregulation**.<sup>iii</sup>

Estimates indicate that trillions of dollars could be made through such changes.<sup>iv</sup> Given how much is at stake, multinational corporations have formed themselves into powerful services trade lobbying groups to advance their interests.<sup>v</sup> These corporate lobbying groups advise the government negotiators who are currently writing the **rules that will govern trade and investment in services in the global economy**.<sup>vi</sup> So far, every indication is that the rules they're writing will enrich global investors at the expense of workers, ecosystems, and other important interests.

This document will review these rules and discuss how they could impact workers and the environment. It will then talk about what we can do to stop this agenda.

*Rules on trade and investment in services also raise major issues regarding global fairness and domination of countries in the Global South by those in the North. For more information on these issues, contact Focus on the Global South, the Third World Network, The Development GAP, or the International Forum on Globalization.*

## OVERVIEW OF THE EXISTING TRADE IN SERVICES AGREEMENT AND CURRENT NEGOTIATIONS

In 1994, when our congressional representatives signed us up to be part of the WTO, they also obligated us under the **General Agreement on Trade in Services (GATS)**. The GATS is one of many separate agreements included in the WTO package of agreements.

*Many corporate representatives had extensive access to the government negotiators who drafted the WTO agreements. Over 500 corporate representatives, including the Chamber of Commerce, the Business Roundtable and numerous Fortune 500 companies, were granted security clearances to advise the U.S. WTO negotiators.<sup>vii</sup> This pattern of special access continues today. In 1999, multinational corporations like Chubb, Citygroup, CocaCola, Enron, Fed Ex, New York Life, and UPS sponsored a conference on services in Atlanta, Georgia.<sup>viii</sup> At the conference, WTO officials, government trade negotiators and corporate officials strategized about upcoming WTO services negotiations.<sup>ix</sup> The same type of special corporate access is occurring in the FTAA negotiations as well. Each time the Ministers of Trade meet to discuss the FTAA, the Americas Business Forum, a powerful corporate coalition, meets at the same time in the same place.<sup>x</sup> Corporations even sponsored the Quebec City Summit.<sup>xi</sup> In contrast, unions and public interest groups have had little access to negotiators.<sup>xii</sup>*

The GATS contains rules governing trade and investment in services for all WTO members, currently 140 countries around the world.

Most people have never heard of the GATS. This isn't that surprising since the whole document was written behind closed doors and there's been almost no public debate about it. However, even though we haven't yet debated the merits of the existing GATS rules, important negotiations are currently underway to significantly expand the GATS.

Negotiators of the **Free Trade Area of the Americas (FTAA)** also want to include a powerful set of **trade and investment in services rules** in the FTAA agreement. The FTAA is currently under negotiation and would expand NAFTA to cover all of the countries of the Western Hemisphere except Cuba. The FTAA services rules will probably be similar to the GATS rules but will probably apply much more broadly than the GATS rules. For the most part, the GATS rules cover only services that countries specifically commit to coverage, whereas the FTAA services rules will likely cover all services that countries do not specifically negotiate to exempt. In trade terminology, this difference is described by saying that the **GATS agreement is "bottom-up"** while the **FTAA agreement will likely be "top-down."**

Because the negotiations currently underway would significantly strengthen the GATS and would create far-reaching services rules in the FTAA, this is a critical time for workers, environmentalists and the public to gain an understanding about how these rules impact their interests.

*"The FTAA will deeply affect almost every aspect of our societies and could become law before a serious public review takes place in anyone's Parliament."—Cam Duncan, Public Services International Regional Secretary<sup>xiii</sup>*

## WHAT'S CONTAINED IN THE GATS AND THE FTAA SERVICES RULES?

The following paragraphs answer questions about important aspects of the GATS and the FTAA services rules.

**What counts as a service?** Most people initially think of trade in services in the same way they think of trade in goods—they think that a trade occurs only when a product crosses a border. For instance, they think that trade in educational services would be limited to on-line educational courses or that trade in health care services would be limited to telemedicine. This is not the case, however. In the GATS, "trade in services" is defined to include much more than just the supply of services across borders (**cross border supply**). Under GATS definitions, "trade in services" also occurs:

- when a citizen of one country receives a service in another country (called **consumption abroad**). [For example, consumption abroad occurs if a citizen of one WTO member country receives emergency health care in another WTO member country while temporarily in the second country]; or
- when a worker from one country travels temporarily to another country to provide a service (called **presence of natural persons**). [For example, if a nurse travels to another WTO member country to provide nursing services in the second country]; or
- when a corporation with its base of operations in one WTO member country establishes a branch office to provide services in another member country (called **commercial presence**). [For example, when a health care corporation based in one WTO member country opens a branch in another WTO member country as well].

The FTAA is also expected to include a broad definition of “trade in services.” These broad definitions mean that the rules of the GATS and the FTAA apply in far-reaching and unexpected ways. In fact, they mean that the set of rules referred to as “trade in services” in many cases also covers investment in services, or local delivery of services by foreign investors.

**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. The easiest 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 any government at any level: national, state and local. The FTAA will probably also cover all types of government action at all levels of government.

While the GATS and the FTAA contain rights for corporations, they contain only obligations and constraints for governments. Despite this, most of our national, state and local elected officials still know almost nothing about global trade in services rules. Negotiators have kept them out of the loop and, in some cases, elected officials have chosen to remain ignorant.

**What rules do the agreements impose?** While these agreements are lengthy and almost always written in the inaccessible language of insiders and economists, you can get a long way towards understanding their impacts with knowledge of just a few key rules. This section is intended to provide a snapshot of these key rules, which are contained both in the GATS and the FTAA.

- One rule requires countries to treat service providers from all other countries in equally favorable ways even if some countries have harmful labor, environmental and human rights practices. The trade term for this rule is **Most Favored Nation (MFN)**. With limited exceptions, the MFN rule applies to all countries and all services in the GATS. It will likely apply in the FTAA in the same across the board manner.
- Under a second rule, countries are required to treat foreign service providers as well as domestic service providers, even if the foreign service provider is private and the domestic service provider is public. The trade term for this rule is **national treatment**. National treatment acts as a powerful tool for forcing privatization by granting foreign private companies rights to “equal treatment,” i.e., rights to compete with local public providers for taxpayer funds designated for public services. The national treatment rule also has a deregulatory aspect, because it allows challenges to laws that “impact the conditions of competition” in ways that disadvantage foreign service providers, even if the law itself is even-handed and by its terms treats all service providers in exactly the same manner. The national treatment rule applies in the GATS only to the particular types of services that a country specifically commits to coverage. In the FTAA, if the U.S. has its way, the national treatment rule will cover all services in all FTAA countries except when a country negotiates a special exemption for a particular service.
- Third, the GATS contains a mandate requiring the negotiation of language that will limit domestic regulations to those “based on objective and transparent criteria” and “not more burdensome than

necessary to ensure the quality of the service.” These new provisions will make it possible for trade panels to rule against public interest laws that cover topics unrelated to trade. In trade terminology,

these constraints on a government’s right to regulate are called “disciplines on **domestic regulation.**” Negotiators are considering making these new disciplines apply to all services regulations without exception, both in the GATS and the FTAA.

Table 1.0 THE KEY SERVICES TRADE AND INVESTMENT RULES

	GATS	FTAA
Exists Now	<p><b>MFN</b>- Applies to all services in all countries</p> <p><b>National treatment</b>- Applies only to services that countries have committed</p> <p><b>Domestic regulation</b>- May apply to all services and countries</p> <p><b>Market access</b>- Applies only to services that countries have committed</p>	
Under Negotiation	<p><b>MFN</b>- Same as above</p> <p><b>National treatment</b>- Countries are under pressure to commit more services to national treatment coverage</p> <p><b>Domestic regulation</b>- A specific test is being drafted to define for all governments which of their regulations are “more burdensome than necessary”</p> <p><b>Market access</b>- Countries are under pressure to commit more services to market access coverage</p> <p><b>Other areas</b>- Negotiations also underway to develop rules for <i>procurement</i> and <i>subsidies</i> of services by governments; as well as <i>emergency safeguards</i> for developing nations and <i>transparency</i> rules that would require governments to consult with interested foreign corporations before passing new laws impacting the service sector</p>	<p><b>MFN</b>- Will likely cover all services in all countries</p> <p><b>National treatment</b>- The U.S. wants national treatment to apply to all services in all countries. To protect a particular service from coverage, a country would have to negotiate a special exception</p> <p><b>Domestic regulation</b>- Will likely cover all services in all countries and will likely contain the same test for “not more burdensome than necessary” as is negotiated in the GATS discussions</p> <p><b>Market access</b>- The U.S. wants market access rules to apply to all services in all countries. To protect particular service from coverage, a country would have to negotiate a special exception</p> <p><b>Other areas</b>- Similar to GATS negotiations</p>

A specific test is being drafted to define for all governments which of their regulations are “more burdensome than necessary.”

- A fourth rule (actually a set of rules) requires countries to allow service providers nearly unlimited right to provide particular types of services within their boundaries. In trade terminology, this set of rules, designed to guarantee investors access to markets, is called **market access**. Specifically, market access rules require that governments may not limit: the number of service providers, the total value of service transactions through numerical quotas or the requirement of an economic needs test, the total number of service operations or the total quantity of service output, the total number of persons who can be employed in particular service sector or that a service supplier may employ, the type of legal entity through which a service may be provided, or the percentage of foreign capital involved in providing a service. Like national treatment, in the GATS this rule applies only to the particular types of services that a country specifically commits to cover. However, again as in the case of national treatment, the U.S. wants market access rules to apply in the FTAA in a top-down way to all services not specifically exempted.
- The fifth category of services rules includes those rules intended to impose “pro-market” constraints on governments’ ability to regulate. For example, the **services procurement rules** presently under negotiation in both the GATS and the FTAA contexts would apply when governments purchase services for their own use. These rules would restrict the criteria that governments may consider when making services purchasing decisions to narrow

economic considerations. In order to comply with these rules, governments would no longer be able to consider social or environmental factors when spending public money to procure services.

### **Are there protections for labor and the environment?** Not to speak of.

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 potentially shield some environmental laws from challenge under the trade in services provisions, thus far similar language has not proven effective in protecting environmental laws in closely related contexts. “General exception” language in the GATS and the draft FTAA states that countries have the right to maintain laws that protect human, animal, and plant life and health, privacy, safety and a few other interests. While in theory these exceptions could safeguard important public interest laws, similar exceptions have rarely been used to do so in challenges to date under the WTO and NAFTA. For example, of the key public health and environmental laws challenged before WTO and NAFTA panels as of the date of completion of this report, all but two have resulted in rulings against the challenged law.

In addition, the GATS contains no exemption for the protection for exhaustible natural resources, an exemption that is contained in other WTO agreements. The absence of this exception may increase the likelihood that trade panels will rule against environmental laws challenged before them under trade in services provisions.

**Are there effective protections for government services?** Not really. The GATS contains, and the FTAA will likely also contain, a provision that is intended to safeguard public services from

privatization. However, just based on its text alone, it's hard to see how this exemption could be effective. It would shield only those public services "supplied neither on a commercial basis nor in competition with one or more service suppliers." Most important public services in the U.S. and other countries fail to meet this test because a fee is charged for them (e.g., postal service) or because a mix of public and private services is offered (e.g., K-12 education).

**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 GATS does this by forbidding governments to withdraw a service from coverage within the first three years of committing it to coverage and by requiring governments to negotiate "compensatory adjustments" that satisfy all other countries before withdrawing a service from coverage. This is such a tough standard that it's unclear any country will ever be able to meet it. 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 stronger in one major respect. If some portions of the services rules (those relating to "commercial presence") are included in the investor protection chapter rather than the services chapter (as the United States proposes), those rules will probably 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 the corporations feel that government actions have negatively impacted their expected profits. For example, using NAFTA's "investor-state suit" provision, the Methanex corporation has brought a challenge claiming almost a billion dollars in lost profits due to California's decision to stop using a particular gasoline additive. The additive, a chemical called MTBE, is a potential carcinogen and was badly polluting drinking water supplies. This suit is currently pending before a tribunal closed to the public and the press. This is the kind of enforcement that will apply to the trade in services provisions that find their way into the FTAA investment chapter.

*"If [the investor's argument is] accepted by the panel, no NAFTA [country] could carry out its most fundamental governmental functions unless it were prepared to pay for each and every economic impact occasioned by doing so."—The U.S. Government in its written argument in the Methanex dispute<sup>xiv</sup>*

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### **WHAT DO TRADE IN SERVICES RULES MEAN FOR THE ENVIRONMENT?**

What do toxic waste processing, mining, water diversion and extraction, oil drilling, pipeline transport, tourism operations, shipping, hotel construction, incineration of waste, and natural resource management have in common? Although you might not be used to thinking of them in this way, all of these activities are services, which means that they are subject to the services trade and investment rules. Given the sweeping nature of the services rules, it's difficult to think of many environmental laws that are definitely safe from a potential challenge under the GATS and the FTAA services rules. These rules threaten to disrupt

environmental protection by: 1) reducing our ability to control the amount of ecologically damaging activities; 2) by reducing our ability to control how ecologically damaging activities are conducted; and 3) by shifting control of important natural resources into the private sector.

1) First, they could **take away our ability to limit the amounts of ecologically damaging activities.**

As discussed earlier, both the GATS and the FTAA contain rules requiring **market access**. If a country commits to provide market access in a particular service sector, governments within that country may lose their ability to limit the number of service providers in that sector or the total amount of that service provided. This is a major reduction in government power that could make it impossible to plan for, restrain, or mitigate environmentally damaging activities. For example, it is quite possible that market access rules could prevent governments from limiting the amount of oil drilling or hotel construction in ecologically sensitive areas. The market access provision could also deny governments the ability to control the number of waste dumps or retail big box outlets (e.g., Walmart stores) operated within their boundaries. Market access provisions thus present a fundamental threat to key environmental tools essential for efforts to secure environmental justice and to safeguard declining ecosystems.

To date under the GATS, most governments haven't committed that many types of services to coverage under market access rules. However, government negotiators are pushing for more coverage in the current round of GATS negotiations. In addition, as mentioned earlier, the U.S. wants the FTAA market access provisions to apply in a "top down" fashion to all services not protected by specially negotiated exceptions.

*"...the GATS agreement represents a major new factor for a large sector of world economic activity... its requirements will from the beginning necessarily influence national domestic laws and regulations in a way that has only been true of the GATT in recent years."—The WTO Secretariat<sup>xv</sup>*

2) Another main way that the GATS and FTAA services rules could harm the environment is by **reducing our ability to control how an environmentally risky or damaging activity is conducted**. Along with the ability to limit the total amount of a damaging activity, the ability to regulate how a service activity is conducted is also critical to protecting ecosystems. The GATS and the FTAA services rules would hurt our ability to do this in two ways, as the following two bulleted sections discuss.

- One major threat is from the new disciplines on **domestic regulation**. Among other things, the proposed disciplines will likely mean that the laws governing how a service is performed, called "technical standards," would have to meet a two-step test. This test would first require that the law is based on objective and transparent criteria. It would next require that the law is not more burdensome than necessary to ensure the quality of the service. Drinking water standards, pesticide application regulations, laws covering the handling of toxic waste, and a whole range of other environmental laws are all technical standards and could be subject to such a test.

Most environmental laws result from hard-fought battles with industry, which often unfold over the course of years. After a lengthy ordeal of sustained advocacy against long odds and deep pockets, what emerges at the end of the process is typically a watered-down

version of the original environmental proposal. Given this, most environmentalists are not pleased to learn that the domestic regulation provisions of the GATS may enable **industry to take an entirely new cut at dismantling the law**, this time behind closed doors. Three appointed individuals, with no mandate to consider the public interest or the environment, will decide whether the law is in conflict with trade obligations. Specifically, if an environmental law were challenged as a violation of new disciplines on domestic regulation, the dispute resolution panel would first evaluate whether the law was “based on objective and transparent criteria.” We don’t know yet how a panel would interpret this. However, given past WTO decisions, it’s possible that the panel would require proof that the law was based on conclusive scientific evidence. In the real world, such a burden of proof would be extremely difficult to meet, making it difficult to defend a law based on informed precaution. In addition, given that many laws are the result of messy, last-minute compromises between conflicting interests, a test requiring that their basis be “objective and transparent” may in and of itself allow for potential challenges to a significant range of environmental laws.

Next, the panel would consider whether the law is “more burdensome than necessary to ensure the quality of the service.” As most advocates know, what is “unnecessarily burdensome” is often in the eye of the beholder. What corporations find unnecessarily burdensome, advocates may find to be the bare minimum that will provide any level of protection for ecosystems and public health. There are probably few public interest laws with any teeth passed in the

last three decades that corporations have not called unnecessarily burdensome. Spraying pesticides with a small buffer zone and no notice to surrounding communities is less burdensome than providing a large buffer, notice, or finding a non-toxic alternative way to deal with pests. Being required to obtain a permit for any proposed stream alteration is more burdensome than getting a blanket permit that allows you to alter a streambed however you wish, whenever you wish, without review by a fish and wildlife biologist. Because the meaning of “unnecessarily burdensome” is so subjective, the domestic regulation provision could allow environmental laws to be invalidated based on a determination that is basically arbitrary.

*“Negotiations...are designed to lock-in deregulation by weakening the regulatory authority of government and public agencies, and by enhancing the power of commercial interests to prevail when there is a conflict with public interest regulation.”—Matthew Sanger, writing for Public Service International describing the FTAA and GATS negotiations<sup>xvi</sup>*

- The **national treatment rule** is the second way the GATS and FTAA trade in services rules will constrain the ability of governments to regulate **how** environmentally damaging service activities are conducted. A law is considered to violate the national treatment rule if it “affects the conditions of competition” in favor of services or service suppliers of that country as compared to like services or service suppliers of another country. A violation can be found even if a law treats all service providers in exactly the same way. For example, a national law banning the

use of energy derived from nuclear sources could be found to be a national treatment violation if it disadvantages companies in countries that produce power from nuclear sources, even though on its face the law applies to all countries equally. This extremely broad test again gives dispute panels wide-ranging power to rule against important public interest laws. Examples of other environmental laws that may be found in violation of national treatment include laws requiring companies to obtain multiple permits or to complete an environmental review process before undertaking construction projects (because it could prove more burdensome to a foreign company unfamiliar with domestic processes) and laws requiring that 20% of a state's energy supply must come from renewable sources (because it disadvantages companies in countries producing energy exclusively from fossil fuels). Thus far in the GATS, most countries have not committed a large number of services to coverage under the national treatment rule. However, in the current round of GATS negotiations, government negotiators are pushing for more coverage. In addition, as mentioned earlier, the U.S. wants the FTAA national treatment provisions to apply in a "top down" fashion to all services not protected by a specially negotiated exception.

**3) Loss of ability to publicly steward natural resources through privatization.** The GATS and the FTAA will also likely reduce our ability to responsibly steward natural resources by shifting important public trust resources and resource management tasks into the private sector, through privatization.

Most dangerous among the resource privatization threats is the **privatization of water**. In the face of global scarcity of clean water supplies, control over life's most basic necessity would be extremely profitable, likely yielding between \$800 billion and \$1 trillion dollars per year.<sup>xvii</sup> This fact is not lost on giant corporations such as Enron, Suez and Bechtel who are taking steps toward making this scenario a reality.<sup>xviii</sup>

The United States still has a high proportion of water systems in the public sector<sup>xix</sup> and therefore can expect to be the target of privatization pressures. U.S. citizens need to decide whether they want profit-driven multinationals to control and deliver their water supply. Under the law, corporations have an obligation to maximize the profits of their shareholders, even if doing so entails great harm to the public or the public interest. During the California energy crisis, corporations such as Enron used their effective control over a basic necessity to drive their profits through the roof, resulting in a massive wealth transfer from California's citizens and public institutions to corporate coffers.<sup>xx</sup>

After privatizing the water system of Cochabamba, Bolivia, Bechtel raised water rates by as much as 200%.<sup>xxi</sup> In a country where more than two-thirds of the citizens live in poverty, many citizens were charged more than one third of their monthly income just to buy water.<sup>xxii</sup> If the citizens of Cochabamba had not staged mass protests that forced the government to reverse the privatization,<sup>xxiii</sup> this private water scheme would have resulted over time in a significant transfer of wealth from the impoverished citizens of Cochabamba to the wealthy executives and investors of Bechtel.

*"Water and biodiversity are common resources and we will fight to keep them in the commons so that ecology and equity, not profits, are the basis of water use and water distribution." –Dr. Vandana Shiva, Physicist, Ecologist and Author<sup>xxiv</sup>*

How do GATS and the FTAA trade in services rules lead to privatization of water services? Water collection and water delivery are both services. If a country makes market access and national treatment commitments in its water sector and the government authority exemption does not apply (i.e., a fee is charged or one private company is already involved in providing the service), national treatment may require that a foreign corporation bidding to provide the service be treated in the same manner as the public agency that has traditionally provided the service. This may entitle the foreign corporation access to both public funding and infrastructure. Market access rules prohibiting "monopolies" may also prevent governments from protecting their public water systems.

*Water itself has been defined as a good under NAFTA. Corporations are working in multiple ways using numerous mechanisms, including trade agreement provisions, to obtain ownership and control of water itself. For more information on these steps, contact the International Forum on Globalization, the Council of Canadians, the Alliance for Democracy or Friends of the Earth.*

What are the environmental implications of water privatization? Dams and water diversions have already fundamentally altered many natural river ecosystems with disastrous results for the fish, wildlife and people who depended on the natural systems.<sup>xxv</sup> Instead of reversing these policies, profit-driven water collection could cause major additional harm to watersheds, river ecosystems and underground aquifers by increasing the incentive to over-extract and override natural watershed functions.

On the water delivery side of the equation, profit-driven pressures to minimize costs could compromise water quality. Significant portions of Britain's water were privatized in 1989.<sup>xxvi</sup> Between 1989 and 1997, the companies involved in delivering water were successfully prosecuted over 100 times

for water pollution, discharge of sewage and failure to meet leakage targets.<sup>xxvii</sup> In 1997, one of the companies involved, a Suez subsidiary, was fined for providing contaminated water to 15,000 customers.<sup>xxviii</sup>

In present negotiations, the European Union is pushing for clarifications in the language pertaining to water related services that will have the effect of advancing privatization.

The **privatization** of some "environmental services" could also threaten sustainable natural resource management. "Environmental services" involves a collection of services ranging from pollution abatement services to "nature and landscape protection services," such as the **management of public lands and wildlife**. Government resource management activities for which a fee is charged, as is often the case with review of logging plans and other natural resource extraction activities, are at risk of privatization. Such a shift would reduce public control over such activities and increase the likelihood that resource management decisions would be influenced by profit-driven incentives to manage lands unsustainably. While the U.S. has already made significant market access and national treatment commitments in the environmental services sector, important issues regarding definitions and classifications may come up in the negotiations.

*"Since taking office, the Bush Administration has listened to diverse viewpoints, and the Bush trade agenda represents broadly supported goals and principles."—The United States Trade Representative<sup>xxix</sup>*

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## WHAT DO THE TRADE IN SERVICES RULES MEAN FOR WORKERS?

The coverage of the GATS and the draft FTAA trade in services agreements is very broad, covering

around 160 separate services. According to the United States Trade Representative, almost 80% of workers in the U.S. are employed in the services sector.<sup>xxx</sup> If you work in any kind of service, from health care to government to construction, you are likely to be affected by the GATS and the FTAA services provisions.

*"Renato Ruggerio, former director of the WTO, claimed it was creating 'a constitution for the global economy.' If so, it is a constitution by the corporations, of the corporations, and for the corporations. It is a constitution with a Bill of Rights that guarantees only the rights of property."—AFL-CIO President John Sweeney<sup>xxxii</sup>*

There are two main anti-worker impacts of the GATS and the FTAA services provisions. The first are negative impacts on laws passed to protect workers and the second are privatizing impacts.

1) **Negative impacts on labor laws.** Directly and indirectly, U.S. labor laws, which cover everything from the eight-hour day to occupational health and safety to the minimum wage, aim to ensure that the conditions of work are safe and fair. Many of these laws grew out of conditions at the turn of the century, when it became clear that left unregulated, industry would run over everyone and everything in its path in the quest for maximum profits.

There are several ways that the GATS and the draft FTAA provisions threaten these labor laws.

First, labor laws, like environmental laws, can "impact the conditions of competition" in ways that indirectly disadvantage foreign corporations providing services in the U.S. If this occurs, the labor law in question can be found to be in violation of **national treatment** obligations. WTO background papers have identified **labor laws** as a category of laws likely to adversely affect the competitiveness of foreign service suppliers,<sup>xxxii</sup> strongly implying that labor laws are likely to run afoul of national treatment obligations.

Let's take an example to demonstrate how this could happen. **Project labor agreements** (PLAs) (agreements governing the relations between labor and management in the performance of individual public construction projects) could be challenged as national treatment violations. Such a challenge could claim, for example, that the PLA procedural requirements for non-union contractors place a heavier burden on foreign companies who aren't as familiar with how to negotiate the ins and outs of the process and are less likely to be unionized.

Second, labor laws are also at risk of challenge under the domestic regulation rules currently under negotiation. These rules, as discussed above, will include a test designed to determine when a law regulating a service is "more burdensome than necessary to ensure the quality of the service." A wide variety of **worker health and safety laws** will be vulnerable to challenge under these provisions, including laws that protect workers in risky environments such as oil refineries and health care settings.

Other laws that are likely to run afoul of the domestic regulation rules include **licensing laws, professional standards, and apprenticeship programs**. Each of these categories of laws is explicitly singled out for scrutiny in the language of the domestic regulation rule.

The third main way that the trade in services rules threaten labor laws is through their provisions on **movement of natural persons** (MNP). MNP provisions would require relaxation of limitations on the temporary entry of workers. However, if these provisions are negotiated as presently slated, MNP provisions would not entitle entering workers to full rights. Instead, these provisions would only allow temporary entry of workers contingent on their work for a particular employer. Such rules create a human rights problem for entering workers, who, in such a captive situation, lack the bargaining power necessary to insist on decent treatment. In addition, proponents of MNP provisions are

suggesting that domestic laws on bargaining rules and minimum working conditions should not apply to visiting workers. This creates a problem for domestic workers as well, by leveraging down wages and working conditions by circumventing hard-won wage and benefit requirements. In fact, WTO background papers clearly view “movement of natural persons” as a way for companies to get around domestic labor laws in order to cut costs.<sup>xxxiii</sup>

In current rounds of negotiation, countries are not expected to take significant steps to relax current restrictions on the movement of natural persons. In future rounds, such steps are more likely.

*“(T)he most significant benefits from trade (in the health care sector) are unlikely to arise from the construction and operation of hospitals, etc., but their staffing with more skilled, more efficient and/or less costly personnel than might be available on the domestic labour market.”—WTO background paper on health and social services<sup>xxxiv</sup>*

The fourth critical way that trade in services rules could undermine labor laws is through their “pro-market” re-regulatory provisions, such as rules governing the procurement of services. Right now, when governments spend taxpayer funds to purchase services for use by the government, they are free to consider not only the price of the service and other aspects of the service itself, but also additional relevant considerations such as the working conditions of those who provide the service. It is this authority that currently makes possible **living wage laws** (laws that require payment of a wage keyed to the actual cost of living in an area), **prevailing wage laws** (laws that require that construction contractors pay workers on public works projects the wage rates prevailing in the local area), **services contract laws** (laws that govern wages for services employees working for government contractors), and “**Cedillo laws**” (laws that seek to ensure that companies who receive government money respect basic ground

rules about workers’ rights to organize). If procurement provisions covering services are negotiated in this round of negotiations at the GATS and FTAA, governments will almost certainly lose their right to consider working conditions when procuring services. If this occurs, essential labor tools will be challengeable as trade agreement violations.

*“Governments need to be armed against pressure from narrow interest groups, and the WTO system can help ...Quite often, governments use the WTO as a welcome external constraint on their policies: ‘we can’t do this because it would violate the WTO agreements.’”—The World Trade Organization document “10 Benefits of the WTO Trading System”<sup>xxxv</sup>*

2) **Privatization.** In addition to challenges to labor laws, privatization is the other main way that services trade and investment rules hurt workers. Workers in the U.S. have been facing privatization struggles for some time.<sup>xxxvi</sup> They have experienced first hand the results of privatization. Private contractors often pay lower wages and offer less generous benefits than the public service providers they replace.<sup>xxxvii</sup> In addition, privatization can harm important societal goals like equity and access to services.<sup>xxxviii</sup>

However, the privatizing provisions of the GATS and the draft FTAA are much more dangerous than anything U.S. labor has seen to date on the privatization front. This is true for several reasons. First, the mechanisms of the GATS and the FTAA remove decisions about whether to privatize from public control and instead shift them to distant, inaccessible forums. There, without input from workers or the public, government negotiators and trade experts decide the fate of critical service sectors. These negotiators and decision-makers aren’t focused on the impacts of such decisions on U.S. workers and the U.S. public, but instead on gaining maximum concessions for U.S. service industries overseas to increase profits for

companies and their shareholders. When key decisions about privatization are transferred away from local elected officials, workers lose the chance to push for full analysis of the costs and benefits of a privatization proposal. They also lose the chance to have the issue decided by elected officials deliberating in an open forum, where all parties, not just privatization proponents, have a right to their say.

The second reason the services rules are so dangerous is that they make it virtually impossible to reverse privatization once it occurs. The FTAA in particular, will likely allow investors to sue for billions of dollars in expropriation damages if a government ever sought to shift a particular service back into the public sector. For instance, if the U.S. ever wanted to take steps to reverse the current trend toward a highly privatized health care system, these rules could make it much more difficult, if not impossible, to achieve such a policy shift. If GATS and the FTAA are allowed to advance, the same may be true when it comes to airport security services and many other important service areas.

*"[GATS] is first and foremost an instrument for the benefit of business."—The European Commission<sup>xxxix</sup>*

**K-12 public education** provides an example of the potential implications of the privatizing provisions of the GATS and the FTAA. For some time now, unions and communities have been fighting off privatization efforts in the form of vouchers, charter schools, and contracting out of school-related services such as cafeteria services, bus service, and management.<sup>xi</sup> Unions fight these efforts because they siphon resources out of the public system, resulting in harm to the societal purposes of public education.<sup>xii</sup> If K-12 education ever were to be covered by the **national treatment** provisions of the GATS and the FTAA services rules, these provisions could function like a **permanent, locked-in voucher program**. National treatment could allow a challenge claiming that public funding

of public schools is a form of discrimination against competing private, foreign corporations. In order to cure the national treatment violation, funding could have to be made available to both public and private institutions on an equal basis.

Currently, there are temporary shields in place to protect K-12 education from privatization-forcing services rules. This is not that reassuring, however, given the estimated two trillion dollar value of the K-12 education "market"<sup>xlii</sup> and the statements issuing from powerful brokerage houses. Merrill Lynch has predicted significant increases in the privatization of K-12 education in the coming decade.<sup>xliii</sup> Lehman Brothers has called the education industry "the final frontier of a number of sectors once dominated by public control."<sup>xliv</sup> These statements indicate a lack of societal consensus about the importance of retaining the public character of the K-12 education system. Given this, it's highly disconcerting that trade negotiators have not removed K-12 education from the GATS and the FTAA. This step is the only one guaranteed to be effective in safeguarding K-12 education from privatization-forcing services rules.

*"Michael Moe, Director of Global Growth Research for Merrill Lynch, writes, 'Compared to other sectors that have been subject to massive reform, such as utilities, telecommunications, transportation, and health care, the education industry represents the largest market opportunity for private sector involvement since health care in the 1970's.' This, obviously, is attracting the attention of America's entrepreneurs on Wall Street, Silicon Valley, and elsewhere."—William Bennett<sup>xlv</sup>*

Public services provide another important case study of the privatizing impacts of trade in services rules. Many workers in **postal service, firefighting, public transportation, public prisons, municipal services such as water delivery, and administration** are familiar with contracting out and privatization pressures. The

trade in services provisions of GATS and the FTAA are just a different, more powerful, way to advance that same agenda. In sectors that are subject to market access and national treatment, private foreign service providers will have enforceable rights to establish service operations in the U.S. and compete with public institutions for funds to perform the service. The **national treatment** rule would require governments to offer funding to these service providers on the same basis as they offer it to public service providers. In time, this could mean the collapse of public funding and the **privatization** of entire sectors. Privatization often results in layoffs, and lower wages and benefits.<sup>xlvi</sup>

*"GATS is hostile to public services, treating them, at best, as missed commercial opportunities..."—Scott Sinclair, Author of Sequel to Seattle: GATS How the World Trade Organization's New "Services" Negotiations Threaten Democracy*<sup>xlix</sup>

Another variation on the same theme occurs in cases when portions of a service are profitable but operation of all aspects of the service wouldn't be. In such a case, private companies seek to provide the profitable portions and leave the public sector to provide those that are unprofitable. The **market access** provisions of GATS and the FTAA will likely make it much easier for corporations to do this. Specifically, market access rules could prevent governments from being able to condition permission to provide a particular service on a service provider's commitment to also provide certain unprofitable services. For example, a government regulation stating that licenses to serve revenue-generating, high-traffic areas may only be granted to bidders that agree to provide a certain level of service in remote areas would likely be found in violation of market access rules.

When combined with the drain on public resources that could result from national treatment obligations, these provisions could lead to cuts in the overall services delivered. These cuts could in turn result in worker layoffs as well as an

unbalanced mix of services that fails to meet social goals.

As of right now, not that many important service sectors are covered under national treatment and market access in the GATS. However, as noted earlier, the pressure to agree to cover additional sectors is significant. In addition, the U.S. wants the national treatment and market access rules in the FTAA to apply in an across the board, top-down fashion to all services not specially exempted. Many of the public services that could be harmed by these rules may not have a high enough profile to obtain a special exemption in the negotiations. Thus, the structure of the FTAA as a whole, and in particular the question of top-down versus bottom-up, could have great consequences for many public service workers.

#### WHAT CAN WE DO?

*"Failure to reach consensus on a forward work programme that would advance the objectives of the multilateral trading system, particularly in light of the earlier failure of Seattle, would lead many to question the value of the WTO as a forum for negotiation. It would certainly condemn us to a long period of irrelevance..."—Director General of the WTO, Michael Moore*<sup>xlxii</sup>

We have the power to stop GATS and the FTAA. Increasingly, the free trade agenda is stymied by refusal of citizens around the world, as well as governments in the Global South, to accept its many harmful implications.

The services rules currently being written without our input could make dramatic changes in our economy and society. It is essential that we educate ourselves about these rules and take action to stop them and to build a fair trade alternative. This is an **especially critical time for action** because many of the most far-reaching provisions of the services rules are under negotiation now and are **not yet law**. Here are some steps you can take

to help educate others and to put a stop to GATS and the FTAA:

- If you belong to a union, inform others in your union and engage the resources of your union in analyzing and tracking negotiations on these agreements. Pass a union resolution in opposition to the GATS and FTAA and make sure your elected representatives understand where your union stands on these issues.
- Inform environmental activists in your community. Let your elected representatives know that you consider votes on trade issues to be critical environmental votes. Let them know that you don't want to see any more environmental laws challenged or invalidated by trade agreements.
- Urge your congressional representatives to vote against "fast track." Fast track would give President Bush wide discretion to negotiate anti-labor, anti-environmental trade agreements. Tell your representatives that you want them to support fair trade in goods and services. Fair trade respects workers, the environment and democracy.
- Hold an educational forum to educate others in your community.
- Link up with other fair traders in your region and subscribe to trade listserves.
- Inform your local and state government representatives and ask them to hold hearings investigating the impacts of GATS and the proposed FTAA provisions on important community concerns. Ask them to contact their congressional representatives and the United States Trade Representative to express their concern about impacts on their law-making powers.
- Reach out to those who would suffer disproportionately under rate hikes and services cuts. Educate the public about

the ways that critical services could shrink or become more expensive with privatization. Give them examples of the ways in which corporate duties to maximize profit often depart from the public interest. Raise questions about who we want to own and control essential services in our society.

- Participate in public protest and community forums surrounding closed official trade meetings and summits.

Further resources on trade in services:

AFL-CIO, [www.aflcio.org](http://www.aflcio.org), 202-429-1181;

Alliance for Democracy, [www.afd-online.org](http://www.afd-online.org),  
202-244-0561;

Council of Canadians, [www.canadians.org](http://www.canadians.org),  
613-233-4487;

Friends of the Earth, [www.foe.org](http://www.foe.org), 202-783-7400;

International Forum on Globalization, [www.ifg.org](http://www.ifg.org),  
415-561-7650;

Polaris Institute, [www.polarisinstitute.org](http://www.polarisinstitute.org),  
613-237-1717;

Public Citizen, [www.tradewatch.org](http://www.tradewatch.org), 202-454-5106;

Public Service International, [www.world-psi.org](http://www.world-psi.org),  
202-824-0880;

Sierra Club, [www.sierraclub.org](http://www.sierraclub.org), 202-675-2387;

Third World Network, [www.twinside.org](http://www.twinside.org),  
011-60-4-2266728;

United for a Fair Economy, [www.ufenet.org](http://www.ufenet.org),  
617-423-2148;

The Alliance for Sustainable Jobs and the Environment (ASJE) was born out of a recognition that sustainability involves both the conservation of the natural world as well as human communities. ASJE understands that human and natural communities are interdependent and that the decline of both often results from common social and economic forces. We work to build common ground between the labor and environmental movements and to create models for economic activity that support both good family wage jobs and ecosystem integrity. You can contact us at 503-736-9777; [www.asje.org](http://www.asje.org); [asje@asje.org](mailto:asje@asje.org)

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<sup>i</sup> Office of the United States Trade Representative, "USTR Welcomes 'Roadmap' for Progress in WTO Services Negotiations," May 26, 2000.

<sup>ii</sup> Maude Barlow, "A GATS Primer," The Council of Canadians [stating that "(g)lobal expenditures on water services now exceed \$1 trillion every year; on education, they exceed \$2 trillion; and on health care, expenditures exceed \$3.5 trillion].

<sup>iii</sup> Polaris Briefing Notes, GATS 2000, Part 2, "Briefing Notes on the Big Business Coalitions Formed to Push for Further Privatization of Services Through the GATS 2000 Round on the WTO Negotiations (as of February 2001)," [e.g., citing Enron's complaint to the Bush Administration that clean air regulations were reducing profits; and citing desire of AOL Time Warner to ensure that regulations are the least trade restrictive possible].

<sup>iv</sup> See, e.g., Maude Barlow, "A GATS Primer," Council of Canadians. [Indicating that privatization of water services, education and health care could yield trillions].

<sup>v</sup> Polaris Briefing Notes, GATS 2000, Part 2, "Briefing Notes on the Big Business Coalitions Formed to Push for Further Privatization of Services Through the GATS 2000 Round on the WTO Negotiations (as of February 2001); Matthew Sanger, "Democracy or Dominance in the Americas? The FTAA vs. Public Services," Public Services International, 2001.

<sup>vi</sup> Matthew Sanger, "Democracy or Dominance in the Americas? The FTAA vs. Public Services," Public Services International, 2001; World Services Congress Press Statement, "Global Service Industry Leaders Call for New Trade Round," September 9, 2001 [stating that "CSI (the Congress of Service Industries) is the leading business organization dedicated to reducing barriers to U.S. services exports and mobilizing support for domestic U.S. policies, including tax policies, which enhance the

global competitiveness of its members...CSI's knowledge of the process of services trade negotiations, its ties to the WTO and its network of relationships with governments and industry in other countries are unmatched"].

<sup>vii</sup> Debi Barker and Jerry Mander, "Invisible Government: The World Trade Organization: Global Government for the New Millenium?" The International Forum on Globalization, 1999.

<sup>viii</sup> Matthew Sanger, "Democracy or Dominance in the Americas? The FTAA vs. Public Services," Public Services International, 2001; "In Whose Service? GATS and the FTAA" [Booklet available through the Alliance for Democracy], 2001.

<sup>ix</sup> Ibid.

<sup>x</sup> Matthew Sanger, "Democracy or Dominance in the Americas? The FTAA vs. Public Services," Public Services International, 2001.

<sup>xi</sup> Ibid.

<sup>xii</sup> Ibid.

<sup>xiii</sup> "Democracy or Dominance in the Americas? The FTAA vs. Public Services," Public Services International, 2001.

<sup>xiv</sup> Statement of Defense of Respondent United States of America, In the Arbitration Under Chapter II of the North American Free Trade Agreement and the UNICITRAL Arbitration Rules Between Methanex Corporation and the United States, August 10, 2000.

<sup>xv</sup> The WTO Secretariat Trade in Services Division, "An Introduction to the GATS," 1999.

<sup>xvi</sup> Matthew Sanger, "Democracy or Dominance in the Americas? The FTAA vs. Public Services," Public Services International, 2001.

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<sup>xvii</sup> See, e.g., Maude Barlow, "A GATS Primer," The Council of Canadians [stating that "(g)lobal expenditures on water services now exceed \$1 trillion every year]; Bertram Zagema, "GATS and Water," Friends of the Earth Netherlands [citing World Bank estimate that world water markets are worth up to \$800 billion] [Background Sheet included in "GATS 2000: Where Are We Now?" 2001].

<sup>xviii</sup> Ruth Caplan, "Water, Water Everywhere to be Sold to the Highest Bidder," Alliance for Democracy; "In Whose Service? GATS and the FTAA" [Booklet available through the Alliance for Democracy], 2001.

<sup>xix</sup> United for a Fair Economy, "Our Communities are not for Sale: Global-Local Links in the Fight Against Privatization," 2001.

<sup>xx</sup> Toward Utility Rate Normalization (TURN), Electric Deregulation fact sheets including "California's Disappearing Dollars," 2001; Bill Jones letter to Vice President Dick Cheney dated May 2, 2001.

<sup>xxi</sup> "In Whose Service? GATS and the FTAA" [Booklet available through the Alliance for Democracy], 2001.

<sup>xxii</sup> Antonia Juhasz, "Bolivian Water War Presents Alternative to Globalization of Water IFG Bulletin," Special Water Issue, Summer 2001.

<sup>xxiii</sup> Ibid.

<sup>xxiv</sup> Dr. Vandana Shiva, "The Politics of Water: Water as Commons or Water as Private Property," 2001.

<sup>xxv</sup> Maude Barlow, "Blue Gold: The Global Water Crisis and the Commodification of the World's Water Supply," International Forum on Globalization, 1999.

<sup>xxvi</sup> Bertram Zagema, "GATS and Water," Friends of the Earth Netherlands [Background Sheet included in "GATS 2000: Where Are We Now?" 2001].

<sup>xxvii</sup> Ibid.

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<sup>xxviii</sup> Ibid.

<sup>xxix</sup> United States Trade Representative, "The Bush Administration's Framework for Trade Promotion Authority," 2001.

<sup>xxx</sup> Office of the United States Trade Representative, "USTR Welcomes 'Roadmap' for Progress in WTO Services Negotiations," May 26, 2000.

<sup>xxxi</sup> John Sweeney, "Making the Global Economy Work for Working Families: Beyond the WTO," Remarks at the National Press Club, Washington, D.C., 1999.

<sup>xxxii</sup> Council for Trade in Services, World Trade Organization, "Construction and Related Engineering Services: Background Note by Secretariat," 1998.

<sup>xxxiii</sup> Council for Trade in Services, World Trade Organization, "Construction and Related Engineering Services: Background Note by Secretariat," 1998.

<sup>xxxiv</sup> Council for Trade in Services, World Trade Organization, "Health and Social Services: Background Note by Secretariat," 1998

<sup>xxxv</sup> The World Trade Organization, "About the WTO: 10 Benefits of the WTO Trading System," 1999.

<sup>xxxvi</sup> United for a Fair Economy, "Our Communities are not for Sale: Global-Local Links in the Fight Against Privatization," 2001.

<sup>xxxvii</sup> Ibid.

<sup>xxxviii</sup> Ibid.

<sup>xxxix</sup> The European Commission, "Opening World Markets for Services: Towards GATS 2000: Where Next? The GATS 2000 Negotiations," The European Commission Info-Point on World Trade in Services.

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<sup>xi</sup> American Federation of Teachers, "What is Privatization?"

<sup>xli</sup> American Federation of Teachers, "AFT on the Issues: The Many Names of School Vouchers," 2001.

<sup>xlii</sup> Alex Nunn, and Jess Worth, "GATS and Education," [Background Sheet included in "GATS 2000: Where Are We Now?" 2001].

<sup>xliii</sup> Dr. Kenneth Stevenson, "Privatization of Public Education: Panacea or Pandora's Box?" Department of Educational Leadership and Policies, University of South Carolina.

<sup>xliv</sup> Council of Canadians, "Don't Gamble with Public Education!" [Fact Sheet on the WTO and the GATS].

<sup>xlv</sup> William Bennett, "The State, and Future, of American Education," The Heritage Foundation Leadership for America Lecture Series, 2000.

<sup>xlvi</sup> United for a Fair Economy, "Our Communities are not for Sale: Global-Local Links in the Fight Against Privatization," 2001; Robert Hebdon, "Contracting Out in New York State: The Story the Lauder Report Chose Not to Tell," Labor Studies Journal, 1995; The American Federation of Government Employees, "Join AFGE's Fight to Stop Contracting Out," 2001; Gerald McEntee and William Lucy, AFSCME Privatization Home Page, October 2001.

<sup>xlix</sup> Scott Sinclair, Sequel to Seattle: GATS How the World Trade Organization's New "Services" Negotiations Threaten Democracy, 2000.

<sup>xlixii</sup> Michael Moore, Statement to the General Council of the World Trade Organization, July 30, 2001.