

April 2003

Whose development agenda?

An analysis of the European Union's GATS requests of developing countries



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**By Clare Joy and Peter Hardstaff
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This report is part of the World Development Movement's (WDM) ongoing campaign to change the rules of international trade to benefit the poor and the communities in which they live, rather than benefiting the multinational companies of the rich, industrialised North.

The authors would in particular like to thank: Tim Jones, Mark Ellis-Jones and Dave Timms of WDM and Markus Krajewski (Kings College, London), Elisabeth Tuerk (Centre for International Environmental Law, Geneva), Martine Julsaint (South Centre, Geneva) and Sarah Sexton (Cornerhouse, UK) for their time and help in producing this analysis. The authors would like to gratefully acknowledge the significant contribution made by David Hall of Public Services International Research Unit (PSIRU) in analysing the EU's requests.

The views expressed in this document are entirely the authors'.

This report is also available in Spanish and French from WDM's web site.

WDM campaigns to tackle the root causes of poverty. With our partners around the world, we win positive change for the world's poorest people. We believe that charity is not enough. We lobby governments and companies to change the policies that keep people poor.

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1. Introduction

1.1 A changing public mood

Since the end of the last round of trade talks – the ‘Uruguay Round’ – in 1994 the political landscape of trade negotiations has been completely transformed. On the one hand, the rules of trade and the institution created to oversee the implementation and further development of these rules, the World Trade Organisation (WTO), have become more powerful and have reached deeper into more areas of government policy-making. On the other, the public have become much more aware of the existence of the WTO and the implications of its rules and less satisfied with the ‘trust us’ approach to trade policy-making. The argument that the issues are ‘too complex’ or ‘too politically sensitive’ to allow for proper transparency and debate can no longer convince a public that is increasingly informed and increasingly concerned. The argument that secrecy is ‘traditional’ and the ‘only way to conduct trade negotiations’ can no longer be justified.

The General Agreement on Trade in Services (GATS) is a perfect example of both trends. The creation of the GATS in 1995, at a stroke, doubled the reach of trade rules from goods into services and also expanded the WTO’s reach from cross-border trade policy into the rights of corporations to set up operations (i.e. invest) in other countries. It also requires governments to develop rules on ‘domestic regulation’, which will move beyond the WTO’s core mandate of ‘discriminatory policies’ (i.e. policies that favour domestic businesses or businesses from particular countries), constituting a further incursion of trade rules into domestic policy-making. At the same time, the public have become increasingly aware of the implications of this, still relatively young, agreement and are demanding more information, more analysis, more debate and an end to the secrecy which characterised past negotiations.

The World Development Movement (WDM) believes that trade rules and trade negotiations, including GATS, must be radically reformed so that they benefit the World’s poorest people. This is not only about developing countries sticking up for their rights. The richest and most powerful countries also have a responsibility to make this change.

Over the past three years, WDM has argued that the GATS is not, as some maintain, a ‘development friendly’ agreement and has raised deep

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concerns about current negotiations aimed at expanding its scope. It is, in fact, being used by the industrialised world, to steadily narrow the policy options open to developing countries through progressive rounds of negotiations. WDM has therefore consistently called for the European Union's (EU) liberalisation requests of other countries to be made public so that its 'development agenda' rhetoric can be properly scrutinised against its actual negotiating intentions. Finally, these documents are in the public domain, although not because of the actions of any European government or the European Commission.

1.2 At last we know

In the final declaration of the November 2001 WTO Ministerial in Doha, a timetable was set for the critical request-offer phase of the GATS negotiations.¹ In June 2002, WTO members began to submit so-called 'requests'. These requests are aimed at individually named countries and seek a commitment to binding liberalisation in targeted service sectors.

The EU tabled its country-specific proposals on 1 July 2002. At this time, it was known that the EU tabled requests aimed at 109 countries, covering a wide-range of service sectors. However, in terms of content, very little information has been in the public domain. Time and again, the EU and its Member States have refused to release the full list of requests. Previous critical analysis has therefore been based on an April 2002 leak of draft requests to 29 countries² and a short summary (approximately 7 pages long) of the requests written by the European Commission and posted on its website.³

Therefore it has been impossible to:

- Identify the 109 countries that the EU is targeting in the current negotiations.
- Analyse precise sectoral demands.
- Fully comprehend the ambitious intentions of the EU in the current round of GATS negotiations.

This has now changed. The full 109 requests (running to thousands of pages) have been leaked to the Polaris Institute in Canada⁴ and we are finally in a position to see what actually lies behind the EU's rhetoric on the 'development round' and on GATS. Although analysis of these 109 will be most effectively done in the individual countries where the EU is requesting liberalisation of specific service sectors, it is also important to develop an overview of the development implications of the EU's strategy.

The aim of this report is therefore to:

- Draw on previous work done by WDM (following the leak of 29 draft requests in April 2002), which mapped the EU's general negotiating intent, and identify some general trends that emerge from the requests.
- With documentation as evidence, challenge the public statements made by the European Commission and the UK Government, over the last three years, about their negotiating intentions.
- Add to an emerging framework of analysis that seeks to provide a clearer interpretation of the exact implications of GATS for developing countries.

This report highlights the following key points:

- 1.** The EU is extensively targeting the World's poorest countries demonstrating a massive imbalance in the negotiating capacity of rich and poor WTO members and providing a clear indication of who has most to gain from these talks.
- 2.** The EU's sector specific requests, if acceded to, will undermine countries' ability to regulate investment in the public interest. The EU's rhetoric about the 'right to regulate' cannot take away from the fact that the whole purpose of the GATS is to steadily remove the ability of governments to use their powers to direct investment in ways which benefit people, rather than companies.
- 3.** The EU is seeking to remove a range of across-the-board regulatory rights in developing countries. The often repeated claims that GATS is flexible and that GATS does not undermine regulation are severely challenged by the exposure in the leaked documents of a list of regulations – specifically protected by developing countries in the last round of talks – which the EU is demanding be eliminated.
- 4.** The EU is targeting countries where effective non-market based service delivery systems are in operation. In contrast to its 'development round rhetoric' the EU's requests threaten the existence and further expansion of successful alternative forms of service supply (e.g. not for profit organisations and cooperative management systems).
- 5.** The EU's requests target public services, despite its claims that it does not do so. The EU is clearly requesting GATS commitments in

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countries where the services in question are currently provided by the state.

6. The EU's requests threaten democratic policy making. The EU has demanded binding, effectively irreversible GATS commitments in the very countries where there has been popular resistance to – ultimately leading to government rejection of – certain liberalisation policies.

This report analyses each of these key points in turn, using the leaked requests to provide specific examples of how the EU is ignoring its own rhetoric on development. These examples clearly demonstrate that the concerns raised by WDM, and many others, are valid and need to be addressed.

Before continuing, it is first important to point out a difference in semantics on 'regulation' that often leads to confusion. Effective regulation encompasses the full range of government interventions related to managing investment so that it achieves development objectives.⁵ This not only includes regulating how companies operate (e.g. environmental laws, consumer laws, labour laws etc.) but also includes regulations – such as requiring foreign investors to employ local people or requiring foreign investors to form joint ventures with domestic companies – that are incompatible with making full GATS commitments. WDM believes that there is no single 'right' model for supplying services across the world, which is why it is so critical to maintain a high degree of flexibility to use these different forms of 'regulation'.

The following analysis assumes some level of understanding of GATS. For an introduction to the agreement, please refer to a previous WDM report, *Out of service: The development dangers of the General Agreement on Trade in Services* available on our website and which complements the analysis below.⁶

2. Extensively targeting the poorest countries

Out of the 109 countries targeted in the EU's requests, 94 are classified as developing countries or economies in transition. This includes all Least Developed Country (LDC) members of the WTO.

Despite the claim by Patricia Hewitt, UK Secretary of State for Trade and Industry, that, "In the case of the least developed countries, requests are in the main limited to three to five sectors",⁷ 5 (17 per cent) of the 30 LDCs targeted have received requests in more than five sectors, Angola (7), Bangladesh (6), Madagascar (6), Mozambique (6) and Tanzania (7). This ignores a specific request made by the LDCs, in a March 2002 submission to the WTO, that, "LDCs shall not be requested to make specific commitments in more than four service sectors."⁸

The reality also contrasts with Patricia Hewitt's claim that, "As regards developing countries, requests are made in line with their levels of development."⁹ With low-income countries as a whole (of which there are 41 in the EU requests) the contradiction is even more obvious. For example:

Mozambique (with a per capita income of US\$854 and ranked 170 out of 173 on the UN's Human Development Index (HDI)) has received six sector requests while **Georgia** (with a per capita income of US\$2,664 and ranked 81 on the UN HDI) has received only three.

Ecuador (per capita income US\$3,203, ranked 93 on the UN HDI) and **Guatemala** (per capita income US\$3,821, ranked 120 on the UN HDI) have both received 11 sector requests, the same number as **Australia** (per capita income US\$25,693, ranked 5 on the UN HDI) and **Japan** (per capita income US\$26,755, ranked 9 on the UN HDI).

Similarly, **Pakistan** (per capita income US\$1,928, ranked 138 on the UN HDI) has received 12 requests, the same number as the USA (per capita income US\$34,142, ranked 6 on the UN HDI) and **Canada** (per capita income US\$27,178, ranked 3 on the UN HDI).

Finally, the UK Secretary for State for Trade and Industry's claim that requests have been made of the Least Developed Countries (LDCs) in sectors "where liberalisation is most likely to contribute to development"¹⁰

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is spurious at best. As Table 1 shows, most requests have been made in business and telecommunication services, as well as twenty LDCs being targeted for financial services liberalisation, seven in 'environmental services' (which includes water distribution), five in tourism and seventeen in transport. The analysis in this paper – and in other WDM publications – gives little cause for optimism that binding GATS commitments in these, or any other sectors, will contribute to development.¹¹

Table 1: Summary of GATS 2000 requests from the EU to the 30 Least-Developed Country WTO Members (United Nations Conference on Trade and Development Definition)

<i>Service sector</i>	<i>No. LDC countries where sector has been requested</i>	<i>Percentage (of total LDC requests)</i>
Professional	9	30
Business	24	80
Telecommunications	30	100
Communication	0	0
Construction	5	17
Distribution	0	0
Environmental	7	23
Education	0	0
Financial	21	70
Health	0	0
Tourism	5	17
Culture	2	7
Transport	18	60
Energy	1	3

Table 2: Summary of GATS 2000 requests from the EU to the 41 low income country WTO Members (World Bank Definition)

<i>Service sector</i>	<i>No. countries where sector has been requested</i>	<i>Percentage (of total no. low income requests)</i>
Professional	21	51
Business	36	88
Telecommunications	38	93
Communication	3	7
Construction	17	41
Distribution	6	15
Environmental	14	34
Education	0	0
Financial	30	73
Health	0	0
Tourism	9	22
Culture	7	17
Transport	26	63
Energy	6	15

Although on average the EU has made fewer requests to the LDCs and low-income countries than industrialised countries, a number of specific cases demonstrate the average can be misleading and it is clear that, in a number of cases, levels of development have been ignored in making requests.

In theory, the GATS specifically permits developing and least developed countries greater flexibility. Article XIX of GATS states, "There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV [increasing participation of developing countries]." Article IV states, "Particular account shall be taken of the serious difficulty of the least-developed countries in

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accepting negotiated specific commitments in view of their special economic situation and their development, trade and financial need”.

In reality, the EU is ignoring demands to further define the application of the developmental aspects of the GATS and ignoring demands for assessment before negotiations begin (as mandated in Article XIX). Instead the EU is pushing countries to focus on the request-offer process and meet tight deadlines. The EU then goes on, in its own requests, to ignore developmental concerns by extensively targeting the poorest countries and by seeking to eliminate the conditions developing countries have previously attached to their commitments (see section 3 and 4 below).

“By mistake, a developed country sent to us copies of the requests they were making of some other developing countries. It was astonishing – the level of details they have gone into ... In many ways, it was a revelation to me, that developed countries have looked at our laws and our provisions so closely.”

The problems for developing countries do not stop at the pace of the process and the attempt to remove development policies. It is also difficult for many to proactively engage in making requests of industrialised countries. The EU making requests of all 30 LDC WTO members is in sharp contrast with the EU *receiving* requests from just one LDC.¹²

The difficulty such countries have in ‘competing’ with the industrialised world in the GATS talks is perhaps best summarised by the Ambassador of Bangladesh to the WTO, who recently stated, “By mistake, a developed country sent to us copies of the requests they were making of some other developing countries. Normally these requests and offers are supposed to be confidential. But we had a look at the request which was made by a major developed country of another developing country. It was astonishing – the level of details they have gone into ... In many ways, it was a revelation to me, that developed countries have looked at our laws and our provisions so closely. Do we have a corresponding understanding of their laws?”¹³

The sheer number and depth of the EU's requests, in comparison to the poorest countries, serves to highlight the massive imbalance in the negotiating capacity of rich and poor WTO members and also provides a clear indication of who has most to gain from these talks.

3. Removing effective investment regulation in specific sectors

3.1 Introduction

Concerns over the developmental impact of GATS relate to a whole range of services potentially covered by the agreement's specific rules. The EU's requests focus heavily on sectors such as retail, construction, transport, tourism and financial services. For example the EU has made requests of 60 countries in distribution services (which includes retail), 70 countries in construction services, 62 in tourism services and 84 in financial services.

During the last set of GATS negotiations, many countries placed restrictions on commitments in these sectors or kept considerable portions outside the reach of GATS rules. This, according to GATS proponents, makes GATS a 'flexible' and 'development friendly' agreement.

Such 'flexibility' could be short lived because, in its requests, the EU is demanding that many countries abandon existing restrictions and exclusions and/or fully commit these sectors to the GATS rules for the first time. However, such regulations are important for a whole range of reasons as the examples below indicate, and making full GATS commitments (i.e. commitments with no 'exclusions') restricts the ability of governments to regulate investment in order to achieve development goals. The fact that the EU is seeking commitments in the mentioned sectors from the following sample of countries serves to demonstrate how its claims to be pursuing a 'development agenda' are in direct contradiction to reality.

3.2 Thailand – EU target for retail service liberalisation

Retail trade in Thailand (as is the case in many other countries), has gradually been liberalised since the late 1980s. In a submission to the WTO in 2002, Thailand describes this process, which attracted investment from major European retail chains.¹⁴ However, in recent years this liberalisation has become extremely controversial because, although there have been some benefits for consumers, it has had adverse impacts on small traditional retail shops and local employment. This controversy has been acknowledged by the Thai Government as 'a very hot potato for the current administration'.¹⁵

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The Government's response was to develop new regulations aimed at curbing the massive expansion of retail stores such as Tesco, Carrefour and Royal Ahold (all major European retail companies). In the last round of GATS talks, Thailand did not make any commitments in retail so it is relatively free to develop whatever mechanisms are appropriate.

However, at the end of June 2002, the EU submitted its GATS requests to Thailand, including a request for a full commitment in the retail sector. In November 2002, the Thai Government announced it was scrapping a new draft 'Retail Business Act', which had taken over 2 years to complete and which aimed at curbing the expansion of foreign-owned retailers. It would also have regulated their pricing policies – such as advertising budgets and supplier-entrance fees – and would have restricted capital registration and new chain expansion.¹⁶

Deputy Commerce Minister Wattana Muangsuk told 'The Nation' (a Thai national daily newspaper), "We are cancelling the draft simply because we don't want to send a wrong signal to the foreign community. Any enactment of rules of law that are not universally accepted in the international community would affect our future negotiation power over free-trade agreements."¹⁷ In February 2003, instead of passing national legislation, the Thai Government approved plans to use regional/local town-planning laws to regulate the establishment of foreign-owned superstores.¹⁸ This seeming climb-down from stronger action generated considerable concern over whether this secondary solution could be effectively used to curb the expansion of big retail outlets.¹⁹

This case illustrates four critical points. First, contrary to the argument put forward by GATS proponents, it is clearly possible to attract significant (and more than sufficient) investment into a country without making binding GATS commitments. Second, all governments make mistakes and it is much easier to go through an iterative regulatory process if you have not made GATS commitments. It is particularly important that developing countries maintain this 'policy space'. Third, the very existence of GATS and the current negotiating round is having a 'chilling-effect' on the regulatory activities of governments such as Thailand. And fourth, if Thailand accedes to the EU's demands by making a full GATS commitment, it would effectively prohibit the Government from, in future, enacting the kind of national legislation that was being called for and debated originally. It may even affect the town planning policies that were ultimately agreed.

All governments make mistakes and it is much easier to go through an iterative regulatory process if you have not made GATS commitments

3.3 Malaysia – EU target for insurance service liberalisation

In its insurance sector request to Malaysia, the EU asks for the removal of Malaysia's cap of 51 per cent foreign equity participation. This cap is designed to prevent foreign companies dominating the Malaysian banking and insurance sector. Malaysia listed this limitation during the 1997 GATS Financial Services negotiations and it was the subject of hot debate. During these negotiations, the US attempted to pressure Malaysia into allowing a greater foreign presence in the insurance sector.²⁰

Speaking from Kuala Lumpur during the 1997 negotiations, the Malaysian Prime Minister, Mahathir Mohamad, made it clear that Malaysia had offered foreign companies up to 51 per cent equity in insurance ventures as the country could not afford to open the sector totally. He remarked that the strength of foreign companies would overwhelm local ones and lead to mergers and acquisitions of local companies.²¹ Even with the restriction in place, Malaysian newspapers at the time reported scepticism about the financial services GATS negotiations.²²

3.4 India – EU target for tourism services liberalisation

EU requests to India in the tourism sector provide another example of its aggressive negotiating strategy. India has already committed some aspects of its tourism services to GATS rules. However, India has also listed specific restrictions designed to limit foreign company operations when they set up inside the country. These restrictions are targeted for removal in the EU's requests.

The type of restrictions the EU is seeking to remove are those which oblige foreign companies to work through a local counterpart. Such requirements are crucial because, for example, they can help ensure that in the event of corporate wrong-doing the offending company can be more easily held accountable. The assets of locally incorporated companies can usually be reached through domestic courts, whereas foreign multinationals can more easily hide their assets 'offshore'. This is of particular importance in the tourism sector where numerous social and environmental violations by the tourism industry are now being recognised by governments around the world.

Equations, a campaigning group in India working for sustainable tourism have highlighted the following example. On 15 March 2002, the Indian Supreme Court passed a landmark judgement ordering a company, Span Motels, to pay a fine of one million rupees for environmental damage

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caused by 'callous interference with the natural course of a river'. The company has also undertaken to bear its share of the costs for ecologically restoring the environment around the Beas River in the Kulu-Manali region of India.²³ This kind of national legal mechanism is not as well equipped to deal with the transnational nature of foreign investors. Unless there is some degree of local incorporation, the abuses committed by multinationals are potentially beyond the reach of such court rulings.

A common EU defence of its negotiating approach is that its proposals merely seek to bring Members GATS commitments in line with current levels of market opening. For example, in May 2001, the Indian Government introduced a new policy allowing 100 percent foreign participation in the hotel industry. However, the Indian GATS schedule under 'Tourism and Travel Related Services – Hotels and Restaurants' still permits India to set a foreign equity ceiling of 51 per cent and the EU is requesting that the GATS limitation be removed.

This EU defence fails to acknowledge the 'binding' and 'locked-in' nature of GATS rules and commitments, which are ultimately enforced through the WTO's legal dispute settlement procedures. Yet government domestic policies are subject to change over time, whether in response to public concerns, new evidence on impacts, a government's own policy review or a change of government. Such change and development is key to sensible policy-making and democratic decision making. To use the previous example, in five years time, the Indian Government may choose to review its 100 per cent foreign participation policy in the light of new evidence and/or public concern. A binding GATS commitment would make changing this policy much harder, if not impossible.

3.5 84 countries – the EU's target for financial services liberalisation

The EU's requests in financial services are far reaching and apply to 84 countries across the globe. Existing evidence does not support the claim that increased foreign competition will make domestic banks more efficient or a country's banking system more stable. In fact, the reverse. It is more likely to contribute to financial volatility and instability in a country, and possibly even in a region, as the 1997 Asian crisis indicated.

Increased competition in banking, insurance and pensions, particularly from large entities such as multinational banks can create access to finance difficulties for local business start-ups, small and medium size

enterprises and low and middle-income consumers. Multinational banks draw on global resources which they can move around the world instantly. This tends to lower the supply of credit in a country to smaller clients, as large lenders prefer to lend to large borrowers.²⁴

Analysts from the US based Economic Policy Institute have suggested that in order to capture even a few of the benefits that that foreign financial service companies could bring in terms of advanced technology and know-how, host countries could impose capital controls requiring multinational banks to enter into partnerships with domestic banks by, for example, establishing local subsidiaries and preventing them from owning the majority share in any domestic company. Similarly, foreign companies could be prevented from owning real estate, which would require them to seek out domestic partners if they wanted to have their own branches.²⁵ Countries such as Kenya wrote these obligations into their GATS financial services commitments but they are the very limitations now being targeted for removal in the EU's requests.

3.6 Other sector-specific investment regulations targeted by the EU

Examples of other sector-specific investment regulations that developing countries have reserved the right to use, and which the EU has requested be eliminated include:

- Colombian financial services sector: Offering special conditions exclusively to Colombian companies or nationals in the disposal of state holding companies.
- Egyptian hotel and restaurant sector: Allowing limitations on the total number of services operations on the basis of economic needs test, and laws requiring that casino services can only be provided through 5-star-hotels.
- Indian banking sector: Placing a ceiling of 15 per cent for assets of foreign banks in the total assets of the banking system.
- Jordanian travel agency and tour operator sector: Requiring foreign travel agents to implement their tours through local service providers.
- Kenyan telecommunications sector: Limiting foreign investment to 30 per cent.

3.7 Conclusion

As mentioned in the introduction to this report, what constitutes 'regulation' covers a broad range of government measures, including the kind of measures which GATS market access and national treatment rules

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'outlaw' when sectors are fully committed to their provisions. The above examples clearly demonstrate that, by demanding elimination of existing regulatory exemptions and/or demanding full commitments, the EU is seeking to eliminate the potential for those developing countries that have such regulations to use them, and for those that don't to ever develop them in future.

The rules on national treatment and market access, on the other hand, constitute quite specific restrictions on how governments can regulate investment to achieve development goals (i.e. their ability to regulate)

The EU often points to the fact that GATS preserves the 'right to regulate'. It is true that the preamble to the GATS affirms this 'right to regulate' and that this has been reaffirmed in both the Doha Ministerial Declaration and in the GATS negotiating guidelines, and that these documents would be used to guide WTO dispute settlement panels in the event of a dispute. However, this does not address the key point that both the GATS preamble and these statements are expressions of general 'expectations' by the members. The rules on national treatment and market access, on the other hand, constitute quite specific restrictions (enforceable obligations) on how governments can regulate investment to achieve development goals (i.e. their ability to regulate). The further development of rules on domestic regulation are also likely to constitute specific restrictions on how governments can regulate service suppliers. WTO panels will base rulings on the most specific guidance they receive from governments. The specific rules on national treatment, market access and on domestic regulation (if agreed) will outweigh a general presumption, however many times it is stated, that governments should have the 'right to regulate'.

4. Removing general investment regulations

4.1 Introduction

As mentioned in the last section, GATS proponents argue that the agreement provides governments with flexibility because negotiators are allowed to place restrictions on their commitments. As well as applying to specific sectors, restrictions can also be listed so they apply across-the-board to all services sectors. In the last round, India, for example, listed a general restriction, applicable across the board, which states that, “in joint ventures involving public sector enterprises, degree of technology transfer is the determining factor in choosing the foreign partner.”²⁶

In the preamble to each request document, the EU has tried to reassure that it “recognises the importance of liberalisation being underpinned by domestic regulatory frameworks designed to achieve public policy objectives.” Yet this rhetoric contradicts the substance of the requests, and the EU’s demands directly challenge the supposed GATS flexibility. Many of their negotiating demands seek to remove the restrictions applying to all sectors that countries have placed on previous GATS commitments which allow them the policy space to set overall economic development policy by, for example, controlling foreign investment.

4.2 ‘Across the board’ development policies targeted by the EU

Across-the-board restrictions, which limit the activity of foreign investors in all service sectors, are clear EU targets. Although a country may not necessarily be implementing these policies, by acceding to EU demands to remove these restrictions from its GATS listing, it is giving up its right to use these policies in the future. This includes policies designed to promote the development of domestic businesses and curb the power of multinationals when operating within that country’s borders.

Examples of laws and regulations applying to all sectors that developing countries have reserved the right to use, and which the EU has requested be eliminated include:

- Barbados: Requiring foreign investors purchasing or selling land or shares/stocks to pay a specific tax on the value of the settlement.
- Bolivia: Requiring foreign companies to establish subsidiaries if they want to trade on a regular basis.
- Botswana: Giving nationals priority in purchasing assets owned by foreigners.

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- Brazil: Restrictions on profit repatriation which outline procedures that enable the central bank to restrict transfer of funds abroad by foreign companies.
- Cameroon: Specifying that for every CFA 5 million (equivalent to US\$10,000) of foreign investment at least one job must be created.
- Chile: Obliging investors to employ 85 per cent of staff of Chilean nationality.
- Chile: Requiring foreign investors to retain capital in the country for at least three years from the date of entry.
- Cuba: Limiting foreign investment of joint enterprises to 49 per cent.
- Dominican Republic: Subjecting foreign investment to official authorisation and placing a limit on remittance abroad of annual profits (25 per cent of registered capital).
- El Salvador: Placing a 50 per cent ceiling on the remittance of profits abroad.
- Honduras: Ensuring foreign investment is authorised based on an economic needs test.
- Indonesia: Obliging multinationals to form joint ventures when they set up shop inside the country. Indonesia's GATS restrictions state that foreign companies can only control 49 per cent of a joint venture and must work through/with a local representative when setting up branches inside Indonesia.
- Jordan: Prohibiting foreign firms from trading in real estate.
- Malaysia: Allowing land purchases to be denied if the intention is purely speculative and subjecting foreign corporate take-overs to government approval.
- Mexico and Chile: Restricting foreign ownership of land along coastlines.
- Pakistan: Requiring maximum foreign equity participation of 51 per cent and authorising the acquisition of real estate to foreigners on a case-by-case basis.
- Philippines: Requiring foreign investors buying real estate to have 60 per cent local capital.
- Solomon Islands: Stipulating that foreign nationals and foreign-owned companies may not purchase land, but may lease from government or land-holding groups.
- South Africa: Limiting the amount of local borrowing by companies with more than 25 per cent non-resident shareholding (designed to ensure that domestic savings do not end up controlled by foreign companies and exported out of the country).

It seems incredible that the UK Government can claim, “The [EU’s] requests purposefully highlight the importance of liberalisation being underpinned by domestic regulatory framework designed to ensure the achievement of public policy objectives”

- Taiwan: Preventing foreign companies purchasing or leasing land in agriculture, forestry, fishing, pasture, hunting, salt production, mines and sources of water.

4.3 Conclusion

It seems incredible that the UK Government can claim, “The [EU’s] requests purposefully highlight the importance of liberalisation being underpinned by domestic regulatory framework designed to ensure the achievement of public policy objectives”²⁷ when, in the very same documents, the EU is seeking elimination of a whole host of public interest regulations.

Also, the EU’s demand for elimination of the Taiwanese law preventing foreign companies from owning sources of water, is in direct contradiction to the claim by the UK Department for International Development (DFID) that, “The [EU] had made it clear that its requests do not seek the dismantling of public services nor the privatisation of state owned companies nor does it seek access to water resources i.e. ownership,”²⁸ and the statement by the European Commission that, “Requests are being made on environmental services, but do not touch on the issue of access to (water) resources.”²⁹

5. Undermining community service delivery – the water debate

5.1 Introduction

Core to the EU's negotiating position is the reclassification of 'environmental services'. Under the proposed classification, 'water for human use and waste water management' becomes a brand new GATS sub-sector. The fact that it has not previously been specifically included within the GATS sectoral classifications is the principle reason why no government has yet made a commitment in water distribution.³⁰

The proposed reclassification therefore represents a major change to the trading system as it formally brings 'water distribution' under GATS rules. WDM has found no evidence that this important proposal was subject to any significant public or parliamentary scrutiny before it became adopted as EU policy. As well as not publicly debating the proposed reclassification of 'environmental services' the European Commission and the EU member states kept secret the detail of the subsequent requests they made for binding commitments in this reclassified sector.

Another important issue to bear in mind with these water sector requests is control of the resource. The European Commission maintains, "Requests are being made on environmental services, but do not touch on the issue of access to (water) resources."³¹ While technically this is true (at least only for the sectoral requests – see also section 4), according to an Indian non-governmental organisation specialising in water and energy issues, "It is impossible to believe that once the market access is granted, the companies will not insist on access and even control on water resources. Indeed, the heading of the Sector is 'Water collection, purification and distribution services ...'. Collection is certain to include the water source, and will lead to establishment of control (if not 'ownership') on the water resources themselves."³² On the ground, the distinction between access to water delivery services and access to the resource itself is not as easily demarcated as the EC's statement presumes.

The leak reveals that the EU is requesting that 72 countries out of the 109 targeted, make commitments to open up the 'water distribution' sub sector in the current negotiating round.

It is not only the sheer number of countries targeted that is startling but also the fact that the EU has targeted countries where non-profit water delivery systems are in operation and more importantly, where they function effectively. If these countries agree to the EU's demands, they:

- a) Close the door on the possibility of governments transferring this experience more widely.
- b) Take a leap into the unknown, as it is not clear what impact a commitment will have on the ability of such community based systems to operate as they currently do.

The EU's negotiating position is a direct threat to these alternative approaches to water delivery. Two country-examples are explained below to provide an understanding of how making full GATS commitments could affect the existence and spread of such alternative forms of service delivery across the world.

5.2 Brazil

The EU is requesting Brazil to take commitments in Environmental Services section A: *Water for human use and wastewater management* (applying to mode 3 – 'commercial presence').³³

DMAE (Municipal Department of Water and Sanitation Services) in Porto Alegre presents a real success story of alternative water provision in a developing country. It is a thriving non-profit company which has dealt with the governance and financial aspects of running a large public enterprise. It has developed sophisticated technical expertise, often called on by other municipal operators. Yet most important are DMAE's participatory management systems where members of the community are integral to its decision-making and which enable true transparency.³⁴

DMAE is an autonomous body. Although legally set up by the government and with a Director General appointed by the government, it operates as a separate entity from the municipal government. This distinct legal personality allows the company to be financially independent of the municipality. Moreover, its status enables it to pursue a no-dividend policy, whereby in the absence of shareholders, all profits are automatically reinvested into the system. Its founding statute specifically requires DMAE to reinvest 25 per cent of its yearly revenue.

Failure by the Brazilian negotiators to protect such legal and financial undertakings if they comply with the EU's demand would leave them

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vulnerable to challenge under the GATS. For example, once a government has made an unlimited commitment to GATS market access rules, they are effectively prohibited from stipulating the legal form of operators. The non-profit nature of cooperatives is clearly a specified legal form and if required would be in violation of GATS Article XVI.2(e). Furthermore, legally requiring the operator to re-invest a certain percentage of profit in the service might be deemed a technical standard or licensing requirement that is 'more burdensome than necessary' under the rules being developed in Article VI.4.

Perhaps the greatest threat posed by the GATS rules to the DMAE model, should the Brazilian Government fully sign-up its water services, is to locally accountable management structures. There are three key elements to DMAE's management structure. The Director General is appointed by the Mayor of Porto Alegre for a four year term. The DG in turn appoints a Technical Management Council from the staff, which is responsible for analysing projects and the internal workings of the operation, discussing annual budgets etc. This Council also provides advice and technical support to the third element, the Deliberative Council. This is the most important as it approves and controls all operations and decisions taken by DMAE. This Council comprises representatives from different civil society organisations, reflecting different political views and interests. There are 13 members drawn from organisations such as the Engineering Council, Lawyers Institute, Industries Centre, Environment Protection and Union of Porto Alegre Neighbourhood Associations.

This management structure is designed to ensure greater local accountability than a company with shareholders. Once a full GATS market access commitment is made, a national, regional or local government requiring a certain kind of legal structure, such as DMAE's, from an operating company would violate Article XVI.2(e). Such requirements could also violate Article XVII (national treatment) as they may be regarded as favourable to domestic operators, who may find it easier to integrate into the local community, and therefore discriminatory against foreign companies.

Irrespective of the specifics of the GATS rules, this kind of management structure, which is so critical to DMAE's effectiveness, would be out of the question for foreign companies. The accountability of foreign companies is constitutionally to shareholders, often largely based in their home country, and not to the communities where water is being

delivered. In this sense, GATS, with its focus on increasing access for foreign companies which are answerable to their shareholders, almost guarantees the demise of non-market based solutions in areas such as water delivery.

5.3 Bolivia

The EU is requesting Bolivia to take commitments in Environmental Services section A: *Water for human use and wastewater management* (applying to mode 3 – ‘commercial presence’).³⁵

A discussion about community action on water issues rarely takes place without the mention of Bolivia. In 2001, popular-based resistance forced the International Water-led consortium Aguas del Tunari to leave the city of Cochabamba (see section 7). Yet there is another water story from Bolivia. The city of Santa Cruz (population 1 million) hosts a moderately sized water cooperative (SAGUAPAC) which was established in 1979 to manage and operate the city's water supply and sewage. This is the only cooperative society in the world responsible for water supply and sanitation in a major urban center. A study of the cooperative, undertaken by the University of Birmingham found that SAGUAPAC is one of the best-run water companies in Latin America, measured by criteria of efficiency, equity and effectiveness.³⁶ The study also notes that SAGUAPAC is highly regarded by the World Bank and internal bank documents have praised it for its utilisation of two major Bank credits.³⁷

Despite its success, SAGUAPAC's operations could be under threat should the Bolivian Government agree to the EU's request for GATS commitments in water distribution. As with the previous example, DMAE in Brazil, SAGUAPAC was established by the government as a not-for-profit cooperative. It is legally required to be answerable to its members (all 96,000 domestic customers are members of SAGUAPAC) and, as with DMAE, SAGUAPAC uses local labour – in-fact its cooperative structure by default requires management personnel to be local. As already explained, any national, regional or local government measure stipulating the legal entity of the service provider (e.g. not-for-profit and/or cooperative management system) would violate a full market access commitment (Article XVI), and any measure requiring cooperative or participatory management systems or employment of local labour could violate national treatment rules (Article XVII).

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5.4 Conclusion

The University of Birmingham study on SAGUAPAC noted that the cooperative model is proving itself as 'sustainable and capable of high performance'³⁸ although it raised concerns about the lack of attention given to this non-market alternative, either in Bolivia or elsewhere, by lending agencies such as the World Bank. However, this problem of lack of attention could pale into insignificance in comparison with the legal obstacles to further expansion enshrined in the GATS.

If the GATS is extended in the current round of negotiations, the ability of other regions in Brazil and Bolivia, and indeed other countries, to implement these more accountable and transparent models of water delivery will effectively be curtailed. Full GATS commitments prevent governments from using their powers to encourage such alternative forms of service delivery. It is therefore critical for all governments to consider how alternatives such as DMAE, would be affected by their compliance with the EU's demands. This is particularly important because developing country trade negotiators in Geneva may even be unaware of the existence of these service supply systems at the local or regional level in their country. Furthermore, the kind of in-country consultations that would be required for negotiators to be fully informed about legislative realities, are beyond the capacity of the majority of the WTO's membership and logistically impossible with approaching negotiating deadlines. There is a contradiction between pressures from various international institutions for developing countries to demonstrate good governance and democratic policy making on the one hand and pressures on the other hand to make binding commitments in the WTO irrespective of domestic expressions against this.

Community based solutions offer one alternative in a topical and lively debate about how best to ensure adequate water provision to some of the world's poorest communities. They are being explored in different ways all over the world but multinational companies have already been known to challenge governments giving these local solutions preferential treatment. As one leading policy maker in South Africa noted, "... attempts to use community based organisations as service providers to promote community participation have been challenged. Potential providers have complained ... that they are being excluded even though the policy objective is to encourage community participation not to promote commercial service provision."³⁹ It is therefore not hard to

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imagine companies encouraging their home governments to use the GATS to challenge such policies in future.

According to the UK's Department for Trade and Industry (DTI), it "consults closely with other government departments, including DFID, before agreeing the UK position. DFID's role is to ensure that this position properly reflects development considerations."⁴⁰ Yet, as the examples show, the UK's GATS negotiating position does not represent a development agenda. It would seem that either DFID is being ignored in favour of European business interests, or DFID itself has not comprehended the full implications of the UK's position.

6. Undermining water services in countries with recognized good public sector companies

6.1 Introduction

After a previous leak of 29 initial negotiating drafts, the European Commission claimed that, “[T]he expressed concerns that future GATS negotiations may undermine the provision of public services ... for example by forcing privatisation of such sectors ... are completely wrong.”⁴¹

Yet analysis of the leaked 109 final negotiating requests demonstrates that the EU is demanding environmental services commitments (e.g. water liberalisation) from countries where the state currently supplies the service. Even industry supporters of the GATS have acknowledged that, “opening service markets to foreign providers [which is what GATS is designed to do] is self evidently inconsistent with retaining public monopolies.”⁴²

In the following countries water services are provided by public sector operators. One look at this list makes the UK Government's claim, “there is no threat to any WTO members' public health and water services: the Government believes them to be excluded from GATS”,⁴³ look increasingly questionable. Also, the fact that these are examples where public provision is proving effective undermines the EU's claim to be pursuing a ‘development agenda’.

6.2 Honduras – EU target for water liberalisation

In four years from 1994 there was a successful restructuring of SANAA, the state-owned water company responsible for the capital Tegucigalpa, which dramatically improved efficiency, management and effectiveness. It was based on joint working with the trade unions, through a process aimed at positively involving the workforce.⁴⁴

Formal rural water supply systems in Honduras are administered through community-based bodies such as *juntas de agua*, *patronatos*, or NGOs. Capacity-building through training and technical assistance (TA) is given at the development stage by technicians employed by the national water corporation SANAA (using aid funding). These include both *técnicos en agua y saneamiento* to promote system development and *técnicos en*

operación y mantenimiento to support the *juntas de agua* in system operation.⁴⁵

6.3 Tunisia – EU target for water liberalisation

The water sector in Tunisia is managed by two government agencies: the Société Nationale de Distribution et d'Exploitation de l'Eau (SONEDE – Tunisian Water Corporation) and the Office National de l'Assainissement (ONAS – National Waste Water Management Agency). The performance of these agencies has been impressive by a number of criteria – for example Tunis has one of the lowest rates of unaccounted-for-water in the region; it is one of the few utilities that generates sufficient revenue to contribute to capital costs and the World Bank says it has performed 'relatively well from the beginning'.⁴⁶

6.4 Botswana – EU target for water liberalisation

The Botswana Water Utilities Corporation (WUC) was established in 1970 by an Act of Parliament. Between 1970 and 1998 it was reported that the population serviced by the WUC increased from 30,000 (with water consumption averaging 5 mega-litres a day) to 330,000 (with an average of 84 mega-litres daily consumption).⁴⁷

According to NewAfrica.com, the WUC operates on commercial principles and sets tariffs to the public and other clientele which allow a fair return on its services and assets employed. The corporation maintains a policy of cross-subsidy in order to protect domestic consumers at the lowest band to have access to water supplies.⁴⁸

6.5 Conclusion

The fact that the EU has targeted sectors in countries where the state is the sole formal service provider raises a massive question. If, according to the EU, GATS does not 'force privatisation', what exactly is a full GATS commitment to market access and national treatment intended to bring about in these circumstances?

Also the targeting of countries like Botswana with a relatively well functioning state water operator also contradicts the EU's claim to have only made requests of least developed countries in environmental services where a commitment "would *clearly* be beneficial for their economic development"⁴⁹ (emphasis added).

The fact that the EU has targeted sectors in countries where the state is the sole formal service provider raises a massive question. If, according to the EU, GATS does not 'force privatisation', what exactly is a full GATS commitment to market access and national treatment intended to bring about in these circumstances?

7. Preventing Democratic Change

It seems that the WTO positively welcomes this anti-democratic aspect of the GATS ... the WTO recommends GATS to pro-liberalisation governments for the political assistance it can bring them in 'overcoming domestic resistance to change'

7.1 Introduction

A great deal of concern has been expressed about how the GATS affects democratic decision-making. GATS represents a particular challenge to democracy because, although it has a 'withdrawal procedure' (Article XXI), this is so strict that it offers countries virtually no effective means of retracting their commitments to services liberalisation. It seems that the WTO positively welcomes this anti-democratic aspect of the GATS. In its own question and answer introduction to the Agreement, downloaded from the WTO web site in October 2000, the WTO recommends GATS to pro-liberalisation governments for the political assistance it can bring them in 'overcoming domestic resistance to change'.⁵⁰ This statement has since been removed from the WTO's website.

It would seem that the EU is also keen to ensure that liberalisation is 'locked-in'. Its requests contain controversial demands for market opening in countries where popular resistance has explicitly rejected foreign companies and privatisation in, for example, the water, energy and telecommunications sectors. If these countries submit to EU pressure, the rights of current and future governments to reverse policies, if they are not working, will be curtailed.

7.2 Bolivia – EU target for water liberalisation

In September 1999, the International Water-led consortium Aguas del Tunari was awarded a 40-year concession for the water and sanitation system of Cochabamba, the third largest city in Bolivia with some 500,000 inhabitants. Water tariffs increased by up to 200 per cent. The massive tariff hikes hit the people of Cochabamba where the minimum wage was less than US\$100 per month. The concession was terminated in April 2000, following social unrest and military repression, which left one person dead, two blinded and several injured.⁵¹ Communities are now considering how to best ensure public participation in future water delivery systems.

7.3 Egypt – EU target for water, energy, transport and construction liberalisation

So far in Egypt, private participation has been limited to construction contracts and most of the new project activity remains reliant on aid finance, especially the US Agency for International Development (USAID).

An attempt to privatise water services using a 'Build-Operate-Transfer' (BOT) framework in Ramadam City failed because; first the legal status of the project was questionable and second; the financial status of the project was not clear because of a possible devaluation of the currency.⁵²

In August 2002, the Egyptian Prime Minister stated that there would be no further privatisation of utilities. Dr Atif Ubayd said that water, sanitary drainage, roads, bridges, schools, hospitals, electricity networks, railways and public transport would remain the property of the state in order to protect people of low-income.⁵³

7.4 Trinidad – EU target for water liberalisation

Severn Trent, a UK water company, who managed the water authority WASA for 5 years, was sent home in April 1999. The management of Trinidad's water supply has now reverted to public sector control.⁵⁴

7.5 India – EU target for energy liberalisation

In June 2001 Enron, the global energy giant, was spectacularly evicted from the Indian state of Maharashtra following a community campaign which highlighted the project's lack of transparency, its threat to village livelihood and environmental damage.⁵⁵

7.6 Colombia – EU target for telecommunications

In the city of Cali, a broad local coalition, which includes the public sector trade union, is engaged in a second round of action against the local government's plan to open up the telecommunications market (and break down the public provider of telecommunications, electricity and water services). This follows a historic victory in January 2002 when, following a month long protest occupation of the central administration tower (of public works), the local government agreed to halt liberalisation plans.⁵⁶

7.7 Conclusion

All over the world, popular protest has led governments to rethink private sector involvement – both domestic and foreign – in service delivery. Even in the absence of mass public opposition, it is critical that governments retain the flexibility to reverse policies that are not working. The EU's requests clearly demonstrate an indifference towards the democratic processes that the countries listed above have gone through. If these, and other countries, submit to the EU's will, then the rights of future governments to respond to public protest and failing policies will be severely curtailed.

Even in the absence of mass public opposition, it is critical that governments retain the flexibility to reverse policies that are not working.

8. The mythical GATS flexibility

8.1 Introduction

No analysis of GATS and development would be complete without a brief examination of the now familiar claim that GATS is a flexible agreement and that poor countries can choose what, when and how to liberalise.

In theory, all countries, including the poorest can choose not to make commitments in certain sectors, or can choose to list specific limitations to the commitments they do make. In practice, GATS works somewhat differently.

8.2 The pressure

Developing countries are put under significant pressure by economically and politically powerful WTO members such as the EU. In theory, the WTO is a place where developing countries can group together to increase their bargaining power but the bilateral request-offer process in GATS makes such strength in numbers difficult, if not impossible. This problem is exacerbated by the lack of capacity in poor countries to adequately deal with the huge scope of GATS. It has been reported that single developing country negotiators – who are often responsible for covering a wide range of different, and extremely complex, WTO agreements – are going into bilateral GATS negotiations against twelve or so industrialised country experts, each specialising in just one part of one WTO agreement.

According to the Ambassador of Bangladesh to the WTO, “When you go into a bilateral format of the negotiations, you are vulnerable. Why? Because against a major developed country, you simply cannot withstand the level of scrutiny. And you do not have the strength in the numbers that you get in the multilateral process. This is exactly what happens bilaterally in the WTO. Within a multilateral context, in the WTO, sometimes developed countries are unable to get their way with us. But when you come to the bilateral mode, we find that where they are unable to persuade us to agree to something multilaterally, they apply pressure bilaterally to get it done.”⁵⁷

It is therefore at best politically naïve and at worst deliberate dishonesty to imply that bilateral GATS negotiations are simply a friendly one-to-one chat between a rich and a poor country official discussing the relative

human development merits of different possible GATS commitments. Pressure is part and parcel of the process and a country's GATS 'flexibility' is therefore, to some extent, relative to its political and economic clout.

8.3 The lack of information

The GATS negotiations are characterised by a lack of information, both in terms of an understanding and analysis of how its rules will impact on government regulation – and thus the implications of making binding commitments (see below) – and in terms of how services can be most effectively provided across the vast range of different circumstances in different parts of the world.

This lack of information undermines the ability, particularly of developing country negotiators, to identify what kind of commitments, if any, might be appropriate and what kind of regulations they might want to preserve through listing limitations to their commitments. Unless these negotiators have a detailed understanding of how services are provided in different regions or localities in their home country – and whether/how this is planned to change – it is impossible to know what to 'defend' in a bilateral GATS negotiation.

This problem is further compounded by the fact that governments must list any limitations to the market access, national treatment and probably the domestic regulation rules, at the time they make a commitment. It is extremely difficult, if not impossible, to go back and add extra limitations at a later date. This means that trade negotiators must therefore have the foresight to list all the potentially GATS incompatible regulations that current (and successive) governments may want to use in the future. A task made even more difficult bearing in mind the uncertainty over many GATS provisions (see below). The much-hyped GATS 'flexibility' only seems to work if you are omniscient.

8.4 The uncertainty

The GATS is riddled with uncertainty. Uncertainty over the application of Article I.3 in terms of how recent changes in public service delivery (i.e. involving more private sector finance, more user fees etc.) affect whether such services can be defined as being provided 'commercially' or in 'competition' with other service suppliers. Uncertainty over what measures are covered by the 'de-facto discrimination' rules of Article XVII. Uncertainty over exactly what constitutes 'government procurement' of

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services and to what extent this is (currently) not covered by GATS rules. Uncertainty over whether the rules on 'domestic regulation' will apply across the board or only to specific commitments and therefore whether and how governments can list limitations to these rules. Uncertainty as to what kind of regulations would violate a 'necessity test' requiring measures to be 'no more burdensome than necessary'. And uncertainty over how GATS applies to subsidies.

As the former WTO Director General, Renato Ruggiero stated at a conference in 1998, the GATS extends into "areas never before recognised as trade policy" and that "neither governments nor industries have yet appreciated the full scope of these guarantees or the full value of existing commitments."⁵⁸ So how can GATS be flexible if governments do not know what its rules mean?

8.5 The grand bargain

Before and at the Doha WTO Ministerial Conference in 2001, the EU lobbied hard to ensure the 'round' of trade negotiations would be concluded on the basis of a 'single undertaking'. In other words nothing is agreed until everything is agreed. Such a procedure provides maximum opportunity to make trade-offs between negotiating topics (e.g. agriculture and services) and it is becoming increasingly clear that this kind of bargaining is indeed taking place.⁵⁹

This will allow the EU to trade off modest changes to the Common Agricultural Policy (CAP) in return for binding GATS commitments from developing countries. However, as one Harvard economist concludes, "The exchange of reduced policy autonomy in the South for improved market access in the North is a bad bargain where development is concerned."⁶⁰ Rather than trying to ratchet concession out of developing countries, the EU should instead be reforming the CAP unilaterally.

The 'flexibility' in the GATS process is dependent on a country's negotiating capital. Poor countries have fewer 'chips' with which to bargain so, particularly in a bilateral negotiation, are at a natural disadvantage.

8.6 The never-ending process

The GATS includes a commitment to "successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalization" (Article XIX). This commitment

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The development process takes many decades, or even centuries, yet the GATS 'flexibility' to list limitations only seems to last a few years.

places a long-term deregulatory pressure on service provision. The leak of the EU's requests clearly demonstrates it is targeting removal of the regulatory conditions developing countries listed in the last round of talks. This begs the question, where will it end? The development process takes many decades, or even centuries, yet the GATS 'flexibility' to list limitations only seems to last a few years.

9. Conclusions

The leak of the European Union's GATS negotiating requests of 109 countries has provided a rare insight into the breadth and depth of the EU's ambitions for binding service sector liberalisation. This analysis of the EU's requests highlights two key points.

First, the EU's claim to be pursuing a 'development agenda' is hollow rhetoric. The EU is pursuing an agenda aimed solely at benefiting its multinational companies.⁶¹ The leaks have exposed that the EU is targeting countries that are attempting to re-regulate in response to the adverse impacts of liberalisation, targeting for elimination a whole raft of potentially important regulations, targeting countries attempting to develop alternative forms of service supply, targeting countries with functioning state provision and targeting countries which have previously rejected failed private sector operators.

Second, these requests should have been open to public scrutiny. It is simply not acceptable that these documents should be secret and it is unfortunate that the only way the public gets access to this information is through leaks.

It is now time for the EU to live up to its responsibility for taking into account development in its negotiating positions. The European Commission itself states that "All [industrialised country] policies – internal and external – should integrate sustainable development goals and take into account global needs."⁶² In a highly unequal world, it is therefore not good enough for the EU to submit maximum demands – and use its political and economic clout to press hard for them to be met – in the expectation that the outcome will be in the interests of development. The EU should withdraw its demands, call for a halt to current GATS talks, and engage in a process of independent assessment to determine exactly how GATS rules affect development-oriented regulations and what impacts liberalisation has on the poor. Only then can the GATS rules be properly analysed and the results have the necessary credibility to inform public debate on how these rules should change or indeed whether they are needed at all.

Appendix: Summary table of EU requests

	Professional	Business	Telecommunications	Postal and courier services	Construction	Distribution	Environmental	Financial	Tourism	News agency services	Transport	Energy
Angola	•	•	•		•			•			•	•
Antigua	•	•	•		•	•	•		•	•	•	
Argentina	•	•	•	•	•	•	•	•		•	•	•
Australia	•	•	•	•	•	•	•	•	•		•	•
Bahrain	•	•	•	•	•	•	•	•	•	•	•	•
Barbados	•	•	•		•	•	•		•	•	•	
Bangladesh		•	•		•		•	•			•	
Belize	•	•	•		•	•	•		•	•	•	
Benin		•	•								•	
Bolivia	•	•	•		•	•	•	•		•	•	
Botswana		•	•		•		•	•	•			
Brazil	•	•	•	•	•	•	•	•	•	•	•	•
Brunei D.	•	•	•	•	•	•	•	•	•	•	•	•
Burkina Faso		•	•					•				
Burma		•	•					•		•	•	

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	Professional	Business	Telecommunications	Postal and courier services	Construction	Distribution	Environmental	Financial	Tourism	News agency services	Transport	Energy
Burundi	•	•	•					•				
Cameroon	•	•	•		•			•			•	•
Canada	•	•	•	•	•	•	•	•	•	•	•	•
Chad	•		•					•				
Gen. African Rep.		•	•					•				
Chile	•	•	•	•	•		•	•			•	•
China	•	•	•	•	•	•	•	•	•	•	•	•
Colombia	•	•	•	•	•	•	•	•	•	•	•	•
Rep. Congo	•				•			•			•	
Dem. Rep. Congo		•	•					•	•	•		
Costa Rica	•	•	•	•	•	•	•	•	•	•	•	•
Côte D'Ivoire	•	•	•		•			•	•			
Cuba	•	•	•		•	•	•	•	•	•	•	
Djibouti		•	•					•			•	
Dominica	•	•	•						•		•	
Dominican Rep.	•	•	•		•	•	•	•	•	•	•	
Ecuador	•	•	•		•	•	•	•	•	•	•	•
Egypt	•	•	•	•	•	•	•	•	•	•	•	•
El Salvador	•	•	•		•	•	•	•	•	•	•	•
Fiji		•	•								•	
Gabon	•	•	•					•			•	

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	Professional	Business	Telecommunications	Postal and courier services	Construction	Distribution	Environmental	Financial	Tourism	News agency services	Transport	Energy
Gambia		•	•								•	
Georgia		•			•						•	
Ghana	•	•	•		•			•	•			
Guatemala	•	•	•		•	•	•	•	•	•	•	•
Guinea		•	•					•			•	
Guinea Bissau		•	•					•			•	
Grenada	•	•	•						•		•	
Guyana		•	•								•	
Haiti		•	•								•	
Honduras	•	•	•			•	•	•	•		•	
Hong Kong	•	•	•	•	•	•	•	•	•	•	•	•
India	•	•	•	•	•	•	•	•	•	•	•	•
Indonesia	•	•	•	•	•	•	•	•	•	•	•	•
Israel	•	•	•	•	•	•	•	•	•	•	•	•
Jamaica	•	•	•		•	•	•	•	•	•	•	
Japan	•	•	•	•	•	•	•	•		•	•	•
Jordan	•	•	•		•	•	•	•	•	•	•	
Kenya	•	•	•		•	•	•	•		•	•	
Korea	•	•	•	•	•	•	•	•	•	•	•	•
Kuwait	•	•	•	•	•	•	•	•	•	•	•	•
Kyrgyz Rep.	•										•	

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	Professional	Business	Telecommunications	Postal and courier services	Construction	Distribution	Environmental	Financial	Tourism	News agency services	Transport	Energy
Lesotho	•		•				•					
Macao, China	•	•	•		•	•	•	•	•	•	•	
Madagascar		•	•				•	•	•		•	
Malaysia	•	•	•	•	•	•	•	•	•	•	•	•
Malawi	•	•	•									
Maldives			•				•		•		•	
Mali		•	•					•				
Mauritania		•	•		•			•			•	
Mauritius	•	•	•		•	•	•	•	•	•	•	
Mexico	•	•	•	•	•	•	•	•	•	•	•	•
Mongolia		•	•		•		•				•	
Morocco	•	•	•		•	•	•	•	•	•	•	•
Mozambique	•		•		•		•		•		•	
Namibia	•	•	•		•		•	•			•	
New Zealand	•	•	•	•	•	•	•	•		•	•	•
Nicaragua	•	•	•				•	•			•	
Niger		•	•					•				
Nigeria	•	•	•		•	•	•	•		•	•	•
Oman		•	•	•		•	•	•	•	•	•	•
Pakistan	•	•	•	•	•	•	•	•	•	•	•	•
Panama	•	•	•	•	•	•	•		•	•	•	•

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	Professional	Business	Telecommunications	Postal and courier services	Construction	Distribution	Environmental	Financial	Tourism	News agency services	Transport	Energy
Paraguay	•	•	•	•	•	•	•	•	•	•	•	•
Peru	•	•	•		•	•	•	•	•	•	•	•
Papua New Guinea			•								•	
Philippines	•	•	•	•	•	•	•	•	•	•	•	•
Qatar	•	•	•	•	•	•	•	•	•	•	•	•
Rawanda		•	•					•				
St. Kitts & Nevis	•	•	•		•	•	•		•	•	•	
St. Lucia	•	•	•		•	•	•		•	•	•	
St. Vincent	•	•	•		•	•	•		•	•	•	
Senegal		•	•				•	•			•	
Sierra Leone			•								•	
Singapore	•	•	•	•	•	•	•	•	•	•	•	•
Solomon Islands			•								•	
South Africa	•	•	•	•	•	•	•	•	•	•	•	•
Sri Lanka	•	•	•		•	•	•	•	•	•	•	
Suriname		•	•								•	
Swaziland		•	•					•				
Switzerland	•	•	•	•	•	•	•	•	•		•	•
Taiwan	•	•	•	•		•	•	•	•		•	•
Tanzania	•	•	•				•	•	•		•	
Thailand	•	•	•	•	•	•	•	•	•	•	•	•

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	Professional	Business	Telecommunications	Postal and courier services	Construction	Distribution	Environmental	Financial	Tourism	News agency services	Transport	Energy
Togo		•	•					•			•	
Trinidad & Tobago	•	•	•		•	•	•	•	•	•	•	•
Tunisia	•	•	•	•	•	•	•	•	•	•	•	•
Uganda	•	•	•		•			•				
U. Arab Emirates	•	•	•	•		•	•	•	•	•	•	•
USA	•	•	•	•	•	•	•	•	•		•	•
Uruguay	•	•	•	•	•	•	•	•		•	•	•
Venezuela	•	•	•	•	•	•	•	•	•	•	•	•
Zambia	•	•	•					•				
Zimbabwe	•	•	•		•	•	•	•		•		

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