

The WTO Trade in Services Agreement: Privatisation by Stealth?

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The Australian Fair Trade and Investment Network is not protectionist and does not support a fortress Australia policy. We support fair trading relationships with all countries. We also support the need for regulation of international trade markets to prevent the total domination of international trade by the strongest economies and corporations. But we want a different and fairer trade framework – one which is open and accountable and which abides by UN agreements on human rights, labour rights and the environment.

How does privatisation relate to international trade?

The push for privatisation became visible to us in Australia the 1980s when both major political parties adopted economic rationalist policies. But it is actually part of a global push known as neoliberalism in the rest of the world. These policies rejected Keynesian national government intervention after the oil crises and recessions of the 1970s. They created more favourable conditions for transnational trade and investment and redistributed income towards corporations and the rich. They included floating of currencies and deregulation of capital markets, lower tariffs, production for export rather than import replacement, lower taxes for business and the rich through replacement of progressive income taxes by regressive consumption taxes, deregulation of labour markets, legislation to restrict union activity, government spending cuts and privatisation. To us, the most obvious source of these was the UK Thatcher government. But in fact the pattern was established by a global institution, the International Monetary Fund. It called these policies structural adjustment programs, and imposed them on developing countries to ensure repayment of loans after the debt crisis and rise in interest rates of the early eighties. The IMF also pushes these policies in its reports on industrialised countries: Its last two reports on Australia have advocated further deregulation and privatisation.

Global trade agreements have also been used to implement these policies. The 1998 draft of the OECD Multilateral Agreement on Investment attempted to reduce the powers of governments to regulate transnational investment and gave corporations the power to sue governments. It was also a charter for privatisation, as it gave transnational investors the right to competitively tender for government funding of public services. The MAI negotiations collapsed after national and international campaigns exposed its outrageous claims and governments were unable to defend it (Goodman and Ranald, 1999).

Now the privatisation parts of the MAI are re-emerging in the current WTO negotiations on Trade in Services. Most of us know that since the Battle of Seattle in November 1999 new agendas and agreements have been stalled in the WTO. Both civil society groups outside the meeting and governments from developing countries inside the meeting demanded democratic trade structures and fairer trade rules. The WTO is yet to respond to those demands, but has decided to hold its next Ministerial Meeting this November in Qatar, a small middle eastern country in which protest is illegal! Only a very limited number of civil society groups will even be given visas and allowed to enter the country. This is a powerful symbol of the secretive and undemocratic nature of the WTO. Developing countries are still resisting a new negotiating round with new WTO agreements on topics like investment policy and government procurement, so it is not clear whether agreement will be reached for a new round. The Qatar Ministerial meeting may end up mainly discussing the existing WTO agreements.

But most people are not aware that the General Agreement on Trade in Services (GATS) had a built-in agenda for further change and talks have already been quietly going on behind closed doors in Geneva. These talks go on over the next two years, so they will continue up to the Qatar meeting and will probably go on after it whether or not there is a new round. Changes to this agreement could reduce the ability of governments to regulate services and to provide and fund public services, so it is vital that we know about them and that we campaign against them. Decisions about essential services should be made at local and national levels after open democratic debate, not secretly signed away in trade agreements.

What is GATS?

GATS was signed by the Australian government and other member governments of the WTO in 1994. Previous agreements had only included goods, not services. GATS applies to all services, from banking to transport and telecommunications, to health, education and prisons. GATS aims to promote international trade in services, and to remove barriers to such trade. The current agreement only full covers those services which each government has agreed to list in the agreement. Australia has not listed most public services like health and education in the agreement. But the agreement encourages governments to increase over time the range of services which are included, without any review of its impacts. Like other WTO Agreements, GATS rules are legally binding on governments, and can be enforced if another government complains through the WTO dispute system. Governments face trade sanctions if they break the rules. Yet there was little or no public debate before it was signed.

GATS has some rules which recognise the right of government to regulate services and to provide and fund public services. These rules are there because many governments recognised that many services need to be regulated or provided by government to ensure equitable access to them.

Governments are now being pressured by global services corporations to change these rules. These include companies like Columbia/HCA, the world's largest private hospital corporation, and Vivendi, the global water company which now runs Australia's only privatised urban water system in Adelaide. They are organised into regional lobbying groups like the US Coalition of Service Industries and the European Services Forum. These companies see public health, education and water services as trillion dollar markets which should be opened up to them. They see government regulation and provision of public services as barriers to trade.

What changes do they want?

The current agreement recognises the right of governments to regulate services in the public interest. There is now a proposal to apply a "necessity test" to some government regulation of services. This would mean that regulation would have to be "least trade restrictive" and could be challenged under the WTO disputes process and possibly defined as barriers to trade.

What would this mean in Australia?

Australian regulation of services in areas like licensing requirements, qualifications and technical standards could come under challenge if the WTO "least trade restrictive" criteria were applied. For example, the NSW government, following extensive community consultation, has recently introduced innovative regulation in the context of the introduction of competition into the retail electricity market. This regulation was supported by PIAC through our Utility Consumers Advocacy Program (UCAP). It enables the entry of both domestic and international competitors but aims to protect consumers from the dramatic price fluctuations, company failures and power cuts which occurred recently under competitive regimes in the USA, notably in California. It achieves this by placing certain restrictions and obligations on existing companies. The Electricity Tariff Equalisation Fund smooths out the price fluctuations between generators and retailers and ensures that consumer prices will remain affordable.

If the "necessity test" and "least trade restrictive" criteria were applied, the NSW regulation, which does not exist in the USA, might not be regarded as "necessary" or "least trade restrictive" by US companies wishing to enter the NSW market. Under the changes proposed to GATS, companies might prevail upon the US government to lodge a WTO complaint. Previous decisions of the WTO disputes panel have most often given precedence to trade issues rather than to public interest issues. It is doubtful that it would give due weight to the public interest considerations which have been extensively debated in NSW.

If this seems fanciful, consider the fact that US drug companies have recently prevailed on the US government to lodge a complaint against the governments of Brazil on the grounds that its AIDS treatment program violates their intellectual property rights as defined in another WTO Agreement (TRIPS). The Brazilian government has committed the crime of having the most successful AIDS treatment program in South America by manufacturing

cheap generic drugs and distributing them to those who need them. This WTO action follows the recent legal action in South African courts by drug companies against the South African government for the same reason. The drug companies withdrew this action after global condemnation but the WTO action is the next step in the strategy.

There is also a move to apply "national treatment" rules to government purchasing and subsidies. This could give transnational corporations access to government purchasing contracts and to government funding of public services.

Australian policies to assist local industry development through government buying products from local firms could come under challenge on the grounds that transnational corporations were not receiving the same treatment as local firms.

"National treatment" applied to government subsidies could mean that transnational corporations could compete for the funding of public health and education. This would mean privatisation of our public health and education systems.

In short, such changes would transfer decisions about privatisation from the national to the international level. This is very convenient for governments at a time when public opinion polls consistently show majority opposition to privatisation of our remaining public services. It is worth reminding ourselves why this is so.

Privatisation seemed attractive to many in the eighties because it claimed to provide an instant fix for problems with public services which sometimes seemed unresponsive to consumers and which were reduced by budget cuts. Governments argued that private corporations and market forces would deliver better services. At the time, opponents of privatisation pointed out that economic theories about markets recognise that certain conditions are required for markets to operate efficiently. These include many buyers and sellers, perfect mobility, perfect knowledge by consumers and no unintended impacts on society. These conditions do not apply to many services. Governments have provided them precisely because of market failure. Essential services like electricity, water, health and education do not respond to market forces in the same way as widgets or apples. They also require massive investment, long term planning have relatively low rates of return. This means that privatised services must not only be regulated by governments, but must also often be subsidised by taxpayers if they are to provide equal access for the whole population (Ranald, 1995).

We now have enough experiences of privatisation in Australia to know that many claims of service improvements are completely unfounded. Private corporations put profits to shareholders first, often resulting in staff cuts and service reductions. Commonwealth Bank customers learnt this quickly. Victorian electricity consumers paid the price of cuts in maintenance staff after privatisation in more frequent power cuts and longer delays in fixing them.

And who can forget the Big Pong which hung over Adelaide for eight weeks in 1997 after the management of the metropolitan water and sewerage system was contracted to a private corporation? The company first claimed that the problem would fix itself, forcing the government to hire its own consultant (a former public employee) to diagnose the problem. His report showed that lack of investment in infrastructure and failure of routine procedures following staff cuts had both contributed to the massive sewerage treatment failure (Hartley, 1997, quoted in Ranald, 2000: 28). This is consistent with studies which link declines in service quality to under-investment in infrastructure and staff.

The power shortages of last summer in Victoria and South Australia, which reflect those being experienced in California's deregulated and privatised systems, were not only caused by lack of generating capacity. They were exacerbated by the introduction of competition into poorly regulated electricity markets in which the private companies can restrict supply in order to maximise prices at times of maximum demand. In NSW strong union and community opposition has so far prevented the Carr government from privatising electricity. Public ownership has enabled consumer organisations to lobby successfully for the introduction of the regulatory framework I discussed earlier which evens out price fluctuations between generators and retailers and prevents such profiteering (UCAP, 2001). Such a framework would have been resisted strongly by private corporations.

Other speakers have shown that privatisation does not deliver the fiscal benefits claimed by governments (Walker and Con Walker, 2000). The savings from contracting out are more difficult to assess, as contracts like the South Australian water one have been kept secret. However, studies indicate that savings are often less than claimed, and most often come from cuts in staffing and services discussed above. The Commonwealth Auditor General's report on the outsourcing of computing services showed that savings were far below the promised amount, there were scandals in the tendering process and many problems with service quality (Sydney Morning Herald, 2000). This forced the government to halt and reassess its program of compulsory outsourcing (Connors, 2001).

The application of market forces and privatisation has proved even more devastating in human services areas. The US private health system excludes millions of low income people without private insurance from access to health care. But it costs far more a percentage of GDP than Australia's public system which covers everyone. Studies now show that the attempt by the Howard government to construct a privatised competitive market in employment services through the Job network has destroyed coherent national labour market training policies and resulted in worse outcomes for the long term unemployed (Abello and Eardley, 2000). The government has not publicly admitted this, but has quietly reintroduced some regulation of service quality and is now discussing more training programs.

These experiences have led many community organisations to join our campaign to urge our government and the opposition parties not to agree to the proposed changes to GATS. In spite of this, the government has

supported a WTO "necessity test" to reduce national rights to regulate in the public interest. It has also refused to exclude public health and education from the GATS negotiations.

It is tempting to believe that governments are prepared to give away their rights in these areas to bodies like the WTO precisely because of public opposition to privatisation and deregulation. They could then still implement privatisation but claim that "the WTO made us do it."

But the WTO is composed of governments and we must hold them accountable for these decisions. The GATS campaign in Australia is part of a more general global movement against the secretive and undemocratic structures of the WTO, which is dominated by the US, Europe and Japan and by corporate lobbying. Business organisations are often represented on government delegations. The Australian delegation to Seattle had eight business representatives but no other community representatives. Given this structure, WTO agreements often reflect the interests of corporations as in the case of the drug companies and the intellectual property rights agreement.

It is instructive to compare the WTO and the United Nations and the double standard of the Australian government's response to both organisations. The UN is not a perfect organisation, but has open meetings, majority voting and non-government observers, and its agreements are implemented through domestic legislation. Thus human rights, labour rights and environment agreement are subject to open debate at international and national levels. The WTO has closed meetings, no non-government observers and its provisions for majority voting have never been used. WTO agreements are ratified and then tabled for a short time with scrutiny by a parliamentary committee, but do not have to be voted on by parliament. The WTO disputes process enforces its rules through trade sanctions. In short, the WTO is far less open and accountable but has a lot more teeth. Our government criticises the UN process on human rights while it jumps to implement WTO decisions, for example in the salmon quarantine decision last year.

What can we do about GATS?

Community organisations are demanding a moratorium on GATS negotiations to enable a review of the impact of the existing agreement and full public discussion of proposed changes. They also want commitments from government and opposition parties that they will oppose any reduction in the rights of national regulation in the public interest and that they will exclude public services from trade agreements. Finally they want full public debate and parliamentary scrutiny of all trade agreements before they are signed, and a more democratic and accountable system of international trade negotiations.

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