

# **The GATS consultation and Government response to Friends of the Earth concerns**

## **Introduction**

Late last year the UK Government produced a response to the public consultation on GATS. We wanted to take this opportunity to let you all know how they responded to the points Friends of the Earth activists made during that consultation.

Overall the Government document<sup>1</sup> is not as comprehensive as we would have hoped. While length is not necessarily a complete judge of quality, at 39 pages the paper could never have responded in much detail to the nearly 800 submissions received by the Department of Trade and Industry (DTI).

Nor is what is there of much comfort. The introduction to the paper reads, “*Our aim now is to address the key underlying issues raised, and in doing so to demonstrate that the Government is taking due account of them in the current WTO negotiations.*” **Yet responses to questions are thin and lacks in either understanding of the issues raised or willingness to engage with them in much depth.** When we recall that the Government was essentially forced to conduct this consultation when it would have preferred to continue to negotiate without public involvement, this is not too difficult to understand.

For example, in the widespread demand that education and health sectors be removed from the negotiations, the Government replies that they have “listened” to the concerns. Yet they deny that the concerns have a valid basis and the topics remain firmly on the negotiating table. The fact that there is no current movement in negotiations does not allay fears that future problems in these sectors will come up.

### **Other areas of considerable concern include:**

- only 1 (one) MP and 2 (two) MEPs participated in the consultation;
- the paper states, “*Relatively few comments were received from business on this occasion,*” but dismisses this by saying, “*but this is not surprising given the focus of this consultation on requests from other countries for liberalisation within the EC. We received most of the input from business during our first GATS consultation in 1998, when the focus was on identifying barriers to trade in services that hinder our exports.*” Apparently the Government would have us believe, then, that business has little or no interest in what the EU or other countries do that will affect their exporting their services to us – surely a serious competition issue if nothing else. **I might surmise that in fact business was caught off guard by the level of public concern and had not anticipated the need to state its case again on these issues, a real campaigning success;**
- **the document does not indicate the level of concern expressed about any given issue**, so in effect we may be looking at a public consultation where one submission from one business is given equal weight to the submissions from hundreds of members of the public;

Below is an outline of the Government responses to the points raised by FOE activists during the public consultation:

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<sup>1</sup> Available at <http://www.dti.gov.uk/ewt/gats2000.doc>

## **We expressed concern about:**

**1. the WTO essentially handing more control over services to big business** – this is not listed as one of the “main issues raised”, which is rather surprising given the emphasis we gave the issue. The document states, “*Consultation responses referred to a comment some while ago that GATS is foremost and agreement for business. That may be an effect of the agreement, but its purpose is more fundamental than that. Its preamble sets its basic aim as ‘a means of promoting economic growth of all trading partners and the development of developing countries.’ Business, and international trade, is an important means by which all countries...can achieve their economic growth. The assumption that a business perspective is somehow reserved only for multinational companies is a rather narrow one.*” This may well be true, but the document fails to acknowledge the serious concerns that the current type of involvement of and favour shown to big business is not acceptable, nor were citizens asked if they wanted such a process or its outcomes to place such a high emphasis on profit over the environment and communities in the first place.

**2. the lack of transparency and democratic accountability in the GATS negotiations process** – as to why they refused to tell us who was making which requests, the paper states, “*We reject this...for the purposes of judging the impact on the UK of meeting specific liberalisation requests, the source should not matter.*” They also repeat that some developing countries requested their requests to remain confidential and that they “*found no other basis on which to consult without breaching this.*” Later they say, “*...we have been as open as possible, within the limits set by other WTO members.*” Although why other countries are permitted to dictate how our Government interacts with us as citizens on these matters is not clear. On the issue of accountability to Parliaments, the paper states, “*our consultation document was written with the help of the Devolved Administrations. Copies were also placed in the libraries of both Houses of Parliament...Parliament has the opportunity to debate all aspects of the DDA, as it did with previous Uruguay Round.*” The fundamental question of the lack of proper, systematic Parliamentary involvement in and scrutiny of the process, rather than merely depositing copies of a short public consultation in libraries, is not answered.

## **3. the risk of impairing regulation of services in the future, particularly locally by:**

**- the fact that GATS “locks in” commitments** - On the “lock in” nature of GATS commitments, the paper states, “*The Government understands but does not share the concerns.*” It says, “*GATS commitments are meant to be binding.*” It also restates the fact that countries can modify or withdraw commitments, but that no compensation will be awarded unless the country concerned can show it has justification. It does not address the fact that experience of other WTO mechanisms, like the dispute resolution mechanism, and other free trade agreements, like NAFTA, give ample cause for concern that such “justification” is not particularly hard to “prove”.

**- the fact that all regulations must be stated up front, so responsive regulation is effectively impossible** - It makes much if the GATS affirming the right to regulate, but does not deal with the questions of needing to predict all future required regulations at the beginning of the negotiations other than to say that the relevant article “*provides only for a work programme. No disciplines have yet been developed...[and] the scope of any disciplines would be limited to qualification, licensing and technical standards, not to the whole range of domestic regulation.*” So in other words we should not worry, everything will be ok when the actual mechanisms on regulation are worked out. Not convincing as “technical standards” and “licensing” maybe precisely the sorts of mechanisms authorities require to protect their environment.

**- the failure to recognise that we need to regulate positively in favour of the environment and social wellbeing (which is considered by many to be “discriminatory” to business**

**and trade)** - They do acknowledge that whatever is developed should be *“no more burdensome than necessary to ensure the quality of the service, even if that may not be the absolutely least trade restrictive approach.”* But coupled with the above, we will have to watch very closely to ensure that their interpretation of this is the same as ours.

It also states that, *“On trade and the environment, the Government believes that WTO rules and multilateral environmental agreements are mutually supportive, and we will continue to press for an outcome to the DDA that recognises this relationship.”* Our experience of the environmental agreements in question, like the Kyoto Protocol and the Precautionary Principle in the Cartagena Protocol, are hardly “supported” by WTO trade laws or dispute rulings. We will in particular watch the ruling on the US/EU dispute over GMOs on this point.

Finally, the paper states, *“Our right to regulate in the public interest is not in question – this is Reaffirmed in the GATS Preamble.”* It assumes, however, that we are unaware that Preambles to WTO documents are never binding, and are therefore of little use in this context.

**4. the fact that while the Government is asking us how to proceed in the GATS negotiations, the key question of if we should proceed at all has never been asked, which is a key failure of democratic accountability** – the introduction to the Government responses states, *“We accept that the Government’s starting point and that of those who are critical of the GATS negotiations have been rather different. We want to reassure all who responded that the Government is approaching the negotiations in a rational and responsible way taking account of the views expressed.”* The issue is not dealt with any more directly than this. The GATS negotiations forming part of the single undertaking of the Doha agenda is a stated fact. The paper maintains that, *“...there is still time for public debate on all aspects of the services negotiating agenda...,”* but their intention to proceed with the negotiations appears unassailable.

### **We demanded:**

**5. a halt to GATS negotiations until comprehensive environmental and social impact assessments have been conducted** – The paper states clearly, *“We disagree with a moratorium on negotiations,”* as, *“This would remove one of the main drivers for an assessment<sup>6</sup>...[and] it would postpone the benefits that developing countries have identified from services liberalisation.”* It concedes, *“the importance of assessing the impact of trade liberalisation under the GATS...In the UK, assessments are conducted inter-Departmentally in association with Devolved Administrations, and decision on whether to liberalise services or take GATS commitments are arrived at through collective discussion. The same should apply to developing countries.”*

However, collective discussion, as we have seen, is not necessarily democratically sound, nor is there any apparent accountability if commitments are taken against the wishes of those in that discussion. It refers to impact assessments being conducted by the EC, but does not address the question of why commitments are being considered before those assessments are completed or how it is possible to make them in an ecologically or socially sustainable way.

**6. exclusion of public services and resource services from the GATS negotiations altogether** – the paper states that, *“No new offer in any public service sector...no new offer in respect of education, health or water services”* have been made. This does not answer the demand that all existing offers and liberalisation should be removed from the negotiating table now and in the future. The paper states, *“We accept that there is room for improvement here [in the ambiguous wording of the GATS text relevant to services provided in the “Government authority”], and has long made it clear that we are open to this...Our public services are not up for sale,”* but they will not categorically remove them from the negotiating table.

**7. exclusion of investment from the WTO, including in GATS** – the paper states, “*We have argued, in the light of Cancun, that investment should be dropped from the DDA altogether,*” but it ignores the demand to drop it from all negotiations both now and in the future.

**8. exclusion of necessity tests from GATS** – the paper states, “*Comments have focused on fears that this [a necessity test] would prevent Governments from regulating. The Government agrees that this is a sensitive issue, and understand the concern, but considers it unfounded.*”

## **Responses to other relevant concerns of FOE and other NGOs**

**Developing countries** – the paper restates old quotes about GATS offering choice, that no country is forced to make requests or offers and that the UK Government believes GATS is in the “export interest” of developing countries. **However the paper does not answer questions about the mounting pressure on developing countries in the WTO to engage “more fully” with the GATS process.** The statement, “*Their [developing countries’] circumstances are all different and it is not for countries such as the UK to presume that we know what is in another country’s best interest,*” is at odds with this pressure.

On the lack of capacity in many countries to engage with the full range of WTO pressures, the paper states, “*We take the point but believe that this underestimates the negotiating strength of developing countries, evidence of which we saw at Cancun.*” **This completely overlooks the fact that it took many countries banding together to make a large show of strength for Cancun to go the way it did, and that pressure against them included President Bush personally making phone calls to delegates in Mexico threatening their aid packages if they did not capitulate.** The point remains that many countries are utterly unable to keep up with the pace and scope of negotiations being set on a daily basis by the WTO.

- **authority of local and regional Government** – it is in this area that the Government seems rather sensitive. The fact that 29 Councils and 13 Health authorities and others participated in the consultation must have helped this. The paper says, “*The Government fully appreciates the local and regional reach of GATS obligations,*” and goes on to discuss a “dialogue” it has established with the Local Government International Bureau designed to “*ensure that this is taken into account in reaching decision on GATS commitments.*”

- **gender** – in response to the whole range of issues raised on gender the paper states, “*GATS rules are gender neutral.*” It concedes that “*impact assessments could usefully take account of any gender effects,*” but **fails to undertake to actually do any such assessments.**

There are of course a number of other significant issues that could be discussed regarding this paper, but I am trying to give emphasis here to the issues raised directly by our campaigning.

## **What this means to our campaigning**

It is important to view this response from the Government in light of the wider WTO struggle. We have learned a lot from this exercise, including that:

- **We can mobilise and cooperate with other organisations to generate a large response to a key strategic issue.** The Government cannot now claim not to have been aware of the breadth of concern around GATS;

- **the Government become more nervous when local Government ask key questions about democratic accountability.** We need to capitalise on this;

- **the exercise proved our point about lack of democratic accountability in the GATS process** in a number of areas – we will be able to use this in future.

We need to bear in mind that we are trying to use GATS as an example of the huge problems with the wider trade system – it is only part of the problem. The combined efforts of activists around the world to expose the considerable flaws in the WTO have levelled sharp scrutiny on the organisation that has resulted in the current blockage right across the negotiations. Our Government has been forced onto the defensive over its role in GATS and the wider problems, and they have had to change tactics to deal with this. All of this is very valuable in the longer struggle to rebalance the way the current global economic system works, or doesn't work. We have done a good job and need to recognise this.

## **Follow up action**

If you are disappointed by this response from the Government you can:

**1. Check the list of contributors to the consultation to ensure that your name appears on it.** If it is not on the list you can email the DTI to ask them why your name was not included. It is important to let us know if this is the case please as we want to monitor it for the whole country.

The list of contributors is at the end of the consultation feedback document at <http://www.dti.gov.uk/ewt/gats2000.doc>

**2. Email the DTI on any of the points above that you feel they did not answer adequately.** In particular you might like to ask about weight given to the numbers of submissions (as discussed in the introduction above) or ask to see impact assessments referred to in paragraph 54 of the response document (as discussed in point 5 above). Our demands are the same as they always have been, it's their response that needs to change.

### **Email the DTI:**

[http://www.foe.co.uk/campaigns/global\\_trade/press\\_for\\_change/gats\\_dti/index.html](http://www.foe.co.uk/campaigns/global_trade/press_for_change/gats_dti/index.html)

**3. Contact your MP again and ask why they did not participate in the consultation** (as discussed in the introduction above) and restate some of our concerns.

### **Email your MP:**

[http://www.foe.co.uk/campaigns/global\\_trade/press\\_for\\_change/gats\\_consultation/index.html](http://www.foe.co.uk/campaigns/global_trade/press_for_change/gats_consultation/index.html)

Again, please do let us know if you get any direct replies – we have received many copies of replies already (thanks for these). They help us see how the Government is responding and adjust our work accordingly.

The letters on our website are templates. It is very helpful if you can adapt these ones or write your own, even if it covers the same issues as the standard ones, as they stand out much more. However, the most important thing is to take action, so if you can't write your own letter, please do take the web action as it is.

All the best for now,

Eve Mitchell  
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