Health and social services have so far attracted fewer commitments than virtually all other large sectors covered by the GATS. What are the reasons behind the low level of negotiating interest? What impact would GATS-bound reforms have on the provision of health and social services?

When Ministers initialled, in 1993, the Marrakesh Agreement Establishing the World Trade Organisation few could have imagined the public attention the new organisation would later attract. Almost every day it is being referred to either in newspapers, parliaments or street rallies – and not necessarily in a positive way. For trade policy veterans, this has certainly come as a surprise.

The General Agreement on Tariffs and Trade (GATT), the WTO’s predecessor for almost five decades, had attracted far less press coverage and public scrutiny. It might have been well-known to small groups of business people, trade lawyers and researchers, but certainly not to a broad public. Since the GATT has essentially remained intact and continues to exist within the framework of the Marrakesh Agreement, what has caused the change in public attention (and apprehension)? Is the WTO fundamentally different?

There are indeed some differences. The WTO now rests on three main pillars. Apart from various agreements on trade in goods, centred mainly on the GATT, there are the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). According to Article II:1 of the Marrakesh Agreement, the World Trade Organisation provides “the common institutional framework for the conduct of trade relations among its Members in matters related to ... [these] agreements and associated legal instruments”. Moreover, the new organisation is equipped with a binding dispute settlement mechanism, which no longer allows a defendant Member to use its own vote to prevent a ruling from being adopted. In turn, this reflects a certain shift in emphasis from policy-based consultation to rules-based litigation in addressing trade conflicts between Members. Diplomats seem to have ceded ground to lawyers. However, all agreements have retained a core function of the GATT: they define rules and principles for Members’ conduct of trade-related policies in the areas covered.

There is little doubt, nevertheless, that there has been a climate change. At times, the “old” GATT might have attracted the wrath of relatively well-defined sector associations, in agriculture, coal mining or textiles, but it would not have caused mass demonstrations in the streets of Geneva and around the world. However, is services trade genuinely different from merchandise trade? Are protective regimes better suited in principle to the pursuit of social or infrastructural objectives that underlie the provision of many services? It is difficult to see why. If it is reasonable and beneficial for the economies involved to trade farm and food products, i.e. bare necessities of life, or basic infrastructural equipment, from trucks to trains and cranes, it might be equally reasonable to improve access to core service sectors. If such sensitive goods as pharmaceuticals can and, possibly, should be traded, the same rationale might apply to medical services as well.

Why the fuss about WTO and GATS?

- For some critics, WTO and GATS have become symbols of something they deeply resent: private ownership, market mechanisms, globalisation, loss of cultural identity, and the like. The fact that only few countries in the world are not Members and are not currently seeking accession, may provide only limited consolation in this context. Absence of a reference or rallying point might simply add to a sense of frustration.

- Professionals in some sectors, including doctors and teachers, may have suffered a culture shock when they learned of the (potential) extension of trade rules to their activities. The mere thought of being covered by a commercial agreement might have been difficult to digest. Misrepresentations about the implications of GATS, circulated in various
professional journals, have certainly not helped to ease concerns.

• Finally, there is opposition of a more traditional, economic nature. Like farmers, miners or textile workers, professionals in protected service sectors may resent sharing their turf with foreign suppliers. Resistance to competition may be even fiercer in services, where protective barriers are higher in general than in manufacturing. Resistance to competition may be even fiercer in services, where protective barriers are higher in general than in manufacturing.1 which has experienced nine rounds of trade negotiations since 1947/48.

The criticism levelled against the WTO and, especially, the GATS has not eased over time, quite the contrary. As the current round of services negotiations advances, within the overall framework of the Doha Development Agenda, many governments are under pressure to explain and, possibly, constrain their negotiating positions. While the guidelines for the services negotiations, approved by the Council for Trade in Services in March 2001, provide that there be no a priori exclusions from the negotiations, various Members have ruled out for themselves the possibility of making (additional) contributions in specified areas. These include not least socially or culturally sensitive sectors, such as health and other social services. For example, Commissioner Lamy recently stated, in a letter to the European Trade Union Confederation, that "Europe will make no offer nor give any undertaking in the field of education and health beyond the limited undertakings already given in the Uruguay Round" (4 February 2003).

The following parts revolve around two issues: the role of trade in the supply of basic public services, and the possibilities under the GATS to accommodate non-trade concerns. Can commitments under the Agreement be made compatible with, or even conducive to, core social policy objectives? A fourth part discusses emerging sectoral patterns of services liberalisation under the Agreement, while a fifth, concluding part focuses on the (potential) impact of GATS-bound reforms on the provision of health and social services.

International Services Trade: the Basic Rationale

International trade is driven by differences in prices, factor endowments (capital, technology, skills and manpower), and consumer preferences. Preventing or restricting trade in a non-distorted environment would be tantamount to squandering social and economic welfare. All participating societies/economies would ultimately be better off than in the absence of trade. This is subject to an important caveat, however: the existence of proper regulation and enforcement that would prevent, for example, negative spillovers on other persons and groups, and protect the weak.

Economic theory calls for public regulation and control in at least four circumstances, which are defined by the existence of:

• information asymmetries between market participants, e.g. suppliers and users
• economic or social externalities that are not reflected in market signals
• economies of scale, possibly leading to market dominance of one or more supplier(s)
• overriding policy objectives, such as social or regional equity and supply security.

Of course, there is value judgement implied. As a starting-point, markets are considered the preferable mechanism to coordinate supply and consumption of whatever product. The reliance on markets, in turn, rests on a three-pronged premise. First, it is the individual person, and his (her) preferences, that should ultimately govern resource use in a free society; second, he (she) is better equipped to express and act on these preferences, subject to the correction of eventual distortions, than collective decision-making; and, third, socially unacceptable income inequalities can and will be addressed through general tax and transfer policies that do not interfere with the coordinating role of markets.

In order for regulations to achieve their perceived objectives, certain conditions need to be met. In particular, the adverse social impact of an unregulated market should be higher than the risks associated with "regulatory failure" on the part of the governments and administrations involved. The latter cannot simply be assumed to be impartial advocates of the public interest, however defined, and to have more accurate information and foresight than private individuals or groups. The regulatory process itself is information and resource-intensive, and it is subject to vested interests lobbying for influence. It is thus conceivable, for example, that low-income economies are "under-regulated", lacking the means to generate and process necessary information and to operate independent supervisory agencies, while high-income economies may be "over-regulated", with regulations unnecessarily intruding upon essentially private affairs. Moreover, regulatory systems may be influenced by producer groups that have the means, contacts and incentives to collude, including established suppliers of mature products that may already benefit from government

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