

Public services and free trade agreements - Making Rogernomics irreversible

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In 1999, New Zealanders voted in a new government. The vote was undoubtedly a rejection of the radical so-called “more market” experiment which had been conducted on New Zealanders for the previous 15 years.

The ‘fundamentals’ of the programme were market liberalisation and free trade, limited government, a narrow monetarist policy, a deregulated labour market, and rigid restraint on government spending. The programme included privatisation of large portions of our public services, corporatisation of others – making profit their primary objective – and the introduction of competition and expansion of user charges in areas like education and health.

The experiment was designed to be difficult to reverse, and we are still feeling its effects in child poverty, greatly increased disparities between the poor and the rich, unemployment still over 50% higher than previous post-war levels, dysfunctional social services, an electricity sector that seems to have provided more price shocks than electricity, a decrepit and dangerous railway system, a telephone network bled by its dominant owner, and overseas debt and ownership of our assets far higher than when we started.

You will have personal views on the wisdom of what was done over this period. What I think we would all agree on is that we should have the *right* to change or reverse what was done by those previous governments.

GATS

What I am going to talk about now is an international agreement – one amongst a number that have been signed and ratified in our name – that in the words of one of its chief advocates, makes changes like those “effectively irreversible”¹. People in New Zealand and around the world are increasingly concerned to prevent further irreversible commitments being made, and to roll back the damage that has been done.

Public and essential services, including education, are among the most widespread areas of concern. So is the ability of a government to regulate commercial activities when necessary, both for purposes of economic development, and to protect the community when markets fail, and when commercial activities threaten social or environmental values.

The primary focus is the General Agreement on Trade in Services (GATS), an agreement which came into existence as part of the World Trade Organisation (WTO) in 1995. It aims progressively to remove any constraints on “trade” in services. Services are widely defined, including the professions, computer services, telecommunications, broadcasting, film-making, construction, wholesale and retail distribution, banks, insurance, and other finan-

¹ Hartridge, D. (1997). What the General Agreement on Trade in Services can do, Director of Trade in Services Division, World Trade Organisation. Speech to the conference ‘Opening markets for banking worldwide: The WTO General Agreement on Trade in Services’, Organised by British Invisibles and the transnational law firm Clifford Chance, London, 08/01/97.

cial services, tourism and transport, environmental services including waste disposal and supply of drinking water, health and education. The meaning of the word “trade” has to be stretched to apply in this way.

Many bilateral and regional trade agreements have similar provisions – the “closer economic partnership” (or free trade agreement) the New Zealand government signed with Singapore in 2000, to take one example. Further similar agreements are in the pipeline – with Hong Kong, Chile, and the U.S.A.

A 2001 declaration by four associations representing over 5,000 degree-granting universities and colleges in Europe and North America warned that “Caution must be exercised before putting the quality, integrity, accessibility and equity of our higher education institutions and systems at risk without obvious benefit.”² The leaders of Scotland’s 21 universities and colleges conclude there is a “substantial risk” that GATS could force state-funded higher education into international tendering against for-profit educational providers, endanger less profitable courses, and undermine standards³. Both groups opposed higher education being subject to GATS.

The world’s peak trade union body, Education International – representing 24.5 million teachers and education personnel – opposes the inclusion of any educational sector in GATS.

New Zealand’s five education unions and the CTU have called upon the government to “provide leadership in promoting agreement among all WTO members to the carving out of education and related services from the coverage of the agreement.”

Treating education as a commodity to be bought and sold like any other product places GATS in the same ideological stable as the competitive, market-driven domestic policies of the 1980s and 90s that I have just described. The architects of those policies could see little difference between education and banking or shipping. They saw students only as socially-sterilised “customers”; and viewed “educational providers” only as suppliers of “outputs”. Similarly the architects of GATS saw services simply like goods to be traded. That should not be a surprise. David Hartridge, then Director of the Services Division of the WTO, who was the same person who described GATS as “effectively irreversible”, at the same time reflected that “Without the enormous pressure generated by the American financial services sector, particularly companies like American Express and CitiCorp, there would have been no services agreement and therefore perhaps no Uruguay Round [the negotiations that led to the WTO’s creation] and no WTO”.

It is not only in education that concerns are at such heights. Local governments are worried because GATS has the ability to undermine their powers in a number of areas, including zoning, limiting the number of shopping malls, limiting advertising hoardings, controlling the amount of packaging, assisting local economic development, and controlling waste. National local government federations in Canada and Australia, along with scores of local governments in both countries, have passed strong motions calling for local government to

² Joint Declaration on Higher Education and the General Agreement on Trade in Services, signed by the Association of Universities and Colleges of Canada; American Council on Education, in the United States; European University Association; and Council for Higher Education Accreditation in the United States, 28/9/01

³ *Sunday Herald*, Scotland, “University chiefs resist higher education sell-off”, by Stephen Naysmith, 3/2/02, p.4.

be exempted from GATS. The injury is added to by the insult that local government is not party to the negotiations, and is usually not even consulted on commitments made by central governments.

Our own Christchurch City Council has passed a resolution including

1. The Council believes that it is inappropriate that local authorities be constrained by an agreement to which local government is not a party.
2. The Council believes public policy regarding the regulation, funding and provision of essential services should be made democratically by governments at the national and local level.
3. That Council believes that no restrictions should be placed on local government's rights regarding achieving social and environment ends in procurement.
4. The Council requests that the Government support the clear exclusion of public services at central and local levels from the GATS, including local government community services, environment and water services.

This has been supported by the North Shore and Waitakere City Councils, and Local Government New Zealand has also expressed its concerns to government.

There is also a growing international campaign to stop water supplies being subject to the GATS.

Cultural activities were at the heart of the earliest opposition to the GATS. When applied to the "audio visual" sector, GATS prevents governments enforcing local content rules or favouring local performers in broadcasting, film making and related media. France and Canada insisted that they would not accept GATS on that basis, so GATS is structured so that countries decide which sectors they commit to the agreement's wider implications. New Zealand was one that committed the audio visual sector in 1994, in the full knowledge that it would prevent future governments using local content quotas. The current government is one of those that is hamstrung by the actions of the 1994 government.

A remarkable declaration has been signed by the European Regional Ministers for Culture and Education at Brixen/Bressanone, on 18 October 2002. Called the Brixen Declaration, it calls amongst other things for "an international agreement for the protection of diversity in education, culture and media, to include the regional dimension" and the Ministers "demand that democratically supported services in education, culture and media are excluded from further GATS involvement". An international convention on culture is gaining support around the world. Without any doubt, concerns about GATS are now mainstream and rapidly gaining momentum.

What does GATS say?

So what does the GATS agreement say? To go into it in detail would take considerably more time than we have today, but I will take you through its main points. Most of this comes from a very useful guide published by the Action, Research and Education Network of Aotearoa, called "Serving Whose Interests?", by Professor Jane Kelsey of Auckland University.

The aim of the GATS is to increase “trade in services” through progressive liberalisation. In other words, its aim is to remove “barriers” to the “export” of services into other countries.

Its provisions are enforced through a “Dispute Settlement” system which can require governments to change laws and other measures, or allow the winning party to use trade retaliation as compensation. It uses Dispute Panels which are controversial in themselves: they are held in secret, rarely allow public submissions, and never public attendance, and comprise trade lawyers, academics and former trade diplomats who have shown themselves to have a very narrow, overwhelmingly trade-oriented, view of the meaning of the agreements. Yet the implications are far wider than trade, often involving political judgements.

The Agreement covers all forms of trade in services. This is divided into the following four ‘modes’ of supply.

Mode 1: Services supplied across borders, known in GATS as “cross-border supply”. An example is a student in New Zealand taking a distance education course in Australia or the U.S.A. via the internet or post; or a call centre in India answering calls made in the U.K.

Mode 2: Services supplied to a national of one WTO member in the territory of another WTO member, known in GATS as “consumption abroad”. An example of this is a Chinese citizen buying education services in New Zealand by coming to study here, or tourists coming to New Zealand.

Mode 3: Services supplied by a company of one WTO Member through foreign direct investment in the territory of any other Member, known in GATS as “commercial presence”. This is when an overseas corporation or institution sets up an operation in New Zealand: it is usually known as foreign direct investment.

Mode 4: Services supplied by citizens of one WTO member working in the services sector of another WTO member, known in GATS as “presence of natural persons”. For example, trainers regularly cross the Tasman (and come from further afield) to provide commercial training courses in New Zealand. A likely development is construction being carried out by companies bringing teams of workers from another country (usually where labour is cheaper, such as a developing country) for just long enough to complete the work.

The Agreement applies to both central and local government measures affecting trade in services.

It covers provision of all services except (as stated in GATS Article I.3) “services supplied in the exercise of governmental authority”. These are defined as services “supplied neither on a commercial basis, nor in competition with one or more service suppliers”. This Article is portrayed by defenders of the GATS as exempting public services – such as education and health – from GATS rules.

But the exemption is unlikely to apply where private and public provision exist side by side (such as private schools and tertiary establishments; and private hospitals), or public provision has an element of commercialism (e.g. through part-charges such as student fees and full fee paying international students). This is a situation which exists in many core public services, including health and education.

This is obviously a major point of concern. People wish to retain the right of governments to control or regulate basic services such as health, education, environment, transport, technical testing, or research in social sciences and humanities. Without that right, democratic government is an empty shell.

The GATS agreement works in two ways. First are the ‘top down’ rules, known as ‘general obligations’, which apply to all services. Second are the ‘bottom up’ rules, which are a set of further disciplines which governments can accept by on a sector-by-sector basis. Countries are allowed to list ‘limitations’ on (in other words, exemptions from) the general obligations, but these exemptions are temporary.

Top-down rules

The GATS has 17 Articles covering general obligations. I’ll discuss just the most important ones.

The **Most-Favoured Nation** (MFN) principle, which is found in all WTO agreements, means that all trading partners must be treated equally. This means that the best treatment a WTO member government gives to any one country must be extended to all other WTO member countries as well. This means for example that we could not offer researchers from Pacific island nations access to research funds in New Zealand without offering the same privilege to the entire WTO. Countries were permitted to list exemptions to the MFN rule in 1994, but they apply for at most ten years. India is currently using the MFN principle to challenge a European Union programme that gives tariff preferences to developing countries based on their performance on labour rights, the environment and combating illicit drugs, on the basis that it doesn’t apply equally to all WTO members⁴. While this is not under GATS, it illustrates the broad implications of the MFN rule.

Restrictions on **domestic regulations** affecting services are one of the most far-reaching aspects of the GATS. Supporters of the GATS commonly deny that it is designed to promote deregulation. However Article VI provides that governments are required, in the sectors where they have made commitments, not to use licensing, qualification or technical standards that are “more burdensome than necessary”, or “unnecessary barriers to trade”. This implies that voluntary, self or “light handed” regulation will be favoured – the kind that has created problems in the international accountancy-cum-consultancy firms (like Arthur Anderson in the Enron scandal) and recently in New Zealand’s building industry. In addition, new rules on domestic regulations are currently being negotiated which raise even greater concerns. Even the Ministry of Foreign Affairs and Trade (MFAT) which routinely denies that the government’s regulatory powers are affected, states that “Instead of the tariffs often imposed on goods, exported services invariably become subject to the domestic regulatory regimes in place in the countries in which they are consumed.” So removing these so-called barriers is removing the regulations that governments use, often for social, environmental or economic development purposes.

As an example, think about the fiasco last year in the New Plymouth PTE, the Practical Education Training Centre. It had apparently become the largest PTE in New Zealand by attracting students who would buy a computer out of their student loan, sell it to a second hand dealer, and never turn up to classes. One response of the government was to require

⁴ *Bridges*, “India Challenges EU GSP Scheme on Environment and Labour Standards”, Vol. 7, Number 1, 15 January, 2003. This is not under GATS, but indicates the wide implications of the MFN provision.

students to attend at least 10% of their courses in order for the institution to claim its tuition subsidies⁵. Another possible approach could be to raise the requirements for entry to courses. These would either reduce the potential “trade” of all PTEs, or could be ruled an “unnecessary barrier to trade” or “more burdensome than necessary” if a WTO Disputes Panel considered there were other ways to achieve the objective. For example, it might consider that the “least trade restrictive” approach for the government would be simply to prosecute the students, or to have closer monitoring of the institution, or for institutions to have codes of conduct policed by a PTE industry association that discouraged this kind of behaviour, leaving it to the “market” (i.e. students) to choose what they considered were reputable providers.

Subsidies (that is, government funding) are covered by the GATS, despite the claims of some advocates. That means that for sectors that the government has committed to, overseas service providers are entitled to the same subsidies as local providers. This is an area which is extremely complex and riddled with uncertainty, but the implications are quite far reaching. Further restrictions on use of subsidies is a focus for current negotiations.

Bottom-up rules

Those were “top-down” general obligations which apply to all services. I’ll now describe the most relevant “bottom-up rules”. The GATS contains two key rules to which governments can make specific commitments on a sector-by-sector basis. These two rules, market access and national treatment, are more far-reaching even than the general obligations. Each WTO member government has its own country schedule in which it specifies how the rules of this part of the Agreement will apply to each of its different service sectors and sub-sectors.

The GATS does have a procedure (Article XXI) for governments to withdraw commitments. However, this requires compensation, normally in the form of some equivalent liberalisation, which then needs the consent of all other WTO members that may be affected. This makes it extremely difficult for governments to withdraw commitments.

A commitment to **market access** prohibits governments from implementing a range of measures that place limits on the amount of services that are supplied or how they are supplied. For example, governments are required not to place restrictions on: the number of service suppliers, operations or output, the value of service transactions or the number of people employed. In the education sector, this could include, for example, attempts to limit the number of universities or institutions providing teacher training to prevent excessive competition, the number of medical students being trained, the number of English Language Schools, or the number of students they could admit from overseas. Nor can governments restrict or require specific types of legal entity. This would prevent us requiring educational institutions to be non-profit, or have students and staff representatives on their boards. The rules also prohibit governments from requiring joint ventures between foreign and national services firms or placing limits on the percentage stake a foreign services company can have in a domestic firm. So we could not insist that tertiary institutions have at least some local ownership. In local government, the CCC is particularly worried about this article because it would force them to allow companies to open up more landfills, at a time when they are trying to reduce the problems they so obviously cause.

⁵ *Press*, “\$25,000 in loans scam probed”, by Jonathan Milne, 5/11/02, p.A5.

A commitment to **national treatment** means that all foreign services providers must be treated at least as well as domestic firms. They can be treated better (and often are), but not worse. Put another way, a central or local government cannot give preferential treatment to domestic services firms because this would discriminate against foreign services firms. So we could not require foreign companies in New Zealand to use at least some local suppliers, managers or staff. We cannot give New Zealand private institutions greater funding than overseas ones.

The relationship of international treaty making to the **Treaty of Waitangi** is another important aspect. During the Uruguay Round when the GATS was first negotiated there was no attempt to inform or involve Maori. Accordingly, the National Maori Congress said it was not consenting to New Zealand's ratification of the WTO agreements, and Congress members would consider themselves exempt from their provisions.

The Government believed it had pre-empted any Maori concerns about the GATS by a reservation that allows measures that give more favourable treatment to any "Maori person or organisation" engaged in "a commercial or industrial undertaking". This wording is very narrow. It only allows more favourable treatment for activities that are "commercial" or "industrial". There is no exemption for measures to implement the Crown's obligations under the Treaty of Waitangi. It does nothing to address the impacts of the agreement on Maori in such areas as protection of taonga, and promotion of the language and culture.

Current negotiations

Governments are now in the process – which will be repeated regularly – of making additional liberalisation commitments. While a new WTO "trade round" began at the biennial Ministerial meeting in Doha in 2001, GATS negotiations were mandated to restart independently of this. Part of this is renegotiating the GATS agreement itself – for example on domestic regulation and subsidies as I have mentioned – but part is also countries making "requests" to other countries for service market opening, and "offers" in response.

The degree to which a "request" is really a "demand" depends on the power of the country making it. A "request" from the EU or the US is difficult to ignore because they can bring other pressures to bear, and they have markets New Zealand and other countries' exporters want access to. In the bigger picture, these requests and offers will be part of the haggling and arm-twisting that goes on in the whole round. Historically, New Zealand has made wide-ranging concessions in the hope of increased agricultural market access.

One Third World observer described the 2001 Ministerial as follows: "Doha has now become a byword for the perversion of democracy and the thwarting of the will of the majority via intimidation, threat and bribery on the part of the strong."⁶ He was speaking particularly of the intimidation of the developing countries – about 80% of the world's population – but, as one New Zealand negotiator put it from his own experience, after a particularly brutal experience with the United States, "this is just a game about power finally"⁷.

⁶ Aileen Kwa, "Power Politics in the WTO", Focus on the Global South, Bangkok, 2002, p. 5, available from <http://www.focusweb.org>.

⁷ "State business is a cruel trade", by Stuart McMillan, NZ Trade Consortium Working Paper No. 13, February 2001, NZ Institute of Economic Research, p.9.

Though the haggling is done essentially on a bilateral basis – one country with another, once an offer has been accepted, it applies to all WTO members, under the MFN rule.

Initial “requests” were due in on 30 June last year. Initial “offers” were supposedly due by 31 March this year, and the government conducted an extremely compressed “consultation” on the basis of that deadline. Yet only five countries met the deadline – even the European Union still hadn’t put in its offer weeks after. However further requests and offers will continue to occur in order to reach a final deal.

When GATS was signed in 1994, countries were allowed to list exceptions they wished to maintain that were in conflict with GATS. These exceptions will be particular targets of the negotiations. For example New Zealand listed an exception for our overseas investment regulations, another for enterprises currently in state ownership, and the one I have already described allowing us to give more favourable treatment to Maori commercial undertakings.

These exceptions are much weaker than they appear. For example, in early March, the Minister of Finance, Michael Cullen, admitted in answer to a Parliamentary Question from Rod Donald that the government could not legislate to ban sales of coastal land (or indeed any land) to overseas interests because of the GATS. That is because the listed exception freezes the overseas investment legislation as it was at 1 January 1995. However, he said, that constraint on Parliament’s ability to pass laws would apply only if “the proposed use of the land was related to trade in services”. Yet that would not be rare at all, as any land that is used for tourism would be covered by GATS. The buyers only need to say they will use a farm at least in part for a homestay, or a piece of prime scenic land for a hotel or lodge, or a fishing or hunting ground for a fishing or hunting lodge, and they are covered. As we will see shortly, the government is currently considering a “request” from unnamed other governments to also open “Sporting services” to GATS. That would further tighten the constraints, as it would presumably apply to any investor wanting to offer recreational or sporting use of land such as hunting and fishing – not just tourist use or accommodation. As well as the land ownership implications, the GATS would also prevent central or local government putting any limit on the number or size of tourism operations or hotels in a particular region, unless the limit was “necessary to protect human, animal or plant life or health” (which will be very narrowly interpreted judging by previous WTO rulings).

In education, the government committed market opening to “Primary, Secondary, and Tertiary education in private institutions”. That it applied only to “private” education was supposed to be a safeguard. But this has been eroded in the deliberate policy moves to reduce the differences in the way public and private institutions are treated. It increases the flow of public funds to foreign owned educational providers, starving public education, and reduces our ability to control of the size of the private sector. Public institutions are vulnerable to “cherry picking” by private institutions of the easiest and most lucrative courses.

In other sectors, its commitments were amongst the widest of any country, including many professional services, the telecommunications sector, broadcasting and other audiovisual services such as film making, construction, retail and wholesale distribution, financial services, tourism, and much of the transport sector. Other commitments, including education, have been made in the free trade agreement signed in 2000 with Singapore.

Process issues are important within New Zealand as well as within the negotiations. In New Zealand, international agreements are not like national legislation. Negotiations are managed solely by the Executive – in effect the Cabinet – who have the power to sign off and ratify any international treaties. The New Zealand Parliament has no official involvement in formulating the negotiating mandate, nor any effective oversight of the negotiations. Its only involvement is, in recent years, a brief Select Committee hearing followed by a non-binding parliamentary debate after the negotiations have completed. This seems extraordinary given that an agreement like the GATS binds future governments, restricts the kinds of laws and policies that Parliament can adopt, is extremely difficult to amend and is enforceable through the WTO's own 'court' system. It is comparable to entrenched legislation, like a constitution.

Worse, the Government's position during these negotiations is kept secret. It has no obligation to provide any information to MPs or the public, and the Official Information Act provides an explicit exemption for international negotiations.

Consultations over New Zealand's initial GATS offer occurred only after intense pressure from many organisations. However they bordered on farcical. Despite having received requests from other countries the previous June, consultations were only opened to the public on 31 January (though exporters were consulted extensively before that). Only a sketch of what is being requested of us, and what the government has requested of others, was released on 31 January. We had only until 28 February to make submissions on intensely complex and often ambiguous issues.

An innovation was that the document containing this information stated "Ten Guiding Principles" for the initial offer. We understand that these were almost forcibly inserted by Cabinet after it was discovered that MFAT was proposing to release a minimalist document. Some of these were welcome, such as that "the government will make no initial offer that would limit the government's right to provide, fund or regulate public services, such as health or education", and that "the government will make no initial offer involving privatisation of public services or of public entities, or which would affect Kiwi Share arrangements." However they apply only to the initial offer in what is likely to be a long and bruising negotiation, they make no acknowledgement of the need to back out of existing commitments; and they leave open the possibility that the rules might change if the government sees advantage in the overall WTO negotiations – such as in agriculture.

In fact, the bare summaries released by the Ministry of Foreign Affairs and Trade (MFAT) heightened our long-held concerns about the effect of the GATS on public tertiary education. New Zealand has asked other countries to open up their entire education sectors to foreign competition. This would affect those countries' public and private education from pre-school through to tertiary and adult education.

At least one country – which information available to us indicates is the U.S. – has asked New Zealand to open up its entire higher education, adult education, and "other education" sectors to foreign competition. If accepted, this would include access to subsidies, and limits on the ability of our government in its wish to regulate the sector. It would imply accelerated commercialisation and widened leakage of scarce public funds to private companies.

The New Zealand government has put the higher education sector into an extraordinarily exposed position. While it has proposed guiding principles for the liberalisation offers it

intends to make, which include one stating that ‘the government will make no initial offer that would limit the government’s right to provide, fund or regulate public services, such as health or education’, it appears to disregard those principles in the requests it has made of other countries. It is effectively saying to other countries: we expect you to do what we won’t do at home. In addition, the US request will be very difficult to ignore, given the government’s pursuit of a free trade agreement with the US.

The government has taken a similar route in a large number of other sectors. It has demanded that the European Union open up its entire public services (a request that we have learned of only through leaks – it was not disclosed in the MFAT summary). To give a sample of other sensitive sectors in which New Zealand made requests to other countries to fully open their markets: Research and Development, Advertising, Postal Services, Construction services, Recreational, Cultural and Sporting Services, Environmental Services (including Sewage services, Refuse disposal services, and Sanitation services), Tourism, and Transport.

In response, other countries have asked for us to commit to opening in a large number of sectors including Research and Development, Postal Services, Distribution in the areas which are required to allow the producer boards to have special status, Entertainment, Sporting Services, News Agency Services, Water supply and most other environmental Services. There is a demand that we remove a provision for special treatment for funding for Maori broadcasting and Government assistance to the film industry. Any one of these requests has far reaching implications which require a detailed knowledge of the particular sector to analyse fully.

Amongst the “horizontal” requests were removal of any requirement for Overseas Investment Commission approval for foreign investment, including land. Another wants us to extend the special rights of entry given to senior and specialist staff transferred to New Zealand from another branch of a transnational to allow them to stay for longer, and without any need to test whether there are local people who could do the job.

We are most disturbed that the government has given away any moral high ground in protecting public education by its requests to other countries. Coupled with increasing pressure from the U.S., there is real cause for concern for New Zealand’s public tertiary and adult education. There is also a wider fear that, as in the original GATS negotiations, our government will trade off wider foreign access to service sectors in exchange for increased agricultural exports.

As the urgency to reach a deal in the WTO increases towards the latter stages of the negotiation, any further public consultation is likely to be even more cosmetic or non-existent. Only constant public pressure will force the Government to open up the GATS to the kind of informed public debate, independent cost-benefit analysis, full democratic scrutiny and genuine participation by its Treaty of Waitangi partner that would be required if such a far-reaching measure was being proposed at the national level.

In its initial offer, the government made relatively limited concessions. The include integrated engineering services; consultancy services on urban planning and landscape architecture; placement and supply of personnel; photographic services; convention services; environmental consultancy services; credit reporting and collection agency services; postal services and courier services. Engineering services coverage of aircraft maintenance (such

as by Air New Zealand at Harewood) and the Postal Services offers are examples of ongoing concerns. The government has retained the right to act in case of anti-competitive behaviour by foreign postal companies, and has retained the right of the New Zealand Post Office to issue New Zealand stamps, but this may not be enough if the market is not big enough for two competitors.

It has also recognised the public concern about public services by stating in its offer that it is made “on the basis that Article I.3 allows for a government to provide, regulate or fund (including through subsidisation) public services such as public education, public health and social welfare services, in the manner it determines best meets broader policy objectives. In this respect, such services should not be subjected to the same disciplines as private services with purely commercial objectives.” But this is not in a legally binding form, and does not deal with the problems GATS presents for regulating privately owned services with a high public good element.

Though the government is now aware of the issues and growing public disquiet, immense pressures will be brought to bear during the WTO negotiations. The regular biennial ministerial meeting in Cancun, Mexico, in September will be make or break time for the negotiations, and the major powers will be working other countries furiously to ensure it is not break time.

GATS is not good for New Zealand’s social, environmental and economic development. We should be withdrawing from it rather than intensifying our commitments to it.