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Joan Claybrook, President

SAVE OUR SERVICES

S.O.S. SERIES No. 4 - CORPORATE ACCOUNTABILITY

How new global "trade" talks threaten consumer protections in financial services.

A global commercial agreement of unprecedented scope and power is currently being negotiated behind closed doors. This agreement, the World Trade Organization's General Agreement on Trade in Services (GATS), could result in the privatization and deregulation of many essential services. You can collect Public Citizen's whole S.O.S. Series at www.citizen.org/trade/wto/gats. For more information, contact gtwinfo@citizen.org or 202-546-4996.

Bottom line: With a growing proportion of U.S. retirement savings invested in mutual funds, insurance annuities and bank savings, consumer protection in the financial services area is even more vitally important to an increasing portion of the U.S. public. Recent corporate scandals have shaken consumer faith in markets and revealed the extreme perils of weak regulation. In response, the U.S. Congress passed a law to crack down on corporate criminals and reinstate some of the safeguards that had been deregulated away. However, new GATS negotiations threaten to undermine these few hard-fought consumer protections.

Congress passed the Sarbanes-Oxley corporate accountability bill in 2002 in response to the corporate crime wave crested by Enron, Arthur Andersen, Worldcom, Adelphia, and others. Weeks after the bill's passage, government officials in the European Union (EU) and Japan told the U.S. Securities and Exchange Commission (SEC) that the legislation as applied to foreign companies operating in the United States was a barrier to trade and investment. When new GATS negotiations are complete, these countries will be able to do more than lobby the SEC. They can attack the law in the WTO and seek trade sanctions to force the United States to withdraw or amend the new law.

- The EU and foreign companies complained that a number of Sarbanes-Oxley provisions constitute barriers to trade such as those which: require EU firms to register with a new oversight board; prevent accounting firms that audit publicly traded companies from also providing them with other consultancy services; require legal and accounting firms to be "whistleblowers" on clients they suspect are violating the law; prohibit companies from making loans to directors and executives; allow U.S. regulators to demand documents from non-U.S. firms to ensure accountability and correct malfeasance. Could the United States defend these provisions as "no more trade restrictive than necessary" if challenged at the WTO?
- The EU was concerned particularly with the creation of this "double-regulatory" regime which increases compliance costs for its companies. As a consequence, the EU demanded that the United States adopt significantly different, international accountancy standards. These standards are "principles-based," not rules-based, meaning they are less comprehensive and rely on the subjective judgement of the auditor, the same auditors responsible for the recent accounting scandals. The SEC has now agreed that by 2009, EU firms can use international standards when doing business in the United States, not domestic standards.
- In addition to GATS rules that apply to services in general, GATS negotiators (aided by the discredited Arthur Andersen accounting firm) developed specific rules for the accountancy sector which apply a "necessity test" to all domestic regulations relating to accounting and require that licensing, qualification and technical standards be "no more trade restrictive than necessary."

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