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## SAVE OUR SERVICES

### S.O.S. Series No. 6 - The WTO Wants to "Discipline" *Your* Domestic Regulations *Proposed New WTO Service Sector Rules Expose More State and Local Laws to WTO Challenge*

**A global commercial agreement of unprecedented scope and power is currently being renegotiated behind closed doors. The agreement, the World Trade Organization's General Agreement on Trade in Services (GATS), could result in the privatization and deregulation of essential services. You can collect Public Citizen's whole S.O.S. Series at [www.citizen.org/trade/wto/gats](http://www.citizen.org/trade/wto/gats). For more info: [gtwfield@citizen.org](mailto:gtwfield@citizen.org) or 202-546-4996.**

**Bottom Line:** In the context of WTO GATS negotiations now underway, the WTO's "Working Party on Domestic Regulations" has produced a draft set of "disciplines" that would limit domestic regulation of all service sectors - from energy to health care to education to banking to mining and more - not just specific service sectors countries chose to sign up to meet the other GATS rules. These new draft disciplines would allow challenge before WTO tribunals of *nondiscriminatory* domestic regulations - rules that treat domestic and foreign companies the same - including those that govern licenses and qualifications, as well as technical service standards. The draft would allow challenges on numerous grounds, including reasonableness, relevance, transparency/necessity and lack of conformity with international standards. A panel of three trade lawyers at the WTO in Geneva would be empowered to judge if federal or subfederal laws met these very subjective tests, without reference to any U.S. jurisprudence on the meaning of such terms, and if they ruled against domestic laws, the laws must be changed or eliminated or the U.S would face trade sanctions.

**The negotiations for developing these new rules are slated for completion by the end of 2006.** Key features of the new rules include:

- **Least trade-restrictive test:** The goal of the proposed new disciplines on domestic regulation is to facilitate the entry of foreign services firms and providers into other countries' markets. Thus, licensing and qualifications procedures for service providers, as well as technical standards governing services, may have to be constructed in the least trade restrictive manner possible, or they could be challenged as WTO violations. Alternatively, they may be required to be "reasonable" or "relevant," extremely subjective terms with no history in trade law. A "least trade restrictive" test places an obligation upon government officials to prioritize the assessment of a law's trade impact over all other policy goals.
- **Transparency and review of necessity:** The draft contains tricky language that requires that technical standards regulating the provision of services must be applied in a transparent manner, which allows for advance publication of new or amended regulations, an opportunity for foreign and domestic parties to comment on the rules and a *review of necessity*. This wording appears to place a burden on state and local governments to develop extensive procedures for *international* notice and comment rulemaking, and to issue a report reviewing the *necessity* of their service laws at the time of their promulgation. These efforts may be judged insufficient by a WTO trade tribunal if they are challenged by a trading partner as a barrier to trade.
- **Licensing fees:** The draft proposal appears to rule out the use of licensing fees for any purpose other than covering administrative cost. From accountants to veterinarians, licensing fees are used by states to generate the funds to monitor and enforce professional licensing standards. At the local level, law enforcement activities are heavily subsidized by licensing fees for everything from child care to alcohol licenses.
- **Requiring the use of international standards:** The draft rules also call on domestic governments to base their local standards on international standards - an international harmonization requirement. This means that national or state service sector regulatory standards that are more rigorous than voluntary industry standards developed in international standard setting bodies (where consumers, local governments and public interest advocates are usually not represented) could be challenged as barriers to trade.