Feb. 25, 2003

EU's Demands Under WTO/GATS

According to documents leaked from ongoing negotiations of the General Agreement on Trade in Services, the EU is demanding significant changes in the regulatory structure of service sectors regulated at the federal, state and local level as well as privatization of services now provided by the public sector.

Wholesale and Retail Energy: Enron Redux

- The EU energy sector request is one to which the U.S. is highly receptive. Although the actual U.S. requests in the "GATS-2000" remain secret, summaries reveal that the U.S. made similar energy requests of other nations. The EU demand is for foreign firms to be free to engage in wholesale energy arbitrage without regulatory or other limits. Enron spearheaded the energy arbitrage industry. Since its bankruptcy, large investment banks like Goldman Sachs, Morgan Stanley, Merrill Lynch, UBS and commercial banks like Bank of America have taken on the business. A key EU priority in the GATS energy negotiations is to guarantee that large EU companies can also play the U.S. electricity and natural gas markets, even as federal, state and local policies are being considered to limit U.S. companies' speculation in these sectors following the West Coast energy crisis. GATS threatens to make failed deregulation and privatization schemes permanent, because under GATS rules, once a sector is committed under GATS, it is difficult to reverse. <u>If local, state or federal governments were to attempt to reregulate after unintended consequences (such as rolling blackouts and soaring costs) occur, under GATS rules, they would be required to offer compensation to all WTO member countries for removing a future business opportunity</u>. To date, nine U.S. states have repealed or significantly delayed their energy deregulation plans since the energy deregulation crisis in the West and the Enron fraud.

Drinking Water and Sewage: Viva la France?

- The EU is demanding that the U.S. fully commit its drinking water and sewage services under the "GATS-2000" talks. This would prohibit the U.S. from maintaining public service "monopolies" or exclusive suppliers of the service on the basis of a regional subdivision or on the basis of the entire territory of a government.

This would oblige the U.S. government to give EU water giants such as Vivendi, Suez Lyonainse and Thames RWE, the right to buy up or otherwise operate for profit the more than 60,000 U.S. municipal water service providers now in existence.

- If the U.S. commits water services, under proposed GATS rules any federal, state or local regulation governing water services, such as those designed to protect water quality, universal access, as well as Public Utility Commission rulings, could be challenged as "barriers to trade" in the powerful and binding dispute resolution system of the WTO. A government might be forced to demonstrate that a regulation of a private provider was necessary and that no other "less trade-restrictive measure" could be taken to accomplish the same objective in order to maintain it.

Financial Services: New Recipes to Cook the Books

- The EU document demands that the U.S. allow for the cross-border sale of insurance services, including via internet – something almost impossible to regulate for consumer protection. This request is significant because it would allow insurance to be purchased by individuals or business located in the U.S. via assorted means from insurers located in foreign countries. Cross-border trade in insurance raises a host of regulatory issues. How will consumers be protected when they are purchasing insurance from foreign insurers who are not subject to U.S. insurance laws? What will prevent U.S. insurers from moving to offshore regulatory havens to subvert U.S. regulations?

- The EU also is demanding the right to conduct cross-border trade in mutual funds and derivatives – two areas where effective domestic regulation is essential. Mutual funds have traditionally been highly regulated in the U.S. because they are the favored investment vehicles of small investors who need protection. Derivatives require stringent regulation because they are highly volatile, risky investments as evidence by the numerous financial crises (Orange County, California, bankruptcy, Asian financial crisis) that have been triggered by derivative trading.

- The EU says it considers U.S. accounting standards a regulatory barrier to trade and urges the adoption of international accounting standards. The SEC recently considered and rejected the idea of allowing the use of international accounting standards. Although in the wake of the Enron/Andersen scandal, principle-based international accountings standards have been touted as superior to rule-based U.S. standards, a strong argument can be made that U.S. standards set by the Financial Accounting Standards Board (FASB) are stronger and offer more protection to investors than international standards.

- The EU is demanding new rights for European firms to establish national insurance agencies – eliminating the state level registration and regulation of insurance that is now in place. Under this proposal, the nation's state insurance commissions either would be disbanded or would lose jurisdiction over foreign insurance companies.

Death Knell for 18 State Alcohol Monopolies Means Lost State Revenue and less Control of Booze

- While the EU has stated it will neither request nor offer concessions in the health sector in the current round of negotiations, the EU is demanding the U.S. commit to completely open its market in the distribution of alcohol, a good that has profound health impacts. Under this proposal, the U.S. would be obliged to put an end to the alcohol distribution monopolies existing now in 18 states. As well as public safety implications, there are major state revenue losses implicated in the demand. Under GATS rules, when a sector is committed fully, governments may neither maintain nor create a monopoly in that sector. As well, the federal government would be obliged to ensure any regulations of alcohol distribution meet a "least trade restrictive" test even if the policies' goals are primarily public safety or health.

Privatization of Postal Services

- The EU is demanding privitazation of components – including sorting and delivery of first-class mail – of the U.S. postal services. This proposal raises issues of universality of service; currently, profitable metropolitan postal operations effectively cross-subsidize national letter delivery to rural and other costly locations. In December, President Bush named a nine-member commission to explore the privatization of the U.S. postal service.

WTO Multilateralism? Either Give U.S. Small Business loans to Firms From All Countries or Eliminate the Program…

- The EU is demanding that all businesses of a certain size located in the U.S. be eligible to apply for U.S. federal Small Business Loans.

<u>CONTACT:</u> Chris Slevin (202) 454-5140