



submission

General Agreement on
Trade in Services
(GATS):
Restricting the
Powers of Municipal
Government

Updated November 2003

Over the last year, the world's governments have been drafting detailed submissions about what public services they would be willing to, or want to, see opened to market forces.

Canada is a signatory to the General Agreement on Trade in Services (the GATS), one of the many agreements falling under the umbrella of the World Trade Organization (WTO). One of the provisions of GATS is a commitment to "progressive liberalization" of the trade in services. Contained within the GATS agreement is a commitment to renegotiate.

These negotiations have now entered an important phase. During the Fourth Ministerial of the WTO in Doha, Qatar, in November 2001, an ambitious schedule was agreed upon by member nations for submitting their initial "requests and offers" regarding services to be opened up for foreign competition. These "offers" were all to have been tabled by March 31, 2003.

Following Doha the world's governments drafted detailed submissions about what public services they would be willing to, or want to, see opened to market forces. WTO members began to submit their "requests" in June of 2002. Requests are directed at specifically named countries and are basically opening demands for service sectors the requesting country wants to see liberalized/privatized.

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Obviously, the concerted efforts of the thousands of Canadians who organized to protect their public services, has influenced the governments' efforts to keep many important services "off the table."

Unfortunately, to date the only services that the federal government has said are "off the table" are culture, public education and health care. Important services like water, postal services, private education, and many others, have not been specifically exempted. As they have not been specifically exempted they remain on the table for negotiation. And it is possible that Canada will be under intense pressure to open negotiations on the exempted services as they respond to threats under other provisions of the GATS and WTO.

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Canada has made its initial offer to WTO members public but these negotiations remain, for the most part, secret discussions between countries. The little that is known comes primarily from leaked documents and the analysis of secondary reports.

While the GATS has been around since 1994, the current negotiations are particularly important because they are aimed at expanding and refining the agreement. In addition, after the failure of the WTO Ministerial in Cancun, Mexico, in September 2003, it is highly likely that there will be increased pressure to negotiate a GATS agreement. Many countries will probably try to expand their bargaining positions in an effort to make up for what is seen as “lost ground” in Cancun.

Also, member nations are starting to specifically identify those services that they want to see liberalized. So for the first time we are starting to see what is actually on the table – not merely hearing vague promises of protection.

Not that much of the negotiating positions are being revealed during this phase of the process. While the WTO has ruled that the public release of the ‘request and offer’ documents is at the discretion of member countries, few are willing to do so. Those countries that are willing to release items usually only disclose summary documents and continue to hide or conceal concrete positions. To date the majority of information known by non-governmental organizations is through leaked documents.

The lack of transparency and public consultation in the process is a serious concern. That these bargaining positions are unavailable for analysis by organizations in civil society effectively denies any public participation in the process. Furthermore, as the deadline approaches, there is going to be an increasing effort on the part of the developed nations and many multinational corporations to achieve the results they want.

These negotiations will have an enormous impact on a wide range of services currently publicly provided. A partial list includes: education, health, social services,

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libraries, recreation and culture, architectural and engineering services, sewers and water, and construction and retail services. Many of these are public services delivered by municipal governments. GATS negotiations have the potential to seriously undermine the ability of municipal governments to deliver important services to their citizens.

While the powers of municipal governments are set out in legislation it is important to note that by signing onto the GATS agreement, Canada commits itself to ensuring that all levels of government, including municipalities, comply with its terms (including any changes that are made during this round of negotiations). Municipal services are not currently exempted from the provisions of the GATS.

The principal goal of GATS is to establish the conditions for more "liberalized" trading relationships in services. Despite its name, the GATS isn't about "trade" in the conventional sense. In principle, practically all services – *including* those delivered by municipal governments within their own jurisdictions – are included within the scope of the GATS. So are many of the so-called "measures" commonly used by governments – such as laws, regulations, administrative decisions, guidelines, or even unwritten practices – that affect (or potentially affect) trade in services, broadly defined.

This round of GATS negotiations could open up the whole field of domestic service delivery, at all levels of government, to international competition from private companies, who have joined together in a well-organized lobby. If they get their way, they would be able to compete with the public sector, including municipalities, for the right to deliver public services. If that happened, each and every Canadian municipality would be *forced* to let private companies in, even if they were foreign-based and didn't care one bit about a particular community's goals and priorities. They could also challenge a municipality's decisions at the WTO, even if those decisions only concerned that particular community, based on the fact that they were inconsistent with some provision in the GATS aimed at trade liberalization. Municipalities would have no choice but to comply with what those companies wanted them

to do, because if they didn't comply, legally enforceable trade sanctions could be imposed on Canada.

In principle, practically all services – including those delivered by municipal governments within their own jurisdictions – are included within the scope of the GATS.

It is important to understand what is seen as constituting a "barrier" to trade under the GATS. The current negotiations could result in provisions that restrict or prevent municipal governments from using many of the policy instruments they now use as a normal part of conducting their operations, because they are considered to be trade "barriers."

Specifically, it could restrict the ability of municipal governments – within their respective jurisdictions – to use such measures as subsidies and grants; nationality requirements; residency requirements; licensing standards and qualifications; registration agreements; labour standards; performance measurements; technology transfer provisions; local content or local employment provisions; economic quotas or needs tests; licensing or training requirements; restrictions on ownership of property or land; limitations on access to markets; environmental and consumer protection measures; and some tax measures.

Municipalities would have no choice but to comply with what those companies wanted them to do, because if they didn't comply, legally enforceable trade sanctions could be imposed on Canada.

These are not just theoretical issues. Several background notes prepared for the WTO's Council for Trade in Services have raised questions about the possible impact of regulations that are commonly instituted by municipal governments. Discussed are such things as restrictions on large-scale outlets; shop opening hours; zoning and planning laws; regulations related to the construction sector (such as controls on land use, building regulations and technical requirements, building permits and inspection, registration of proprietors, contractors and professionals, regulation of fees, and environmental regulations); measures that protect the health and safety of workers, and measures aimed at other public policy objectives, such as urban planning and environmental protection. One of these background notes went so far as to state that local governments "may not be sensitive to the trade effects" of the regulations for which they are responsible.

For example, in March 2003 WTO Members had to declare whether they wanted their water services to be

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covered under the GATS. In a leaked document from the European Commission it was found that the Commission wants water for human use classified as a service under GATS negotiations. This has been done in consultation with a number of European companies who expect to benefit from water privatization in other countries. If accepted, this could effectively remove local control over the provision of water services. In addition, all water regulations, for example water quality and access, would be open to trade challenges. This would affect the ability of municipal governments to take the necessary steps to ensure that its citizens have guaranteed access to clean water.

In another leaked document, the minutes of a meeting of GATS negotiators in the fall of 2001, it was revealed that a number of delegations consider local regulations governing zoning and hours of operation as subject to the provisions in the GATS. This was corroborated by the release of other internal documents that argue that local regulations be considered barriers to trade. Local zoning and hours of operation are important tools used by municipalities to protect the quality of life of its citizens.

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This would mean that municipalities would have to ensure that any regulations they placed on development – such as prohibiting the construction of a big-box retailer in a residential neighbourhood – met the GATS test of being “no more burdensome than necessary” and “least trade restrictive.” The same test would have to be applied for any attempt by a municipality to restrict how long stores can stay open.

As independent trade researcher Ellen Gould told the West Vancouver City Council: “Any regulations local councils pass in order to restrict the building of big-box stores, limit housing developments that are out of character with the neighbourhood or restrict how long stores can stay open could be challenged.”

In a leaked document from the European Commission it was found that the Commission wants

If the GATS negotiations follow the path being tread by some powerful governments, multinational corporations and industry lobby groups, many of the powers and decision-making abilities that municipal governments currently have will be considered to be restrictive to trade and therefore challenged. If that happens, it

water for human use classified as a service under GATS negotiations.

would prevent municipal governments from governing in the best interests of the people who elected them to office, and who expect those governments to uphold their best interests.

This would directly affect the ability of municipal governments to take the necessary steps to ensure that its citizens have guaranteed access to clean water.

Nearly all decisions made by WTO trade panels since 1994 have confirmed that whenever trade liberalization is weighed against any of the other goals and priorities of government – such as job creation or the preservation of jobs, the protection of public programs and services, the promotion of local businesses or local content in goods or services, the need for environmental or consumer protection measures, or the protection of culture – trade liberalization always comes out the winner. WTO trade panels make their decisions through a highly secretive process, and for the most part, decisions rarely get changed upon appeal. Governments (including those at the municipal level) are obligated to implement WTO decisions, or risk subjecting Canada to trade sanctions.

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Municipal governments have a wide range of policy objectives that are important to them. Should the policies of municipalities, and the tools they use to implement them, be exposed to WTO oversight and potential challenge because of the federal government's trade priorities? In our view, it is up to municipalities to make decisions in relation to matters that fall under their lawful mandate, not the federal government. While the municipal level of government is the most junior level of government, it nonetheless plays a very important role in people's daily lives. As a key part of this, municipal governments deliver and/or regulate a wide range of services. Municipal governments must retain the ability to deliver public programs and services; regulate within their own jurisdictions; institute policies to support local economic development and employment; legislate on behalf of the citizens to whom they are accountable; protect public health and the quality of the environment; and, more generally, establish policies and practices that are in the best interests of their municipalities' current and future residents.

Municipal governments must retain the ability to

It is therefore important that Canada's municipal governments act, individually or through their provincial or national associations, to convince the federal

deliver public programs and services; regulate within their own jurisdictions; institute policies to support local economic development and employment; legislate on behalf of the citizens to whom they are accountable; protect public health and the quality of the environment; and, more generally, establish policies and practices that are in the best interests of their respective municipalities' current and future residents.

government (which is pushing for a much more expanded and strengthened GATS) to prevent international agreements like the GATS from limiting the legitimate rights and responsibilities of municipal governments. We strongly urge Canada's municipal governments to demand that the federal government bring forward a proposal to the WTO to permanently exclude sub-national jurisdictions, including local governments, from the scope of the GATS; and to demand that Canada work actively to seek support for this amendment from the other WTO Members.

Municipalities across Canada have recognized the potential negative implications of GATS. Attached are copies of resolutions passed by the Federation of Canadian Municipalities; the Vancouver, BC, City Council; and the Union of British Columbia Municipalities, the organization that represents local governments in British Columbia. Also included is a listing of Canadian and international municipalities that have passed GATS resolutions. Finally, we recommend the research by the Local Government Information Unit in the United Kingdom.

It is important that elected municipal leaders continue to educate their constituents about the very real threat to public services and local democracy the GATS presents. We also need municipal leaders to speak out against the GATS.

For more information on the GATS:

Canada

National Union	www.nupge.ca
Canadian Centre for Policy Alternatives	www.policyalternatives.ca
Polaris Institute	www.polarisinstitute.org
Council of Canadians	www.canadians.org

International

GATS Watch	www.gatswatch.org
World Development Movement	www.wdm.org.uk/campaign/GATS.htm

For Research on Municipal Governments and GATS:

Canada

Federation of Canadian Municipalities	www.fcm.ca
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New Zealand

Local Government New Zealand	www.lgnz.co.nz/
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United Kingdom

Local Government Information Unit	www.lgiu.org.uk
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Resolution Passed June 4, 2001, at the FEDERATION OF CANADIAN MUNICIPALITIES Convention in Banff, Alberta

2000-A14: WORLD TRADE ORGANIZATION – AGREEMENT ON TRADE IN SERVICES (GATS) AND AGREEMENT ON GOVERNMENT PROCUREMENT (AGP)

WHEREAS Article I of the GATS agreement includes local governments under the scope of the Agreement, which contrasts with the provisions of the NAFTA agreement which explicitly exclude local governments from coverage; and

WHEREAS the federal government is currently formulating its negotiating strategy for making commitments in certain economic sectors under the GATS which could affect local governments' jurisdiction in decision making with respect to its services and which could result in significant administrative burdens and costs; and

WHEREAS the federal government has also been discussing including subnational governments, including provincial and local governments, under the provisions of the Agreement on Government Procurement.

THEREFORE BE IT RESOLVED THAT the FCM:

1. Urge the Federal Government to consult with all Canadians, and especially local government jurisdictions, much more widely and comprehensively than it has in the past, and to do so much earlier in the process prior to contemplating any Canadian negotiating positions with respect to international trade agreements of all kinds; and
2. While recognizing that trade can have beneficial impacts on local economies, recommends strongly to the Federal Government that it bring forward a proposal to the WTO to exclude "local governments and authorities" from the definition of a "measure" under Article I of the GATS agreement, and further that Canada work actively to seek support for this amendment from the other WTO Members; and
3. Request the Federal Government to not include sub-national governments in Canada under the requirements of the Agreement on Government Procurement; and
4. Continue to dedicate staff to closely monitor WTO discussions and the activities of the Federal Government in this regard, and also to alert Canadian local governments of any potential encroachments on their jurisdiction and authority resulting from trade agreements.

PARTIAL LIST OF CANADIAN MUNICIPALITIES WHO HAVE PASSED GATS RESOLUTIONS

Updated: February 13, 2003

To date, 68 municipal governments have passed anti-GATS resolutions. Several of these municipalities include a number of separate communities. As well, the Federation of Canadian Municipalities and the Union of British Columbia Municipalities have passed resolutions. Please see a complete list below:

National Passed:

Federation of Canadian Municipalities – Annual Meeting 2001

Alberta

Passed: Red Deer, St. Albert and Sylvan Lake

British Columbia

Passed: Vancouver, North Vancouver, Victoria, Kelowna, Richmond, Kamloops, Bowen Island, Coquitlam, Port Coquitlam, Port Moody, Powell River, Tumbler Ridge, Williams Lake, Burnaby, New Denver, Delta, Abbotsford, Campbell River, Quesnel, City of Langley, Corporation of the Township of Langley, Wells, Comox, Courtenay, Cowichan Valley Regional District, Salmon Arm, Vernon, the Union of British Columbia Municipalities (UBCM) and by School District 35 (Langley)

New Brunswick

Passed: Sackville, Port Elgin, Saint John, Fredericton

North West Territories

Passed: Yellowknife

Nova Scotia

Passed: Pictou County, Chester Municipal Council, Municipality of the County of Colchester (includes 11 districts, towns and communities including Tatamagouche and Stewiacke), Town of Lunenburg, Truro, Sydney, Mahone Bay, Halifax, Wolfville

Ontario

Passed: Tecumseh, Guelph, Kingston, London, Windsor, Region of Niagara (includes mayors and representatives from St. Catharines, Welland, Niagara Falls, Port Colborne, Thorold and seven other towns in the region), City of

Ottawa (newly-amalgamated including former cities of Kanata, Nepean, Gloucester, Vanier, Rockcliffe and the townships of Cumberland, West Carleton, Goulburn, Rideau and Osgoode), Cambridge, Township of Brighton, Township of Hamilton, Township of Alnwick-Haldimand, Toronto (includes former city of Toronto, North York, East York, York, Etobicoke), Peterborough

Manitoba

Winnipeg

Québec

Passed: Ste-Anne de Bellevue, Fleurimont, d'Ascot Corner, Rock Forest, Municipalités régionales de comté (MRC) de Sherbrooke (includes 8 communities), MRC de Coaticook (includes 11 communities), MRC de Haute St.-François (includes 13 communities)

Saskatchewan

Passed: Prince Albert, Regina, Saskatoon

**MOTION PASSED UNANIMOUSLY BY VANCOUVER, BC, CITY COUNCIL,
MAY 2, 2000**

World Trade Organization

WHEREAS the recent World Trade Organization (WTO) meetings in Seattle to initiate "The Millennium Round" brought public attention to the importance of trade issues to the quality of life people experience in their local community. While the meetings did not reach agreement on an agenda for the next round of WTO trade talks, discussions on the General Agreement on Trade in Services (GATS) will still take place over the next three years as part of the "built-in agenda" agreed to at the founding of the WTO in 1995. Discussions on this Agreement may result in the inclusion of many of the features of the now defunct Multilateral Agreement on Investment (MAI), opposed by Vancouver City Council by resolution on April 28, 1998; and

WHEREAS the proposed changes to GATS are of concern to local governments as they could affect existing jurisdiction and authorities, and also could result in significant administrative burdens and costs; and

WHEREAS the current GATS is a "bottom-up" agreement (each affected sector, such as Construction services, is identified), but proposed changes to the Agreement's structure (to a possible "top-down" or "horizontal" structure) would expand the Agreement's application; and

WHEREAS the Federal Government has neither alerted nor consulted local governments regarding these issues, and as a result, citizens and taxpayers of Canadian municipalities have had little access to information and informed debate on proposed changes to GATS.

THEREFORE BE IT RESOLVED THAT

1. The City Council urge the Government of Canada to consult widely and in depth with the people of Canada, especially and including municipal councils, before taking any further action on the GATS; and
2. The City of Vancouver, while recognizing trade can have beneficial impacts on our region, urge the Prime Minister to have Canada file a permanent and explicit exemption in the GATS limiting application to areas of Federal jurisdiction to ensure sub-national jurisdictions maintain local flexibility and control over the delivery of public services; and
3. The government of British Columbia convene the Legislative Committee to hold public hearings on the impact of the WTO/GATS and on British Columbia municipalities, including an invitation to the Federal WTO/GATS negotiator, to provide background information and answer pertinent questions; and
4. The Government of British Columbia establish a Trade Advisory Committee for stakeholders for ongoing consultation on international trade issues; and

5. The Federation of Canadian Municipalities (FCM) be urged to dedicate staff to monitoring WTO discussions and alert Canadian municipalities of any encroachment on their jurisdictions; and
6. The City of Vancouver Council state their support for the UBCM letter to the Honourable Minister Pettigrew, dated December 16, 1999 ("Trade Negotiations and the Impacts on Local Governments in Canada" – attached); and

BE IT FURTHER RESOLVED THAT a copy of this motion be:

- i. circulated to Members of Parliament representing areas within the Greater Vancouver Regional District, with the request that they endorse the City's action; and
- ii. forwarded to Lower Mainland municipalities for their support; and
- iii. made available to the public; and
- iv. forwarded to the Federation of Canadian Municipalities' Executive for endorsement; and
- v. and forwarded to the UBCM Executive for their information.

**RESOLUTION ENDORSED BY THE UNION OF BRITISH COLUMBIA
MUNICIPALITIES AT ITS ANNUAL CONVENTION, OCTOBER 24-27, 2000**

REPORT OF THE UBCM RESOLUTIONS COMMITTEE

**World Trade Organization – Agreement on Trade in Services
(GATS) and Agreement on Government Procurement (AGP)**

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WHEREAS the federal government is currently formulating its negotiating strategy for making commitments in certain economic sectors under the GATS which could affect local governments' jurisdiction in decision making with respect to its services and which could result in significant administrative burdens and costs; and

WHEREAS the federal government has also been discussing including subnational governments, including provincial and local governments, under the provisions of the Agreement on Government Procurement.

THEREFORE BE IT RESOLVED THAT

1. the UBCM urge the federal government to consult with all Canadians, and especially local government jurisdictions, much more widely and comprehensively than it has in the past, and to do so much earlier in the process prior to contemplating any Canadian negotiating positions with respect to international trade agreements of all kinds; and
2. the UBCM, while recognizing that trade can have beneficial impacts on local economies, recommends strongly to the federal government that it bring forward a proposal to the WTO to exclude "local governments and authorities" from the definition of a "measure" under Article I of the GATS agreement and further that Canada work actively to seek support for this amendment from the other WTO Members; and
3. the UBCM request the federal government to not include sub-national governments in Canada under the requirements of the Agreement on Government Procurement; and lastly
4. the UBCM urge the Federation of Canadian Municipalities to continue to dedicate staff to closely monitoring WTO discussions and the activities of the federal government in this regard and also to alert Canadian local governments of any potential encroachments on their jurisdiction and authority resulting from trade agreements.

ENDORSED

INTERNATIONAL LISTING OF MUNICIPALITIES WHO HAVE PASSED RESOLUTIONS OPPOSING THE GATS

Assembly of European Regions

Brixen/Bressanone Declaration on Cultural Diversity and GATS (unanimously adopted by the European Regional Ministers for Culture and Education, Brixen/Bressanone, 18 October 2002)

Austria

The following Austrian towns / local communities have adopted a resolution to stop the sell-off of public services and the privatization of basic services, calling for an immediate halt on the GATS negotiations:

- Linz (regional capital of upper Austria)
- St. Pölten (regional capital of lower Austria)
- Salzburg in process (regional capital of Salzburg)

Some further communities (all of them in upper Austria): Ansfelden, Ebensee, Engerwitzdorf, Hagenberg, Mauthausen, Oberneukirchen, Rohrbach, St. Georgen an der Gusen, Schwand im Innkreis, Wolfers

France

ATTAC France has launched a campaign to get anti-GATS resolutions adopted by local and regional governments.

Two motions have already been adopted:

- Conseil général de Haute Garonne (24 January 2003)
- Conseil de Paris (24/25 February 2003)

Italy

In the context of a broader campaign towards Cancun – "QUESTO MONDO NON E' IN VENDITA!" – local and regional councils are asked to pass anti-GATS resolutions.

Netherlands

Milieudefensie (Dutch Friends of the Earth) is planning a campaign on the impacts of GATS and the 'new issues' (a.o. investment and government procurement) for local governments. Later this Spring, local councils will be approached with a sample GATS resolution.

United Kingdom

Local and Regional Council Motions on GATS:

- Chester le Street
- East Lindsay District (12 December 2001)
- Flintshire County
- Oxfordshire County Council (May 2002)
- Warwickshire County Council (16 May 2002)
- Warwick District Council (WDC) (6 April 2002)
- Brighton and Hove Unitary Authority (29 March 2001)
- Haringey Council (London)
- Manchester City
- Nuneaton & Bedworth Borough Council (18 June 2002)
- North Warwickshire Borough Council (8 July 2002)
- Oxford City Council (27 March 2001)

Australia

Australian Local Government Association response to the Department of Foreign Affairs and Trade discussion paper on GATS (26 February 2003)

North Shore City Council Letter to the Minister of Trade Negotiations (12 December 2002)

Regional District of Coaticook

New Zealand

Christchurch City Council (12 December 2002)

The report considered by the Christchurch City Council, written by Director of Policy, Mary Richardson

Melbourne Council (24 October 2002)