



submission

The General
Agreement on Trade
in Services (GATS):
Eroding Provincial
Authority

Updated November 2003

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The federal government is engaged in negotiating an international trade agreement that could cover almost all the public services that we, as Canadians, enjoy. The General Agreement on Trade in Services (GATS), one of the many agreements falling under the umbrella of the World Trade Organization (WTO), could effectively strip the provinces of many of their traditional powers.

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While the National Union accepts and supports the role that the federal government should, and must, play in establishing national programs and standards, we also recognize and defend the important role that provinces have in the process.

Current negotiations for the GATS have embarked upon an important phase. Since the Fourth Ministerial of the WTO, in Doha, Qatar, in November 2001, member nations have been submitting their initial "requests and offers" to other members of the WTO with regards to services they want to see opened to foreign competition.

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Under a fairly heavy cloak of secrecy, the world's governments have been drafting detailed shopping lists about what public services they would be willing to, or want to, see opened to market forces. In June 2002 WTO members began submitting their "requests" to specifically named countries. These so-called "requests" are the opening demands for service sectors, which the requesting country wants to see liberalized or privatized. Countries were to have submitted their offers, the extensions to the GATS that they are prepared to agree to, by March 31, 2003.

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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, post-secondary education, and many others, have not been specifically exempted. As they have not been specifically exempted they remain on the table for negotiation.

This is obviously a testament to the efforts of the thousands of Canadians who have so successfully organized to protect their public services. While this is a positive development, there remains a need for continued action and vigilance.

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. They remain on the table for negotiation. 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.

We have to be cautious about the Canadian government’s public statements regarding services being exempted as well as the process taking place behind closed doors. For example, Canada’s negotiators in Geneva have argued for a very narrow interpretation of the health care exemption in the GATS. This leaves the door open for a wide range of private sector involvement in health care.

If Canada were to make GATS commitments to cover private education, it would seriously undermine our public education system. Foreign private education companies could argue that publicly supported education was competing unfairly with them and demand access to subsidies, degree-granting authority and other “advantages” Canadians give to our public system.

It is important to note the problems with the text in Canada's proposal for the GATS "Negotiating Guidelines and Procedures." The proposal is for negotiations not to "cover those services specifically excluded by the GATS, i.e., services supplied in the exercise of governmental authority." But this exclusion in the GATS only applies to those service sectors where there is currently no private sector competition. Of course, services with a mix of public and private systems are widespread within Canada. Almost all public services, including Medicare, could be interpreted at the WTO as competing with private providers.

The lack of an exemption for private education is also of particular concern. If Canada were to make GATS commitments to cover private education, it would seriously undermine our public education system. Foreign private education companies could argue that publicly supported education was competing unfairly with them and demand access to subsidies, degree-granting authority and other “advantages” Canadians

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give to our public system. In order to protect our public education system Canada needs to clearly state that it will not make any GATS commitments covering public or private education.

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

Even though the GATS has existed since 1994, the current negotiations are particularly important because they are aimed at expanding the agreement. Member nations are identifying those specific services that they want to see liberalized. For the first time we are starting to see what is actually on the table – not merely hearing vague promises of protection and benefits.

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The federal government is conducting these negotiations along with 137 other countries and the results will be felt by all levels of government in Canada. When the federal government signs the agreement it commits all sub-national jurisdictions, including provincial governments, to comply with its terms.

When the GATS refers to "services" it means almost everything that governments at all levels do – health care, education, social services, corrections, environmental protection.

It is important to remember that most of the trade in services occurs within national economies. This ultimately means that the GATS will not only apply to cross-border trade but could open up all domestic service delivery to international competition from private companies. These private companies, most of whom are multinationals based outside of Canada, would be able to compete with the public sector for the right to

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deliver such things as health care; hospital care; primary, secondary, and post-secondary education; social assistance; environmental protection; tourism; and many other services. Provinces would be forced to let private companies in or otherwise legally enforceable trade sanctions could be imposed on Canada.

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A key objective of the GATS is to promote the liberalization of trade in the widest possible range of services. Although the WTO says that the GATS allows member countries to pursue their own policy objectives through regulating services, it also requires that they do this in a way "which avoids that any ensuing trade restrictions and distortions are more burdensome than necessary." The GATS therefore ensures that trade liberalization always looms in the background, whenever governments do what they are mandated to do, namely, govern in the public interest.

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For example, GATS could present a threat to Canada's system of Medicare. Contrary to assurances from the federal government that health care is protected from the provisions of the GATS, most analysts think otherwise. The Catholic Health Association of Canada has concluded that:

"Such assurances that medicare will be protected are simplistic and worrying. At the international level, the World Trade Organization (WTO), with the support of the United States and international trade organizations, is developing an agenda aimed at opening all public services to trade and foreign investment. The efforts of those who want to alter Canada's health care system by turning to private, for-profit service providers further the agenda of these international trade organizations, while eroding the ability of the federal government to reverse the trend."

A report prepared by the Canadian Centre for Policy Alternatives for the Romanow Commission on the Future of Health Care concluded that international trade agreements, such as NAFTA and the GATS, could undermine, and prevent, health care reforms.

“This reckless decision means that U.S. or European governments could block the expansion of our public health insurance system into new areas, such as pharmacare or homecare, by complaining that their private insurers were being denied market access. A GATS dispute could result in trade sanctions against Canadian exports to Europe or the U.S.”

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If any province or territory introduces private for-profit delivery of public health care within their jurisdiction, the safeguards within the agreement are weakened. This weakening of the protective measures of the agreement will further open up public health care to foreign investors. Canada could face trade challenges for failure to provide access to multinational for-profit health care corporations. The ability for a province, or any level of government, to reverse the trend once it has begun would be increasingly difficult and costly. The other threat that the GATS presents to health care comes from the Canadian negotiators' decision to include private health insurance in the agreement. As trade researchers Scott Sinclair and Jim Grieshaber-Otto have argued:

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It is noteworthy that nearly all decisions made by WTO trade panels since 1994 have shown that whenever trade liberalization is weighed against any of the other goals 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.

Regulations regarding water quality provide an excellent example of how provincial governments could see their ability to govern in the public interest seriously undermined or removed. Following the tragic events in Walkerton, Ontario, and North Battleford, Saskatchewan, the importance of provincial standards for water quality has been well demonstrated. However by enacting these regulations the provinces could open Canada to trade challenges.

Provincial governments must speak out about this erosion of their ability to enact and deliver services to their citizens.

Added to that concern is the fact that many powerful interests want the current negotiations to extend the force and reach of the GATS to ensure that many more of our public programs and services become "commercial opportunities" for them.

The principal goal of the 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 provincial 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.

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 provincial level) are obligated to implement WTO decisions or risk subjecting Canada to trade sanctions.

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During the current negotiations, WTO members will have to declare whether or not they want their water services to be covered under the GATS. In a leaked document from the European Commission, it was revealed that the Commission wants water for human use classified as a service under the GATS negotiations. This has been done in consultation with a number of European companies who expect to benefit from water privatization in other countries. This could result in all water regulations (i.e. water quality and access) being viewed as an unnecessary "barrier to

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trade” and therefore open to trade challenges. This would affect the ability of provincial governments to enact regulations which would ensure that its citizens have guaranteed access to clean water.

The GATS represents a considerable threat not only to our system of public services but also to the democratic nature of many of Canada’s governing bodies.

Provincial governments must speak out about this erosion of their ability to enact and deliver services to their citizens.

Provincial governments need to ensure that their right to offer public services, to regulate in the public interest, and to act according to the best interests of their residents, is not undermined by the GATS.

The federal government must ensure that provincial rights are not further eroded and that provinces have a say regarding any new GATS proposals or agreements. GATS is already a threat to our public services and to provincial jurisdiction.

The federal government should be working to eliminate the existing weaknesses in GATS rather than further expanding its reach.

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
Public Citizen (US)	www.citizen.org/trade/wto/gats