



International Trade Agreements: Priorities for Health

WPHFA Position Paper

Introduction: Trading in vital human services

Since the 1980s health care systems in the USA and some other countries have become increasingly market-driven. Health services have been systematically privatized, deregulated, and decentralized. Public health protections and funding have been challenged. In the United States, the number of uninsured is growing.

These trends are being accelerated, in the US and around the world, through little-known international trade agreements, including the General Agreement on Trade in Services.

The General Agreement on Trade in Services (GATS), first proposed in 1994, is an international trade agreement that sets the rules for how services will be traded globally by private transnational corporations. It covers all 145 nations that belong to the World Trade Organization (WTO). Trade Representatives from the United States (USTR), an office of the President's Administration, and other countries are currently negotiating far-reaching new rules for trade in services that pose significant threats to public health, the environment, and providers and users of both public and private services. These new rules could severely restrict the regulatory ability of federal, state and local governments. The health-related laws and regulations at stake include: clinician licensing; controls on the distribution of alcohol, tobacco, and firearms; privacy rules; requirements to allocate medical equipment and services based on need; health insurance regulations; environmental protections; occupational safety and health regulations; a specific state law (New York) prohibiting corporate ownership of hospitals; and the ability of governments to maintain viable services in water and sanitation. New rules on government purchasing will determine whether public funding, contracting and subsidies can be targeted for clinician education, public health programs, safety net services, and women's health.

International trade agreements, and the policies of international financial institutions such as the World Bank, have contributed to economic dislocations and to increased social and economic inequality. These developments affect all of our efforts to provide high quality health care services and to improve population health. GATS sets the template for a number of pending agreements that address services, which aim to privatize and deregulate vital services. These include regional agreements such as the Free Trade Area of the Americas (FTAA), which would cover 34 nations in the western hemisphere, and several country-to-country (bilateral) agreements, such as those between the US and Chile, and the US and Singapore. This Briefing Paper explains how GATS and related agreements work, and calls on communities concerned about health to reassert leadership in achieving universal access to vital human services, and socially and economically sustainable societies.

Briefing Paper sections are:

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1. What Does GATS Do? Subjecting Nations' Rules to Global Trade

The goal of GATS is to progressively eliminate any restrictions to trade in services, including removing "barriers to trade" posed by government laws and regulations. It is enforced by the WTO, which has the authority to override national laws.

"Barriers to trade: When transnational corporations sought to facilitate international trade in products like rice and steel, the "barriers" were relatively straightforward and limited, such as financial tariffs and import quotas. The "barriers" to international trade in services, which GATS seeks to remove, consist of a web of local, state, and national regulations on rights, the quality of services, professional licensing, and privacy, that protect safety, the environment, working conditions, and health, and can include public subsidies for vital human services such as health care and water. The European Union, for example, has already requested access to US Small Business Administration loans, which are funded by US taxes. (The US has not yet responded to this request.) Future requests could include access to Medicare and Medicaid funds that are now targeted by US policy-makers for particular purposes.

Services include vital human services such as health care, water and sanitation, education, and energy, as well as finance, banking, telecommunications, distributions services, and construction. All of these have implications for health. **Both private and public services are subject to GATS.** There is an exclusion in GATS for public services "provided in the exercise of government authority" if they are "supplied neither on a commercial basis nor in competition with one or more service suppliers." Since almost all public services in the US are also provided in the private sector, or at least have commercial relationships with private suppliers, there is serious doubt that any service would actually be exempt under this definition. **To be protected, vital human services must be specifically and permanently excluded from international trade agreements.**

While countries may exempt certain service sectors from trade rules at this point, they will face ongoing pressure from trading partners to add them in over time.

2. The GATS Process: Continually Opening Services to Global Trade

The goal of GATS is to "progressively liberalize" all services. Through successive rounds of negotiations, WTO member nations continually add to a growing list of services that will be opened up to trade by private, foreign corporations, and refine agreement on the rules for trade.

Members of the WTO are currently in negotiations regarding the expansion of GATS, to include a longer list of services, and to revisit rules such as those on government purchasing and contracting of services, and on domestic regulation. Negotiations on specific commitments by countries to open up trade in services on a sector-by-sector basis are conducted bilaterally (nation-to-nation) through a "request-offer" process. The process in which countries submitted requests to each other to add services to the list of those already covered by GATS, ended on June 30, 2002. **The initial deadline for countries to respond by offering to open up additional services to trade was March 31, 2003.** This round of negotiations is scheduled for completion in 2005.

Most offers and requests have been kept secret. However, a leak to the press revealed that **the European Commission (EC)**, the trade arm of the European Union, **has made significant requests of the United States to open up service sectors to trade by private corporations, including drinking water, distribution of alcohol products, the US Postal system, and loans from the Small Business Administration. However, the EU has also recently decided to exclude its own health, education, energy and water sectors from trade negotiations.** (See Section 7 below.)



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Although the full list of US requests to other countries has not been publicly released, US insurance companies have expressed an active interest in expanding into countries that currently operate publicly financed health care systems:

"Historically, health care services in many foreign countries have largely been the responsibility of the public sector. This public ownership of health care has made it difficult for US private-sector health care providers to market in foreign countries. (E)xisting regulations...present serious barriers in OECD countries, including restricting licensing of health care professionals, and excessive privacy and confidentiality regulations. In most emerging markets...barriers can be erected in the future as laws and regulations are enacted, absent commitments in writing." - US Coalition of Services Industries, recommendations to the Office of the United States Trade Representative on priorities for trade negotiations for health care, Nov. 27, 2000²

3. GATS Rules - Prioritizing Corporate Interests Over Public Health

The most basic GATS rules, "**top down**" rules known as "general obligations," **apply to all 145 WTO members and to all services**. These include:

The Most Favored Nation (MFN) rule requires nations to give all foreign companies equal treatment in terms of trade in services. The most favorable treatment in terms of trade granted to any foreign company must be extended to all foreign companies. While a country may list exemptions to the MFN by service sector, such limits are temporary and expire in 2005.

The Domestic Regulation rule makes domestic laws and regulations, including those which protect the public's health and safety, subject to challenge and possible elimination if they are determined to be "unnecessary barriers" to trade, or more "burdensome than necessary" to assure the quality of a service. For example, the United States Coalition of Services Industries, the major lobbying group representing services industries in the United States, has explicitly identified "**restricting licensing of health care professionals and excessive privacy and confidentiality regulations**" as serious barriers to trade in health care services. In administering other trade agreements with similar language, WTO panels have defined terms like "burdensome" and "necessary" in favor of commercial interests, at the expense of public health. (See Section 4.) The Domestic Regulation rule is still being negotiated. However, it places all national, state, regional and local government laws, regulations, rules, procedures, decisions, or administrative actions that may affect trade in services under scrutiny.

Subsidies. GATS directs governments to avoid the "trade-distortive effects" of public subsidies. This could include public subsidies for health services that may be allocated to achieve social purposes such as reducing inequalities.

Governments can make specific commitments to further open up trade in services on a sector-by-sector basis, by electing to be covered by "bottom up" rules of GATS. Two principle rules apply to these services, which impose more specific limitations on government regulations than the "top down" rules. Governments can specify how these additional rules will apply to each of the different service sectors that it lists on its "schedule of commitments." These rules are:

Market access: A country cannot legislate or regulate the amount of services or how they are supplied, either by domestic or foreign-owned companies, and **cannot limit the percent of foreign ownership**. In the US, it could be used to challenge laws that restrict distribution of health care equipment and services subject to needs assessments.

The market access rule of GATS opens the door to foreign direct investment in health care and water systems that are currently public operated, because it prohibits regulations of the percent of foreign private ownership of services or how these services are supplied. Many countries, where health care is



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considered a public good, to be provided as a publicly administered and accountable service, have restricted or prohibited foreign direct investment in health care. Activity by US insurance companies, however, has increased in the last decade. At the same time, multinational water corporations based in Europe have expressed interest in access to US water and sanitation systems.

National treatment: The home country cannot provide more favorable conditions to domestic companies than to foreign companies. Violations can result in financial penalties even if a government measure discriminates unintentionally, for example, if it is harder for foreign companies to comply. This rule would prohibit policies that restrict government purchasing or contracting of services from companies in countries with repressive labor practices or poor environmental practices. Local government efforts, for example, to increase economic opportunity by requiring construction developers to train, hire, and provide health benefits to people in the local area for building jobs could be illegal under GATS. This is because the US has agreed to be covered by the national treatment rule in construction, and therefore cannot discriminate in favor a domestic company which provides training, hiring, and benefits to the local population.

In addition, countries can limit which "modes of service" it will commit to these "bottom up" rules. The four modes of service include the delivery of services across borders (Mode 1) or providing services to foreign consumers who travel to use them (Mode 2). More importantly they also include foreign direct investment in the services of another country (Mode 3), and rules related to the immigration of workers (Mode 4).

The migration of clinicians raises several important questions, including international agreement on standards for professional training and practice, adequate availability of trained clinicians and service providers in countries that "import" and "export" such workers, and assurance of fair working conditions.

Choosing not to list a particular service (or mode) does not protect that service permanently. The goal of GATS is to eliminate, progressively, any restrictions to trade in services. Restrictions listed in a government's schedule of commitments now become targets for elimination in subsequent rounds of the negotiations.

4. WTO Tribunals Trump Democracy

The World Trade Organization (WTO) is set as the unequivocal arbiter of trade rules. Countries that believe their companies are being barred from trade by another country for reasons that violate WTO rules can file a dispute with the WTO. Disputes among nations are currently resolved by panels appointed by the WTO, which are unaccountable to governments or courts. The panels can impose substantial financial penalties for noncompliance, as well as authorize countries to take trade sanctions against other countries that do not comply, including financial penalties and the boycott of products. This means that the democratic decision-making rights of governments at all levels - local, regional and national - are subordinated to WTO decisions on matters that it deems are related to trade. It also has a chilling effect on regulatory protections. Trade disputes have increasingly affected protections for health, the environment, and working conditions, which countries may believe justify barring the import of certain products - but which the WTO can see as a pretext for limiting trade.

The WTO has not hesitated to overturn national government decisions that would protect public health, but conflict with another country's trade interests. For example the European Union's ban on the sale of beef from cattle treated with artificial hormones was overturned by a WTO panel after complaints from the US. The ban was applied in a nondiscriminatory manner to both domestic and imported beef, as required by the WTO rules on national treatment. There is evidence of risk to humans from artificial hormones. However, there is not yet a precise scientific conclusion quantifying the risk from residual artificial hormones in beef. To justify its ban, the EU relied on the precautionary principle, an important basis for public health policy, which asserts that potentially dangerous substances should be proven safe



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before they are marketed. The WTO ruled that the ban was illegal under the terms of a WTO agreement known as the Application of Sanitary and Phyto-Sanitary Standards (SPS), in part because it did not rely on a risk assessment approved by the WTO. The tribunal authorized the US to retaliate with sanctions against European goods.³

5. Why the Health Community Is Concerned

An independent review of the effects of trade in health services points out significant drawbacks for population health and equity.⁴ Health and public health concerns include potential challenges to standards and protections for: clinician licensing, the environment, occupational health and safety, research and development, hazardous materials, data privacy (for example, patient health and billing information), injury control (alcohol, tobacco and firearms), government subsidies and procurement practices that support the safety net and other services, medical equipment, health insurance, construction, education, and libraries.

In addition, evidence suggests that privatization and deregulation can play a role in increasing social and economic inequality, which strongly influence population health.

Facilitating trade among private transnational corporations is not sufficient justification for requiring nations to sacrifice their rights to protect the public's health and safety, or to dictate the standards and definitions local and national governments and regulatory bodies will use to enforce those protections.

6. Summary of Current US Commitments To Trade In Health-Related Services - Areas of Concern

The United States has already agreed to "commit" the services listed below to the "bottom up" rules of Market Access and National Treatment. This means the US **cannot legislate or regulate the amount of these services** or how they are supplied, either for US or foreign-owned companies, and **cannot limit the percent of foreign ownership**, (Market Access rule) and **cannot impose rules that discriminate against foreign companies in favor of US companies** (National Treatment rule). There are some exceptions within some sectors, as noted in the following table. These services, and related reasons for concern, are:

Health-Related Service Covered by GATS	Reasons for Concern
<p>Hospital services are covered by GATS, including direct ownership, management and operation by contract of hospitals on a "for fee" basis</p>	<p>A range of hospital funding and performance laws and regulations could be subject to challenge under GATS. The following are specifically exempted from coverage under GATS, and therefore potentially subject to future requests from other countries to be covered: : 1. Needs-based quantitative limits may be placed on procurement of certain types of medical equipment. 2. New York rules prohibiting corporate ownership of hospitals, nursing homes, or diagnostic and treatment centers. 3. Michigan and NY laws on HMO licensing. 4. Federal or state government reimbursement of medical expenses is limited to licensed facilities in the US.</p>
<p>Health insurance</p>	<p>Ongoing attempts to protect current public programs and to extend coverage for health care could be challenged on a number of grounds; restricting the number of competing insurers could violate GATS. Currently workers compensation programs are exempt. Current rules also permit tax exemption for employee benefit trusts based in the US The EC has requested removing this tax exemption, contending that it is covered elsewhere in GATS.</p>



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Installation of systems for environmental cleanup, and sewage and refuse disposal in the private sector	Under the GATS "Domestic Regulation" rule, quality and performance standards in these sensitive environmental areas could be challenged as "unduly burdensome" regulations, and therefore warranting elimination. The EC has requested expanding coverage to water for human use and wastewater management, opening these critical services to privatization.
Distribution of wholesale goods, including: Tobacco products and Alcohol products	To date the US has set restrictions in market access rules regarding tobacco and alcohol distribution. This means the US can limit the amount of services supplied and number of distributors. The EC has requested removing this restriction.
Email and electronic data interchange	Privacy protections are of concern to researchers and to health care providers who bill.
Agriculture, fishing and mining services (such as site preparation)	Health and safety standards could be challenged.
Energy distribution	The EC proposes further opening in this area, including exploration and production, and bulk storage of liquids or gases. Regulations protecting the safety of workers and the public could be challenged as "more burdensome than necessary." In addition, the EC requests removing a Michigan state law requiring that contractors maintain an in-state office.
Publishing	A present exception prohibits a single foreign company from owning a combination of newspaper, radio and/or TV stations serving the same local market. As this rule is already significantly abridged in the US, further corporatization could restrict freedom of expression, including important public health information.
Construction	Health and safety codes, government subsidies and procurement practices are at risk.
Retail food services	Food safety concerns.
Adult education	US rules or public subsidies that give an advantage to domestic adult education providers could be challenged. Currently some scholarships can be earmarked for US citizens, but this is subject to ongoing negotiation.
Libraries, archives and museums	Competition from private, foreign companies could undermine public availability of information.
Air, rail and road transport services	A range of occupational and public safety issues are of concern.
Management consulting	Licensing standards and the distribution of public subsidies and procurement funds could be affected.

7. Summary of Services In US Not Committed To Trade In Services - Areas of Concern

The following services are not yet covered by GATS "bottom up" rules, but are subject to progressive "liberalization" through ongoing negotiations. The European Community has made significant requests of the United States to open up services to trade, as noted here.



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Health-Related Services Listed But Not Yet Covered	Reasons for Concern
Medical, dental, veterinary, midwives, nurses, physiotherapists and paramedical personnel	Immigration and licensing standards for clinicians are important quality concerns for health care. Increased hiring of immigrant nurses in the US, for example, may be appropriate or may mask poor working conditions. It may also drain important clinical resources away from countries of origin. These issues should be examined in a process driven by a concern for health, not by commercial trade.
Research and development on natural sciences, social sciences and the humanities, and engineering	The EC has requested opening these services, including through foreign direct investment. This would facilitate the further corporatization of research, and could undermine rules and funding sources.
Additional services in telecommunications, education, and pipeline transport services are so far exempt.	Education is a crucial underpinning of good health. Opening education to competition by private foreign corporations has not been shown to be compatible with successful education, and user fees for private education have discouraged school attendance.

8. Now is the time to act: Protecting All Nations' Health

All WTO member nations had to announce by March 31, 2003 a new list of services that will be open to international private sector trade and regulation under GATS. Negotiations are scheduled to conclude in early 2005. National legislatures can suggest changes to the GATS as long as the negotiations last, and depending on national rules, may or may not have a final vote on its terms. At stake is all nations' health and public water supplies.

National legislative

The United States and other economically powerful countries play a pivotal role in shaping the ground rules for global trade. They have an important opportunity to promote a safe and just global community with publicly accountable and sustainable health care, water, and other vital human services. The health care community's voice can make an important difference, and must be heard.

Step 1. The health care community should review the list, and to consider carefully the effects these rules are likely to have on health and health services.

Step 2. The health care community can make its voice heard by supporting letters to the national Trade Representatives, the World Health Organization, and members of national Parliaments, calling on them to:

1. Assess the impact of GATS on population health, as provided for in GATS Article XIX, and assure, based on such assessment, that policy proposals do not have an adverse impact on health or create conditions that undermine health promotion, as required in article 129 of the Maastricht treaty (1992) and article 152 of the Amsterdam treaty (1997);

2. Exclude vital human services such as health and water, from trade negotiations and challenge under the GATS, for all WTO countries;

3. Promote transparency and democratic accountability at all levels of trade negotiations;



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4. Support enforceable commitments to advancing population health, and to achieving universal access to health care and to safe, affordable water in all countries.

Authority and accountability for population health need to be shifted back to health organizations. The road toward empowering effective international health organizations has to be built that can achieve universal access to vital human services.

¹ Based on a Briefing Paper of the Center for Policy Analysis on Trade and Health, San Francisco, CA 94121 1437, www.cpath.org

² Coalition of Service Industries. Response to Federal Register Notice of March 28, 2000. Solicitation of public comment for mandated multilateral trade negotiations on agriculture and services in the World Trade Organization and priorities for future market access negotiations on non-agricultural goods. P. 65. Viewed on 1/20/03 at: <http://www.uscsi.org/publications/papers/CSIFedReg2000.pdf>. [OECD=Organization for Economic Cooperation and Development]

³ L. Wallach, M. Sforza. The WTO. Five Years of Reasons to Resist Corporate Globalization. Seven Stories Press, New York. 1999.

⁴ R. Chanda. Trade in health services. Working Paper No. 63. Commission on Macroeconomics and Health, World Health Organization. June 2001.