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The General Agreement on Trade in Services (GATS) and health care: an introduction and annotated bibliography

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This paper begins with a general introduction to GATS, and then continues with an annotated bibliography of articles which discuss GATS or the World Trade Organization (WTO) in relation to health or health care.

The General Agreement on Trade in Services (GATS)

GATS was agreed by WTO members in 1994. In 2000, negotiations began to expand it.

GATS aims to increase trade in services. "Services" includes banking, insurance, retail and wholesale, tourism and transport, but also education, health care and water supply. It aims to increase trade in services by "liberalising" that trade, that is, removing restrictions, which include government measures. GATS measures can apply to all services, and also to specific areas chosen by governments for inclusion. GATS recognises four "modes" of trade in services, which are described below.

GATS negotiations were to be completed by the 1st January 2005.

GATS means that all service suppliers have to be treated alike. It is not possible to exclude a company from abroad from competing in a service market in a country. The number of service suppliers in a country cannot be restricted. It is also the case that once a service has been "liberalised" under GATS, that "liberalisation" cannot be reversed without incurring penalties. This may conflict with the provision of health care. If services are run for profit, then services which do not generate a profit may suffer and government may be powerless to intervene without contravening GATS.

GATS identifies four "modes" of trade in services:

Cross border supply: e-commerce, call centres servicing clients abroad, international postal services. In the context of health, this would include telediagnosis and telehealth.

Consumption abroad: studying at a foreign university and visiting another country as a tourist. In health, this mode would include seeking medical treatment abroad.

Commercial presence: foreign investment relating to service provision. In health, this would include the establishment of health facilities by overseas companies.

Presence of natural persons: employees going abroad. In health, this would include health personnel working abroad.

A service is excluded from GATS if it is provided with no competition, or if it is not provided on a commercial basis. The UK Government (<http://www.dti.gov.uk/ewt/gats2000.doc>, section 32, accessed 3rd January 2005) initially argued that this means that the NHS can be kept out of GATS. However, the NHS contains elements of competition and commerce: the application of commercial accounting procedures and the appearance of an internal market of sorts, for example. The Government is apparently now seeking legal guidance.

The existence in health services of these modes of trade may have a good side and a bad side. Providing telemedicine services to a country may have the effect of draining resources from rural health care. Telemedicine will benefit the few, where rural health services may benefit the many. There is already more drug company money spent on treatments for Western ailments, rather than diseases endemic in the developing world. The latter affects more people, but there is more money in the former. Travelling to another country to seek treatment may lead to a dual market in that country, with health personnel being drawn to work in the centres that treat people from abroad, at the expense of centres which serve the local population. Private investment in health by foreign companies may require huge public investments, and raises the question of who controls that facility. Health personnel moving abroad may lead to a shortage of personnel in the “home” country. As the Independent newspaper has pointed out, the British National Health Service would not function without workers from outside the UK. Some workers are coming from countries which have a surplus of personnel, but there is concern that that we are causing problems in other countries through a “brain drain”. As Lipson argues, GATS may mean that developing countries are required to open up health care provision to competition, and GATS rules mean that competition may be from companies based abroad. This might mean that services improve, but experience shows that usually services become more inequitable and reduce access to the poor. As Labonte points out, GATS does not cause health privatisation, which was happening anyway. But it does accelerate it, and the result will be inequalities.

(This discussion draws heavily on the paper by Chanda. This, and other items referred to, is detailed in the annotated bibliography which follows).

Health care and GATS

This is a selection of articles published in the medical press about the WTO or GATS and health. I hope this list might help readers develop their concerns about GATS and its effects on health. The articles listed all contain bibliographies, which may lead the reader to other useful material. Most of the material is freely available online.

Adlung, R. and Carzaniga, A. (2001). Health services under the General Agreement on Trade in Services. *Bulletin of the World Health Organization* 79(4): 352-64. Freely available at [http://whqlibdoc.who.int/bulletin/2001/issue4/79\(4\)352-364.pdf](http://whqlibdoc.who.int/bulletin/2001/issue4/79(4)352-364.pdf), accessed 3rd January 2005.

The authors are employed by the WTO. This paper is an overview of the scope of GATS and commitments under the agreement. It discusses in detail the four modes of trade in services. The paper is designed to make people familiar with GATS, which it does well, but perhaps rather less than critically.

Baum, F. (2001) Health, equity, justice and the globalisation: some lessons from the People's Health Assembly. *Journal of Epidemiology and Community Health* 55(9): 613-6. Available online at <http://jech.bmjournals.com/cgi/reprint/55/9/613.pdf>, accessed 3rd January 2005, but a subscription may be needed.

This paper discusses the People's Health Assembly in 2000, which agreed a charter, the "People's Charter for Health". That charter is available at <http://www.phmovement.org/charter/pch-english.html>, and in other languages via the People's Health Movement website. The charter calls for transformation of the WTO and the global trading system, so that it does not violate the right to health. It also calls for the abolition of world debt and for the transformation of the World Bank and IMF. There is to be a second People's Health Assembly, in Ecuador, in July 2005. Details are at <http://www.phmovement.org/pha2/>

Chanda, R. (2002). Trade in health services. *Bulletin of the World Health Organization* 80(2): 158-63. Available freely online at [http://www.who.int/bulletin/archives/en/80\(2\)158.pdf](http://www.who.int/bulletin/archives/en/80(2)158.pdf), accessed 3rd January 2005.

This paper examines ways in which health services can be traded and the positive and negative implications of this trade. It uses the "modes" defined in GATS.

Labonte, R. (2004). Nailing health planks into the foreign policy platform: the Canadian experience. *Medical Journal of Australia* 180(4): 159-62. Available freely online at http://www.mja.com.au/public/issues/180_04_160204/lab10750_fm.html, accessed 3rd January 2005.

Labonte starts from the assumption that health is a basic human right – a development goal as well as a development means. He argues that GATS is accelerating health care privatisation, and that privatisation will lead to inequalities. Labonte's work was contributed to a Canadian Royal Commission:

"The message we conveyed to the Royal Commission was blunt: healthcare is not like other commercial services. It is essential to the creation and maintenance of a public good. Public healthcare systems arose in most countries because private

systems proved inadequate and inequitable. Trade treaties — intended to promote private commercial interests — are no place to negotiate international rules for healthcare and other essential public goods such as education, water and sanitation. Indeed, the progressive liberalisation requirement of GATS may directly contravene the progressive realisation of the right to health under human rights covenants.”

His conclusions are that there should be an exception in GATS to allow countries to withdraw their health, education, water or sanitation commitments without penalty, and that there should be a separate agreement governing international trade in these things, which also promotes equity.

Lipson, D. J. (2001). The World Trade Organization's health agenda. *British Medical Journal* 323(7322): 1139-40. Available freely online at <http://bmj.bmjournals.com/cgi/content/full/323/7322/1139>, accessed 3rd January 2005.

Lipson argues that equity of health care may suffer under “liberalisation” of trade in services. At the time, there were few empirical studies of the effect of liberalisation on health. (Smith, writing three years later, makes the same point: I refer to his paper below).

Pollock, A. M. and D. Price (2003). The public health implications of world trade negotiations on the general agreement on trade in services and public services. *Lancet* 362(9389): 1072-5. Freely available online at http://www.thelancet.com/journal/vol362/iss9389/full/lancet.362.9389.editorial_and_review.27286.1, accessed 3rd January 2005. (there are underscores between “editorial”, “and”, and “review”).

This paper argues that national autonomy over health care is not preserved under GATS, and therefore that international regulation is needed to protect public services. The UK is seeking clarification on the claim that public services are exempt from GATS. Discriminatory policies are, they argue, permissible under GATS to promote public health. They argue that the WHO must take the lead, and gather data on the outcomes of privatisation of essential services, and that powers of enforcement must be considered for the WHO. They also argue that there is a need for an international body with a public health mandate, to act as a counterweight to the WTO, with its trade mandate.

Price, D., Pollock, A.M. and Shaoul, J. (1999). How the World Trade Organization is shaping domestic policies in health care. *Lancet* 354(9193): 1889-92. Freely available at http://www.thelancet.com/journal/vol354/iss9193/full/lancet.354.9193.editorial_and_review.2639.1, accessed 3rd January 2005. (There are underscores between “editorial”, “and”, and “review”).

The authors argue that education, health and welfare are high on the WTO agenda, and that the medico-pharmaceutical industry, insurance companies and corporations back this. Services, they argue, are now more important, with the decline in manufacturing.

They discuss the idea that health care can be thought of as exempt from GATS, pointing out that if there is a mix of private and public health care provision, then there is competition and therefore health care is vulnerable to “liberalisation” under GATS. They argue that the introduction of the internal market in health care in the UK, and the use of commercial accounting procedures, conflicts with the idea of universal coverage and shared risk.

Smith, R. D. (2004). Foreign direct investment and trade in health services: a review of the literature. *Social Science and Medicine* 59(11): 2313-23. Available online, but a subscription is needed.

Smith’s paper is a review of the empirical evidence on the effects of foreign direct investment in health care. He points out that there is not much empirical evidence, a point made three years earlier by Lipson. Much of what has been written is, he points out, speculation on what the effects might be. Smith argues that commercialisation is more significant than who is investing the money. He argues that national regulation is what will determine the impact of FDI, and that everyone needs an understanding of what exactly is being talked about in discussions of FDI and commercialisation.

Wesselius, E. (2002). *Behind GATS 2000: corporate power at work*. Amsterdam, Transnational Institute. Available at <http://www.tni.org/reports/wto/wto4.pdf>, accessed 3rd January 2005.

This is an introduction to GATS, produced by an organisation campaigning against it. The TNI website also includes other GATS related material, including reports of moves to persuade the French government to campaign against GATS.

Further information:

“Official” information on GATS is available at http://www.wto.org/english/tratop_e/serv_e/serv_e.htm and http://europa.eu.int/comm/trade/issues/newround/index_en.htm, WTO and European Union sites respectively.

GATSWatch (an organisation campaigning against GATS) – <http://www.gatswatch.org>

MEDACT is a UK based charity taking action on global health issues. Their website is at <http://www.medact.org> and there is information specifically on the WTO at http://www.medact.org/hpd_world_trade_organisation.php.