

The European Commission's GATS Position A Bad Bargain for Canada

by Ellen Gould, April 2002

Overview

The General Agreement on Trade in Services is an existing WTO agreement currently being renegotiated to expand its reach. WTO members are making requests of each other to expand their GATS commitments. The leaked draft of the European Commission's request confirms that critics were right to be concerned about the direction the negotiations are taking. A broad range of Canadian policies at every level of government would have to be eliminated or changed to accommodate the Commission, including federal reviews of foreign takeovers of Canadian companies (1), provincial restrictions on who can own land(2), and municipal regulations of activities like outdoor advertizing(3). The Commission is challenging the ability of Canadians to determine how professionals are licensed and accredited, with potentially negative consequences for the reliability of the full range of professional services.

When Canadian governments decide to privatize, the EC wants Canada to eliminate any restrictions to ensure the privatized service remains in Canadian hands (4). The EC is asking Canada to get rid of its limitations on foreign acquisition of privatized services despite the fact that European countries themselves maintain these limitations.

Privatizing Water (5)

European transnational water corporations dominate the delivery of this service where it has been privatized, and are major promoters of water privatization in Canada. On behalf of these corporations, the European Commission is asking Canada to completely open all services involving "Water collection, purification and distribution services through mains" to foreign competition. The kind of complete commitment the Commission is asking for would mean among other things that governments could not maintain monopoly or exclusive suppliers of water services, they would have to allow competition in the supply of these services, and no local supplier could be given preference over a foreign one. In taking this bargaining position, Commission appears confident that the clauses in the GATS that seem to exempt government services and procurement will be no obstacle to getting increased business for European transnationals through the GATS.

General Attack on Publicly Delivered Services

Since citizens of WTO countries first began to raise concerns about the GATS, trade officials have vehemently denied the agreement is intended to achieve privatization. They argued that the GATS is merely about providing foreign and local companies equal access to markets once they have been opened.

But the leaked European position proves this is not true. The Commission is telling

Canadians right across the country that we need to change our publicly-owned institutions to accommodate private corporations, and make these changes binding under international law. It is telling Canadians that the management of their pension funds should be opened up to private firms (6). It is telling the people of Saskatchewan, Quebec, and British Columbia they should surrender auto insurance services to foreign companies (7). It is telling the citizens of Prince Rupert -where a publicly-owned telecommunications company is able to provide cheap, universal access to the Internet - they should give up these benefits and allow foreign corporations access to their market (8). People in all provinces with public monopolies on alcohol sales are being told these should be eliminated (9).

The EC proposal, if accepted, would cover a range of postal and express delivery services provided by Canada Post that are not now covered under Canada's GATS specific commitments. This would further expose Canada Post to GATS claims along the lines of UPS Inc.'s \$220 million NAFTA lawsuit against the Canadian government (10). It would also eliminate guarantees provinces have implemented to ensure adequate standards of service, particularly for rural areas.

Publicly-delivered services in Canada are in double jeopardy because the Canadian government refuses to acknowledge that the provision in the GATS that appears to exempt public services actually is unlikely to do this in the event of a WTO challenge. This means that Canada is operating on the basis that only the "commercial" aspects of a service sector can be affected by concessions it makes in the GATS negotiations, whereas public services are inevitably on the table as well.

The federal government repeatedly implies there is absolute certainty about what is exempted under the GATS, even claiming that WTO members are allowed to define for themselves what a "public service" is. WTO documents indicate however:

- there is no certainty about when a public service might be exempt
- the WTO staff themselves state certain kinds of public services might not be exempt, and
- WTO members have never agreed governments get to decide what an exempt public service is. Far from it. Instead, they have said any exemption should be interpreted "narrowly".

Beggar Thy Neighbour Approach - Undermining Health and Cultural Diversity
Despite European countries' own stringent policies to protect health and cultural diversity, for the sake of commercial interests the Commission is attacking these policies overseas. Most reprehensible perhaps is the Commission's drive to liberalize the distribution of tobacco, not only in Canada (11) but also in developing countries such as Mexico, Korea, and China (12). Liberalization has proven to mean increased consumption in developing countries where tobacco-caused deaths are skyrocketing - estimated to quadruple in 1990-2020. The removal of restrictions on alcohol distribution (11) sought by the Commission also threatens alcohol control policies designed to protect public health.

In terms of cultural policy, European countries traditionally have been allies of Canada. Yet the Commission is challenging Canada's exemption for the distribution of "musical scores, audio and video recordings; and books, magazines, newspapers, journals, periodicals and other printed matter."(13) The Commission is also asking Canada to remove all restrictions, such as limits on foreign ownership, of news agencies (14). In addition, it wants aspects of the printing and publishing industry committed to GATS rules (15).

Imposing Conformity - Eliminating the Flexibility in the GATS

Promoters of the GATS have tried to argue the agreement provides governments with flexibility because they were allowed when they first signed the GATS to place limitations on their commitments. In Canada, these limitations at least provided provincial governments the possibility of safeguarding policies that did not fit the GATS "one-size-fits-all" model of economic development. For example, Newfoundland and Nova Scotia registered a limitation in order to ensure oil development projects could give local businesses preference if they offered competitive services (16).

But the European Commission is asking Canada to remove this and most of the other limitations on Canada's commitments, including virtually all provincial requirements for local residency or citizenship. Once removed from Canada's schedules, these policy options are for all practical purposes eliminated forever. Any government that has such policies will have to eliminate them as violations of Canada's internationally binding obligations. As well, where the Commission is asking Canada to liberalize entire new sectors, they are asking that these commitments be made with absolutely no limitations.

The Commission's negotiators in fact have used the existing limitations in Canada's schedules as a kind of "hit list". For example, it is highly unlikely that Ontario's residency requirement for "cadastral surveyors" (17) has posed any significant problem for European business. Mere difference in policy is being targeted as unacceptable, making a mockery of arguments about GATS "flexibility."

Energy (18)

European support for American efforts to get energy - normally considered a good - covered by the services agreement sends a very negative signal. The Commission is asking Canada to open up energy trading and brokering, and wholesale trading of electricity in particular. Not only would this require privatization of some of the operations of public utilities like BC Hydro or Quebec Hydro, but as well, it could mean commercial values could triumph over environmental ones. Wholesale purchases of energy based on preferences for clean sources of energy might be challenged if they tended to "discriminate" against foreign suppliers. Getting energy dealt with through GATS negotiations has the advantage for commercial interests that the GATS, unlike the General Agreement on Tariffs and Trade, does not have an exception for measures taken to conserve natural resources.

Footnotes:

Relevant Sections of European Commission Position

[Note: "schedule none" means the EC is asking Canada to not limit its commitments in the sector at all]

(1) Foreign Takeovers:

"MA - The acquisition of control of a Canadian business by a non-Canadian is subject to approval above a certain amount.

EC Request: Eliminate this approval."

(2) Land Acquisition

"Ontario, Prince Edward Island, and Saskatchewan: Discriminations on real estate transactions. **EC Request:** Eliminate those restrictions."

(3) Advertising

"Advertising [which includes outdoor advertising such as billboards]

Canada has not committed this sub-Sector. **EC Request:**

- Modes 1, 2 and 3: Take full commitments, i.e. schedule "none" under MA and NT."

(4) Domestic Ownership of Privatized Services

"NT - Limitations on participation in companies of which government disposes of its interest. **EC Request:** Remove those limitations."

Water Supply:

(5) **"A. Water for human use & wastewater management**

- Water collection, purification and distribution services through mains, except steam and hot water. **EC Request:** Extend sectoral coverage to include the above services, and take full commitments in that subsector for mode 2 and 3."

Privatization:

(6) **"Banking and other financial services**

Pension fund management is not committed. **EC Request:** Take full commitments in mode 2 and 3, in accordance with the Understanding on Commitments in Financial Services."

(7) **"Insurance**

Mode 3: MA - Monopoly on motor vehicle insurance in several provinces.

EC Request: Open to competition."

(8) **"Telecommunications**

...Competition in the provision of interexchange voice telephone service in the serving

areas of Northwestel Inc., Ontario Northland Transportation Commission, and Prince Rupert City Telephones, may be limited.

EC Request: Remove this restriction.

- Competition in the provision of local wireline telephone services in the serving areas of Northwestel Inc., Ontario Northland Transportation Commission, Prince Rupert City Telephones, Telus Communications (Edmonton) Inc. and the other independent telephone companies listed in CRTC Telecom Public Notice 95-15, may be limited.

EC Request: Remove this restriction."

(9) "**Retailing services**

The distribution of the following goods is not committed:

- liquor, wine and beer (CPC 63107)

EC Request for these goods:

- Modes 1, 2 and 3: Take full commitments, i.e. schedule "none"."

(10) "**POSTAL AND COURIER SERVICES EC Request to Canada**

This request includes sub-sectors that were listed under the negotiating proposal of the EC (S/CSS/W/61). The work on the revision of classification of this sector is still underway. For this reason, the sub-sectors lack reference to CPC.

Canada has only partially committed this sector (commitments in courier services). The EC requests Canada to commit this sector as follows, based on the EC proposal for the revised classification of postal and courier services:

Services relating to the handling of postal items, whether for domestic or foreign destinations:

A. Handling of addressed written communications on any kind of physical medium, including:

- Hybrid mail services

- Direct mail

B. Handling of addressed parcels and packages

C. Handling of addressed press products

D. Handling of items referred to in A. to C. above as registered or insured mail.

E. Express delivery services for items referred to in A. to C. above.

F. Handling of non-addressed items.

G. Document exchange.

H. Other services not elsewhere specified.

EC Request for sub-sectors B., C., E., F. and G.:

- Modes 1, 2 and 3: Undertake full commitments for market access and national treatment.

- Mode 4: Commit as referred to in the section « Horizontal commitments ».

EC Request for sub-sectors A. and D.:

- Modes 1, 2 and 3: Undertake commitments for market access and national treatment.

- Mode 4: Commit as referred to in the section « Horizontal commitments ».

Canada's current commitments:

- Market access, Mode 3: « Courier services (Nova Scotia and Manitoba): Economic needs test. (Criteria related to approval include: examination of the adequacy of current

levels of service; market conditions establishing the requirement for expanded service; the effect of new entrants on public convenience, including the continuity and quality of service, and the fitness, willingness and ability of the applicant to provide proper service.)

» **EC Request:** Remove the restriction."

(11) Alcohol and Tobacco:

"EC Request to Canada

A. Commission agents' services (CPC 621, 6111+6113+6121)

The distribution of the following goods is not committed:

- Food, beverages and tobacco (CPC 62112)"

B. Wholesale trade services (CPC 622, 6111+6113+6121)

-alcoholic beverages (CPC 62226)

EC Request for these goods:

- Modes 1, 2 and 3: Take full commitments, i.e. schedule "none".

C. Retailing services (CPC 631+632, 6111+6113+6121+613)

The distribution of the following goods is not committed:

- liquor, wine and beer (CPC 63107)

EC Request for these goods:

- Modes 1, 2 and 3: Take full commitments, i.e. schedule "none""

(12) Tobacco and China

"DISTRIBUTION SERVICES EC Request to China

"A. Commission agents' services (CPC 621, 6111+6113+6121)

- **The distribution of salt and tobacco is not committed. EC Request:**

- **Modes 1, 2, 3 : Take full commitments, i.e. schedule "none"...**

B. Wholesale trade services (CPC 622, 6111+6113+6121)

- The distribution of salt and tobacco is not committed. **EC Request:**

- Modes 1, 2, 3 : Take full commitments, i.e. schedule "none".

C. Retailing services (CPC 631+632, 6111+6113+6121+613)

- The distribution of tobacco is not committed :**EC Request:**

- Modes 1, 2, 3 : Take full commitments, i.e. schedule "none"."

Culture:

(13) Distribution of Cultural Goods

"B. Wholesale trade services (CPC 622, 6111+6113+6121)

The distribution of the following goods is not committed:

- musical scores, audio and video recordings (CPC 62244)

- books, newspapers and other printed material (CPC 62262)

EC Request for these goods:

- Modes 1, 2 and 3: Take full commitments, i.e. schedule "none".

C. Retailing services (CPC 631+632, 6111+6113+6121+613)

The distribution of the following goods is not committed:

- musical scores, audio and video records and tapes (CPC 63234)

- books, newspapers and other printed material (CPC 63253)

EC Request for these goods:

- Modes 1, 2 and 3: Take full commitments, i.e. schedule "none".

(14) News Agency Services

"NEWS AGENCY SERVICES EC Request to Canada

Canada has not committed this sector (CPC 962). The EC requests that this Sector be committed as follows:

EC Request (CPC 962):

- Modes 1, 2 and 3: Take full commitments, i.e. schedule "none" under MA and NT."

(15) **"Printing and Publishing Services (CPC 88442) [printing and publishing on a fee or contract basis]**

Canada has not committed this sub-Sector. **EC Request:**

- Modes 1, 2 and 3: Take full commitments, i.e. schedule "none" under MA and NT."

Provincial Limitations Examples:

(16)"- NT - Newfoundland and Nova Scotia: First consideration given to services provided within the province for petroleum operations.

EC Request: Remove this preference."

(17) "Modes 1 and 4: NT - Ontario - Residency requirement for cadastral surveying. **EC Request:** Remove this requirement."

Energy:

(18) **"ENERGY SERVICES - EC Request to Canada**

This Request includes services that are listed under the negotiating proposal of the EU (S/CSS/W/60). The work on the classification of these services is still underway. For this reason, some activities therefore lack reference to CPC.

The EC requests that this area is committed as follows:

C. Services related to networks

C.1 Operation of transportation/transmission and distribution facilities

· CPC 887: Services incidental to energy distribution

This sub-sector is not committed. **EC Request:**

- Modes 3: Take commitments for operation of networks not part of the integrated system.

- Mode 4: Commit as referred to in the section "Horizontal commitments".

· CPC 71310: Transportation of petroleum and natural gas

This sub-sector is not committed. **EC Request:**

- Modes 3: Take commitments for operation of networks not part of the integrated system.

- Mode 4: Commit as referred to in the section "Horizontal commitments".

E. Services for the supply of energy

E.1 Wholesale of energy products

- Wholesale trade services of electricity

EC Request:

- Modes 3: Take full commitments, i.e. schedule "none".

- Mode 4: Commit as referred to in the section "Horizontal commitments".

E.3 Trading of energy products

EC Request:

- Modes 1, 2 and 3: Take full commitments, i.e. schedule "none".
- Mode 4: Commit as referred to in the section "Horizontal commitments".

E.4 Brokering of energy products

EC Request:

- Modes 1, 2 and 3: Take full commitments, i.e. schedule "none".
- Mode 4: Commit as referred to in the section "Horizontal commitments".

G. Services related to decommissioning

EC Request:

- Mode 3: Take full commitments, i.e. schedule "none".
- Mode 4: Commit as referred to in the section "Horizontal commitments".