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# How The GATS Threatens Post-Secondary Education

## Selling Rights as 'Services'

The *General Agreement on Trade in Services* (GATS) is one of more than twenty trade agreements administered and enforced by the World Trade Organisation (WTO). It is the services agreement of the WTO and was signed in 1994 at the conclusion of the 'Uruguay Round' of the General Agreement on Tariffs and Trade (GATT). It was one of the trade agreements adopted for inclusion when the WTO was formed in 1995.<sup>1</sup>

Like the North American Free Trade Agreement (NAFTA), the fundamental aim of GATS is to turn the public good and human rights into commodities or products that can be bought and sold for profit in the market. The difference is that with GATS the products are 'services' and no area of human life will be excluded: education, health care, social programs, water, and parks that play a vital role in maintaining our quality of life are all included in the definition of the 'services sector' that must be open to the market.

## The 'liberalisation' of Services

There are four important aspects to GATS:

1. The goal of GATS is to *liberalise* international trade in services, which means to gradually phase out all so-called barriers to international competition in the services sector. A barrier can be a 'tariff' (border tax) or 'non-tariff' (any law, practice or policy deemed to restrict competition and trade). So, under GATS no tariff or protection mechanism can be applied to 'services'.
2. Like NAFTA, GATS entrenches the principles of 'National Treatment' (which holds that investors from all WTO countries must be treated in the same way as domestic investors) and the 'Most-Favoured-Nation' treatment (which holds that investors from all member countries must be treated equally).
3. Unlike NAFTA, the GATS agreement specifically targets subsidies and taxation measures as trade barriers.
4. GATS is not final. Its goal is "a progressively higher level of liberalization"

through "successive rounds of negotiations."<sup>2</sup> The aim then, is to eliminate all exceptions.

## Education for Sale

Under GATS public funding and equal access to post-secondary education are in danger for two important reasons: because education is not excluded from GATS and because public funding falls under the definition of a barrier.

## Education is not excluded

Supporters of the GATS will argue that public education is protected because the agreement states that services "provided in the exercise of governmental authority" are excluded. However, these are defined as "any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers."<sup>3</sup> In other words, in order to be excluded, a country's education system must be *completely* publicly financed and administered without *any* private financing or commercial purposes.

Canada's system of post-secondary education does not fulfil these conditions for exclusion. First, after two decades of federal and provincial cuts Canada's system of post-secondary education has seen a 'creeping privatisation' in which private funds and commercial interests already exert some influence and control. Today public funds cover only 55% of the cost of post-secondary education and tuition fees cover 32%.

Secondly, the payment of tuition fees for courses could fall within the category of services supplied "on a commercial basis".

Thirdly, there are already a myriad of private for-profit companies in Canada that sell diplomas for profit. So, the public education system is "in competition with one or more service suppliers."

For these reasons, Canada's system of public post-secondary education is not excluded from the GATS agreement.

## Attacking 'Government Monopoly'

There is more compelling evidence suggesting that public funding and equal public access to

**“Education is now an industry. Canada needs to approach the international marketplace for educational services with the same discipline and commitment that we bring to other sectors.”**

- Sergio Marchi, former Canadian Trade Minister, current Canadian Ambassador to the WTO and Chair of the Council for Trade in Services. Cited in Maude Barlow “Trading It All Away: The WTO Services Negotiations and the Threat to Canada’s Public Health and Education Systems” March, 2000.

**“There are a number of education services that are on a commercial basis and it is something that can certainly continue to be an object of discussion and eventually negotiation between countries who want to do that.”**

- Pierre Pettigrew, Canadian Minister of International Trade, *Toronto Star*, November 16, 1999.

**“Essentially, the GATS is mandated to restrict government actions in regards to services through a set of legally binding constraints backed up by WTO-enforced trade sanctions. Its most fundamental purpose is to constrain all levels of government ... and to facilitate access to government contracts by transnational corporations in a multitude of areas, including public health and education.”**

- Maude Barlow, Volunteer National Chairperson, The Council of Canadians, “A GATS Primer”, February 8, 2001

post-secondary education are in danger under the GATS. This has to do with how the WTO defines a ‘non-tariff’ barrier.

In a 1998 document the WTO Secretariat defined potential barriers to treating education as a ‘commercially’ traded service. They identified: measures limiting foreign ownership of colleges and universities, nationality requirements, needs tests, restrictions on recruiting foreign teachers, the existence of “government monopolies” and “high subsidization of local institutions”, not legally recognizing “foreign education providers” as universities, “restricting the granting of university degrees to domestic institutions” and not allowing students enrolled in these institutions to qualify for “financial assistance.”<sup>4</sup>

## **GATS Will Destroy Public Education**

The message here is clear. Under GATS, Canada’s public system of post-secondary education will be destroyed.<sup>5</sup>

1. The GATS will ensure that foreign-based colleges and universities, including private companies selling degrees and diplomas for profit, will be guaranteed access to the Canadian ‘educational market’. Private for-profit training companies will have the rights to invest within Canada, to provide services to Canadians from abroad, to provide services to Canadians travelling abroad and to send their staff into Canada on a temporary basis.
2. Because GATS covers ‘subsidies’, it will force governments to provide foreign institutions and private for-profit training companies with the same grants, financial assistance and other subsidies that they provide to Canadian colleges and universities.
3. GATS will force governments to provide student loans, bursaries and other financial assistance to students attending foreign

educational institutions on the same basis as students attending Canadian institutions.

4. Under the rubric of unfair subsidies, GATS will strip governments of the power to offer grants or tax incentives for research and development at Canadian educational institutions as well as any requirement that citizens be given preferential access to the benefits of that publicly supported research and development.

5. GATS will force governments to give degree granting authority to private for-profit training companies. GATS will also ensure that non-governmental bodies exercising delegated governmental authority (such as teachers colleges or professional associations) recognise degrees and diplomas granted by foreign colleges and universities, including private for-profit training companies.

6. GATS will eliminate residency requirements; for example, that members of governing boards live in the community or that first preference for teaching positions be given to qualified residents of Canada.

7. Because GATS covers taxation measures, it will eliminate preferential tax treatment for Canadian universities and colleges and other educational institutions vis-à-vis foreign educational ‘service providers’.

## **Conclusion: A ‘Corporate Charter of Rights’**

Because it can challenge democratically agreed upon laws, policies and practices, the GATS by its very design is about more than just trade in services. It is a corporate charter of rights that transfers unprecedented new rights to investors and transnational corporations. With GATS citizens will lose democratic control over their economy and will be stripped of their power to use legislation to govern in the public interest.

<sup>1</sup> For an overview of the GATS and Canada’s negotiating positions, see: Scott Sinclair, *Sequel to Seattle: GATS, How the WTO’s New “Services” Negotiations Threaten Democracy* (CCPA, 2000); Steven Shrybman, *The World Trade Organization: A Citizen’s Guide* (CCPA/Lorimer, 2000) and Maude Barlow, “A GATS Primer” (February 8, 2001, available at: <http://www.canadians.org/campaigns/campaigns-trade/pub.html>).

<sup>2</sup> *General Agreement on Trade in Services*, “Progressive Liberalisation”, Part IV, Article XIX.

<sup>3</sup> *General Agreement on Trade in Services*, “Scope and Definition”, Part I, Article I, 3.(b)-(c); “Government Procurement”, Article XIII.

<sup>4</sup> Council for Trade in Services, World Trade Organisation, “Education Services”, document S/C/W/ 49 Subsection 3, (September 23, 1998).

<sup>5</sup> This section is drawn from the following excellent analysis: “General Agreement on Trade in Services (GATS): What’s at Stake for Post-Secondary Education”, The Canadian Association of University Teachers, September 17, 1999, pages 2-3.