

that we're repositioning the profession to such a degree that we're going to lose our basis of opposition. For us to be info-entrepreneurs, there's no room for intellectual freedom, there's no room for archival integrity, there's no room for democratic information provision. We've never accomplished that job perfectly, nor will we ever do it completely, but libraries are one of the few places left where that is happening at all. I got a little angry when I re-read Dr. Miller's articles. I don't know that ALA is always serving us well in how it responds to the issues we've discussed today, and ALA's corporate culture is increasing. I think we should step back from the hype and quit worrying about some 15 or 16 year old kid with a network connection taking our jobs away from us. We should just do our jobs, and I suspect that librarianship will be around for a good long time to fulfill the role Dr. Miller sees for us.

*Editor's note: This is an edited transcript of a panel presentation and follow-up discussion at the 1998 American Library Association Annual Conference in Washington, D.C. The panel was organized by Steven Harris. Robert J. Lackie prepared the transcription.*

## The WTO and the Threat to Libraries

by Fiona Hunt

**H**ow many of you here today would prefer not to buy products made with child labor? How many would prefer not to eat food treated with hormones? Even if you don't care about these things yourself, do you think that people should have the right to make these choices?

The WTO would like to take away that right, and has done so already in a number of cases.

According to the WTO, countries cannot discriminate against a product based on its method of production, even if the same standards are applied to domestic as well as foreign products. Such discrimination constitutes a "non-tariff trade barrier."

For instance, in 1988, the US passed a law banning the sale of tuna caught using "purse seine" nets, nets which injure and kill dolphins as they catch the tuna. This law is applied to domestic tuna as well as imported. Even so it has been ruled WTO-illegal as a barrier to trade. Similarly, a ban against shrimp caught in nets that injure sea turtles was overturned by the WTO. The US ban fell under the US Endangered Species Act as well as satisfying US obligations under the global environmental treaty CITES (Convention on International Trade in Endangered Species). Despite these facts, it was deemed a non-tariff barrier to trade.

Where food safety is concerned, the WTO contends that unless a product is scientifically proven to be unsafe, it should not be discriminated against in trade. Countries should assess what they consider a "tolerable" risk. Many countries prefer to adopt a "zero tolerance" attitude and wait until the product has been proven safe to ensure ultimate safety for their citizens. Such a stance constitutes a WTO non-tariff barrier to trade. For instance: Since 1988, the European Union has had a ban on the sale of domestic and imported beef treated with bovine growth hormone. Bovine growth hormone is suspected as a possible cause of cancer as well as premature pubescence in girls. It has not been absolutely proven, but the EU has

decided to apply the "Precautionary Principle" and wait until it is conclusively pronounced safe before allowing it into its food supply. The US challenged this ban in 1996, and in 1998, the WTO ruled that the EU must begin importing hormone-treated beef by May of 1999. When the EU refused to comply with the ruling, the US requested that sanctions be applied. The EU currently pays over \$100 million in trade sanctions (\$116.8 million to be exact) because of its refusal to import beef felt to be unsafe for its population.

In each of the above scenarios, the right to choose has been taken away in favor of the "right" to trade.

It might also interest you to know that every environmental law challenged in the WTO's dispute resolution court to date has been overturned. Numerous other laws aimed at protecting the world's environment have been stopped in their tracks by the threat of a WTO challenge. All have been deemed WTO-illegal barriers to trade.

The governments bringing these challenges to the WTO did so on behalf of corporations in their countries. It is the corporate interest that is being upheld.

What does this have to do with libraries? Under WTO laws, public libraries could disappear.

#### *What is the WTO?*

The World Trade Organization was established in 1995 to regulate global trade coming out of the 1994 Uruguay Round of GATT negotiations. At the moment, there are 137 WTO member countries from the developed and developing world and that number is growing. Member states vote on agreements and bind themselves to implement all or part of these agreements within a certain time frame, failure to meet a deadline results in pressure from the WTO. It also acts as a settlement "court," settling disputes that arise in the arena of global trade; a place where corporations (through their national governments) can complain of and be compensated for other members' "unfair trade" practices. The WTO is backed heavily by transnational corporations (TNCs).

In the words of Ralph Nader's *Public Citizen*, the WTO's goal is "to provide transnational corporations (TNCs) with a cheap supply of labour and natural resources. The WTO also guarantees corporate access to

foreign markets without requiring that TNCs respect countries' domestic priorities" (Working Group 1999); in other words, it awards TNCs all of the rights and none of the responsibilities of unfettered access to global markets.

WTO decisions are heavily influenced by the so-called "Quad" nations (US, Canada, Japan, European Union), who often meet behind closed doors to make key decisions, excluding the other, primarily developing, member states. It strives to abolish the public sector and encourage privatization and deregulation.

#### *How Could the WTO Affect Libraries?*

The WTO encompasses many different agreements dealing with different aspects of trade. One such agreement is the GATS, or General Agreement on Trade in Services. Libraries could face the threat of extinction under the GATS. Before we look at the GATS, however, we need to talk about National Treatment.

#### *What is National Treatment?*

Put simply, national treatment is the right of foreign companies to be treated the same as or better than domestic companies. For instance, if a foreign company enters the US market, selling the same or similar products as US companies, it has the right to apply for any benefits or special treatment afforded the US companies. The concept of national treatment is built into all WTO agreements and is meant to create a "level playing field" for all companies doing business in the same market so that there is no discrimination against foreign companies. WTO-style national treatment goes one step further, however. Not only must foreign corporations be treated the same as domestic corporations, there is no way for governments to place performance requirements on them. A foreign company would not be required to hire locally, bring technology into the country, etc.; it could simply use the population as consumers, adding nothing to the economic development of the region. And government's hands would be tied.

#### *What is the GATS?*

The GATS introduces a whole new field to international trade, namely, *services*. Born in 1994, out of the Uruguay Round of the GATT proceedings, the GATS has remained relatively unknown amongst the public. With the 1999 Seattle WTO Ministerial, however, the GATS has come to the forefront and the WTO now recognizes services as the next big area for the

expansion of international trade. It is an area hitherto undeveloped with tremendous potential for profit-making.

The GATS strives to deregulate all services across all borders world-wide with the goal to commit each country to deregulate every service sector and provide national treatment for foreign service-based companies. Services include almost everything that is not a "good" or commodity: education, health care, broadcasting, child care, social services, water treatment, energy distribution, and a multitude of other things including libraries, museums and archives.

#### *National Treatment and the Threat to Libraries*

Take the following scenario – it could easily come about under the GATS national treatment guidelines:

Public libraries are in the public domain, supported by public taxes. Imagine an "information services" company entering a market and demanding the same subsidies and tax support that public libraries get. It would be entitled to do so under national treatment rules, providing it can prove itself to be the same kind of operation. The government's most likely response would be to cut back on or eliminate public funding to libraries so as to avoid similar claims in the future. Libraries could find themselves forced to generate income to survive. The worst case scenario is that, without public funding, libraries could disappear altogether. The public would then be required to buy their information from "information companies" or from libraries, if libraries could stay afloat by charging for their services. Either way, the public would find itself paying for information that was once in the public domain.

Think this sounds far-fetched? According to an article in the *Vancouver Sun* dated August 1999, there are companies launching what they call "information markets" on the Internet. Information markets are essentially Internet-based "reference desks," providing reference service to paying customers (Ott 1999). The Information Market pairs up experts in various fields with people seeking answers to e-mailed questions; once an answer has been received, the seeker pays a fee, from which both the expert and the Information Market take a cut. Should companies offering this type of service enter the US market, they could, under national treatment guidelines, try to claim government funding, describing themselves as library-like companies offering library-like services. In addition, many libraries are experimenting with fee for service arrangements to deal with already

inadequate funding levels; these schemes could open the door to competition with companies offering the same kinds of services.

One issue that could affect the magnitude of the threat to libraries is how they are classified according to the GATS. As it happens, libraries fall under the broad classification of Division 96 "Recreational, Cultural, and Sporting Services" under the UN classification of services. The UN classification is the one generally used by countries when they make their commitments under the GATS. You can go to: <http://gats-info.eu.int/gats-info/swtosvc.pl?&SECCODE=10.C> to find the countries that have made commitments under library services. You'll see that the US and Japan have made almost total commitments, meaning that any country's private library services could bid on contracts for local libraries once the sector has been opened up to competition.

An example of this kind of scenario taken from real life, involving the North American Free Trade Agreement (NAFTA): United Parcel Service (UPS) courier service in the US is challenging Canada Post's practice of funding the Canada Post courier service, under NAFTA's chapter 11 guidelines, which pertain to expropriation of profits. They hold that Canada Post's courier service is being given an unfair advantage and that UPS should receive the same kind of funding. Sound familiar?

Last year in Canada, the government sent out a questionnaire to public libraries asking them to identify areas where they might have "export" interests. This is how the GATS is being sold. Rather than protecting public services within Canadian borders, the focus is on getting foreign market access for Canadian services exports. Support for the GATS is being solicited using exports as the carrot, completely ignoring the other side of the coin – namely, probable privatization of all services currently in the public sector.

Another way in which libraries could be affected by the GATS is the current move towards including professional licensing standards in the agreement. Extending the concept of the "level playing field," the GATS would like to see standards for licensing professionals brought down to the lowest common denominator. "Pro-competitive" is the preferred terminology. Such a provision in the GATS might mean that professions could no longer demand a certain standard of education or licensing amongst their members. Demanding that your employees and colleagues hold an ALA-accredited masters degree could constitute a non-tariff barrier to trade.

### *Good-bye to the Public Sector*

The GATS is explicit in its goal of privatizing the last remaining vestiges of the public sector. Public libraries would face the same threat of extinction under the GATS that was predicted with the Multilateral Agreement on Investment (MAI), a draft treaty that was abandoned in December 1998 after France's withdrawal from the proceedings. The difference is that the GATS already exists and is relatively unknown to the public, making it an easier target for WTO negotiators.

Some quotes from WTO officials:

Pierre Sauve, an OECD official and advisor to Industry Canada, told a services lobby conference sponsored by the Brookings Institute in Washington, DC, June 1, 1999 that the advantage of pursuing an investment agreement through existing WTO rules is that it "is more difficult to oppose than a full blown negotiation in a 'new' policy area. [ie. Investment] This is particularly true of investment discussions centered on the GATS..."

David Hartridge, director of the WTO services division, wrote in a memo to WTO services negotiators in November 1999: "Services is the major part of the built-in agenda; less difficult and less visible politically than agriculture but very much larger in economic importance and potential. It is also the least controversial element of the Seattle agenda."

#### *Seattle*

So what happened in Seattle? How did libraries fare?

As you are no doubt aware, thousands of people marched through the streets of Seattle on November 30, 1999 to express their concern over WTO rules and their potential to affect the safety and well being of the public. Despite careful planning on the part of demonstration organizers, with a route clearly planned to create as little havoc as possible by skirting the area around the conference center, demonstrators managed to take their message to the doors of the center and delay the official opening of the meetings.

Despite this rocky start and the general disagreement on other key issues amongst WTO members, the GATS talks went well and a draft services document emerged. The goal was to begin talks early in the year 2000. This goal was achieved and as we speak, GATS negotiations are taking place, with several meetings scheduled for this month. The GATS is going

ahead. All negotiations are secret and carried out behind closed doors, with little or no information about the substance of the talks feeding out to the public.

The following document [see Appendix A "Services Document"] is the blueprint for the current negotiations. Looking at it, you can see that it is dangerously ambiguous, leaving the door open for negotiators to take whatever direction they like.

The main issue is that of protecting or excluding those sectors that members do not want to be open to liberalization. This is the only way to avoid the concerns we've looked at today, short of scrapping the GATS entirely. If an exemption can be obtained for libraries, then they would probably not be in danger from foreign library-like companies claiming national treatment rights. While obtaining exemptions for specific sectors is not necessarily a guarantee for the future, it is better than nothing. However:

i) Paragraph (c) of the document says "the negotiations, from which no service sector or mode of supply shall be excluded *a priori*..." This means that right off the bat, all sectors are on the table, open to liberalization. No sector gets special treatment; nothing is considered so sacred that it wouldn't be included. Potentially any sector could be offered up.

ii) Secondly, and related to the above point, is the issue of "negotiating modalities." Looking at paragraph (b), we can see that the wording is so contradictory and ambiguous as to mean almost nothing. "Based on the request-offer approach" implies a bottom-up approach, which is promising. A bottom-up approach means that the participants introduce to the negotiations only those sectors that they wish to be liberalized. But "and supplemented as necessary by other appropriate negotiating modalities, applied on a horizontal or sectoral basis" seems contradictory. A "horizontal modality" means that whatever is decided in one sector will be applied across the board to all other sectors, while "on a sectoral basis" means that decisions will be applied individually, sector by sector. In this case, members would decide that a particular sector should be liberalized the same way for all members.

This paragraph *probably* means the following: WTO members must offer up sectors to be committed. This constitutes the "request-offer" approach mentioned. Members will commit sectors they are willing to open up to liberalization. Decisions made during the negotiations will be applied to

these committed sectors only. However, some GATS clauses will be applied horizontally to all sectors, even those sectors not committed in the "request-offer" process. So, even though a WTO member may not commit its education sector, or health services, or libraries, these sectors will still be subject to probably some of the worst GATS clauses.

As we speak, negotiators are meeting to decide where to use this horizontal application of rules. So far, they have isolated domestic regulation. In response to a WTO challenge, a country would need to prove that the regulation under challenge was serving a "legitimate" objective. Incidentally, in putting together a WTO-approved list of "legitimate" objectives, "safeguarding the public interest" has already been rejected. So have "cultural diversity" and "environmental protection." Instead, a May 9, 2000 confidential paper suggested that legitimate objectives could include "economic efficiency," "competition" and "economic development."

Supposing a country were successful in proving that its regulation was serving a legitimate purpose, it would then have to prove that its regulating action was the least trade restrictive action it could have taken, which is nearly impossible. Once a WTO ruling was reached in such a case, the ruling would apply horizontally, across all sectors, whether the sectors were committed by WTO members or not. For example, a ruling by the WTO on domestic regulations concerning hiring practices in the health sector would automatically apply to libraries, museums, education, social services, etc. It is breath-taking in scope.

Finally, some sectors, like telecommunications and finance will be negotiated on a sector by sector basis, applying the same rules to these sectors across all the WTO member states. Tourism is next on the chopping block and if negotiated on a sector by sector basis, would prove disastrous for developing countries, which would not be able to regulate to protect delicate and already damaged eco-systems.

Returning to our services document, when you take the two paragraphs, B and C, together, the implications are disturbing. One high-ranking EU official stated in a press conference that "all the boxes will be opened, but not all of them will be filled." It occurs to one to ask why boxes that will remain empty should be opened at all. Regardless of the rhetoric being used, the agenda is to liberalize all sectors, if not immediately, then gradually over time. Article 19 of the GATS talks about "progressive liberalization" and indeed, this document (see the introductory paragraph)

states that the aim is "to achieve progressively higher levels of liberalization of trade in services..."

When asked in a press conference about protections for the Canadian health care and education systems against privatization, Pierre Pettigrew, Canada's Trade Minister and chair of one of the WTO working groups, brushed-off the question as irrelevant due to the built-in protections for those sectors in the GATS. There is a clause in the GATS that exempts "services supplied in the exercise of governmental authority." However, public services operating in competition with other service suppliers (like private schools) would not qualify for this exemption. A library could be considered to be operating in competition with other service suppliers by engaging in fee for service arrangements.

Should the GATS proceed smoothly in this current round of negotiations, we could soon see a world in which only the richest can afford information -- and a host of other things.

#### *What Can You Do?*

- get informed on the issues
- spread the word to your friends and colleagues
- write your congressperson and the president
- put up displays in your libraries to inform the public
- invite speakers to your library to inform the public
- join a listserv devoted to these issues
- make some noise! Demonstrate publicly...
- volunteer with any one of the public interest groups fighting against these proceedings

Do one or more of these things and you've taken your first step towards helping to fight this agenda. Globalization itself is not necessarily a bad thing; it could be a good thing. And it is perhaps inevitable. The WTO's globalization agenda, however, is corporate-driven and the rules are being written with the good of corporations, not the well-being of the public, in mind.

If even one of the things you've heard today has made you angry, I will consider this presentation a success. Thank you very much.

## WORKS CITED

- Ott, Christopher. 1999. "Brain Power for Sale," *Vancouver Sun*, Aug. 12, 1999 E1, E4
- Working Group on the WTO/MAI. 1999. *A Citizen's Guide to the World Trade Organization - Everything you Need to Know to Fight for Fair Trade*. New York: Apex Press, p.2

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APPENDIX A: Services Document drafted at the Seattle WTO Ministerial Conference, November 30 - December 4, 1999

28. Pursuant to the objectives of the GATS; as stipulated in the Preamble and Article IV, and as required by Article XIX, negotiations based on these guidelines shall aim to achieve progressively higher levels of liberalisation of trade in services through the reduction or elimination of the adverse effect on trade of measures as a means of providing effective market access. The negotiations shall take place with due respect for national policy objectives and the level of development of individual Members. In this process, the existing structure and principles of the GATS shall be preserved. To this end:

- (a) The negotiations shall be conducted in full accordance with Article IV (Increasing Participation of Developing Countries) and Article XIX (Negotiation of Specific Commitments) and the Annex on Article II (MFN) Exemptions.
- (b) Liberalisation may be achieved through bilateral, plurilateral or multilateral approaches, based on the request-offer approach and supplemented as necessary by other appropriate negotiating modalities, applied on a horizontal or sectoral basis. Participants shall submit initial requests or proposals on specific commitments by 1 November 2000 and initial offers by 1 November 2001.
- (c) The negotiations, from which no service sector or mode of supply shall be excluded a priori, shall aim to promote the interests of all participants and to secure an overall balance of rights and obligations through the liberalisation of services across a broad range of sectors. Special attention shall be given to sectors and modes of supply of interest to developing countries.
- (d) In order to improve market access and make the operation of the Agreement more effective, work currently in progress under the GATS shall be expedited, alongside negotiations on specific commitments. The Working Party on Domestic

Regulation shall aim to conclude its work on the development of new disciplines no later than the fourth Ministerial Conference. The Working Party on GATS Rules shall aim to conclude its work by the same date. However, negotiations under Article X (Emergency Safeguard Measures) shall be concluded by 15 December 2000, as agreed by the Services Council on 24 June 1999. Participants shall aim to conclude the work undertaken by the Committee on Specific Commitments on the nomenclature of services and the scheduling of commitments no later than the date of the fourth Ministerial Conference.

- (e) Existing provisions of the GATS may be subject to technical review, as agreed by Members, in order to improve the clarity and legal consistency of the text.
- (f) In the conduct of negotiations, account shall be taken of any autonomous liberalization undertaken by other Members since the conclusion of the Uruguay Round and credit shall be given for it according to modalities to be developed during the negotiations.
- (g) Negotiations shall take account of the results of the reviews to be conducted by the Council for Trade in Services of Article II Exemptions and the Annex on Air Transport Services.