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Trading public health for private wealth

It has been a year since the World Trade Organisation (WTO) met in Seattle under siege by protesters claiming that unrelenting globalisation of trade is adversely affecting the economies of developing countries. But WTO rules affect more than the economy. As *The Lancet* has highlighted, today (p 1995) and in the past, they have implications for health-care provision.

Of current concern is the General Agreement on Trade in Services (GATS), which aims to expand the involvement of private enterprise in the service sector. A revision of this agreement was a focus of the Seattle meeting. The service industry is replacing the manufacturing industry as the source of profit. Service exports have accounted for about a third of the economic growth in the USA over the past 5 years or so. These exports also account for a quarter of the European Union's total exports. The governments of these two huge regions are thus eager to strengthen GATS. So too are their service industries, represented in the EU by the European Services Network of multinational industry representatives and in the USA by the Coalition of Service Industries. Health care, social services, and education are among the 160 service sectors covered by GATS. US health-maintenance organisations, whose profits have plummeted through market saturation and efforts by government and employers to limit health-care costs, hope to restore profitability by expanding abroad.

The Uruguay round of WTO talks in 1995 had enabled governments to protect health and social services from GATS rules by defining them as government services, which in turn were defined as services supplied neither on a commercial basis nor in competition with one or more service suppliers. However, this let-out has come under threat with the WTO argument that in many countries the hospital sector is operated by a mix of government and private organisations, and that in such countries foreign corporations are thus entitled to join the competition on an equal footing with local ones.

WTO also sees the voluntary nature of GATS as a weakness and is tightening its regulations to ease market access and to enable member states (or

private bodies acting through their governments) to challenge other states' decisions to exclude public services such as health from GATS. Domestic health policy could thus be set by trade tribunals.

Other concerns about the expansion of the free market in health services are the possible erosion of social-welfare provision (a feature of many countries in Europe), conflict with the principles of universal coverage and health-care funding based on shared risk, or the introduction of a system whereby capacity to pay determines speed of access to care. These concerns have arisen in Canada with Alberta's Health Care Protection Bill, which allows private corporations to supply services previously provided exclusively by public hospitals.

How seriously is the threat to health-service provision being taken in the EU, which is holding a summit in Nice at the time that this week's *Lancet* is published? The topics that have been most discussed in the run-up to the summit are expansion of the Union, the weighting of votes of member countries, tax, the right of vetoes, and the charter of human rights. Health has not featured prominently. An important issue to be resolved at the summit is whether the EU's negotiating powers on trade matters are enhanced—ie, whether it requires unanimity (as at present) or just qualified majority voting to negotiate on its members' behalf on trades in services, intellectual property, and investment. The EU is committed to trade liberalisation ("Everything but Arms" for least-developed countries) and to strengthening of GATS rules. Pascal Lamy, the European Community's trade commissioner, has said that the rules should be clarified such that there is no conflict between trade and other policies and that interpretation of the rules is not settled by dispute procedures. However, the EU has a dismal record on public health, and there is little clarity on how much independence for domestic policy that member states have under subsidiarity arrangements. These points and the quagmire that the WTO has created make vigilance about GATS negotiations especially essential.

The Lancet

Rewriting the regulations: how the World Trade Organisation could accelerate privatisation in health-care systems

Allyson M Pollock, David Price

The World Trade Organisation (WTO) is drawing up regulatory proposals which could force governments to open up their public services to foreign investors and markets. As part of the General Agreement on Trade in Services (GATS) negotiations, the WTO working party on reform of domestic regulation is developing a regulatory reform agenda which could mark a new era of compulsion in international trade law. Article VI.4 of the GATS is being strengthened with the aim of requiring member states to show that they are employing least trade-restrictive policies. The legal tests under consideration would outlaw the use of non-market mechanisms such as cross-subsidisation, universal risk pooling, solidarity, and public accountability in the design, funding, and delivery of public services as being anti-competitive and restrictive to trade. The domestic policies of national governments will be subject to WTO rules, and if declared illegal, could lead to trade sanctions under the WTO disputes panel process. The USA and European Union, with the backing of their own multinational corporations, believe that these new powers will advantage their own economies. Health-care professionals and public-health activists must ensure that this secretive regulatory reform process is opened up for public debate.

The fate of public services under World Trade Organisation (WTO) rules will come under the spotlight at the Inter-Government Conference in Nice, France, on Dec 7–8, 2000, when it considers the European Commission's mandate to negotiate market access agreements on members' behalf. During the WTO's abortive Seattle talks in late 1999, lawyers from the UK's Department of Trade and Industry gave assurances that public services were protected from the WTO's business-oriented agenda.¹ These assurances have recently been reiterated. In October, 2000, Andrew Stoler—director of the WTO's Trade in Services Division—described as “false or mistaken”² claims that services supplied by governments were under threat by the WTO, and the European Community's trade commissioner, Pascal Lamy, has complained in press briefings that he is tired of rebutting the charge.

But behind the scenes, the WTO, with the support of the USA and international trade organisations, continues to develop an agenda aimed at opening all public services to trade and foreign investment. The WTO's mandate derives from promises already made by its 138 member states to liberalise services. Under existing rules set down by the General Agreement on Trade in Services (GATS), member states are allowed to volunteer some services for liberalisation and to exclude others. Members, although encouraged to liberalise, are therefore free to retain domestic policies that restrict or prohibit private investment in traditional areas of public service. The WTO's strategy is shifting from persuasion to the development of new global regulations which will over-ride national sovereignty in domestic policy and impose unprecedented market reform obligations on all

the processes of service delivery and throughout all service sectors.

The WTO intends a tighter regulatory framework that will make it more difficult for member states to keep rules that protect public services from foreign investors and markets. The ultimate aim is to increase pressure on member states to open their public-sector services to foreign investment through privatisation and deregulation.

WTO and its rules of trade

Established in 1995, the WTO is the most potent international organisation setting global rules of trade to expand markets. The agreements contain three basic principles. First, members are not allowed to discriminate between trading partners who are also members of the WTO, all of which are granted most-favoured-nation status. Second, under the national treatment principle, members must treat foreign firms in an identical way to firms in their own country. National treatment effectively bans discriminatory or protectionist policies. And third, members are bound to eradicate uncompetitive practices such as export subsidies and dumping (exporting at a price lower than the price normally charged) that give countries a comparative advantage that is not due to the efficiency of their industry.³

WTO rules are set out in 12 principal legal texts or trade treaties, one of which—GATS—contains the main provisions governing the services sector (www.wto.org/english/tratop_e/serv_e/gatsintr.htm). GATS is a complex, difficult-to-master set of rules that apply to all 160 service industries including water, telecommunications, health, and education. The agreement has generated little case law since 1995 and some basic provisions still need legal interpretation. One of its main purposes is to open services to foreign investment, and all GATS signatories, including the UK, have committed themselves to this goal. GATS, like other WTO treaties, is backed up by the WTO's enforcement arm—a unique disputes system that allows states, and

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corporations acting through states, to challenge violations of WTO rules and to extract compensation or impose retaliatory sanctions.³

Why public services are important to the WTO

Services are now more important than manufacturing in the push for economic growth. A European Community assessment of the economic significance of service industries calculates that they account for “two thirds of the Union’s economy and jobs and almost a quarter of the European Union’s total exports and a half of all foreign investment flowing from the Union to other parts of the world.”⁴ The European Community reportedly stalled agreement on China’s accession to the WTO because China failed to approve a licence to a European health insurer to sell insurance. According to a recent newspaper report, “ING and other European insurers are looking to cash in as China cuts back on government welfare benefits, forcing hundreds of millions of workers to shoulder more of their own health insurance and pension costs.” In the USA, the trade policy of exporting US managed care is part of an effort to bolster the domestic health-care industry, which is being destabilised by falling profits.⁵

Public services in most economically advanced countries have economic significance because of their size. For example, in countries of the Organisation of Economic Co-operation and Development (OECD), public expenditure on health services and education alone account for more than 13% of gross domestic product. The WTO Secretariat calls the health sector of OECD countries “a domestic economic giant”.⁶

When are public services excluded from GATS?

In the exercise of government authority?

The UK’s Department of Trade and Industry and European Community officials have stated that public services are exempt from WTO rules because of GATS Article 1.3(b), in which the “services” covered are defined as “any service except services supplied in the exercise of governmental authority”. But the treaty defines a government authority service as: “a service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.” It is difficult to see how health services are exempt under this part of the Treaty, since in most countries health services involve both competition and commercial provision. For example, commissioning in the UK’s national health service is based on competitive bidding, and commercial providers are found among pharmaceutical companies, medical suppliers, nursing homes, and owners of privately financed hospital buildings (www.wto.org/english/tratop_e/serv_e/gatsintr.htm).

Moreover, in November, 1999, the WTO’s Council for Trade in Services debated the application of this article to health services, and members decided that exceptions provided in Article 1.3 of the Agreement needed to be “interpreted narrowly” and did not cover the whole sector. They also noted “increasing possibilities for private participation, whether domestic or foreign, in various health and social-related activities”.⁷ This is significant, since WTO council minutes can be used by dispute panels to settle differences in interpretation when states bring challenges under the treaty.

When they are not voluntarily “offered”?

WTO officials also point to the voluntary nature of GATS as additional protection for public services. For

Sector	Member states permitting unlimited foreign investment	Member states permitting limited foreign investment	Total
Medical and dental services	19	24	43
Veterinary services	19	14	43
Midwives, nurses, &c	10	16	26
Other (including medical services)	1	2	3
Hospital services	18	17	35
Other human health services	8	4	12
Social services	5	13	18
Other health and social services	2	1	3

Adapted from ref 8.

WTO member states committed to unlimited or limited foreign investment in medical, health-related, and social services in 1999 (total membership at that time 135)

example, lawyers for the Department of Trade and Industry have said that, “The UK government has no intention whatsoever of offering to privatise public healthcare or education under the GATS 2000 negotiations”.¹ GATS allows members to liberalise services sector by sector in voluntary “schedules of specific commitments”. It also allows countries to decide how much of each sector should be liberalised—eg, whether foreign direct investment will be permitted in hospital services—and how much liberalisation will take place—eg, what proportion of a sector’s infrastructure is open to foreign ownership. Official assurances carry little long-term weight because the whole point of GATS is to make services tradeable.

It is important to note that by the end of 1999, few of the WTO’s then 135 member states had committed their health and social services to foreign investment through GATS (table).⁸ Part of the reluctance of member states to opt into health services is that health care is generally regarded as a universal right. Almost all major industrialised countries except the USA have universal, publicly funded systems of health care based on social insurance or collective risk-pooling principles. In many of these countries, the public sector also provides the service, and where it does not, there are usually tight controls on the role of for-profit providers and powerful regulation of other actors in the system to ensure universal service provision.⁹ For example, in France, Italy, Luxembourg, the Netherlands, and Spain, hospital expansion is limited by a health-services plan, and Sweden limits the number of private medical-service practices that may be subsidised out of public funds.¹⁰ Service suppliers are assigned a public interest role that limits their choice of what they will provide, in what way, to whom, and at what price. Furthermore, levels of supply are fixed. Market access to final customers is therefore highly regulated. The reluctance of member states to open their public services to trade has led the US government, among others, to observe that “commitments in this sector are not as comprehensive or deep as in other sectors”.⁶ It is the voluntary nature of the GATS agreement that is now being targeted by the WTO.

How WTO is trying to lever open public services

The WTO acknowledges that the main barrier to trade in public services is the voluntary nature of GATS. Under the voluntary agreement, countries are free to retain national sovereignty over public services and to devise their own domestic regulations in the

pursuit of public-policy objectives such as universal health care, public safety, and quality of service. It is these freedoms over domestic regulation that the WTO is now seeking to curtail. To this end, the Council for Trade in Services—the body within the WTO that oversees GATS negotiations—convened a standing committee, the Working Party on Domestic Regulation (WPDR), which began taking reform suggestions in May, 2000. The UK and other members of the European Community have been asked to negotiate new GATS regulatory disciplines in the WPDR by the end of the year.

In May, 2000, WPDR members agreed a timetable to identify which aspects of domestic regulation present obstacles to the market and to incorporate reform suggestions within the next 2 years. The chairman of the Council for Trade in Services—the Canadian trade ambassador, Sergio Marchi—has identified regulatory reform as a priority. Services negotiations were, he said, “a test of the resilience of the WTO post-Seattle” (e-mail communication, Department for Trade and Industry). By tightening the regulations, the WTO intends that member states will be able to challenge the legal basis of other members’ decisions to exclude public services such as health from GATS.

The European Community and the USA have a disproportionate influence over WTO policy. According to John Braithwaite and Peter Drahos, who have recently completed a 10-year study of the General Agreement on Tariffs and Trade and the WTO: “When the US and EC can agree on which direction global regulatory change should take, that is usually the direction it does take.”¹¹ Both the European Community and the USA have argued strongly for reform of domestic regulation through the WTO. In 1998, the US trade department suggested that: “While keeping in mind the need for governments to oversee and regulate this sector, it would be useful to take a closer look at issues such as government intervention and regulation for their impact on the ability of WTO members to provide these services on a commercial basis.”¹² In July, 2000, it returned to the issue, proposing that: “Members should reach agreement on GATS disciplines to promote greater transparency in regulation of services and to address other, identified, trade-restructuring aspects of regulation.”¹³ European Community trade negotiators, who have a mandate to reach trade agreements on behalf of the whole Community, have called for a test to ensure that regulations restrict the market as little as possible.¹⁴

The regulatory reform process consists of negotiations to make changes to GATS in general or top-down provisions that apply automatically to all service sectors, even those where members have made no specific commitments. The process has been made possible by a mandate, otherwise known as the built-in agenda, already written into the treaty.

The regulatory reform process

Regulatory reform has been strongly promoted by the OECD, which has issued a series of reports to help

“governments improve regulatory quality” and remove “unnecessary obstacles to competition, innovation and growth”. It advocates “policy instruments that are competition neutral”. In its view, public ownership and economic regulations impede competition. For example, the OECD review of Spain states that efficient regulations are those that are “not more trade restrictive than necessary” (www.oecd.org/publications/e-book/4200051e.pdf). “At the procedural level, effective adherence to this principle entails consideration of the extent to which specific provisions require or encourage regulators to avoid unnecessary trade restrictiveness and the rationale for any exceptions, how the impact of new regulations on international trade and investment is assessed, the extent to which trade policy bodies as well as foreign traders and investors are consulted in the regulatory process, and means for

ensuring access by foreign parties to dispute settlement.” This agenda is reflected in current WTO negotiations.

The mandate of the working party on domestic regulation reform is contained in article VI.4 of GATS—one of four provisions in the treaty that obligates members to negotiate new liberalisation rules. This article is vitally important because it covers all the processes of services delivery that it conceives as potential barriers or obstacles to trade. These processes include professional qualifications and licensing, licensing and accreditation of facilities, financing and funding of services, and overall administration. In other words, the article is all-embracing. The article mandates the Council for Trade in Services to ensure that in each of these areas, the least restrictive trade policies are being pursued.

Article VI.4 states: “With a view to ensuring that measures relating to qualification requirement and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Council for Trade in Services shall develop any necessary disciplines. . .

(a) based on objective and transparent criteria, such as competence and the ability to supply a service;

(b) not more burdensome than necessary to ensure the quality of the service;

(c) in the case of licensing procedures, not in themselves a restriction on the supply of a service.”

“Technical standards” is a catch-all term that includes most types of governmental control. It is defined in the WTO’s Technical Barriers to Trade Agreement as: “product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory” (www.wto.org/english/tratop_e/tbt_e/tbtagr.htm).

Under Article VI.4, WTO members are required to develop legally enforceable rules that will limit the powers of governments to impose restrictions on commercialisation if the powers can be shown to create unnecessary barriers to trade. The task for the Council for Trade in Services is to work out a legal test for determining when anything from legal statutes

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to professional-qualification requirements and administrative rules on funding and financing are unnecessarily restrictive of private-sector activity.

A legal test is required because the WTO secretariat has acknowledged that the existing wording does not provide a formula that can be enforced by WTO dispute panels. "It appears that the simple transformation of the principles listed in VI:4 into binding rules would in itself bring domestic regulation within the GATS legal framework. Such a general rule, however, would probably have been insufficient to provide guidance for the settlement of disagreements or disputes about particular measures; the purpose of developing these general principles into 'disciplines' could be seen as being to give them enough specificity to make them operationally useful". Thus, the purpose is to make legal challenge to other countries' domestic policies available to states that want to further the interests of their own corporations.¹⁵

Tightening up the necessity test

The key mechanism giving the WTO power over domestic regulation is the "necessity test", which determines when a regulation is an "unnecessary barrier to trade". Article VI.4 includes the principle of such a test but the Working Party on Domestic Regulation is currently considering importing more precise wording based on two other WTO agreements—the Sanitary and Phytosanitary Agreement and the Technical Barriers to Trade agreement. These agreements define least trade-restrictive as follows: "a measure that has the effect of restricting trade can be considered 'necessary' only if there is no alternative measure less disruptive of trade";¹⁶ and "regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective".¹⁴

The focus of regulatory reform involves developing a two-stage test of necessity in which governments will have to show that their regulations meet a legitimate objective and that the measures they adopt in pursuit of that objective are least burdensome to trade.

Under the Technical Barriers to Trade agreement, legitimate government objectives are defined as "national security arrangements, the prevention of deceptive practices and the protection of human health or safety, animal or plant life or health, or the environment" (www.wto.org/english/tratop_e/tbt_e/tbtagr.htm). A list of GATS-permissible objectives has been proposed in the WPDR by European Community negotiators. The list will undoubtedly include public-health measures. However, the concern is that the WTO is likely to retain the role of arbiter in determining whether a domestic policy serves a legitimate purpose or not. The WTO has already exercised this power under another of its rules. In a dispute involving a French ban on the import of asbestos, a WTO panel collected its own evidence to determine whether asbestos was a hazardous material and therefore whether a ban on asbestos served a legitimate objective or constituted protectionism.

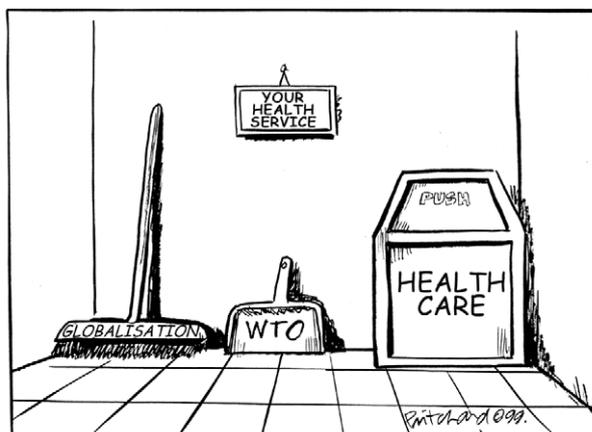
Where a regulation meets a legitimate objective, the proposed necessity test also requires that it has to be the least restrictive or least burdensome means to that end.

Currently, the term does not have a concrete, legally enforceable meaning. For this reason, the WTO and the European Community have suggested incorporating into GATS Article VI.4 principles set out in the Telecoms Reference Paper where "least burdensome" regulations are defined as regulations that are "pro-competitive". The European Community has called for "a substantial strengthening of the disciplines built on Article VI of GATS, and, where appropriate, the development of more pro-competitive disciplines based on the approach of the Telecoms Reference Paper".¹⁷ It has also tabled proposals at the WPDR which include principles drawn from the paper.¹⁴ The WTO and the WTO secretariat say that the paper's provisions "draw upon the principles laid out in GATS Article VI.4, and add greater specificity".¹⁶

The Telecoms paper prescribes least restrictive practices by identifying "anti-competitive practices". Examples of anti-competitive practices include the use of cross-subsidisation by monopoly providers of network infrastructure and services, since this restricts market entry by competing suppliers. Least restrictive practice would undermine public monopoly of service provision by assigning charges based on "cost-oriented rates that are transparent, reasonable, having regard to economic feasibility, and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided".

The Telecoms paper also identifies funding of universal service obligations as potentially anti-competitive if they are not "competitively neutral" or are "more burdensome than necessary". It suggests that resource allocation should not be anti-competitive, and that "Any procedures for the allocation and use of scarce resources will be carried out in an objective, timely, transparent and non-discriminatory manner". In other words, governments that currently use non-market mechanisms and structures such as risk pooling, social insurance funds, block contracts, and cross-subsidisation for the delivery of universal health-care services could be required to switch to the market mechanisms described above. The paper also calls on governments to find new ways of meeting public objectives such as universality: "Finding new mechanisms to meet universal service objectives, whose impact on the many competitors in a market is even-handed, will require creativity and the flexibility to constantly reassess on the basis of results".¹⁸

European Community negotiators at the WPDR have also proposed introducing a proportionality principle under GATS article VI.4.¹⁴ Under this provision, it could be necessary to show not only that a government control was directed at a legitimate objective and was least restrictive but also that it did not impose unreasonable costs on commercial providers. This idea has already been deployed by international financial institutions. For example, the Inter American Development Bank criticises "equity imperatives [that] call for investments regardless of the cost-benefit relationship. For example, universal access to education



and health services applies, in principle, to all citizens independent of population density, proximity to existing supply . . . or needed level of investment".¹⁹ The Bank questions the adoption of universality without a cost-benefit analysis.

Practical implications of the necessity test

Opinions differ about the extent to which a reformed Article VI.4 will affect all public services. European Community negotiators at the WPDR have implied that Article VI.4 only applies to services that members have offered to liberalise, and that reforms to it will, therefore, not affect the voluntary character of GATS. However, the WTO Secretariat is adamant that nothing in the treaty suggests that the provisions only apply to services where liberalising commitments have been made. The issue was considered by one of its working parties, which declared in 1999 that: "Nothing in Article VI.4 suggests that its disciplines were to be limited to services on which specific commitments are undertaken. Indeed, the fact that four other paragraphs in this Article are specifically stated to apply only where there are commitments strongly suggests that the absence of any such limitation in Article VI.4 was intentional."¹⁶ In other words, reforms to WTO rules will introduce new mandatory controls applicable to all services covered by GATS, not simply to those that have been "offered" voluntarily.

If this is the case, under proposals currently being debated in the WTO, states may find their rights to protect public services under challenge from commercial providers acting through their own governments. As a result of these challenges, a WTO disputes panel could require states to unbundle public health-care monopolies and substitute competing service providers or competing health-care insurers.

Many countries are already unbundling services and moving to competitive contracting. But under WTO regulatory reform proposals, this would no longer be a project under their own control.

How the WTO will enforce regulatory reform

If the necessity test can be given legal force by tighter definitions of its meaning, the WTO's disputes settlement system can be brought into play. The disputes panel mechanism allows individual states to challenge the policy-decisions of other states and has already been used to influence domestic regulations. Between 1995 and 1999, 25 disputes adjudicated by the Disputes Settlement Body referenced WTO agreements dealing with regulatory standards.²⁰ Of seven cases adjudicated, four challenged the rationality of policies in the light of international standards of scientific evidence. The WTO has generally ruled that measures not supported by sufficient evidence will be found in violation of WTO rules. For example, in the recent hormone-treated beef dispute brought against the European Union by the USA and Canada, the WTO Appellate Body ruled that the European Union's standard was higher than international standards, that the higher standard was not supported by evidence, and that it did not address defined risks. The USA/Canada challenge was upheld on these grounds.

For the moment, these powers can be applied only where there is discrimination against foreign firms. WTO disputes panels have applied this national treatment test very broadly to expand their enforcement powers. For example, when, in 1996, France banned asbestos products on public-health grounds, Canada

complained that the ban discriminated against their goods because it did not cover all "hardened articles consisting of an intimate mixture of fibres", some of which were produced in France.²¹ The disputes panel supported Canada's interpretation, ruling that goods cannot be discriminated against on the ground of health risk: "it is not appropriate to apply [a health] 'risk' criterion" in order to treat otherwise identical goods differently. Thus, the WTO's national treatment rule was used to define a public-health initiative as protectionist and therefore potentially illegal. Under the regulatory reform agenda, the WTO would no longer have to rely on these contortions because domestic regulations would be covered by a general obligation that, in the view of the WTO, applies whether or not a policy discriminates against foreign firms and violates the national treatment principle. The reform would transform the WTO from a body combating protectionism to a global agent of privatisation.

The WTO secretariat acknowledges that bringing rules within an enforceable legal framework will create a tension between trade objectives and national sovereignty. It says that placing restrictions on the nature of domestic regulations means "achieving a balance between two potentially conflicting priorities: promoting trade expansion versus protecting the regulatory rights of governments".¹⁷ But the crucial factor is not so much domestic sovereignty as the way in which public interest and public-health objectives can be over-ridden by objectives that further trade. Already in the negotiations currently under consideration, there is evidence of the way in which the term "least trade restrictive" is being tightened so that the criteria provide the benchmark against which all government policies will be judged.

Public-health implications

Globalisation, according to a UK House of Lords select committee, is effectively about "reducing the power of individual governments in the face of multinational corporations whose annual turnover may exceed the GNP of many WTO member countries".²² If this is true, WTO regulatory reform proposals are a pure case of globalisation.

Most European health-care systems guarantee access to health care as a universal right. Because of this, health care is funded either through general taxation or social insurance with the role of for-profit firms severely limited or banned altogether. To extend rights of access for private firms, the WTO, with the backing of powerful trading blocs, multinational corporations, and US and European governments, is attempting to use regulatory reform to challenge limitations on private-sector involvement. But this amounts to a challenge to the principles that lie at the heart of social welfare systems in Europe. The new criteria proposed at the WTO threaten some of the key mechanisms that allow governments to guarantee health care for their populations by requiring governments to demonstrate that their pursuit of social policy goals are least restrictive and least costly to trade.

In the largely secret and unaccountable reform process, public-service objectives could rapidly become subordinated to pro-trade policies. As Bert de Wel, advisor to Belgium's Cabinet Federal Minister of Consumer Protection, Public Health and the Environment puts it: "For us, as for many people, it sounds like common sense that if social, environmental and health aspects are on some kind of meta level, they should be considered before the common trade rules. The problem is that this is far from evident in the WTO

trade logic. Even the European Commission's trade people do not see it that way." It is essential that politicians, public-health activists, and civil servants open up to public scrutiny the WTO regulatory reform negotiations and those of its working party. At stake is not just the future of local democracy, but the future of public services, and with them, the rights and entitlements that underpin the tradition of European social welfare.

We thank Ellen Gould and Scott Sinclair.

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