



Trade Agreements What the New Alphabet Soup Means for BC

By Marc Lee

SIGNING TRADE DEALS HAS BECOME somewhat of a growth industry for the Canadian government. The Department of Foreign Affairs and International Trade (DFAIT) now has a huge staff to deal with ongoing negotiations and trade disputes. Trade and investment have become an ideological pillar—the source of all things good, according to the federal vision of the world.

The new “alphabet soup” consists of trade and investment agreements in the works through the Free Trade Area of the Americas (FTAA) initiative, negotiations on Services (GATS) at the World Trade Organization (WTO), and domestically through expansion of the Agreement on Internal Trade (AIT). These ingredients form a potentially volatile cocktail with serious implications for BC.

While keeping track of trade agreements and negotiations can be challenging, at their core they are all variations on the same theme. By emphasizing the rights of traders and investors, they stress deregulation, privatization and commercialization, while restricting the authority of democratically-elected governments.

FTAA: NAFTA goes South

In April 2001, leaders from nations across the Americas (except Cuba) will meet in Quebec City for the *Summit of the Americas*, to reiterate the push for a Free Trade Area of the Americas. Negotiations have been on since 1998, and a draft text has now been compiled of the various national positions. Negotiations are scheduled to conclude by the end of 2004 (although the US is pushing to accelerate the process).



At its heart, the FTAA is an attempt to expand the North American Free Trade Agreement southward. One of the most troubling elements of the proposed FTAA is an extension of NAFTA's Investor-State Dispute Settlement Mechanism, which enables foreign corporations to directly sue national governments. Any government measure (whether a law, regulation or practice), regardless of public interest considerations, may be subject to litigation under this scheme if a corporation can prove an adverse impact on its bottom line. Canada has been challenged several times under this section of NAFTA.

The FTAA talks may also have implications for Canadian institutions, such as Crown corporations and marketing boards, designed to benefit Canadian citizens, but that might prejudice US corporations. Strangely, there seems little for Canada to gain in these talks, as 86% of Canadian exports go to the US, while less than 1% of exports go to Latin America (minus Mexico).

GATS: Giving Away the Store

In Geneva, Canadian negotiators are pushing hard to expand the WTO's General Agreement on Trade in Services (GATS). Even though the WTO failed to launch a new round of negotiations in Seattle in late-1999, negotiations on the GATS are part of a “built-in agenda” included with WTO membership (negotiations on agriculture are also part of the agenda, but talks are currently deadlocked).

The concept of “services” sounds rather benign, but the GATS has huge potential for limiting the scope of democratically-elected

...continued on page 2

...continued from page 1...

governments to act in the public interest. Services account for some two-thirds of GDP and three-quarters of employment in BC. And most goods also have some type of service attached to them (such as distribution, finance and marketing). This means that trade rules in services are applicable to almost every aspect of the economy, including public services.

GATS negotiators are seeking to minimize the scope for domestic regulations that negatively affect the conduct of commerce. Laws or regulations that do not meet a very narrow test could be subject to challenge. Ultimately, it may be possible to retain regulations on the books—but governments will have to pay for the privilege, with (potentially very large) sums determined by trade panels. In addition, the Canadian government is even proposing that countries would have to consult with all 140 WTO members before introducing new regulations.

The record of the existing GATS agreement suggests cause for concern. In a high profile case, provisions of the GATS were used to challenge the *Auto Pact*, which required that foreign auto makers produce cars in Canada in order to get tariff-free access. This example of a successful industrial development and trade policy that has been of huge benefit to Canada was struck down by a WTO panel, even though autos are clearly “goods”.

AIT: In Search of a Problem

Within Canada, attacking regulations has also become a sport. The federal-provincial Agreement on Internal Trade (AIT), which came into effect in July 1995, is an elaborate, legalistic framework that parallels the language of international trade in the name of reducing interprovincial trade barriers.

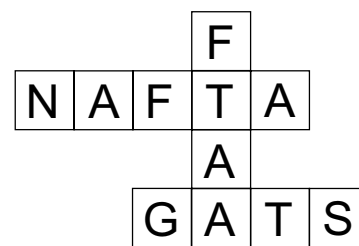
In truth, there is little in the way of actual trade barriers in Canada. Rather, the AIT is more about access for corporations to government procurement opportunities in other provinces (the billions spent by governments on goods and services) and the mobility of professionals. But the AIT also sets up a framework to challenge differences in provincial regulation over labour, consumer protection, and the environment.

In recent negotiations to expand the AIT, some provinces are pushing to strengthen the capacity of corporations to challenge provincial regulations, and to prevent provinces from opting out of parts of the Agreement they disagree with. Furthermore, a draft Energy chapter may lock-in an energy model based on deregulation and privatization (see related article by Marjorie Cohen on energy and the GATS). This could create the same chaos in BC as is now being experienced in Alberta and California.

The Provincial Fallout

While the federal government has developed an ideological zeal about negotiating trade and investment agreements, the provinces must deal with the consequences. Provincial governments (and their municipal counterparts) have jurisdiction over social services and wide areas of regulation. It is these areas that are most threatened.

Areas like health care and education are increasingly seen as lucrative markets by the corporate sector. Because Ottawa shares this view, and wants to gain market access for Canadian companies abroad through the GATS, it may be extremely difficult to shield public services back home. This could affect licensing requirements for professionals, confidentiality of patient records, and whether for-profit



entities have the right to receive public dollars for delivering services.

At present, there is a great deal of uncertainty as to how the FTAA and GATS negotiations will unfold, and what our negotiators are willing to give up in last minute horse trading. For any deal that is eventually signed, much will hinge on decisions made by secretive dispute panels composed of trade lawyers who tend to take a narrow trade liberalizing view when interpreting the texts.

What is clear is that trade deals are steadily eroding local decision-making and control. Bit by bit, public programs may be deregulated or privatized due to trade agreements and decisions by dispute panels. Similarly, government measures to protect the public interest may be attacked in the cross-fire of different trade agreements. More insidiously, provinces contemplating new regulations or new public services may not bother due to the “chilling effect” of potential litigation.

The current BC government has been rightly critical of these negotiations. BC could send a strong message by passing legislation saying it would not implement an agreement like the GATS that affected its areas of jurisdiction. Many BC municipalities (and the Union of BC Municipalities) have already made similar gestures. Public opposition by provincial and municipal governments matters as a signal of discontent, both to Canadians and the broader

...continued on page 4

POWERLESS

Electricity Deregulation through the GATS

By Marjorie Griffin Cohen

DEREGULATION OF ELECTRICITY MARKETS IN California and Alberta has resulted in huge price increases for electricity users and probabilities of brown-outs and shortages that could send prices sky-high. Are people in BC prepared for the same? There are mighty forces that want to see an integrated electricity market for the continent—a move that would mirror what has happened to gas prices. Unless Canadian governments take strong and firm action to prevent this, we could lose the advantages of having BC Hydro in the public sector.

Huge increases in gas prices in BC have focused attention on the energy sector in ways we haven't seen since the great energy price spikes in the 1970s. The surge in demand for gas in the US, coupled with a deregulated and integrated continental gas market, caused prices to rise in BC, a province rich in gas. For businesses any advantage they had through cheap energy in BC is lost when they have to pay the same as consumers in California.

While the focus is currently on gas, there are good reasons to worry about a similar pattern developing for electricity prices. The main difference between these two industries now is that gas markets are competitive and are controlled by the private sector in BC (after the privatization of BC Gas in 1989), while electricity production and distribution is still a regulated public monopoly.

The deregulation and privatization of electricity is occurring rapidly throughout North America, and many argue that BC must move in the same direction in order to accommodate export markets. But a debate about whether electricity *should* be deregulated could become irrelevant if the US proposal for international treatment of energy succeeds in the current discussions for changes at the WTO's GATS negotiations.

The US submissions to the WTO on energy services deregulation simply assume that energy deregulation is always beneficial to all classes of consumers because it lowers prices and ensures a reliable supply. This is an assertion that too frequently is false, as the California experience makes clear. In a province like BC,

where electricity supply is reliable and the costs are low, any international regulatory changes that could force the disintegration of the public monopoly should be an issue of high priority.

The US proposal to the GATS specifically calls for measures that will provide secure access to energy outside national boundaries. As one US government paper states, "the availability of varied sources of energy at reasonable prices is a significant determinant of a nation's ability to compete in the world marketplace." Parts of the US, like California, need much more energy than they produce at reasonable prices. The solution to this "problem" for the US would be to create GATS rules similar to those that have been developed for the telecommunications sector. Specifically, these rules would guarantee rights to market access, national treatment, and most importantly, address regulatory issues that inhibit a liberalized market in energy.

The ultimate goal of the US is to have all energy markets, including electricity, deregulated and government monopolies eliminated. All of this would lead to market pricing, something crucial to private energy companies that want to control the markets and to a country that needs to import energy. The most recent communication from the US to the WTO indicates that it is aware of the hostility to deregulation that would affect public ownership of energy in some countries. In order to assuage criticism, the US position says it recognizes the right for governments to continue to regulate energy for conservation or environmental reasons, and says it "is not proposing to address issues of ownership of natural resources." However, what it is proposing will be just as bad because it will nullify the benefits the public receives from the government owned services.

In the current GATS agreement there is no specific language on energy services. The US wants to see various types of services related to energy consolidated in one section and the definition of what will be covered extended considerably. The definition is important because various types of activities crucial to an integrated electrical system, such as the transmission, storage (dams)

...continued on page 4

Recent Indicators

	Unemployment rate (%)				Inflation (%)		
	Dec-00	Nov-00	Oct-00	Dec-99	Nov-00	Oct-00	Nov-99
BC	7.1	7	7.7	7.8	2.7	2.4	1.5
Canada	6.8	6.9	6.9	6.8	3.2	2.8	2.2

Note: Unemployment figures are seasonally adjusted. Inflation figures are based on price changes over the previous 12 months.
Source: Statistics Canada

...continued from page 2...the New Alphabet Soup...

international community.

Throughout 2000, protests around the world have accompanied meetings of business and government leaders seeking to expand the “new world order”. Quebec City and the FTAA will be the next flashpoint for protest, with early indications suggesting it may set a new standard for police repression in Canada. This only shows that as long as governments fail to develop an alternative vision for trade rules—based on fair trade, democratic processes and regulating corporations—more battles will be fought in the streets.

Marc Lee is the CCPA-BC's Research Economist, and is author of In Search of a Problem: The Future of the Agreement on Internal Trade and Canadian Federalism and a forthcoming paper on the Free Trade Area of the Americas.

Related materials on trade and investment liberalization:

GATS: How the WTO's new "services" negotiations threaten democracy, by Scott Sinclair (ISBN 0-88627-229-7, \$19.95)

In Search of a Problem: The Future of the Agreement on Internal Trade and Canadian Federalism, by Marc Lee (see www.policyalternatives.ca)

The Cartagena Biosafety Protocol: Opportunities and Limitations, by Michelle Swenarchuk (see www.policyalternatives.ca)

Debunking the myth that free trade benefits the world's poor, by Marc Lee (see www.policyalternatives.ca)

Globalization, Poverty and Migration, A Speech by Seth Klein to the MOSAIC AGM (see www.policyalternatives.ca)

...continued from page 3...Powerless...

and distributions systems, will be seen as an unfair trading practice if they are not available to private foreign corporations.

This could have serious negative implications for BC Hydro, a system that is efficient, relatively clean and low-cost mainly because all of the functions for producing and distributing electricity are integrated. By classifying the transmission, distribution, and storage systems as services that are distinct and separate from the generation of electricity, the GATS would be able to force a deregulation of the transmission, distribution and storage systems. What this means in a practical sense is that BC Hydro would no longer have exclusive use of its major assets, but would have to allow private, foreign providers access to them.

The federal government appears to have little interest in heeding provincial concerns on energy—perhaps because Ontario and Alberta have gone so far in the deregulation of electricity. BC and Quebec are in a prime position to make energy deregulation an issue, and should seek to protect their citizens and industries from continental energy pricing.

Marjorie Griffin Cohen is Professor of Political Science and Chair of Women's Studies at Simon Fraser University, and is on the CCPA-BC's Steering Committee.

BC Commentary is produced by the BC Office of the Canadian Centre for Policy Alternatives.

Editor: Marc Lee; **Layout:** Shannon Daub

CCPA-BC: 1400–207 West Hastings Street, Vancouver BC, V6B 1H7 • Tel: (604) 801-5121 • Fax: (604) 801-5122
www.policyalternatives.ca • Email: info@bcpolicyalternatives.org

www.policyalternatives.ca