

700 Lawrence Ave. W., Suite 310  
Toronto, Ontario M6A 3B4

Tel: (416) 367-3313  
1-800-267-6817 (Ont)  
Fax: (416) 367-2844  
E-mail: [info@opha.on.ca](mailto:info@opha.on.ca)  
[www.opha.on.ca](http://www.opha.on.ca)

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The Hon. David C. Onley  
Lieutenant Governor of Ontario

**President**

Carol Timmings  
E-mail: [ctimmings@opha.on.ca](mailto:ctimmings@opha.on.ca)

**Executive Director**

Connie Uetrecht  
E-mail: [cuetrecht@opha.on.ca](mailto:cuetrecht@opha.on.ca)

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September 3, 2003

**The Honourable Pierre Pettigrew  
Minister for International Trade**

**RE: Public health issues involving alcohol in GATS and  
FTAA treaty negotiations**

Dear Minister,

Thank you for responding to our request for information on steps taken by your department to ensure that Canada's international trade commitments do not infringe on the ability of provincial and territorial governments to continue to regulate alcohol in a manner that safeguards public health and safety.

On behalf of the Ontario Public Health Association (OPHA) and those who participated in the conference call meeting on June 12, I would like to thank Mr Bernard Li for bringing together a very knowledgeable and articulate group of senior officials to address our concerns.

We were very pleased to learn of Canada's negotiating position on alcohol in the current negotiating round of the General Agreement on Trade in Services (GATS) that is now underway in Geneva. In particular, in direct response to our written questions, Mr. Paul Robertson, the Director of the Trade in Services Division and Canada's chief GATS negotiator unequivocally affirmed that:

the Government of Canada . will not make any GATS offers affecting the supply, distribution, distribution, sale, advertising, promotion or investment in alcoholic beverages during the current round of negotiations.

Mr. Robertson also assured us that:

the Government of Canada . is not considering, and will not make, any GATS requests to other . member countries" affecting the aforementioned alcohol-related services.

We commend your government on these positive assurances, and we support your efforts to encourage your counterparts in

other countries to take similar positions in ongoing GATS negotiations.

There are, however, a number of items of interest and concern that remain outstanding following the conference call.

**1. The GATS "governmental authority" exclusion**

In the event of a GATS dispute, we remain concerned that the treaty's exclusion for "services supplied in the exercise of governmental authority" is likely to provide little if any meaningful protection from GATS rules for alcohol-related measures. Your officials acknowledged that the scope of this exclusion is uncertain. We also understand that under international trade law it is almost certain to be interpreted restrictively. It is our view, therefore, that the GATS "governmental authority" exclusion cannot reasonably be considered-as one federal official characterized it-as part of a "belt-and-suspenders" approach to safeguarding alcohol-related measures. We would like to re-emphasize that in this and future GATS negotiations, the Government of Canada should not rely on the effectiveness of the "governmental authority" exclusion and should instead continue the prudent course of not making any GATS offers affecting alcohol measures.

**2. 'Listing or losing' provincial measures in committed service sectors**

Another area of concern is the apparent need to list sub-national non-conforming measures in committed sectors in order to protect them. During the conference call, it was suggested that the Government of Canada could, in making GATS market access and national treatment commitments, specify the geographical scope of commitments in a particular service sector so as to restrict the commitment to a particular province without the need for protective limitations to be made for other provinces' non-conforming measures.

We remain concerned that the contrary may be true; that in any sector or sub-sector where commitments are made, each non-conforming provincial measure would have to be described as a limitation in order to be protected-a complex and onerous task.

In the 1994 Canadian schedule of GATS specific commitments, we see no examples where commitments were limited to a single province or set of provinces. Instead, commitments were made on the basis of the entire national territory, and non-conforming measures that provinces or territories wished to maintain were described as limitations.

The revised GATS Scheduling Guidelines appear to indicate that the same approach is to be used in the current round of negotiations. These guidelines state:

5. "Is it necessary in a schedule to describe the geographical scope of limitations to market access and national treatment where they exist at regional or sub-federal level?

"In a committed sector if a Member wishes to maintain a measure which is inconsistent with Article XVI or XVII, it must be entered as a limitation in the appropriate column. As measures, for the purpose of this Agreement according to Article I:3(a)(i), include measures taken by central, regional or local government, *the entry should describe the geographical scope of measures where they do not cover the entire national territory.*" (italics added)

The evidence appears to indicate that there is no provision to limit the geographical scope of commitments to a specific province or set of provinces as was suggested in the conference call. Rather, it is the geographical scope of the non-conforming measures that has to be described. In other words, provincial and territorial non-conforming measures in committed sectors would have to be "listed or lost".

We would appreciate further clarification on this important point.

### **3. GATS Domestic Regulation negotiations**

The potential impact of ongoing GATS negotiations on Domestic Regulation also remains of concern to the OPHA. These negotiations, far from affecting a narrow "slice" of government regulation as was suggested, could have grave consequences for the ability of governments to regulate alcohol in the public interest.

These negotiations are aimed to develop "any necessary disciplines" on "measures relating to qualification requirements and procedures, technical standards and licensing requirements" to ensure that they "do not constitute unnecessary barriers to trade in services" (Article VI:4). Critically, these proposed restrictions are being designed to include some form of "necessity test" - that is, domestic regulations must not be more restrictive than necessary; and that any measures adopted must be necessary to achieve a specified legitimate objective.

If agreed to, these proposed rules could affect the ability of governments to regulate alcohol in a number of important ways. For example, they could fetter governments' ability to set or maintain:

- conditions on the establishment of alcohol retail outlets, or put limits on their number;
- specialized training for alcohol sellers and servers to reduce sales to intoxicated individuals and to young people;
- special standards for soft drinks containing alcohol, which are particularly attractive to young people.

It is our understanding that these proposed treaty restrictions are among the most restrictive ever contemplated and would apply 'across-the-board' with no exception for public health or any other legitimate public policy purpose. We urge the Government of Canada to suspend its support for the development of GATS Domestic Regulation "disciplines" pending a more thorough and open examination of the potential impacts of these negotiations on public health in Canada and elsewhere.

### **4. Treatment of alcohol-containing soft drinks in GATS**

The classification of soft drinks containing alcohol in international treaties was also considered briefly in the conference call. We were assured that alcohol-containing soft drinks-commonly referred to in Europe as "alcopops"-are considered "alcoholic beverages" for the purposes of the GATS. We would appreciate receiving confirmation that the limitations that now exist in the GATS for "liquor, wine and

- 5. Information on GATS alcohol-related initial requests submitted to Canada**  
Earlier this year, the secrecy of the GATS negotiating process was breached when the European Communities' initial negotiating requests were leaked and posted on the internet. This leak indicates that the EC is formally seeking the permanent elimination of alcohol controls and restrictions in the United States, Canada and many other countries. A different leak from another source indicates that the U.S. Government - just like the EC -- is also requesting an end to alcohol controls in other countries.

While we understand officials' unwillingness to confirm these leaks, we also appreciate your statements about the need for greater "transparency" in the GATS negotiation process. In the interest of protecting public health both in Canada and elsewhere, we are keenly interested in learning from you the nature and number of GATS initial requests affecting alcohol that the Government of Canada has received from other GATS members.

- 6. Request for alcohol to be 'carved-out' of the proposed FTAA**  
In light of your government's gratifying assurance on the GATS, we would also appreciate receiving confirmation that it is the position of the Government of Canada to ensure that alcohol is beyond the reach of the proposed FTAA. In particular, we would appreciate learning that the Government of Canada will not sign a Free Trade Areas of the Americas agreement unless it excludes all government measures affecting alcohol-whether as a "good," "service," or "investment".

- 7. Response to CAMH letter**  
Finally, we would be interested in your Department's response to the concerns and recommendations made by Dr. Paul Garfinkel, President and CEO of the Centre for Addiction and Mental Health, in a recent letter to Suzanne Vinet, Director General Foreign Affairs and International Trade.

In the meantime, the Ontario Public Health Association will continue to monitor trade negotiations and the decisions of international trade tribunals. We appreciate the opportunity for further liaison with officials at the Department of Foreign Affairs and International Trade and officials at Health Canada, as well as officials from the Ontario Ministry of Enterprise, Opportunity and Innovation and elsewhere to ensure that the health community's concerns regarding alcohol policy and international trade continue to be actively considered.

Once again, thank you very much for taking the time to respond to these important concerns. We look forward to working with the Government of Canada to ensure that in global, regional or bilateral trade treaty negotiations, the preservation and protection of public health and safety are made paramount.

Sincerely,

Dr. Jack Lee  
Executive Director  
Ontario Public Health Association

**cc.** The Honourable Anne McLellan, Minister of Health  
Dr. Elinor Wilson, Canadian Public Health Association  
Michel Perron, Canadian Centre on Substance Abuse  
Dr. Paul Garfinkel, Centre for Addiction and Mental Health  
Andrew Murie, MADD Canada

**ecc:** Paul Robertson (Director), Laurie Hunter and Bernard Li, Services Trade Policy Division

Joanne Hamilton, Investment Trade Policy Division

Vincent Beaulieu, Trade Policy Consultations Division

Tyler Bjornson, Technical Barriers and Regulations Division

Geoff King and Doug Rubbra, Tariffs and Market Access Division

Ross Duncan and David Strawczynski, Health Canada

James Perttula, Ontario Ministry of Enterprise, Opportunity and Innovation

Dr. Jim Grieshaber-Otto, Cedar Isle Research

Patricia Begin, Canadian Centre on Substance Abuse  
Dr. Robin Room, Centre for Social Research on Alcohol and Drugs, SoRAD (Sweden)

Alcohol Policy Network Coordinating Committee

OPHA Alcohol Policy Work Group