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Libraries and free trade agreements

The possible implications for libraries of GATS and the EU proposal for a directive on services in the internal market

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GATS (The General Agreement on Trade in Services) – short description

GATS is one of the treaties administered by the World Trade Organization (WTO). Its goal is to liberalize and expand the international trade in services by opening up national markets to international competition.

It has been in effect since the 1st of January 1995. A revision was expected to take place in 2005, but most likely we shall have to wait for longer than that.

GATS is composed of two parts:

1. The first one contains the general rules for liberalization. The basic principle is "national treatment", which means that foreign service providers should have market access on the same terms as domestic ones. The "most-favoured-nation" principle (MFN) prohibits any form of discrimination between trading partners. (In practice, most members require reciprocity.)

2. The second part of GATS consists of the schedules of commitments made by member countries, which refer to the 160 different sectors and sub-sectors of services listed by GATS.

Each member country indicates, in a request/offer process, the sectors/sub-sectors for which it wants, and is prepared to make, commitments in terms of market access and national treatment.

Specific limitations to a commitment (e.g. maximum number of foreign service providers or maximum amount of foreign capital) are allowed if indicated when the commitment is made. Limitations *after* a commitment is made, or withdrawals of commitments, must be compensated in terms of other, additional commitments. Domestic regulation/legislation may in some very few cases restrict a commitment, provided it is not considered to be an unnecessary barrier to trade. Such regulation will typically have to do with authorization, qualification requirements, and the like.

Disputes between member countries are settled by a Dispute Settlement Body.

A visit to the WTO

To find out more about the implications for libraries of the GATS treaty, a joint delegation from IFLA and EBLIDA, which is the European association of librarians and archivists, visited the WTO headquarters in Geneva two and a half years ago.

The members of the library delegation were: Frode Bakken, chairman of the Norwegian Library Association, Teresa Hackett, the then director of EBLIDA, Ross Shimmon, the then secretary general of IFLA, and myself.

The WTO representatives were the GATS counsellors in charge of "Education" and "Culture" respectively.

We had a lot of questions, but the most crucial ones were:

1. Are the services of publicly funded libraries really included in the scope of GATS (or should they be regarded as "supplied in the exercise of governmental authority", and not in competition with private service providers, and therefore, according to the text of the treaty, be exempt)?
2. If they ARE included, which sectors/sub-sectors in the GATS scheme are relevant for these libraries?
3. And, perhaps most interestingly, where in this scheme do you place services supplied by libraries online?

The answers we received from the GATS counsellors were not altogether clarifying. Nevertheless, our conclusions were that:

1. The services of publicly funded libraries are definitely within the scope of GATS; only public monopolies are exempt; and, in fact, as of today 18 countries have already

included public libraries in their commitments, i.a. the US, Japan, Austria, and Iceland.

2. Public libraries in general are covered by sub-sector 10 C: "Libraries, archives, museums, and other cultural services", and educational libraries go into sector 5: "Educational services".
3. Services supplied online are apparently included in sub-sector 10 C, but they might soon, and I have to say with more reason, be placed somewhere else, e.g. in a sub-sector called "Computer and related services" (1 B) (which, in fact, *has already been committed by the EU!*)

[So far, the UN classification scheme (CPC) has served as the basis for the schedules of commitments, but the last version of the UN scheme is 15 years old, and clearly, in the Google era, online information retrieval cannot exclusively be defined as a library matter.]

So, what is the problem?

A complex international treaty like GATS certainly gives room for different interpretations. Also, the wording might be subject to many changes during its lifetime. But, as I said, there is no doubt that the services of publicly funded libraries are within the scope of GATS.

The next question is: would it, then, be so *harmful* if these services were committed?

And the answer is that if you think that library services should be a public good, equitably accessible for all, opening publicly funded libraries up to competition from private service providers *on equal terms* will most likely undermine public support to these libraries.

So, what is *the risk* that this will happen?

Here, the answer has to be diversified.

Although, 18 countries have already committed public libraries in their GATS schedules, they have not been one of the most targeted areas in the negotiations. Running a public library is obviously not considered as a very tempting business opportunity. Nevertheless, librarians will have to watch out.

There are a couple of issues which need particular and immediate attention:

1. *Educational services* is *certainly* one of the most attractive targets, and in many countries this area of services includes a substantial part of the publicly funded libraries. "Privately funded educational services" have already been committed by both the EU and the US. Large national and international university associations have made statements against any plans to commit *publicly* funded higher education. I think their concerns are to be taken seriously.
2. *Services supplied online* is, as I already hinted, an extremely sensitive area, since it is obviously so tightly connected to what we perceive as a modern library.

In this field publicly funded libraries are often challenged by private companies which express concerns about unfair competition. The services have to do with Internet access, portals, virtual reference, electronic document delivery, etc.

It is also interesting to note that the WTO has a working group going with the specific task of looking at the issues concerning electronic services, including their placement in the GATS scheme. As I said before, it would not be at all surprising if the result of this work were to get libraries into trouble.

For European libraries, some protection seems to be offered by the general, or "horizontal", limitations made by the EC, which regarding market access say that:

"public utilities at a national or local level may be subject to public monopolies or to exclusive rights granted to private operators." and, perhaps more important,

"the EC has reserved the right to supply, or subsidize, a service within the public sector without breaching its national treatment commitments."

In principle, this could safeguard continued public support to libraries. But there are indications that these limitations may well have to be abolished as "unnecessary barriers to trade", and, in addition, there is nothing to say that these limitations would ever be a *guarantee* against commitments affecting the services of publicly funded libraries.

GATS – the current situation

So, what is new with the GATS negotiations?

Well, since most of the work goes on behind closed doors, one cannot be sure.

What is obvious is that

- There have been serious delays in the request/offer process. The scheduled deadline was the end of March 2003, but by that time only 15 member states had filed their offers. Today, the number has risen to 92, but that means that 56 members have still not made any offers. Furthermore, most of the offers which have been made do not propose any expansion of the commitments from the mid-90's.
- Secondly, we know that negotiations have been underway for the last couple of years to minimize government subsidies and domestic regulation which could be considered as "barriers to trade". And I'm sorry to say that these negotiations seem to have advanced very far.
- Thirdly, there will be a ministerial WTO conference in Hong Kong in December, the first one since the collapse in Cancun two years ago, but very little is known about the agenda. There have been rumours that the focus will shift from agricultural trade to trade in services, but other rumours say that a deal on agriculture is the prerequisite of any other developments. What we do know is that a cluster of meetings on GATS will be organized by the WTO in the second half of September.

Both IFLA and EBLIDA will be represented as observers at the ministerial conference.

Liberalization of trade in services – not only GATS

If we are talking about the liberalization of trade in services, we must not forget that there are many more instruments than GATS which lead in the same direction.

- There are innumerable *free trade agreements* which are *not administered by the WTO*.

Regional and bilateral treaties seem to become more and more popular. E.g., there are clear indications that the US administration considers them a less cumbersome way to achieve its goals. NAFTA (the North American Free Trade Agreement) and the recently concluded agreement between the US and Australia are two examples.

- Then there is *national legislation*.

In Sweden, like in many other European countries, one public monopoly after the other has been abolished over the last two decades. Transport, power supply, telecommunications, broadcasting, etc. We have also seen an amazing proliferation of private schools, all demanding, and getting, the same public support as the municipal ones.

- For European libraries it was interesting to note that in March last year, the European Commission released its proposal for a *Directive on Services in the Internal Market*.

One of the big differences between this directive and GATS is that whereas GATS allows you to commit specific service sectors on a voluntary basis, the EU directive will in principle apply to all services, the only major exception being services supplied "without remuneration". There are different opinions on whether or not it would apply to publicly funded libraries. A good guess seems to be that if there are *any* fees involved, you are in.

The proposal gives full market access for service providers within the internal market, meaning freedom of establishment and free cross-border supply of services.

The country-of-origin principle stipulates that "providers are subject only to the national regulations of their Member State of origin". This means that totally different regulations could apply to service providers active in one and the same country, depending on their respective countries-of-origin. In other words, this is the opposite of the national treatment principle established by GATS. The fear is that it would lead to social dumping.

According to the original plan, the directive would be adopted in the European Parliament in October this year. Because of extensive criticism from quite a few

member countries it is doubtful if this will happen. Nevertheless, EBLIDA's Expert group on Trade and Libraries will follow developments very closely.

What do we do?

And, to follow developments closely, raise awareness, and influence the decision makers is exactly what librarians will have to do to try and make sure that the existence of publicly funded and accessible libraries is not sacrificed on the altar of free trade.

On the global scene, IFLA/CLM is doing an active job with small resources, in Europe EBLIDA is doing the same. (You can read about this on our web sites at

<http://www.ifla.org/III/clm/copyr.htm> and <http://www.eblida.org/lobby/index.htm> .)

But the most important work will have to be done on a *national* basis. Remember, if your countries do *not* commit library services to GATS, you're not in trouble, and if the members of the European Union do *not* open up their publicly funded libraries to the Internal Market, European librarians will not have to worry.