



RNAO

Registered Nurses' Association of Ontario
L'Association des infirmières et infirmiers
autorisés de l'Ontario

Foreign Affairs and International Trade Canada
Consultations & Liaison Division (CSL)
125 Sussex Drive
Ottawa, Ontario
K1A 0G2

December 11, 2006

Dear Sir/Madam:

Re: GATS Article VI:4 and Domestic Regulation

The Registered Nurses' Association of Ontario (RNAO) is the professional association representing registered nurses who practice in Ontario. RNAO's mandate is to advocate for healthy public policy, promote excellence in nursing practice, and ensure nurses' full participation in shaping the health-care system and policy decisions that affect them and the public they serve. It is in this context that we express our deepest concerns about the impact of international trade negotiations on the future of health and other critical social services in Canada.

We are particularly concerned about the impact of these negotiations on our ability to sustain and enhance our universally accessible, publicly-funded, and publicly-administered health-care system. In our earlier submissions to government regarding the General Agreement on Trade in Services (GATS) negotiations, RNAO expressed concern with the Canadian government's position that it not request an exclusion of these social areas from the GATS, as this position is inconsistent with government claims that it will ensure that Canadian authorities maintain the right to regulate these social services, based on Canadian objectives and priorities.

Our concerns are particularly acute as we consider the current negotiations for strengthening Article VI:4 in the GATS on domestic regulation. The GATS' deregulatory agenda presents very serious potential and actual threats to Canada's social fabric, and to the responsibility of our governments to pursue the public good and remain accountable to Canadian citizens.

In particular, we are responding to the Consultations & Liaison Division (CSL) of Foreign Affairs and International Trade's request for comments on the draft text on domestic regulation. We have serious concerns about the draft text and its potential impact both on the health-care system and the health of Canadians.

The health of Canadians is dependent on a wide range of factors, including the environment, water quality, waste disposal and health and safety standards, as well as the health-care system itself. The ability of governments to regulate these services in the public interest is therefore paramount to the health of Canadians.

We strongly urge the government of Canada to oppose the inclusion of a "necessity test" in any new disciplines. A necessity test on non-discriminatory regulatory measures could require governments to prove both that regulations are not more trade restrictive than necessary *and* that they are needed to achieve a specific public policy objective. Necessity tests place an unacceptably high burden on proof on governments to defend and justify a regulatory

measure. We believe that this kind of restriction on the rights of government to regulate, in the health care or other sectors, is an unacceptable limitation on democratic sovereignty. Any potential gains from trade, which are unproven, would be far outweighed by negative impact of these limitations on the ability to regulate in the public interest.

We have serious concerns about the potential impact of the proposed disciplines on regulation of our health-care system. Canada has not taken commitments in direct health services in the GATS. However, commitments covering private health insurance, and in other sectors closely related to health, remain a threat to our ability to regulate health-care providers and the health-care system in the public interest.

As the Chaoulli case illustrated, regulation of private health insurance is essential to the maintenance of Medicare. As a result, we urge the government to withdraw its 1994 GATS commitments covering private health insurance. In the absence of such a withdrawal, the proposed disciplines, in combination with Canada's commitments covering private health insurance, would result in exposure to potential challenge by WTO governments acting on behalf of foreign private insurance providers. This poses an unacceptable risk to Medicare.

If Canada were to take future commitments covering other health services, domestic regulation rules would potentially expose many more legitimate measures to trade actions. For example, any requirements for non-profit delivery in the licensing of health facilities or high standards for health professionals might be interpreted as a violation of this requirement, and then be challenged by a foreign government. Or, if universal access was named as the objective behind a regulation like non-profit service delivery, other governments could say that the least trade restrictive means of achieving this objective would be by paying private (domestic and foreign) corporations to provide the services.

Any restrictions on qualification requirements and procedures are of particular concern to our Association. We are concerned about any pressure to "harmonize downward" licensing requirements in ways that could endanger the Canadian public. The draft text on domestic regulation would limit the ability of Canadian certification and registration agencies to protect the Canadian public.

In the interest of the health of the Canadian public and the health-care system, we ask that the Canadian government oppose the inclusion of disciplines on domestic regulation in any agreements coming out of this round of negotiations.

With kindest regards,



Doris Grinspun RN, MSN, PhD (c), O. Ont.
Executive Director
Registered Nurses' Association of Ontario (RNAO)

cc: Hon. David Emerson, Minister of International Trade
Hon. Tony Clement, Minister of Health
Hon. Dalton McGuinty, Premier of Ontario
Hon. Sandra Pupatello, Minister of Economic Development and Trade, Ontario
Hon. George Smitherman, Minister of Health and Long Term Care, Ontario