REPORT 18 OF THE BOARD OF TRUSTEES (A-04)
International Trade Agreements
(Resolution 219-A-03)
(Reference Committee B)

EXECUTIVE SUMMARY

At the 2003 Annual Meeting, Resolution 219, introduced by the American College of Preventive Medicine and the American Association of Public Health Physicians, was referred to the Board of Trustees. Resolution 219 asks the American Medical Association to advocate certain positions in connection with international trade agreement negotiations, and to assess the implications of trade agreements and negotiations for public health and for the medical profession and report back at the 2004 Annual Meeting with an AMA action plan.

Board of Trustees Report 18-A-04 describes pertinent international trade agreements, and discusses the potential effects of these agreements on physicians, the provision of health care, and public health. International trade agreements are agreements establishing rules for trade among signatory countries. The report describes the General Agreement on Trade in Services (the GATS), which is the largest trade agreement for services. Negotiations to open specific service sectors to trade are ongoing under the GATS. These service sectors include professional medical services, health related services, and the distribution and advertising of products, including alcohol and tobacco. The U.S. is also negotiating trade in services through regional trade agreements (among three or more countries) and bilateral trade agreements (between two countries).

Each country must decide if it wants to negotiate the opening of a specific service sector within its borders to international trade, and whether it wants to place any limitations on trade in that service. The report explains the U.S. obligations for the service sectors covered by the GATS. Certain obligations apply, regardless of whether a country has opened a specific service sector to trade. If a country chooses to open a service sector to trade, the country must comply with additional obligations for that service sector. The report also discusses the health exception in the GATS, which allows governments to take measures necessary for the protection of human, animal or plant life or health, and notes the concerns about the application of this exception.

There are two main areas of interest for physicians in international trade agreements. One is the international trade of professional medical services. The U.S. has not opened the professional medical services sector to trade under the GATS. The U.S. may decide to open this sector to trade in the future. In addition, these services may be opened to trade under regional or bilateral trade agreements. A second area of interest in trade agreements for physicians is public health. Advertising and distribution of products including tobacco and alcohol are covered by the GATS, and have also been addressed in regional and bilateral trade agreements. The report describes concerns about potential challenges to U.S. tobacco and alcohol control measures, and to the tobacco controls proposed in the Framework Convention on Tobacco Control.

The report concludes that our AMA is well-positioned to work with interested state and specialty societies whose constituents would be most affected by trade to identify the issues and potential effects of trade provisions, and to communicate these to the U.S. Trade Representative and to Congress. The recommendations specifically call for our AMA to monitor developments on international trade agreements; to advise the U.S. Trade Representative on trade issues, in collaboration with the Federation and other professional organizations; and to continue to strongly advocate for U.S. ratification of the Framework Convention on Tobacco Control.

REPORT OF THE BOARD OF TRUSTEES

B of T Report 18-A-04

Subject: International Trade Agreements
(Resolution 219-A-03)

Presented by: William G. Plested III, MD, Chair

Referred to: Reference Committee B
(Michael J. Fischer, MD, Chair)

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1 INTRODUCTION
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3 At the 2003 Annual Meeting, Resolution 219, introduced by the American College of Preventive
4 Medicine and the American Association of Public Health Physicians, was referred to the Board of
5 Trustees. Resolution 219 asks the American Medical Association to:
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7 1. strongly advocate that the General Agreement on Trade in Services, the Free Trade Area of
8 the Americas, and similar international trade agreements recognize that health and public
9 health concerns take priority over commercial interests, and that trade negotiations be
10 conducted in a transparent manner and with full attention to health concerns and participation
11 by the public health community,
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13 2. strongly advocate that any provision that could negatively affect health or health care, safe
14 and sufficient water, and/or other vital human services be excluded from the GATS and
15 FTAA, and
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17 3. assess the implications of trade agreements and negotiations for public health and for the
18 medical profession and report back at the 2004 Annual Meeting with an AMA action plan.
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20 This report describes pertinent international trade agreements, and discusses the potential effects
21 of these agreements on physicians, the provision of health care, and public health. The Board of
22 Trustees recommends actions to ensure that the U.S. government officials responsible for
23 negotiating trade agreements are informed about the medical profession, and AMA policies and
24 concerns.
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26 DISCUSSION
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28 International trade agreements establish rules for trade among signatory countries. Certain trade
29 agreements, such as the General Agreement on Tariffs and Trade (GATT), deal with trade in
30 goods and products. Other trade agreements focus on trade in services. The largest trade
31 agreement for services is the General Agreement on Trade in Services (the GATS). Both the
32 GATT and the GATS are administered by the World Trade Organization (WTO) located in
33 Geneva, Switzerland. These agreements have been in force since 1995, although negotiations
34 under each are on-going.
35
36 In addition to the GATS, countries are free to negotiate regional trade agreements (among three
37 or more countries, such as NAFTA among U.S., Canada, and Mexico) and bilateral trade
38 agreements (between two countries). These agreements are often similar to the GATS in
39 principles and in requirements.

1 *The General Agreement on Trade in Services (the GATS)*
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3 Purpose
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5 The purpose of the GATS is to ease restrictions on the trade of services among countries. The
6 GATS provides a framework for negotiations pursuant to which a participating country can
7 choose to open specific service sectors to trade, and to specify conditions on the trade. Each
8 participating country can also request other participating countries to open trade in their service
9 sectors. This process, called "liberalizing" trade, allows the production and distribution of
10 services to cross international borders.
11
12 According to the WTO, the overall goal of liberalizing trade in services is to promote human
13 welfare. The benefits of liberalization include competition, which increases efficiency; consumer
14 savings through lower prices, better quality and wider choice; faster innovation; and increase in
15 both domestic and foreign investment.
16
17 The GATS recognizes the need for many services to remain carefully regulated to serve the
18 public interest. The GATS distinguishes between regulations that act as trade barriers, which
19 distort competition and restrict access by service providers, and regulations that are necessary to
20 ensure the quality of service and protect the public interest.
21
22 Participants
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24 By becoming a member of the WTO, a country becomes subject to the GATS. Currently, 145
25 countries are WTO members, including the United States. These countries account for more than
26 90% of all world trade in services.
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28 Timing
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30 Negotiations to open specific service sectors to trade are ongoing under the GATS. The current
31 round of negotiations (the "Doha Round") was scheduled to conclude on January 1, 2005. The
32 negotiation process has stalled, however, primarily over procedure, and it is expected that the
33 conclusion date will be extended to January 1, 2007.
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35 Scope
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37 A broad range of service sectors is covered under the GATS. These service sectors include:
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39 • Professional services, including accounting, engineering, legal, medical and dental,
40 nursing and paramedical, and veterinary;
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42 • Health-related services, including hospital ownership and services, and human health
43 services;
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45 • Research and development on natural sciences;
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47 • Educational services;
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49 • Distribution and advertising of products, including alcohol and tobacco; and
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51 • Environmental services, including sewage and sanitation.

Other service sectors such as financial services, consulting, and communications are also covered. In view of recent and extensive negotiations on these services, these sectors tend to be featured in reports on trade agreements by the popular press.

It is important to note that service sectors covered under the GATS are not automatically opened to trade by all countries. Each country must decide whether it wants to negotiate the opening of a specific service sector within its borders to international trade.

Requirements

Each WTO member country must comply with certain requirements ("General Obligations") for all service sectors covered by the GATS, regardless of whether the country has opened a specific service sector to trade. The General Obligations include:

- Most-Favored-Nation (MFN) Treatment

  Each country must treat services and service suppliers from all other WTO member countries equally. If a country permits trade in a certain service from one country, it must permit trade in that service from all other countries on the same terms. If a country prohibits trade in a certain service, the prohibition must apply to all countries.

  There is a significant exception to this requirement for regional or bilateral trade agreements. A country may negotiate more favorable terms with another country under a separate trade agreement, without having to extend those favorable terms to all countries.

- Transparency

  Each country must inform other countries about laws, regulations, or other rules that affect trade in the service sectors.

- Domestic Regulation

  A country may regulate the supply of services within its territory in order to meet national policy objectives. Each country must have procedures to review its administrative decisions that affect trade in services.

If a country chooses to open a service sector to trade, the country must comply with additional requirements ("Specific Commitments") for that service sector. Certain Specific Commitments may be limited, as explained below. The Specific Commitments include:

- Market Access

  The country must provide full market access. The country may not have laws, rules, or regulations that restrict the number of service providers. (A country may limit this commitment.)

- National Treatment

  The country must treat foreign service suppliers no less favorably than domestic suppliers. (A country may limit this commitment.)

- Domestic Regulation

  If a country opens trade of a professional service, the country must ensure that its regulations are administered objectively and impartially, and must provide procedures to verify the competence of professionals from another country.

Each country is allowed to specify the level of market access and national treatment it will allow for each service sector it opens to trade. A country may include specific "limitations" on market access and national treatment, such as requirements for professional qualifications, licensure requirements, and residence requirements. A country may also include "unbound" limitations on market access and/or national treatment, which means that the country has the right to impose any restrictions in these areas.

Health Exception

The GATS does not prevent governments from taking measures necessary for the protection of human, animal, or plant life or health. These measures cannot be applied in an arbitrary or discriminatory manner.

This health exception has been the subject of discussion among commentators. Concern has been expressed that the term "necessary" will be strictly construed, and that measures may be considered "necessary" only if no other less restrictive measure can be taken.

Regional and Bilateral Free Trade Agreements

There is a current emphasis by the U.S. to negotiate regional and bilateral free trade agreements (FTAs). The scope of services covered by recent FTAs is generally similar to the scope of the GATS. Health exceptions similar to the GATS health exception (discussed above) are usually included in regional and bilateral agreements.

The Free Trade Area of the Americas (FTAA) is a regional trade agreement currently being negotiated among the countries of North and South America. The current negotiations are set to conclude by the end of 2004, with implementation by the end of 2005. Due to difficulties in the negotiations, it is unlikely that these dates will be met.

The Central American Free Trade Agreement (CAFTA) is another regional trade agreement currently being negotiated among the U.S. and several Central American countries.

The U.S. recently completed bilateral trade agreements with Singapore, Chile, Central America, Australia, the Dominican Republic, and Morocco. Bilateral agreements are under negotiation with Bahrain and Southern Africa. The U.S. expects to enter into negotiations for agreements with Thailand, Bolivia, Columbia, Ecuador, Peru, and Panama.

International Trade Agreements Procedure and Process

Trade agreements are negotiated by government representatives. The U.S. Trade Representative, Ambassador Robert B. Zoellick, is authorized to negotiate trade agreements on behalf of the United States. The Department of Commerce is also involved in U.S. trade negotiations.

Trade agreements require Congressional approval. Certain Congressional committees have jurisdiction over issues involved in trade negotiations, and hold periodic oversight hearings.

Trade agreements have been designated as "fast-track" agreements, which means that Congress may vote up or down on each final agreement as a whole, without opportunity for amendment.

Actual negotiations on trade agreements are not open to the public, the press, or industry. However, many countries, including the U.S., publish their initial positions, and some publish their on-going negotiating "offers" and "requests" on trade issues. Requests from some countries are not disclosed to the public. As a general rule, less information is publicly available on the positions and negotiations of regional and bilateral agreements.

Federal law requires the U.S. government to consult with the private sector in the development of trade negotiation proposals. Both the Department of Commerce and the U.S. Trade Representative have established formal private sector advisory committees. Members of the advisory committees have access to the terms of the on-going trade negotiations, but generally are prohibited from sharing that information with non-members.

Organizations and individuals who wish to address specific trade issues, or provide information and advice, may contact the U.S. Trade Representative's office, and may advocate their positions to Congress. The texts of the trade agreements are published for public comment following completion of negotiations.

Enforcement of Trade Agreements

Trade agreements are made by national governments, are enforced by national governments, and bind national governments. Only national governments may bring legal actions to enforce the provisions of trade agreements. There are no private rights of action or remedies.

The relationship between the GATS and U.S. federal and state laws is complex. U.S. law specifically provides that provisions of the GATS must be consistent with U.S. law in order to be effective. U.S. law also provides that only the Federal government, i.e. not a foreign government or foreign party, can sue a U.S. state to invalidate a state law that is not consistent with the GATS. A state whose laws or regulations may be affected by negotiations under the GATS or an FTA may raise a constitutional challenge.

Areas of Interest for the Medical Profession

There are two main areas of interest for physicians in international trade agreements.

<u>Medical Services</u>

One area of interest is the international trade of professional medical services. As noted above, under the GATS, a country may decide whether or not to open a specific service sector to trade. <u>The U.S. has not opened the professional medical services sector to trade under the GATS.</u> This means the U.S. may continue to retain or impose regulations, rules, and restrictions on the number of foreign physicians permitted to practice in the U.S. (market access), and may regulate foreign physicians differently than U.S. physicians (national treatment). Under the General Obligations of the GATS, the U.S. is required to make information available about its laws, regulations, and rules that apply to foreign physicians.

The U.S. may decide to open professional medical services to trade under the GATS in the future. In addition, these services may be opened to trade under regional or bilateral trade agreements. As discussed, under the GATS, a country may place limitations on market access and national

treatment in any sector opened to trade. If the U.S. opens these services to trade, it is free to impose limitations on providers, such as professional qualification and licensure requirements.

The U.S. has opened the hospital and other health care facilities sector to trade. This sector comprises ownership, management, and operation of for-profit facilities. The U.S. has placed limitations on trade in this sector, e.g. Medicare and Medicaid reimbursement is limited to U.S. or state licensed, certified facilities.

Easing restrictions on trade may have benefits for the provision of health care, but may also raise concerns. There are four types of trade, called "Modes", covered by trade agreements. Several of the benefits and concerns in each Mode for medical services are summarized below.

Mode 1: Cross-Border Supply

This Mode covers foreign service suppliers who provide services into another country. The supplier and the consumer remain in their home countries, and the service itself crosses the border. The service is delivered by mail, phone, print, or electronically.

This arrangement describes telemedicine, in which health care services created in foreign countries are delivered to, or for the benefit of, patients in the U.S. For example, radiology and pathology services could be rendered in a foreign country, with medical information transmitted electronically between the U.S. and the foreign country.

Benefits of this type of trade include:

- Lowers health care costs
- Fills shortages of providers
- Opportunities for U.S. physicians or other health care providers to deliver services through telemedicine to, or for the benefit of, patients in other countries, including underserved areas.

Concerns about this type of trade include:

- Qualifications of the providers
- Quality of care
- Privacy
- Liability
- Application of state professional licensure requirements

Mode 2: Consumption Abroad

This Mode covers consumers who travel across borders to obtain services in another country. It applies to U.S. citizens who travel to a foreign country to receive health care services and foreign citizens who travel to the U.S. to receive health care services.

Benefits of this type of trade include:

- May increase quality of care
- Finances generated by services to foreigners could be used to fund other health care services for residents

Concerns about this type of trade include:

- May lower quality of care, if resources are diverted to specialized fields
- Payment for services, e.g. insurance reimbursement and Medicare/Medicaid reimbursement, could be altered
- Segmentation of health care system, differentiating between those who can afford to travel for services and those who cannot
- Specialization of countries in specific health care services may reduce availability of basic health services in that country, particularly for the poor.

Mode 3: Commercial Presence

This Mode covers foreign companies or service suppliers that establish operations in another country, or invest in service companies in another country. This Mode applies to foreign companies that establish or invest in health care facilities in the U.S., and to U.S. companies that establish or invest in health care facilities in foreign countries.

Benefits of this type of trade include:

- Increased investment in health care facilities

Concerns about this type of trade include:

- Control of quality of services
- Segmentation of health care system, if foreign-owned facilities provide services primarily to wealthy

Mode 4: Presence of Natural Persons

This Mode covers service providers who travel across borders to provide services in another country. This Mode would apply to foreign physicians or other health care providers who move to the U.S. to provide services. Under this Mode, U.S. physicians could also be allowed to personally provide services in foreign countries.

As stated above, the U.S. has not opened the professional medical services sector to trade under the GATS. However, countries may request other countries to open a sector to trade. India has requested the U.S. open the medical profession to trade, to recognize the qualifications of Indian physicians, and to remove requirements of residence. The U.S. is not obligated to respond to the request from India.

Benefits of this type of trade include:

- Control of health care costs
- Fills shortages of providers
- Facilitates transfer of medical knowledge

Concerns about this type of trade include:

- Qualifications of providers
- Quality of care
- Migration of physicians (“brain drain”)
- Application of state professional licensure requirements

Public Health Concerns

A second area of interest in trade agreements for physicians is public health. Advertising and distribution of products including tobacco and alcohol are covered by the GATS, and have also been addressed in regional and bilateral trade agreements.

Trade in services involving tobacco and alcohol has been treated differently by the U.S. in its trade commitments. The U.S. has opened the advertising and distribution of tobacco to trade under the GATS. Under the national treatment requirement, the U.S. may not treat foreign providers less favorably than domestic providers. Restrictions, such as tobacco controls, that apply to domestic providers also apply to foreign providers. Concerns have been raised that U.S. tobacco control measures may be challenged by foreign providers as barriers to trade.

In addition, the World Health Organization (WHO) has facilitated the development of the Framework Convention on Tobacco Control (FCTC), which is a proposed treaty (separate from the GATS framework) supporting international tobacco controls intended to reduce the demand for tobacco. Controls addressed in the FCTC include provisions designed to combat smuggling, bans on "low tar" or "mild" labeling, designs of warning labels, and restriction on mass-media advertising. The FCTC is pending signature and ratification by WHO member countries. The U.S. has not yet signed the FCTC. Our AMA supports adoption of the FCTC (Policy H-490.925, AMA Policy Database). Concerns have been raised that the protections proposed in the FCTC also could be challenged.

The U.S. has also opened the advertising and distribution of alcohol to trade under the GATS. Unlike tobacco, the U.S. has specifically included "unbound" limitations on market access, which means that the U.S. may retain and impose any limitations on the number of foreign providers. The European Community has requested removal of these limitations. If the U.S. agrees to this request, laws could be jeopardized in those states that give state authorities the sole right to sell packaged liquor. However, such an action by the federal government could be subject to a constitutional challenge by the affected states.

Concerns have also been expressed about the possible effect on public health of other trade agreement provisions. For example, water distribution services and sanitation services may be opened to trade. Prioritization and deregulation of these services may affect public health.

CONCLUSION

International trade agreements are complex, and their provisions may be far-reaching. As these agreements may affect physicians, the provision of medical services, and public health, it is important for the medical profession to be aware of the potential implications of these agreements. It is also important for the U.S. Trade Representative to receive guidance on medical services issues, so that the U.S. may appropriately negotiate provisions relating to these services. Our AMA is well-positioned to work with interested state and specialty societies whose constituents would be most affected by trade to identify the issues and potential effects of trade provisions, and to communicate these to the U.S. Trade Representative and to Congress. It is also important for our AMA to work with other interested organizations to continue to advocate for AMA policy on tobacco and alcohol.

RECOMMENDATIONS

The Board of Trustees recommends that the following be adopted in lieu of Resolution 219 (A-03) and the remainder of this report be filed:

1. That our American Medical Association monitor developments on U.S. international trade agreements that involve the provision of medical services and the distribution and advertising of alcohol and tobacco. (Directive to Take Action)

2. That our AMA, in collaboration with interested members of the Federation and other professional organizations, advise the U.S. Trade Representative on trade issues that could affect physicians or the provision of medical services, and advocate applicable AMA policy. (Directive to Take Action)

3. That our AMA, in collaboration with interested members of the Federation and other professional organizations, advise the U.S. Trade Representative on trade issues that involve the distribution and advertising of alcohol and tobacco, and other pertinent public health issues, and advocate applicable AMA policy. (Directive to Take Action)

4. That our AMA continue to strongly advocate for U.S. ratification of the Framework Convention on Tobacco Control. (Directive to Take Action)

Fiscal Note: Estimated staff costs of $6,190