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Submission No:14.....

**SUBMISSION TO THE
JOINT STANDING COMMITTEE ON TREATIES
ON THE
SINGAPORE-AUSTRALIA FREE TRADE AGREEMENT
(SAFTA)**

Submitted by:

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Introduction

What is The Grail?

The Grail is an international women's movement active in 20 countries in Europe, Africa, North and South America, Asia, Australia and Melanesia. It is a spiritual, cultural and social movement of women grounded in Christian faith and committed to the vision of a world transformed into a global community of justice and peace. The Grail, as part of civil society, takes its stance in the public arena, collaborating with others with similar values and goals.

How does it focus its efforts?

It is a goal of The Grail that women have the opportunity to develop their talents and contribute to the society as fully as they are able. To this end, The Grail focuses on women's education and personal development, on social and cultural critical analysis and organised action grounded in conviction.

The Grail is connected into a number of different networks: women's movements and organisations, Christian churches and other religious communities, justice and peace groups, educational organisations and institutions.

It is out of our desire to see more truth, justice, equity and human dignity in the world that we have identified the World Trade Organisation (WTO), and especially its General Agreement on Trade in Services (GATS as a particular focus for organised effort. The Australian Government's commitment to pursuing bilateral free trade agreements is a closely related matter.

Submission perspective

We are presenting here some major concerns we have about the Singapore-Australia Free Trade Agreement, limiting this submission to six (6) issues:

- Public consultation and review of reservations
- Requirement for explicit reservations
- Encouragement of domestic development
- Expropriation provisions
- Reservation of 'social services'.

The reason for this limitation is that we have already made a detailed submission to the Senate Inquiry into the WTO General Agreement on Trade in Services and the US-Australia Free

Trade Agreement. I am forwarding this submission to this Joint Standing Committee as an additional document. With every submission one makes on current trade agreements, the same issues and the same problems arise.

1 Public consultation and review of reservations

The Department of Foreign Affairs and Trade (DFAT) refers in its document, *The Regulation Impact Statement* (cf. pp.16-17), to 'extensive public consultations' with:

- business and industry,
- State and Territory Governments and
- 'interested non-government organisations'.

Those in the first two categories are then further detailed. Significantly, those in the third category remain unidentified.

Is it not extraordinary that the Minister for Trade would hold a round-table meeting with leaders of industry in Parliament House on 8 February 2001, but that Parliament itself, the premier public representative body in the nation, would had no opportunity to contribute to discussion on such an important matter? How adequate is a consultation process which exposes an Agreement to public view only now after it has been signed? At the very least, can we be assured that no further steps will be taken by the Government in relation to this Agreement before this Joint Standing Committee completes its work and reports to Parliament?

The Department refers frequently to its consulting 'stakeholders' (*see also DFAT's Discussion Paper on GATS, p.10*), but seems unable to comprehend that Australian citizens are stakeholders of central importance in Australia's multilateral and bilateral trade negotiations.

DFAT states that 'stakeholders' will be included in consultations associated with the Review of reservations to take place one year after the Agreement becomes operative (cf. *The Regulation Impact Statement, p.18*). Stakeholders are identified here as 'industry' and 'relevant government agencies'. At this point, no passing mention even of 'non-government organisations'. And yet, at this Review, the National Treatment and Market Access rules are to be extended, as far as possible, to the areas of State and Territory responsibility. These areas include a range of key services, to which all the people have claim to equitable and affordable access, eg, health, education, environment, energy, water, transport, social

services. State and Territory governments also carry responsibility for development, housing and employment within their boundaries. This Review will be dealing with matters affecting the personal, cultural, social and economic well-being of all the Australian people.

Government policies in these areas should not become subject to trade agreement rules which support policy interference from corporations primarily concerned for shareholder profits,

It is essential that the Australian Government involve the Parliaments (national and regional) and the people of Australia in informed discussion of SAFTA and of Australia's trade policies and processes in general.

2 Requirement for explicit reservations

There is much in the WTO General Agreement on Trade in Services (GATS) to oppose and criticise, but at least this Agreement asks governments to consciously 'opt in' to its provisions. Its rules apply only to those services explicitly listed by governments, who also have the power to choose whether to make a full or partial commitment in a particular service sector.

SAFTA, described by DFAT as 'GATS-plus' (*cf. The Regulation Impact Statement (p.10)*), **takes the opposite approach, which we vigorously oppose.** In relation to both trade in services and investment, SAFTA requires governments to make explicit exclusions ('reservations'). The SAFTA rules apply automatically to everything except what is explicitly reserved. This presents us with the prospect of inadvertent inclusions in SAFTA.

So, here we have Australia entering into a bilateral agreement with Singapore that is even more constraining than the GATS, that has even more potential than GATS for locking Australian governments (national and regional) into policies detrimental to the welfare of the Australian people.

This should be strongly protested as an unacceptable approach in any trade agreement. It should be changed when the review of reservations takes place. The Australian Government is already engaged in negotiations for a US-Australia Free Trade Agreement and, we believe, has plans for bilateral agreements with Thailand and Japan. **We seek an assurance that SAFTA will not serve as a model in this regard for any future negotiations on trade in services or investment.**

3 Encouragement of domestic development

In Chapter 6, *Government Procurement*, there are two welcome Articles (15 and 16), which permit the Parties to pursue policies favourable to indigenous citizens and industrial development particularly in relation to small business enterprises.

However, what are missing from SAFTA are clear statements of more general applicability, protecting the rights of governments at all levels to pursue policies which promote employment of Australian workers and/or promote development in a particular region or locality experiencing hardship and economic depression.

The Australian Government should not make binding trade agreements, whether multilateral or bilateral, which inhibit domestic development policies of this kind. In these circumstances, it is the most vulnerable of our people who are made more vulnerable by these Agreements. This is an unjust and inequitable outcome.

4 Expropriation provisions

SAFTA draws on the precedent of The North American Free Trade Agreement (NAFTA). There is ample evidence that NAFTA (Chapter 11 particularly) has given corporations outrageous power over national, regional and local governments.

SAFTA Chapter 8, *Investment*, has an Article (9) on 'Expropriation and Nationalisation'. On the face of it, it may seem reasonable that corporations would seek some protection from arbitrary expropriation of their assets by a government. But, what does 'expropriation' mean in SAFTA? The Chapter begins with definitions of various other words, but this word is allowed to stand in the text in all its ambiguity.

In 1997, Ethyl Corporation, a US chemical giant, sued the Canadian Government for the ban it imposed on a gasoline additive, MMT, produced by Ethyl, which is toxic and hazardous to public health. Ethyl claimed that the ban 'expropriated' its assets in Canada; and, further, that, since the matter was spoken of in the Canadian Parliament, 'legislative debate itself constituted an expropriation of its assets because public criticism of MMT damaged the company's reputation'. Ethyl sued for US\$250m. A year later, in June 1998, the Canadian

Government settled with Ethyl by withdrawing its environmental legislation banning MMT, paying Ethyl US\$13m and writing letters of apology.

It is essential that 'expropriation' be given a strictly limited definition and that this definition be inserted into the SAFTA document.

5 Reservation of social services

The Australian Government reserves social services insofar as they are 'social services established for a public purpose' (*cf. Annex 4-ii(a), p.6*). This implies that there are social services which are not reserved. **It is not at all clear what, in the mind of DFAT and the Government, these unreserved social services are. We, the people have a right to know.**

When one considers the list of services recorded here, there seem to be some obvious omissions: employment, housing, public radio and television, reliable quarantine services, to mention a few. **This statement of reservations is very unclear to us.**

We must keep in mind, also, the other problem in SAFTA with regard to trade in public services (*cf. Chapter 7, Article 1(a) and Article 2(b)*), a problem in the GATS (*Article 1-3(b) and (c)*), which SAFTA simply repeats. We are told that 'a service supplied in the exercise of government authority' is excluded from the provisions of SAFTA Chapter 7, but such a service is defined as 'any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers'. In today's Australia, many services provided under government authority are in competition with one or more service suppliers, eg, public education, public hospitals and health services, public radio and television, energy, power and water supplies, telecommunications, roads and railways – and more. This can only mean surely that these public services (not just the private suppliers in these sectors) are exposed to international investment and management for profit under SAFTA rules, unless they are explicitly and clearly and permanently excluded in the reservations.

In our view, the reservations need to be more comprehensive and precise.

Conclusion

We commend these proposals and requests to the Committee.

Alison Healey, Sydney, May 2003

References

- 1 Dept of Foreign Affairs and Trade - *SAFTA* :
 - *Text of Agreement*
 - *Annexes 3 and 4*
 - *Background*
 - *Summary outcomes*
 - *National Interest Analysis*
 - *Regulation Impact Statement*
- 2 WTO – *General Agreement on Trade in Services*
- 3 Department of Foreign Affairs and Trade - *Discussion Paper on the GATS, Jan. 2003.*