

**SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE
REFERENCES COMMITTEE**

**INQUIRY INTO GENERAL AGREEMENT ON TRADE IN
SERVICES AND AUSTRALIA/US FREE TRADE AGREEMENT**

SUBMISSION

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STOPMAI (WA) Coalition



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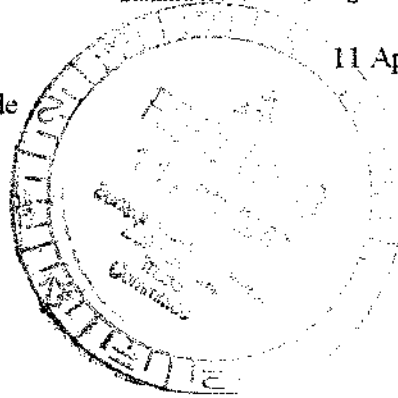
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The Secretary
Senate Foreign Affairs, Defence and Trade
References Committee
Suite S1.57
Parliament House
CANBERRA ACT 2600

11 April, 2003



Dear Sir/Madam

THE GENERAL AGREEMENT ON TRADE IN SERVICES (GATS) and THE AUSTRALIA-U.S.A. FREE TRADE AGREEMENT (AUSFTA)

Citizens are justifiably concerned that the GATS and other related processes of trade and investment 'liberalisation' have not been demonstrated to operate in the interests of the Australian population. In fact, the nation's balance of trade and currency value have progressed to disastrous negative levels throughout the years during which 'liberalisation' has been fashionable. This is strongly impacting on employment and living standards. Moreover, unnecessary obeisance to a profit-based "new world order" is endangering domestic security as citizens are obliged to shoulder the consequences of our governments' collaboration with the violent behaviour of unscrupulous trade 'allies', notably the United States of America.

It is the Government's prime responsibility to secure the welfare of citizens as against that of the international corporate interests which are the moving force behind the GATS and the Australia-US Free Trade Agreement (AUSFTA).

The StopMAI (WA) Coalition was formed in January 1998 to assist in educating citizens about trade and investment treaty negotiations and to present citizens' opinions to relevant fora, including Australian state and federal parliaments. Our submission on the subject treaties is appended. We are prepared to further assist the Committee's inquiries if required.

Yours faithfully

Brian Jenkins
Hon. Secretary

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**StopMAI Coalition
of Western Australia ***

A Submission to
**the Senate Foreign Affairs, Defence
and Trade References Committee**
on the negotiation of
**the General Agreement on Trade in Services (GATS) and
the proposed Australia-USA Free Trade Agreement (AUSFTA)**

APRIL, 2003

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** StopMAI's 'shambling bear' logo represents the dismay and subsequent fierce determination of world citizens confronted in 1998 by the rapacious Multilateral Agreement on Investment (MAI)*

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which had been negotiated in secrecy for several years by governments through the OECD. The negotiations failed following criticism by worldwide civil society alerted by internet revelations.

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1 (a) the economic, regional, social, cultural, environmental and policy impact of services trade liberalisation

GATS diminishes Australian constitutional sovereignty

Since WTO treaty obligations and Dispute Settlement Body pronouncements are able to override parliamentary legislation, commitments to the GATS are automatically diminishing the sovereignty and democracy of the Australian people. WTO outcomes are ultimately decided by the interests of profit-seeking corporations and amenable trade bureaucracies.

GATS enables competition at the expense of labour standards

Maintenance and enforcement of negotiated core labour standards is crucial to achieving sustainable, equitable, democratic economic development. Under the GATS, Australian labour standards will be classed as barriers to trade and progressively eroded.

The Government should recognise that UN treaties have primacy over trade rules, and urge other WTO members to update WTO agreements (including GATT Article XX and GATS Article XIV) to incorporate human rights standards, including the core labour standards.

GATS will result in dilution of Australian culture by US media content

GATS negotiations and commitments must not jeopardise domestic measures to protect appropriate Australian media content, cultural identity and cultural diversity. Australians do not want to be deluged by TV commercials spoken in American accents. We already have a minimum of TV content reflecting Australian society, and sports coverage is predominant.

GATS will enable more small businesses to be killed off by overseas corporations

Federal and subnational government authorities must retain options to regulate in favour of quality retail trade services and other efficient small business operations which may otherwise be lost to local communities or replaced by inferior large-enterprise services as a consequence of the GATS negotiations.

The Committee should consider, for instance, whether it is genuinely productive and beneficial for 80% of the world's agricultural trade to be controlled by just 10 agro-chemical companies, as is presently the case.

GATS will eliminate important social standards in communications services

Negotiations in sectors such as post and telecommunications must not jeopardise the provision of universal services to current uniform standards and affordable prices.

StopMAI (WA) is very pleased with the performance of Australia Post in its (monopoly) transmission of standard letters. We have no objection to the present competition for transmission of parcels, and we welcome the customer-service improvements which have followed Post's initiatives in retail, agency and other business areas. We believe that removal of the standard-letter monopoly would result in serious disadvantage to the community.

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1 (b) Australia's goals and strategy for the negotiations, including the formulation of and response to requests, the transparency of the process and government accountability

WTO processes require democratisation and transparency to be 'ratcheted' up

The WTO urgently needs to be reformed and made more transparent and democratic to redress the power imbalances evident in recent WTO Ministerial Conferences and to achieve coherence and consistency with the goals agreed through the UN system, as enshrined in the Universal Declaration of Human Rights and other multilaterally agreed instruments such as the ILO Declaration on Fundamental Principles and Rights at Work.

The weight of the UN and its specialized agencies need to be increased relative to that of the WTO. Closer linkages and co-ordination between the WTO and other international institutions with reciprocal observer status should be agreed before or at the 5th WTO Ministerial Conference. To prevent roll-back, such provisions must be couched in language similar to the GATS insistence on irreversible one-way ('ratcheted') progress.

Ludicrous antisocial secrecy must be eliminated

The Cancun Ministerial should take a decision to end the conditions of secrecy under which the GATS negotiations have been taking place, and to order immediate internet publication of all details of the access "requests" and "offers" under negotiation.

Environment and Human Rights

Environmental and social principles must be incorporated fully throughout the GATS and other WTO instruments, and the scope of the Trade Policy Review Mechanism (TPRM) expanded to include relevant environmental, gender and social concerns, including the right of all to fair employment opportunity and food security.

Reduce the autocracy of WTO dispute-settlement

The dispute settlement procedure must be opened up for public information and involvement. In relevant cases, such as those with health, labour and environmental implications, the WTO must involve the UN agencies competent in the areas concerned. Trade unions and other civil society groups concerned by any dispute settlement process should be able to participate directly in the procedures with a right to submit amicus curiae briefs. The experts judging any disputes case must not merely be trade specialists but must include people with varied backgrounds representing labour, environment and development organisations. There should be a swift public release of the findings and conclusions of disputes settlement procedures.¹

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1 (c) the GATS negotiations in the context of the 'development' objectives of the Doha Round

Advancing Development Priorities

WTO negotiations must progress with due regard to the capacities of smaller and poorer countries, and Australia should act positively to enhance their co-operation and co-ordination. Increased transparency and financial assistance are needed to ensure that all WTO members (particularly the least developed) are able to take part fully in all WTO activities and procedures. The internal negotiation processes of the WTO must be fair, transparent and predictable so as to ensure the effective participation of all its members.

Do not prejudice health requirements of developing countries

Urgent agreement is needed on a range of issues where developing countries require action, especially a decision in the TRIPS discussions to define health problems broadly enough for developing countries to obtain access to low-cost medicines in case of health need.

Assist developing countries to attain consumer and environmental standards

GATS negotiations must include evaluation of non-tariff barriers to developing country exports to ensure they are reasonable requirements for consumer and environmental protection, with the involvement of relevant UN agencies, trade unions and other relevant civil society groups, and provision of technical assistance to assist developing countries to attain such standards;

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1 (d) impact of the GATS on provision of, and access to, public services provided by government, such as health, education and water

Exclude public services from the GATS

Australia should support the European Union in moving for the Cancun WTO Conference to amend the terms of the GATS agreement to formally and **unequivocally exclude public services** (above all, education, health, essential public utilities and socially beneficial service sector activities) at national and sub-national levels of government, from all further GATS negotiations.

From the viewpoint of a civil-society organisation like StopMAI, it is very tiresome to be repeatedly assured that 'government services' are not caught by GATS. For example, DFAT's recent discussion paper on the subject states at page 6:

"The GATS covers services in any sector "except those services supplied in the exercise of governmental authority". But the definition of such a service is "any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers". On that basis GATS critics sometimes argue that many public services are caught by the GATS and will somehow be targeted but this is not so."

However, in Australia, "public services" are not delivered exclusively by government. Many services are delivered to the population through a mixed system funded and regulated by governments at federal, state and local levels. Health, education, and other social service systems, for example, consist of a complex, constantly shifting mix of governmental and private funding and governmental, private-not-for-profit and private-for-profit delivery.

An effective exclusion for "public services" must therefore be broad enough to protect governments' ability to deliver services through the mix that they deem appropriate and to preserve their regulatory authority over all aspects of these mixed systems.

Unless exclusion is made specific, a narrow interpretation is certain

The record of discussions in the WTO Council for Trade in Services supports the view that a narrow interpretation is almost certain. When the council considered the exclusion in the context of sensitive health and social services sectors, negotiators asserted that even here the exclusion "needed to be interpreted narrowly":

"Members drew attention to the variety of policy objectives governing the provision of health and social services, including basic welfare and equity considerations. Such considerations had led to a very substantial degree of government involvement, both as a direct provider of such services and as a regulator. However, this did not mean that the whole sector was outside the remit of the GATS; the exceptions provided in Article I:3 of the Agreement needed to be interpreted narrowly" (emphasis added).²

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1 (e) the impact of the GATS on the ability of all levels of government to regulate services and own public assets

Public services are determined and controlled by the people

Public services and other services of general interest reflect democratically-determined public policy objectives, and it is essential that these not be undermined by private sector competition under the GATS and other WTO disciplines. Governments need to preserve full responsibility and accountability in the area of such services.³

To protect the ability of governments to enact domestic regulatory measures (in accordance with the preamble of the GATS) without possibility of legal challenge, GATS Article VI.4 should be deleted or revised and a clarifying statement adopted that social and environmental concerns have primacy over the principle of 'free trade' and that such regulations will not be subject to any 'necessity test' through the WTO dispute settlement mechanism;

Delete the principle of 'no more burdensome than necessary'

Attempts to limit regulations (even when completely non-discriminatory) involving qualifications, standards, and licensing requirements, as is discussed in the GATS Working Party on Domestic Regulation, pose a serious threat to government regulation and it is essential that the Cancun Ministerial eliminate the principle of "no more burdensome than necessary", such that government regulations cannot be subject to any potential challenge by the GATS negotiations;

Allow GATS commitments to be rolled back

Article XXI of the GATS agreement should be amended to include an explicit clause to enable governments to withdraw or diminish their GATS commitments so that they can improve their public services without any risk of challenge under WTO rules (so preventing foreign service suppliers from using the WTO as a tool to maintain market access);

Clarify and strengthen 'exercise of governmental authority'

Article I.3 (b) of GATS should be clarified to make it absolutely clear that 'the exercise of governmental authority' allows, without threat of legal challenge, WTO members to exclude competition from public services and services of general interest;

Other issues concerning GATS

Introduction of investment measures through GATS

Discussions are on the agenda for Cancun that some governments hope will lead to the opening of WTO negotiations to create a multilateral framework on investment which would have similar effect to the OECD's discredited Multilateral Agreement on Investment (MAI). The status quo concerning foreign direct investment (FDI) is a barrier to sustainable development. An international regime is emerging based on bilateral and regional investment agreements that disproportionately favour investors, entrenching their rights with no countervailing binding mechanism governing their responsibilities.

It is reported that 'Senior trade officials ended a week-long series of meetings in Geneva April 4 aimed at getting the World Trade Organization's Doha Round of trade talks back on a positive track'. Little was achieved but, on April 3, there was some discussion of the "Singapore" issues of investment, competition policy, trade facilitation and transparency in government procurement.

*"Several officials said they welcomed New Zealand's suggestion that, in the spirit of improving the political environment, members start to draw positive linkages between the Singapore issues and sectors already under negotiation in the run-up to Cancun, such as dealing with the issue of investment in the services negotiations through the right of establishment and addressing competition concerns in agriculture through disciplines on state trading enterprises."*⁴

Investment rules must include enforceable obligations

StopMAI Coalition is prepared to accept multilateral investment rules limited to foreign direct investment (FDI), and which include parallel enforceable rules promoting sustainable development and measures (such as Tobin Tax) to control speculative cashflows. No investment rules can be sustainable and acceptable unless they include binding investor obligations on core labour standards, environmental and human-rights protection and an enforceable equivalent of the OECD Guidelines for Multinational Enterprises.

Also, in the words of the International Confederation of Free Trade Unions (ICFTU), "Any multilateral investment regime must be compatible with the right of governments to regulate in all areas of public interest including investment, and must respect the value of public services and state ownership. Governments must have the leeway to implement legitimate domestically-based economic development strategies.

Investment rules must lie within law-court jurisdiction

StopMAI is absolutely opposed to the establishment of offshore tribunals for the determination of investor-state dispute actions which potentially affect Australian legislation at federal, state and/or local levels. Such actions must be determinable by domestic courts.

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2 (a) economic, regional, social, cultural, environmental and policy impact of a Free Trade Agreement with the United States of America

Be warned by Canada's NAFTA experience

Canada's widely publicised experiences under the tripartite North American Free Trade Agreement (NAFTA) are an ample demonstration that AUSFTA will reduce the ability of Australian governments at all levels to regulate in the public interest.

A great deal of information about NAFTA's investor-state dispute resolution process is available on the website of the international law firm Appleton and Associates.⁵ For example, the Canadian government took measures to delay the sale of a terminal at the Toronto Airport to a group including an American company. This delay constituted an expropriation under the NAFTA of the foreign company's interest. There could be a NAFTA claim, if the foreign investor did not receive full compensation from the Canadian government. Government policies that provide a preference to locals violate the NAFTA investment obligations of governments. This includes policies that encourage local hiring or the purchase of local services or goods.⁶

One of 142 bilateral FTAs sought by the US?

Last year, the Wall Street Journal reported that the U.S. 'will ask 142 trading partners to open their borders to American services, in a sweeping proposal aimed at liberalizing global trade in an area where the U.S already holds an advantage over other industrialized nations'.⁷ The Bush administration believes liberalisation of trade in services will bring \$450 billion annually in new business to US firms.

It is an unequal bargaining relationship of negative value to Australia.

The Australian economy is 4% of the size of the US economy. The independent study by ACIL Consultants shows that there would be net losses to Australia from trade lost to other countries.⁸

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2 (b) Australia's goals and strategy for negotiations including the formulation of our mandate, the transparency of the process and government accountability

In whose interests? The few, not the many.

Public education and consultation over AUSFTA has been merely token in nature. The Government and DFAT should therefore have no difficulty in understanding the deep suspicion in which the proposed bilateral agreement is held. The call for public submissions was made late in November 2002, with a deadline in mid-January 2003.

Such contemptuous process loudly proclaims that the goals and strategy embrace the interests of a few, a favoured trade-centred elite, rather than those of the nation at large.

Unwelcome linkage with military policy

The contiguity of AUSFTA negotiations with the Government's major commitment of military personnel and resources to the US invasion of Iraq suggests that there is an unaccustomed and unwelcome linkage of trade and security policy. This has been confirmed by numerous proclamations by authorities in both Australia and the Bush Administration.

Threat to regional trade

Australians would be foolish to "think that systematic trade discrimination against East Asian economies, leading to reductions in Australian imports from and overall rates of return on investment in these economies, would not lead to reactions which reduced Australian market access", according to Prof. Ross Garnaut's commentary on the subject.⁹

The main cost Australia would face under a free trade agreement with the US would involve "Australia's non-discriminatory access to markets in East Asia and the rest of the world through its effects on other countries' policies and the trading system". In the worse case scenario Garnaut said "the cost to Australia of fracture in the open, multilateral trading system would be very large indeed"¹⁰.

As Garnaut pointed out elsewhere, "A "Free Trade Area" comprises two or more countries which have removed trade barriers between or among themselves, while retaining their own respective barriers against countries that are outside the arrangements. It is therefore preferential trade rather than free trade".¹¹

There will undoubtedly be negative effects on Australia's relationship with neighbouring trading partners, including China if a FTA with the US was implemented.

Threat to national-interest regulation

The Australian Government favours both a "necessity test" and "least trade restrictive" criteria in these negotiations. This will bring our quarantine regulations, licensing, professional qualifications and technical standards under challenge by US competitors.

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2 (c) the impact on the Doha Development Round

The Round and the multilateral trading system are already floundering

Missed deadlines from Doha are compromising the credibility of the multilateral trading system. A major effort to boost the sustainable development of developing countries is needed in every area of the multilateral system, including greatly enhanced debt relief, a substantial increase in development assistance (including technical assistance and capacity building on trade issues), and fundamental reform of IMF/World Bank economic adjustment policies.

These failures, combined with mounting politico-economic tensions between the USA and much of the rest of the world, including the European Union and the United Nations, clearly make it advantageous for the USA to bypass the WTO system and forge bilateral FTAs in which it will almost invariably be able to dictate terms and use its inordinate power to force outcomes favorable to itself whenever a dispute arises. It is difficult to imagine this policy bringing anything but harm to the Doha development objectives.

AUSFTA Conclusion

StopMAI is strongly opposed to the following measures which we believe have been targeted by the USA for achievement through the AUSFTA:

- **Removal of all controls on Investment**
- **Treating essential services as traded goods and reducing the right of governments to regulate to ensure equitable access to them.**
- **Removal of Australian local content rules for film and television.**
- **Abolition of the Pharmaceutical Benefits Scheme**
- **Pressure to accept GM crops and imported GM food**
- **Abolition of Food Labelling for food containing Genetically Modified Organisms (GMOs)**
- **Reduction in Quarantine Standards**
- **Abolition of local preferences in government purchasing**

The issues have been discussed in public at several forums organised by our group in Western Australia. We have also attended other similar forums organised by State and Federal parliamentarians and by the well represented WA Globalisation Roundtable group.

We are therefore very confident that our view generally represents that of WA civil society.

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References and acknowledgments

¹ ICFTU statement on the agenda for the Cancun 5th ministerial conference of the WTO

²). (Council for Trade in Services, Report of the Meeting Held on 14 October 1998, Note by the Secretariat, S/C/M/30, 12 November 1998, p. 4.)

³ ICFTU, *op.cit.*

⁴ International Trade Daily Monday, April 7, 2003

⁵ <http://www.appletonlaw.com/>

⁶ *ibid.*

⁷ Wall Street Journal, July 1, 2002, article by Michael M Phillips
(Copy available at <http://www.tradeobservatory.org/news/index.cfm?ID=3613>)

⁸ www.rirdc.gov.au/reports/GLC/ACIL-ABridgeTooFar.pdf

⁹ Garnaut, Ross, 2002. 'An Australia-United States Free Trade Agreement' in Australian Journal of International Affairs, Vol 56, No. 1, pp.123-141

¹⁰ *ibid.*

¹¹ Garnaut, Ross, 'Effects of a Free Trade Agreement with the United States On Australia's Multilateral and Regional Interests'-- Paper presented to Conference on an Australia-United States Free Trade Agreement, Canberra, 30 August, 2002. Available at <http://www.apec.org.au/docs/fta2gar.pdf>