

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

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

SUBMISSION

Submission No: 120

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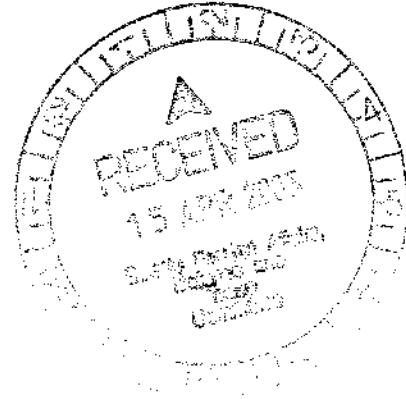
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14 April 2003



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

Dear Secretary,

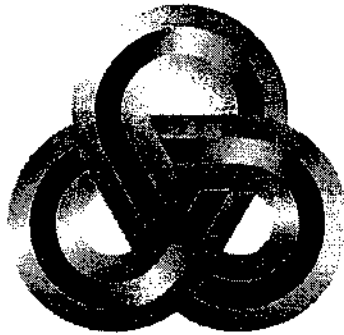
Please find attached for the Committee's consideration the ALGA submission on the General Agreement on Trade in Services and Australia/US Free Trade Agreement.

ALGA welcomes the opportunity to lodge a submission with the Committee and is willing to discuss further any points with the Committee if so required.

Your Sincerely

Ian Chalmers
Chief Executive

**ALGA Submission to the Senate
Foreign Affairs, Defence and Trade
Committee Inquiry on the General
Agreement on Trade in Services
and Australia/US Free Trade
Agreement**



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Executive Summary

ALGA is responding to the Senate Foreign Affairs, Defence and Trade Committee Inquiry on the *General Agreement on Trade (GATS) in Services and Australia/US Free Trade Agreement*.

Local government believes its regulatory and administrative powers may be diminished as a result of the possible extension of commitments into particular service areas in the upcoming negotiations on GATS, and the bilateral agreement on free trade between Australia and the United States of America (US). Local government is particularly concerned about the potential impact the forthcoming round will have on certain areas of local government activity, including (but not limited to):

- the provision of essential services (water and waste management);
- licensing the provision of services (such as food outlets);
- the regulation of services (such as waste disposal and building control);
- the provision of planning permission/permits (including discretionary powers); and
- general discretionary powers (such as giving preference to local employment).

Local government supports the basic principle of liberalising the trade in services, where it leads to improvements in:

- market access conditions for Australian services exporters; and
- the level and quantum of services provided to local communities without a diminution of the public interest (as defined in the paper).

Local government believes the fundamental principle underlying Australia's negotiating position should be the maintenance of the public interest. Public policy regarding regulation, funding and provision of essential services should be made by governments at all spheres (national, state and local). Any weakening of the public governance arrangements within Australia would be strongly opposed by local government. Local government opposes any proposal:

- reducing the capacity of local government to make regulations on behalf of local communities; or
- with the potential to lower the extent, nature or quality of services local government provides to local communities.

Local government urges the Commonwealth to ensure that the provision of a public subsidy (by any sphere of government) is not interpreted as a barrier to trade. Local government opposes any agreement allowing such a definition to be enforced by the WTO or any signatory to a bilateral agreement with Australia on free trade.

Local government opposes any proposals that may lead to diminution or circumvention of local environmental laws and regulations.

ALGA is unable to determine the potential impact trade liberalisation may have on local government in the solid waste and waste water sectors. Therefore, ALGA will request that Commonwealth exclude these and other related services from the GATS and US FTA negotiations.

Who is ALGA

1. The Australian Local Government Association (ALGA) is constituted as a federation of the peak Local Government Associations in the six States and the Northern Territory, together with the Government of the ACT. Each year, the National General Assembly of Local Government provides local governing bodies with the opportunity to consider national policy directions and convey their views to the ALGA national executive.
2. Through these processes, ALGA is able to speak on national issues for the 717 local governing bodies throughout Australia and the local communities they represent.

Why Local Government is Providing a Submission to the Senate Committee Inquiry

3. On 12 December 2002, the Senate referred the following matters to the Foreign Affairs, Defence and Trade References Committee (the Committee) for inquiry and report by 27 November 2003:
 - The relevant issues involved in the negotiation of the General Agreement on Trade in Services (GATS) in the Doha Development Round of the World Trade Organisation (WTO), including but not limited to:
 - a) the economic, regional, social, cultural, environmental and policy impact of services trade liberalisation;
 - 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;
 - c) the GATS negotiations in the context of the 'development' objectives of the Doha Round;
 - d) the impact of the GATS on the provision of, and access to, public services provided by government, such as health, education and water;
 - e) the impact of the GATS on the ability of all levels of government to regulate services and own public assets
 - The issues for Australia in the negotiation of a Free Trade Agreement (FTA) with the US including but not limited to:
 - a) the economic, regional, social, cultural, environmental and policy impact of such an agreement ;
 - b) Australia's goals and strategy for negotiations including the formulation of our mandate, the transparency of the process and government accountability; and
 - c) the impact on the Doha Development Round.
4. The Committee has invited individuals and organisations with knowledge and information relevant to the inquiry's terms of reference to lodge submissions for its consideration. Local government is lodging a submission as it is concerned that its regulatory and administrative powers may be diminished as a result of the possible extension of commitments into particular service areas in the upcoming negotiations on GATS, and new commitments resulting from the bilateral agreement between Australia and the US.

5. Local government is particularly concerned about the potential impact the negotiations may have on certain areas of local government activity, including (but not limited to):
 - the provision of essential services (water and waste management);
 - licensing the provision of services (such as food outlets);
 - the regulation of services (such as waste disposal and building control);
 - the planning permission/permits (including discretionary powers); and
 - general discretionary powers (such as giving preference to local providers).
6. ALGA has alerted the Minister (through the Department of Foreign Affairs and Trade) of these areas of concern and has requested involvement in discussions about Australia's approach at forthcoming negotiations.
7. ALGA welcomes the opportunity to make a submission to the Committee, and to provide a local government perspective on such negotiations.

About Local Government in Australia

8. Local government in Australia offers to local communities a very broad and expanding range of services. For example, local government operates ports and airports, protects the environment, provides welfare and aged care services, maintains the bulk of Australia's road network and plays a critically important role in the nation's health through environmental health measures, regulatory functions and waste management. In many parts of Australia local government is also the major provider of essential water and sewerage services
9. There are 717 local governing bodies across Australia, employing some 152,500 people.¹ In much of rural Australia, local government is the major employer, thereby underpinning the viability of many communities.
10. Collectively, local government is a significant sector of the Australian economy. In 2000-01, local government collected around \$6.4 billion in property taxes (rates) and was responsible for maintaining around 84% of Australia's road network (683,893 km)². It invested almost \$16 billion in Australia's local communities, including:
 - \$4.5 billion in transport and communications;
 - \$3.6 billion in housing and community amenities (this includes spending on the environment);
 - \$2.1 billion in recreation and culture;
 - \$820 million in social security; and
 - \$2.6 billion in general public services.³

The Impact of GATS and the Australia-US Free Trade Agreement on Local Government

¹ Australian Bureau of Statistics: *Catalogue 6248.0 Wage and Salary Earners, Public Sector, Australia September Qtr 2002* January 2003

² Austroads: *RoadFacts 2000* 2000

³ Australian Bureau of Statistics: *Catalogue 5501.0 Government Finance Statistics 2000-2001* April 2002

11. Under GATS, WTO members may negotiate commitments to open specific service sectors to foreign competition, affording foreign suppliers the same market access treatment as domestic suppliers. WTO members may also make commitments about the operation of their own domestic regulation of services to other WTO members.
12. Under GATS, member governments are required to ensure sub-national governments observe GATS related obligations and commitments. All services are covered, except those "supplied in the exercise of governmental authority". By entering into proposed new international commitments the Commonwealth obligates the other spheres of government to certain activities. Similar obligations may underpin bilateral free trade agreements in which Australia is a signatory.
13. Contemporary bilateral agreements on free trade usually cover both goods and services. Commitments made under an FTA with the US is most likely to liberalise the service sector than the multilateral commitments made under GATS. This is confirmed by the DFAT discussion paper explains that "

*"there is no predetermined definition of what an FTA between Australia and the United States would cover, beyond the core requirement to eliminate tariffs and other restrictions on substantially all merchandise trade between the parties. Beyond that core, the parameters of a bilateral economic agreement creating a Free Trade Area between Australia and the United States will be guided by the interests, practices and policies of both countries, and determined in the course of negotiations. Both governments have agreed that an agreement should be comprehensive in scope, should aim to complement our respective efforts in the WTO negotiations, and set a high standard for FTA agreements between other countries."*⁴

14. Given the potential impact upon sub-national governments, including local government, a dedicated commitment by the Commonwealth to consult widely with the other spheres of government prior to undertaking such negotiations is essential. Such an approach will ensure that Australia's public interest is maintained and that adverse or unintended consequences can be avoided.
15. In the context of this paper, *the public interest* is defined as the provision of a service or determination of a regulation that benefits (in either an economic, social or environmental sense) the local community as a whole.
16. ALGA contends that the public interest is best served by a clear and transparent liberalisation of the services sector that is acceptable to all three spheres of government.

Basic Principles of Local Government and Dealings With the WTO and Signatories to Bilateral Agreements on Free Trade

17. Local government supports the basic principle of liberalising the trade in services, where such liberalisation leads to an improvement in:

⁴ Department of Foreign Affairs and Trade Discussion Paper on Free Trade Agreement With the United States <http://www.dfat.gov.au/trade/negotiations/us.html>

- market access conditions for Australian services exporters; and
 - the level and quantum of services provided to local communities without diminution of the public interest.
18. The inclusion of additional service sectors in GATS negotiations, and an FTA with the US should not undermine, or restrict the ability of local government to provide essential services, as well as meeting community service obligations deemed necessary on social, local and other policy grounds. Local government has a range of regulatory mechanisms designed to intervene in the market (usually in the case of market failure) in order to maintain the public interest benefit to the local community (such as the pursuit of social or environmental goals). Local government:
- believes the fundamental principle underlying Australia's position in any international trade agreement should be the maintenance of the public interest. Public policy regarding regulation, funding and provision of essential services should be determined by governments at the national, state and local level;
 - opposes the inclusion of water, waste management and other related services in any international trade agreements;
 - opposes any proposal reducing the ability of local government to make regulations relating to the delivery of services to local communities;
 - opposes any proposal which will diminish the extent, nature or quality of services it provides to local communities; and
 - opposes any weakening of the public governance arrangements within Australia.
19. ALGA urges the Commonwealth to ensure that the provision (by any sphere of government) of a public subsidy is not interpreted as a barrier to trade in any agreements it may enter. Many local services provided by local government are funded through public subsidies. This mechanism overcomes local area market failure and ensures more equitable service delivery to local communities.
20. The forced removal of such subsidies, on the basis of being a barrier to trade, would entrench inequity, particularly where the delivery of community services is not commercially viable.
21. ALGA opposes any agreement allowing such a definition to be enforced by the WTO or an FTA.
22. Local government has been facing revenue pressure in recent years as a result of growing demand for services and increasing devolution of responsibilities from the Commonwealth and state and Northern Territory governments, in a context of declining (in real terms) revenue grants from federal and state governments.
23. There are potential cost implications for local government if particular licensing arrangements and service charges are identified as trade barriers. User charges are an important component of local government revenue. Any reduction of this revenue stream

will place a severe strain on local government budgets. Notably, in 2000-01 local government raised \$5.4 billion from the sale of goods and, the provision of services.⁵

24. Foreign companies disputing local regulations (made in support of community interests) on the basis that they could constitute a barrier to trade may expose local government to considerable and burdensome dispute processes. Local government has little if any expertise, nor the financial resources to respond effectively to disputes in this area.

Maintaining Local Government, Planning, Licensing and Regulation

25. Communities expect local government to balance the public interest against the perceived efficiencies arising from reduced levels of regulation. Local planning, public health and environmental laws are invariably implemented after a great deal of community consultation. Such regulations and laws are an expression of a community's expectation of environmental and health standards, service delivery, and the way they wish to see their community evolve.
26. The rationale for many regulatory and licensing decisions by local government is to ensure the provision of goods and services meet agreed minimum community standards. Such standards protect the community (individuals and businesses) from the supply of poor quality goods or services.
27. Any suggestion such regulations are a barrier to trade assumes little or no knowledge about how local government makes decisions on behalf of communities. Successfully challenging such regulations would ensure a decline in the standard of services provided to local communities, and potential degradation of the immediate environment.

Local Government and Environmental Services

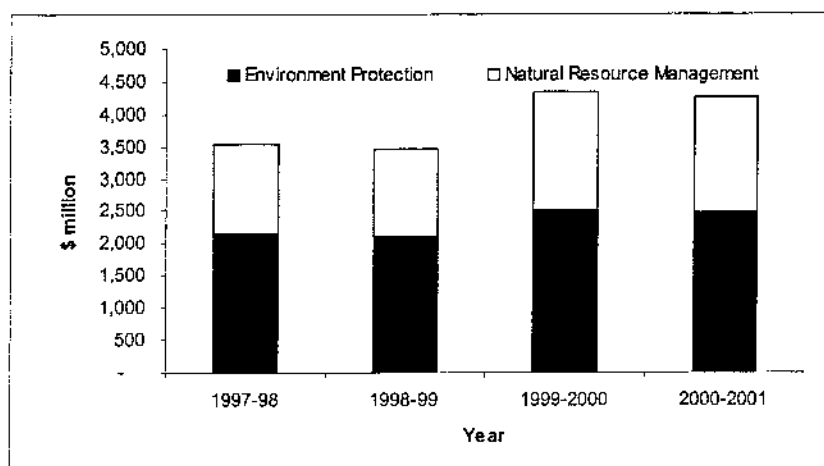
28. Local government plays a leading role in the provision of environmental services, primarily natural resource management and environment protection. Local government rejects any external influence that may diminish or circumvent local environmental laws and regulations.
29. In circumstances where appropriate policies for sound environmental management are not in place, trade liberalisation may potentially exacerbate existing environmental problems. There is little evidence to suggest that issues of environmental degradation are resolved by improving access to markets in these areas.
30. Local government supports the adoption by the WTO of a broader classification scheme for environmental services that is based on the *UN Classification of Environmental Protection Activities* and used by the Australian Bureau of Statistics.
31. In 2000-01, local government spent \$2.5 billion on environmental protection,⁶ mainly in the prevention, reduction and repairing of environmental damage resulting from harmful socio-economic activities.

⁵ Australian Bureau of Statistics *Catalogue 5501.0 Government Finance Statistics 2000-2001* April 2002

⁶ Australian Bureau of Statistics *Catalogue 4611.0 Environment Expenditure Local Government 2000-01* October 2002

32. In the same year, local government spent a further \$1.8 billion on natural resource management,⁷ ensuring the management, allocation and efficient use of natural resources. This also included activities associated with the recreational use of the environment, such as the management of parks, beaches and reserves.⁸

Chart 1
Local Government Environment Expenditure



33. Australia's environment faces crucial challenges, particularly in regard to reversing environmental degradation. Many of these challenges are confronted by local government in conjunction with volunteers or local community groups undertaking much needed environmental repair work, often with little or no financial resources.
34. Any financial resources in this area of environmental activity are usually provided through a grant, or public subsidy from one of the three spheres of government. Environmental maintenance and repair should be viewed as the provision of a public good by all spheres of government.
35. In some states, activities such as the delivery of water and wastewater services (rural NSW, QLD and TAS), are provided by local government, often utilising outsourced providers in the production chain. In regard to solid/hazardous waste services local government, is the main provider, in many cases the only provider. Table 1 illustrates how much local government in Australia spends on these two activities and the amount that goes to private sector contractors.

⁷ Australian Bureau of Statistics *Catalogue 4611.0 Environment Expenditure Local Government 2000-01* October 2002

⁸ As defined by the Australian Bureau of Statistics

Table 1
Payments to contractors as a percentage of local government spending 2000-01⁹

	Solid Waste (\$m)	Waste Water (\$m)	Water Supply (\$m)
Amount paid by local government to contractors	585.7	85.9	48.8
Total Amount Spent by local government	1,067.1	601.0	563.8
Percentage of total	54.9%	14.3%	8.7%

36. ALGA is unable to determine the potential impact trade liberalisation may have on local government in the solid waste and waste water sectors. Therefore, ALGA will request that Commonwealth exclude these and other related services from the GATS negotiations and any future bilateral agreements.

Exclusion of Water and Waste Services from GATS Negotiations

37. The provision of clean water and waste management to communities is a basic human service which should be provided on an equitable and lasting basis. ALGA is opposed to the inclusion of the water sector (on any basis or modality) in GATS negotiations. The provision of water to communities is an essential service provided by local governments in Queensland, rural New South Wales and Tasmania.

38. ALGA has requested that local government controlled water, waste management and other related services be specifically excluded from the ambit of GATS negotiations and any future bilateral agreements on free trade.

Conclusion

39. The issues raised in the discussion paper are of real, immediate and pressing concern to local government in Australia. Local government notes the potential impact future GATS determinations and FTA's may have on certain areas of local government activity, including (but not limited to):

- the provision of essential services (water and waste management);
- licensing the provision of services (such as food outlets);
- the regulation of services (such as waste disposal and building control);
- the provision of planning permission/permits (including discretionary powers); and
- general discretionary powers (such as giving preference to local employment).

40. Local government supports the basic principle of liberalising trade in services, where it leads to improvements in:

- market access conditions for Australian services exporters; and

⁹ Australian Bureau of Statistics *Catalogue 4611.0 Environment Expenditure Local Government 2000-01* October 2002

- the level and quantum of services provided to local communities without a diminution of the public interest.
41. The inclusion of additional service sectors in forthcoming GATS negotiations or an FTA should not undermine or restrict the capacity of local government to satisfy community service obligations deemed necessary on social, local and other policy grounds.
42. Local government:
- believes the fundamental principle underlying Australia's position in any international agreement should be the maintenance of the public interest. Public policy regarding regulation, funding and provision of essential services should be determined by governments at the national, state and local level;
 - opposes the inclusion of water, waste management and other related services;
 - opposes any proposal reducing the ability of local government to make regulations relating to the delivery of services to local communities;
 - opposes any proposal which will diminish the extent, nature or quality of services it provides to local communities; and
 - opposes any weakening of the public governance arrangements within Australia.
43. Local government opposes any proposal reducing the capacity of local government to regulate or diminish the quality and/or quantity of services it provides. Any lessening in the public governance arrangements within Australia would be strongly opposed by local government.
44. Local government urges the Commonwealth to ensure that the provision of a public subsidy by any sphere of government is not interpreted as a barrier to trade. ALGA opposes any agreement allowing such a definition to be enforced by the WTO or any participant in a bilateral agreement on free trade.
45. Local government opposes any proposal that may negate, diminish or circumvent local environmental laws and regulations.
46. ALGA is unable to determine the potential impact trade liberalisation may have on local government in the solid waste and waste water sectors. Therefore, ALGA will request that Commonwealth exclude these and other related services from the GATS negotiations.