

**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: 141

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Organisations Inc

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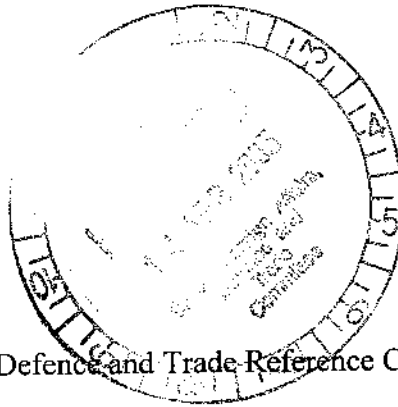
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Australian Council
of State School
Organisations Inc.



Mr Brenton Holmes
Secretary
Senate Foreign Affairs, Defence and Trade Reference Committee
Suite S 1.57
Parliament House
Canberra ACT 2600

11 April, 2003

Re: General Agreement on Trade in Services and Australia/US Free Trade Agreement

Dear Mr Holmes

Please find enclosed the submission from the Australian Council of State School Organisations submission to this Inquiry.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Rob McConchie', followed by a long horizontal flourish.

Rob McConchie
Executive Officer

ACSSO Submission to the Senate Foreign Affairs, Defence and Trade Committee on General Agreement on Trade in Services (GATS) and Australia/ US Free Trade Agreement.

This submission is made on behalf of the Australian Council of State School Organisations (ACSSO), in response to the call for public comment on issues relevant to the current round of GATS negotiations and the Australia/ US Free Trade Agreement. The submission addresses the issue of trade in education generally rather than responding to each of the headings listed in the Senate Committee's terms of reference. Comments in relation to the multilateral agreements being developed through the GATS also apply to the bilateral negotiations occurring in the FTA with the USA.

ACSSO is the national organisation representing the interests of parents, citizens and students associated with government schools throughout Australia. ACSSO is non-party political and non-sectarian.

ACSSO is committed to access, equality, equity of outcomes, excellence and participatory democracy.

The principle of access means a public education system available to all, irrespective of their age, capacity to pay, class, culture, gender, level of ability, location, religion/belief, or sexual orientation.

Equality is dependent on recognition that all children have a capacity to learn. Learning is the construction of meaning from experience. School practices must acknowledge and build on the culture and experiences children bring to school. Children have a right to develop their skills, knowledge and aptitudes in challenging but personally successful and fulfilling ways.

Equity in educational outcomes means all social groups should, as a result of schooling, have comparable distributions of educational outcomes.

Excellence means that the public school system must provide the highest quality education for all.

Participatory democracy means a partnership of students, parents and teachers in school and system decision making. It also means that students should, as a result of schooling, have the knowledge, skills and understandings necessary to shape their own lives and to participate effectively in shaping society. This will enable students to learn how to learn throughout their lives for the benefit of themselves and others. Public education must develop among all students a sense of justice as well as respect and concern for others.

ACSSO believes that public education must remain secular and be fully funded by government.

ACSSO has fundamental concerns over the direction and purpose of the GATS and the implications of Australia's negotiations around the provision of education.

These can be summarised as follows:

- The assumption that education is a tradeable commodity;
- The assumption that trade in services will be progressively liberalised through a series of negotiating rounds;
- The likely implications of increasing commercialisation of education;
- Reliance on the Commonwealth government to represent the interests of public education in GATS negotiations
- The process and procedures of the GATS negotiations
- The effect of increased privatisation of Higher Education.

Public Education

The underlying rationale about the nature of the trade transaction epitomised by the GATS is that it is an exchange of private benefit for money. Many services however are public goods, with the collective or public benefit they provide overriding any private benefit. Public education is a key means to achieve this collective interest or social purpose. The public education system consists of a network of schools owned and operated by government, sustained by government funding and governed by government policies and regulations which include provision for public participation in decision-making. Its goals are to support individual justice in education, to sustain and practice democracy and to achieve equity in school outcomes. It is a matter of justice and a prerequisite for a fully functional democracy that:

- all children, without regard to gender, race, ethnicity or socio-economic status, develop the capacity to function as independent adults;
- all children have the capacity to participate in public affairs and to respect and tolerate cultural and social difference;
- the public is involved in decision-making about educational policy; and
- school outcomes are not dependent on family circumstances and that all children have equal prospects for participation in adult society.

Public provision of schooling is central to achieving the social purposes of justice, democracy and equity in education. It is needed to:

- guarantee non-discriminatory and non-selective access to education;
- support social tolerance and cohesion;
- provide a full range of support services for student development;
- facilitate community participation in school decision-making; and
- contribute to other social purposes of government.

In their desire to open new markets and exchange trading benefits, however, supporters of GATS play down public benefit, redefine public goods as services and encourage deregulation and privatisation.

ACSSO and its affiliates reject this redefinition and reassert the primacy of public benefit from the provision of education services. This does not deny an element of private benefit, recognized in the provision of private education alongside public education, but emphasises the fundamental importance of universal, quality education as a foundation of democratic society. The

concomitant responsibility of government is to provide free, comprehensive, universal, high quality education services, across all education sectors.

That the prime purpose of education is for public benefit does not negate the possibility of allowing private operators, either domestic or foreign to provide education services. As long as the position of government as the major provider is not undermined by pressure to expand the presence of commercial providers, either domestic or foreign, or the ability of government to provide and support public education and to regulate private education is not removed, other providers may operate.

In spite of assurances that the GATS provides both flexibility and protection for national sovereignty, public services and national regulations, there is no evidence that this is the case in practice. Claims that public services are protected by the government authority exclusion, whereby “a service supplied in the exercise of governmental authority” is excluded from the agreement (Article 1:3:[b]), are misleading because of the conditions that the service must be “supplied neither on a commercial basis, nor in competition with one or more service suppliers” (Article 1:3:[c]), and the fact that the WTO secretariat have provided no example of a public service that would be protected under this Article.

Progressive liberalisation

The broad scope of the GATS and indeed the text of the agreement, assumes that the liberalisation of trade in services is unquestionably desirable and will be a natural progression. There is an expectation that countries will add sectors or sub-sectors to their schedules of commitments and negotiate the further removal of trade barriers at each new round of negotiations. Claims of flexibility and the protection of public services and sovereignty are also undermined by this negotiating pressure. This is exemplified by attempts to introduce horizontal negotiations, for example encouraging governments to make blanket commitments across clusters of sectors, thereby creating a potential risk that trade-offs will be made in vulnerable sectors to gain desirable concessions in another.

It is clear from this that our public education systems will come under further pressure in future negotiating rounds.

Trade in Education Services

Education is one area where, because of concerns about the impact of commercialisation, many WTO members have been unwilling to make commitments to liberalisation. (Examples of such commercialisation include; Sponsorship and advertising in schools, homogenised curriculum materials, and management companies running schools and exposing them to bankruptcy).

Australia made significant commitments in 1995 and appears to have taken the role of promoting liberalization in Education Services in subsequent negotiation rounds.

While GATS agreements are binding on all levels of government, it is the Commonwealth government that engages in the negotiations on Australia's behalf. The ambivalent, not to say hostile, attitude of the current Commonwealth government to public education and its argument that it is responsible for non-government schools increases the vulnerability of our public systems. The lack of clear national public education policy – a pre-requisite for guaranteeing the removal of public education from the negotiating rounds – also exposes them to demands for further liberalisation.

The processes of the GATS

The secretive nature of GATS processes is of considerable concern. Through the GATS negotiations agreements on public services can be signed and become irrevocable before the public has any opportunity to debate them. No significant details of either Australia's requests or requests to Australia during this round have been made public.

In addition the following processes work to the disadvantage of protecting public services and increase the likelihood that serious misjudgments will be made during negotiations:

- The general exceptions of Article XIV (a) and (b), "nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures: (a) necessary to protect public morals or to maintain public order; (b) necessary to protect human, animal or plant life or health" must be demonstrated to the WTO, leaving room for a narrow interpretation that favours trade over national interest.
- The nature of the agreement is such that sectors that nations wish to protect have to be included in the specific schedules at the time of accession. Problems with this include the inability of negotiators to take into account all possible (future) implications and scenarios. (Although Most Favoured Nation [MFN] exemptions have not been sought in the area of Education Services, WTO rulings in cases where the MFN rule was invoked have demonstrated the inability of negotiators to foresee the full implications of the agreement into the future and the tendency for the WTO to interpret the agreement narrowly).
- The assertion by the WTO that members can introduce restrictions at any time fails to acknowledge the real impediment of then having to provide compensation to suppliers who entered the market without restriction.

Higher Education

Notwithstanding the implications of the general concerns as they apply to Education Services, there is a specific concern arising from Australia's schedule of commitments. Although ACSSO represents parents and school councils in the primary and secondary education sectors, Australia's unrestricted commitment to liberalisation in terms of market access in the Higher Education sector, does have implications for Secondary and Primary education.

Australia's domestic policies over the last decade have contributed to a decline in access to higher education on the basis of socio-economic background, setting up a situation where the private benefits of education can accrue to a section of the community at the expense of others in the community and at the expense of the public benefit of universal access to higher education. A higher education sector that distributes private benefits unevenly, puts pressure on the Secondary sector as individuals vie for higher education places and the rewards they offer. In an attempt to maximize their chances of gaining a place in higher education, individuals will be encouraged to seek out private providers of Secondary education services that are perceived to offer more. This in turn increases the pressure for increased market access for private suppliers. The same pressures may eventually spread to the primary sector.

Although domestic policies have put some pressure on Secondary Education in this manner, the effects of unrestricted market access and the application of the National Treatment rule under the terms of the agreement have the potential to accelerate this process and ultimately to threaten the viability of public education in all sectors.

Recommendations

In relation to the current and future rounds of negotiations, ACSSO recommends that:

- No part of public school education should be included in this or any future bargaining around the WTO table. This comprises publicly provided, universal, free education from pre-school to Yr 12 equivalent.
- The restrictions in Australia's schedule of commitments should be maintained and pressure to further liberalize rejected;
- Scheduled commitments in Higher Education should be removed before the entrance of foreign providers makes compensation an insurmountable obstacle;
- Scheduled commitments on cross-border supply should be removed in order to regulate the electronic supply of education services; and
- Broad restrictions on commercial presence and cross-border supply should be maintained.
- Future negotiations should be preceded by widespread public debate to ensure that the negotiating position genuinely reflects the wishes of the Australian community.

ACSSO

April 2003