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: 154

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No. of Pages: 14

Attachments: 1

McAuliffe, Andrea (SEN)

From: alistair_waters@cpsu.org
Sent: Friday, 11 April 2003 6:10 PM
To: FADT, Committee (SEN)
Cc: steve_ramsey@cpsu.org; margaret.gillespie@cpsu.org; adrian_o'connell@cpsu.org
Subject: CPSU Submission on GATS

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To the Committee Secretary,

Please find attached a copy of the CPSU Submission on GATS and AUSFTA for the Community and Public Sector Union - PSU Group.

My name and contact details are provided below. My postal address is
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In addition to the submission (0411SenateFATDCommSub.doc) is an attachment (UnisonSubmissionto DTI.pdf)

Thank you for your consideration of our submission.

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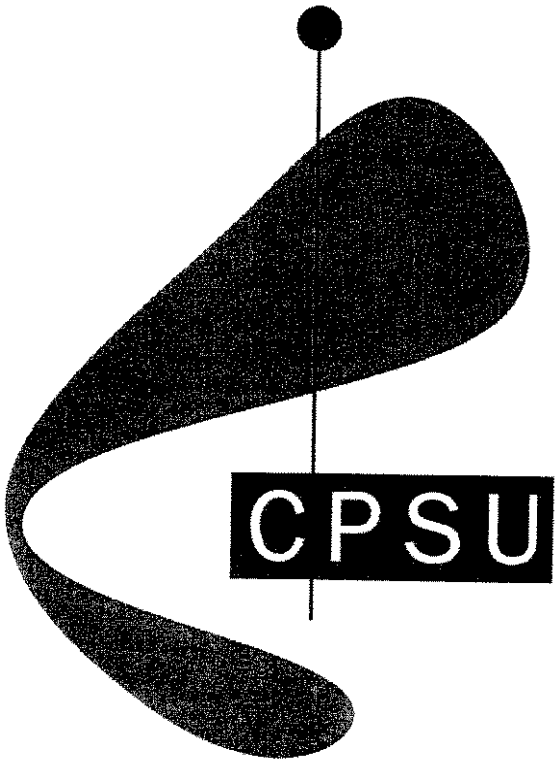

Submission

To the Senate Foreign Affairs, Defence and Trade Committee

On the General Agreement on Trade in Services (GATS) and Australia / US Free Trade Agreement

By the Community and Public Sector Union - PSU Group (CPSU).

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"Importantly, once a service is subjected to the GATS rules of the market, that service cannot be withdrawn from those rules, without a penalty applying to the state for withdrawing it.

The GATS and the WTO trade negotiation process appear to act as an instrument of pressure on countries to open up services, including public services, to competition. Once a service is opened up to competition the existing terms of GATS operate as a ratchet, ensuring services cannot be returned to state control, even for the strongest of public policy reasons such as in cases of market failure."

Summary

The Community and Public Sector Union - PSU Group (CPSU) is pleased to have the opportunity to contribute to the current debate regarding the General Agreement on Trade in Services (GATS) negotiations and the Australia / US Free Trade Agreement negotiations (AUSFTA).

CPSU supports the work of the Committee and all those steps that assist a full public debate on the issues for and impacts on Australian civil society arising from the negotiations and any final agreements.

The CPSU has identified a number of in-principle areas of concern. These include:

- The high level of contention on what constitutes a public service, the lack of protection for these services and the use of the GATS negotiation process to pressure countries to privatise public services and services of general interest;
- The imposition, through a GATS treaty and a AUSFTA, of constraints on the capacity to administer public policy in the national interest, as defined from time to time; and
- The importance of all countries adopting and honouring the Fundamental ILO Conventions as a key element of any trade agreement.

CPSU recommends that these issues are examined by the Committee and we propose some measures for consideration by the Committee that seek to alleviate these concerns.

Gathering data to inform the discussion in civil society on GATS and AUSFTA is a difficult and labour intensive task. CPSU recommends the document "A UNISON Response to an UK DTI Consultation Document", (prepared by UNISON, the UK public sector union) as useful comment. A copy is attached to the submission. We propose some areas where the Committee may wish to examine and report on which would significantly inform the public discussion. These include:

- The views of WTO members on the purported protections for public services in the treaties and the scope of services afforded such protection; and
- Analysis of the use of dispute settling mechanisms in relation to the existing GATS treaty and existing treaties comparable to the AUSFTA such as NAFTA.

Developing a public understanding of the effect of the treaties would be assisted through a full review of the operation of the existing treaties. Such a review would be most valuable if it occurred prior to further negotiation of the treaties.

The CPSU welcomes the Trade Minister Mark Vaile's decision to commit to a public consultation process. However in preparing this submission, CPSU found that obtaining detailed information relevant to the negotiation process from the published material provided by the Department of Foreign Affairs and Trade (DFAT) is difficult. CPSU suggests that the Committee examine sources of relevant detailed information to inform the public, including DFAT's current methods.

CPSU makes a number of comments on the DFAT Office of Trade Negotiations "Discussion Paper on the GATS"(the GATS Discussion Paper).

Significant areas of CPSU membership are directly affected by these negotiations. Based on initial input only, these areas include members employed in:

- Research institutions such as CSIRO, relating to research and development services;
- Quarantine and Customs services;
- Cultural and media services including cultural institutions and public and private media organisations;
- Telecommunications and Postal services;
- Employment services;
- Control of intellectual property;
- Air transport services;
- Health and education services; and
- Insurance services, particularly health insurance.

As an affiliate of the Australian Council of Trade Unions, we endorse the position adopted in its submission to the Committee.

Recommendations Summary:

1. That, to inform the public discussion on the treaties, the Committee examine:
   - The views of WTO members regarding the purported protections for public services in the treaties and the scope of services afforded such protection; and
   - Analysis of the use of dispute settling mechanisms in relation to the existing GATS treaty and existing treaties comparable to the AUSFTA such as NAFTA.

2. That the Committee examine mechanisms within the treaty processes that will ensure:
   - That Australia's capacity to conduct public administration, including regulation and provision of services, as determined to be in the Australian public interest from time to time, is not constrained, reduced, or left open to challenge, now or in future by outcomes from GATS or AUSFTA; and
   - Provision of all Australia's public services, at all tiers of government, and Australia's cultural services are explicitly excluded from GATS, through Australia's schedule.

3. That the Committee recommend to the Australian government that commitment to core labour standards, including the Fundamental ILO Conventions, and changes to national laws, necessary to ensure the application of the standards, be established in the treaties as a necessary condition for participation in the treaty processes.

4. That the Committee recommend that the Government commit to: transparent public access to all claims on Australia and Australia's responses; a public education campaign to lift awareness and provide accessible information of the risks and potential benefits of the treaties; a parliamentary debate in both Houses; and full public consultation that informs the development of Australia's position in negotiations.

5. That the Committee recommends that the government support a review of the current GATS, ensuring broad consultation informs the views Australia puts to that review, prior to negotiation on a new GATS.

6. That the Committee examines communication methods to ensure detailed information is readily available to the public, including the adequacy of DFAT's current methods.

Public Services - A matter for protection not contention

There is significant debate among WTO member states about what constitutes a public service and the protections available under the treaty for public services and services of general interest.

GATS Article 1.3

The material produced by the Australian Government, the WTO and other Member states makes much of Article 1.3 of the GATS treaty as a protection for public services. CPSU has significant concerns that there is in fact little effective protection provided by this Article.

Article 1.3 refers to public services as services "supplied in the exercise of governmental authority" and states that these services are exempted from GATS disciplines. This commitment is qualified by the requirement that such services be provided "neither on a commercial basis, nor in competition with one or more service suppliers."

There are significant differences in the view of WTO Members on what constitutes a public service in the terms of Article 1.3. For example, it would appear clear to most of us that a service such as Air Traffic Control is a service "supplied in the exercise of governmental authority". However, the EU has stated:

"...(T)hat these services were not provided in the exercise of governmental authority and did not fall under Article 1 of the GATS, but would appreciate more clarity on that and more material to make a decision on that point." (WTO Council for Trade in Services, "Report of the Second Session of the Review Mandated Under Paragraph 5 of the Air Transport Annex Held on 4 December 2000 (S/C/M/50, 5 March 2001, (01-1060)), paragraph 50).

In sectors such as job search for the unemployed, health or education the level of private service suppliers is significant and growing and in Australia there is no monopoly supply of these services. If areas where there is no competition such as air navigation services are subject to intense debate as to their status as public services, the capacity of Article 1.3 to exclude sectors such as job search, health or education from GATS is in significant doubt. The UNISON document attached to our submission also deals with this matter.

The European Commission (EC) have crystallised their position on public services in a manner that is very different to the rhetoric on protecting public services. In its document "WTO Services: Commission submits draft offer to Council and Parliament - public services fully defended" (Brussels, 5 February 2003), the EC states:

> *"GATS does not cover services which are not supplied on a commercial basis or in competition with other providers. It is only when a WTO member decides to subject a public service to the laws of the market is this service subject to the rules of the market."*

Importantly, once a service is subjected to the GATS rules of the market, that service cannot be withdrawn from those rules, without a penalty applying to the state for withdrawing it.

The GATS and the WTO trade negotiation process appear to act as an instrument of pressure on countries to open up services, including public services, to competition. Once a service is opened up to competition the existing terms of GATS operate as a ratchet, ensuring services cannot be returned to state control, even for the strongest of public policy reasons such as in cases of market failure. For this reason CPSU proposes a recommendation:

1. **That, to inform the public discussion on the treaties, the Committee examine:**
   - **The views of WTO members regarding the purported protections for public services in the treaties and the scope of services afforded such protection. and**
   - **Analysis of the use of dispute settling mechanisms in relation to the existing GATS treaty and existing treaties comparable to the AUSFTA such as NAFTA.**

Constraints on Public Policy and Regulation

The DFAT GATS Discussion Paper focuses on public services and the GATS and draws our attention to paragraph 7 of the Doha Ministerial Declaration:

> 7. *We reaffirm the right of Members under the General Agreement on Trade in Services to regulate, and to introduce new regulations on, the supply of services.* (page 6)

This right is originally expressed in the preamble to the GATS. However, the scope and limitations of this right is not outlined in the GATS Discussion Paper.

The GATS Discussion Paper makes a number of contradictory points regarding Member states capacity to exercise this right. The Paper states:

> *"The economic benefit of the GATS is that WTO Members' selective commitments to open services trade cannot be revoked without penalties, except under special circumstances, providing greater certainty and security for services exporters."* (page 4)

However, the paper also states:

> *"Under the GATS, governments retain the right to: schedule their commitments so as to regulate with a view to pursuing national policy objectives; modify and/or withdraw commitments undertaken; designate or maintain monopolies, public and private; and choose the sectors for which they want to grant access and the conditions governing such access."* (page 5)

CPSU acknowledges that both statements are technically correct. However, *Article XXI Modification of Schedules* of the GATS makes clear that any action to "modify or withdraw any commitment" may require "compensatory adjustments".

Mr Vaile has stated in his 1 April 2003 Media Release that the Government "is committed to upholding the right of WTO members to regulate and to fund public services, and will not support new rules or make any offers which cast doubt on that outcome." However the DFAT Discussion Paper adds an important caveat to the government position in this regard:

> "The Government will ensure that its ability to regulate and continue to support public services is maintained, **in full accordance with the GATS treaty**." (page 2, our highlighting).

This position reflects the terminology of the GATS itself which deals in Article VI with the capacity of member states to regulate in areas where commitments have been given. The terms of Article VI.4 appear to grant the Council for Trade in Services a determinative role on whether particular national regulation complies with the terms of GATS. Such regulations are limited to issues related to the quality of service and appear, on one reading, to exclude any capacity of States or sub-State entities to determine how services are provided.

CPSU supports the establishment of far clearer definitions of public services and services of general public interest in Article I.3 with any replacement of GATS. In our view it is also important to make explicit the capacity of member states to regulate and control these services in the public interest. Therefore CPSU recommends:

2. **That the Committee examine mechanisms within the treaty processes that will ensure:**

- **That Australia's capacity to conduct public administration, including regulation and provision of services, as determined to be in the Australian public interest from time to time, is not constrained, reduced, or left open to challenge, now or in future by outcomes from GATS or AUSFTA; and**
- **Provision of all Australia's public services, at all tiers of government, and Australia's cultural services are explicitly excluded from GATS, through Australia's schedule.**

One mechanism that the Committee may wish to examine is that the tests on regulation imposed by Article VI of GATS could be altered to simply impose a test on whether the determination of particular regulations is in the public interest for the particular Member state. Examination of the elements of such a test could include removal of the "least trade restrictive" test in insertion of a positive test that, if met, excludes action against the member state.

The Committee may examine whether such a test could include reconsideration of outsourcing or privatisation of government assets or services, including returning those services to full government control or monopoly supply, occurring where it is demonstrably in the public interest. Possible elements for such a public interests test may include:

The need to maintain or redress:

- privacy of consumer information;
- accountability to and scrutiny by the public;
- cost increases for consumers or instances of provider failure or market failure;
- identified negative effect on the national environment or national industry development; or
- Negative impacts on regional, rural and remote communities.

Where one or more of these tests are met, the Member state's capacity to act through public policy should be unchallenged.

The CPSU further notes for the Committee's consideration, mechanisms that the European Union maintains a listed horizontal commitment that:

> "In all EC Member States, services considered as public utilities at a national or local level may be subject to public monopolies or to exclusive rights granted to private operators."

Australia's existing horizontal commitments contain no such protections for the Australian public interest. The Committee may see clear value in Australia determining to insert such a commitment into Australia's Schedule, and suggests the committee consider the possibility.

Set out below is a possible scenario where the lack of clarity on Australia's capacity to regulate and act in our own public interest could be affected by the treaties.

Regulation of the insurance industry - A Possible Scenario

Over the course of the last 2 years problems in the insurance industry have been a major cause of public concern. Insurance arrangements, particularly public liability insurance, have been a matter of significant public debate. Insurance arrangements for builders, medical practitioners and community and sporting groups have been particularly high profile.

Interested parties have expressed a range of views on this important public policy area, including suggestions for reintroducing government monopoly supply of insurance to some areas. For example, the Minister for Small Business and Tourism, the Hon Joe Hockey has made public comment that canvassed possibilities including the recreation of state insurance offices.

Given the public debate and commentary it would be a reasonable public policy outcome for a government to act to reintroduce monopoly supply of insurance, or parts of the existing insurance market, in the public interest.

The question arises as to the constraints imposed by Australia's GATS Commitments or commitments under the AUSFTA on Australia making such a decision. The dispute resolution provisions available under GATS have not to our knowledge been sufficiently tested in this matter but it is certainly arguable that Australia could be subject to penalties due to existing GATS commitments. Dispute resolution provisions and their usage in NAFTA, point to such a decision being directly open to challenge by multinational corporations in the courts.

Core Labour Standards

In our view the focus of the WTO agreements is on outputs - elements of trade. The concerns of civil society seek to balance issues of inputs as well as outputs, supporting growth in trade and supporting the workforces that make such trade possible. The benefits of growth in trade are only benefits where they are shared among all elements of society. For this reason it is important that all trade agreements include specific protections for workers through core labour standards.

Core labour standards should include the Fundamental ILO Conventions as determined by the ILO. There are eight Fundamental ILO Conventions dealing with:

- Freedom of association, the right to organise and collective bargaining (No 87 and No 98);
- The abolition of forced labour (No 29 and No 105);
- Rights to equal remuneration and anti discrimination (No 111 and No 100); and
- The elimination of child labour (No 138 and No 182).

We note that the current legal position in Australia on federal workplace relations fails to honour some of these conventions particularly rights of workers to bargain collectively. As the Union representing members across the commonwealth public sector CPSU deals directly with practical consequences of the current government's ideological drive to remove Australian workers' choice to collectively bargain.

Therefore CPSU strongly supports a recommendation that:

3. **That the Committee recommend to the Australian government that commitment to core labour standards, including the Fundamental ILO Conventions, and changes to national laws, necessary to ensure the application of the standards, be established in the treaties as a necessary condition for participation in the treaty processes.**

Public Consultation

CPSU welcomes the undertaking of the Minister for Trade, the Hon Mark Vaile, to consult widely on Australia's GATS negotiations. However, in announcing that the Australian Government has released its initial offer to Australian civil society, as well as to WTO Members, the Minister The Hon. Mark Vaile states:

> *"As the negotiations progress, we will continue to consult with stakeholders and to provide all the information we can, consistent with WTO and commercial confidentiality and without undermining the effectiveness of Australia's negotiating effort."*

In Australia, the use of the term "commercial confidentiality" on the part of governments has become commonplace as a means to escape public scrutiny of commercial dealings by governments. That Mr Vaile considers that the negotiation of trade rules to regulate commercial enterprises also raise issues of commercial confidentiality is staggering. It is further demonstration that the rules are for the benefit of commercial entities not the Australian civil society as a whole. Therefore CPSU recommends:

4. **That the Committee recommend that the Government commit to: transparent public access to all claims on Australia and Australia's responses; a public education campaign to lift awareness and provide accessible information of the risks and potential benefits of the treaties; a parliamentary debate in both Houses; and full public consultation that informs the development of Australia's position in negotiations.**

Australia's requests of other Members are not detailed in the GATS Discussion Paper. CPSU is unaware of details of Australia's requests being publicly released elsewhere. The decision to not include this information limits the capacity for informed comment. CPSU notes that the authors of the GATS Discussion Paper are able to provide some details on commitments Australia is seeking in the areas of "private health and private aged care" (page 6) but for most sectors no details are provided.

The capacity for civil society to participate in a discussion that informs eventual outcomes in the treaty processes is severely limited by the lack of access to detailed information. In particular there is a lack of information about the outcomes from existing treaties. CPSU recommends:

5. **That the Committee recommends that the government support a review of the current GATS, ensuring broad consultation informs the views Australia puts to that review, prior to negotiation on a new GATS.**

DFAT Information

The Office of Trade Negotiations "GATS Discussion Paper" provides a useful base for commencing a consultation process. However, the GATS Discussion Paper did not provide sufficient detail on the requests received from other WTO Members, the implications of these requests for Australia or details about the requests made by Australia of other Members.

In our view, there also remain significant gaps in the information available about the impact of GATS, the process of negotiation of GATS and the possible affects of GATS on public administration in Australia. The same appears true of the information provided regarding the AUSFTA.

CPSU notes the statement of the Trade Minister on 1 April 2003 and welcomes his decision to publicly release Australia's initial offer on services trade.

The GATS Discussion paper is the main information paper made available by DFAT for consultation purposes. CPSU is concerned that the GATS Discussion Paper does not properly, in our view, set out the context of Australia's GATS negotiations. CPSU notes that on page 12 of the GATS Discussion Paper it states:

"Australia is not obliged to respond positively to any request we have receive. We can choose not to make commitments in a particular sector, or to structure our commitments to limit Market Access or discriminate between foreign and domestic suppliers. The fact that Australia has made a request in a particular sector does not mean that we have to accept a request made of us in the same sector (i.e., there is no requirement for reciprocity)."

While CPSU accepts the on its face accuracy of this statement, it could be argued that the statement masks the reality of trade-off negotiations that constitutes the overall DOHA process.

In the DFAT paper, "The GATS Review - An Opportunity for Phased Reform of Air Transport Services" (14 November 2000 (00-4862)) it states at paragraph 10 that:

"The WTO's 'single undertaking' allows trade-offs between all goods, services, forms of trading and almost all countries."

Given this view, it would appear that the requirement for Australia to "respond positively" to other Members particular requests is driven, at least in part, by the commitments that Australia is seeking from other Members in the GATS process and more broadly in the Doha Round. In these circumstances it is therefore a requirement that the nature of Australia's requests be disclosed to the Australian public particularly as they have already been disclosed to other Members.

Further, CPSU is concerned that the GATS Discussion Paper does not acknowledge the 'single undertaking' principle of WTO agreement making. The GATS Discussion Paper raises "choice" for Member governments on page 1 and returns to the theme in the paragraph quoted above, from page 12 of the GATS Discussion Paper. However, the paper does not deal with these choices in the context of trade off negotiations. An implication that could be read into the paper is that the "choices" are made on the basis of the merits in each service sector when this is not the case. In our view public consultation and public involvement are not assisted by partial provision of information.

DFAT provides significant information on its web site regarding the two treaty processes. However, there is a lack of detailed information regarding Australia's current commitments or the positions of Australia's negotiating parties, even where these documents are publicly available. For instance details of Australia's existing GATS Schedule of Commitments does not appear to be available on the DFAT website. Key information such at the US objectives in the AUSFTA negotiations are also not available from DFAT's site. Providing the Australian public with easy access to publicly available documents is important in fostering the necessary public debate and CPSU recommends:

6. **That the Committee examines communication methods to ensure detailed information is readily available to the public, including the adequacy of DFAT's current methods.**

CPSU Sectoral Concerns

The Minister released Australia's GATS initial offers on 1 April 2003 and AUSFTA objectives during March 2003. The stage that CPSU is at in our consultation process with members means that CPSU is not in a position to submit detailed comments on all areas of membership affected by the two treaties.

Particular concerns have been raised with respect to the Research and Development requests made of Australia in relation to GATS. In releasing Australia's initial offer on GATS, The Minister Mark Vaile made no comment on Australia's position with regard to the requests for greater opening of research and development services. CPSU notes that no offer has been made by Australia but there is also no indication of Australia's position on the requests received. Australian Research and Development has been subject to sustained attacks, opening it up or applying national treatment on Australian R&D projects is not in Australia's interests.

CPSU notes that the following areas are also raised either by the US in the AUSFTA negotiations or by WTO members through GATS, or both:

- Research institutions such as CSIRO, relating to research and development services;
- Quarantine and Customs services;
- Cultural and media services including cultural institutions and public and private media organisations;
- Telecommunications and Postal services;
- Employment services;
- Control of intellectual property;
- Air transport services;
- Health and education services; and
- Insurance services, such as health insurance.

Should the Committee wish CPSU to provide further information we would be happy to provide supplementary submissions to the Committee.

CPSU (PSU Group) Coverage

CPSU is a federal union with regions and sections in each State and Territory.

CPSU (PSU Group)'s coverage is predominantly in the Commonwealth public sector, but also includes ACT and NT public sectors, and public and private sector employers in the communications, education, aviation, broadcasting, health and pharmaceutical industries.

Our members include people doing work in the areas of administration, sales, engineering, communications, information technology, legal, technical, scientific research, broadcasting and many others.

Our major employers include:

- Australian Public Service agencies such as the Australian Quarantine Inspection Service, Immigration, Centrelink, Defence, Customs, the Australian Protective Service and the Tax Office.
- Statutory Authorities such as CSIRO, the ABC and the Health Insurance Commission.
- Government Business Enterprises such as Telstra, Australia Post, AirServices Australia and Medibank Private.
- ACT and NT government departments and authorities.
- Private sector companies such as CSL Ltd., Ten Network, Seven Network, Pacific Access, Qantas and Sydney Airport.

CPSU membership reflects the diversity of professional, technical, managerial, administrative and general occupations associated with this range of public and private sector employment.

CPSU is very active in representing the industrial and professional interests of our members. Pursuant to the *Workplace Relations Act 1996,* our union is party to over 100 Federal awards and nearly 300 current certified agreements.

CPSU offices are located in every Australian capital city as well as Newcastle and Lismore.

DTI Consultation document: 'Liberalising trade in services – A new consultation on the World Trade Organisation GATS negotiations'

A UNISON Response

DTI Consultation document: 'Liberalising trade in services – A new consultation on the World Trade Organisation GATS negotiations'

A UNISON Response

Introduction

1. UNISON represents 1.3 million members across a range of services, including education, health, local government, energy and water, and is the largest trade union in the United Kingdom.

2. We welcome the opportunity to respond to the consultation document, as we believe GATS will have a significant impact on service provision in the UK and elsewhere. For this reason we have focused not only on the key service sectors in which UNISON members work, but we have also included comments on what we believe will be the impact on developing countries.

3. This response includes comments of a general and specific nature. In the first part we set out our views on the consultation process and comment on some of the key elements of GATS, including Article 1.3, the 'horizontal limitations', regulation and the 'most-favoured nation' rule. The second part of the response focuses on specific service sectors, such as education, health and local government, and outlines our perspective on the international aspects of GATS. The third, and final, part summarises our position and draws specific conclusions.

Part One

a) The Consultation Process

4. Civil society groups, including trade unions, are accused of tilting at windmills, of wasting time worrying about GATS, when we are told there is little or nothing to be concerned about. But if this is the case, why has the process been shrouded in secrecy until now? And why has so little information been revealed about the 'requests' made by the non-EU countries, and a reluctance on the part of the EC to provide it? If there is nothing to be concerned about, then why not have a wholly transparent process with full disclosure of information?

5. When this matter was raised at the meeting between representatives of the Department of Trade and Industry and the Trade Policy Consultative Forum last November, a commitment was given to be more open and transparent as the process continues. This lack of transparency and adequate information in the consultation document makes it difficult to respond to the issues and questions raised in anything other than a general manner; and the DTI officials present generally agreed that this was the case.

6. The best that could be said in defence of the available, but limited, information was that a real effort had been made in the consultation document to be as open as possible in line with the demands of trading partners that the details of the 'requests' be kept confidential. It is understandable that the EC and the UK government do not wish to break any agreement they may have made with their non-EU trading partners, but they should not be surprised when civil society groups are sceptical about the GATS process and cynical about the benefits of open markets in the provision of services.

7. While we applaud and welcome the government's willingness to consult, we wonder just how the responses to the consultation document will feed into the wider process, given that the Article 133 Committee is already considering the EU's position on the offers under GATS, and intends to present a draft of the internal offers to EU member states in mid-January. Furthermore, bearing in mind that most other EU member states are not consulting civil society, how can we expect the EU's position to be representative of European public opinion? Such a development only lends weight to the accusations that the whole GATS process is anti-democratic.

8. We hope that the Government will do everything in its power to allay these accusations, and will insist that the EU opens up the process in a manner that enables full and genuine participation in the GATS negotiations up to 1 January 2005 and beyond. This is currently the official deadline by which the negotiations will end, but we know that the process itself will continue until all 160 service sectors globally are opened up to market access. For this reason, we expect civil society representatives, including trade unions, to be fully involved in the decisions relating to the liberalisation of the services in their respective countries.

b) Key issues in GATS

9. It is commonly said that Doha round of trade negotiations in November 2001 revealed the value of services to economies worldwide. They create wealth and jobs and, it is argued, have the potential to create more if the GATS process is successful. GATS, therefore, is deemed to be essential for the continued development of services worldwide. The difficulty for those of us who wish to defend public services lies in its definition; for if we are not clear about what we understand to be a **public** service according to the GATS definition, we are unable to see how Article 1.3, as the supporters of GATS claim, is not a threat to public services.

Article 1.3

10. Article 1.3 refers to public services as services "supplied in the exercise of governmental authority", and claims that these are exempted from GATS disciplines. This is qualified by the requirement that such services be supplied "neither on a commercial basis, nor in competition with one or more service suppliers". But as we state in our comments on specific

services sectors, it is by no means clear that services such as education and health, where there is private sector involvement, would be exempt. This uncertainty is compounded by WTO Secretariat background notes which suggest that the involvement of the private sector as exclusive providers on a temporary basis, as in PFI projects for example, may well expose UK public services to GATS disciplines.

11. This lack of clarity in Article 1.3 has long been acknowledged by the Government. This should be clarified to make it unambiguously clear that the 'exercise of governmental authority' allows, without fear of legal challenge under GATS rules, WTO members to exclude public services, and services of general interest, from liberalisation. A commitment to this effect was given at the meeting last November between DTI officials and representatives of the Trade Policy Consultative Forum. It would be extremely helpful if the Government were to give this commitment official public endorsement.

The EU's horizontal commitment

12. The EU has listed a 'horizontal commitment', in effect a limitation, relating to the provision of public services. It reads as follows:

> "In all EC Member States, services considered as public utilities at a national or local level may be subject to public monopolies or to exclusive rights granted to private operators!"

The EU took this up in 1994 and there is now pressure for its removal. The limitation is a protection of public monopoly services and, given the uncertainty surrounding GATS rules and the lack of clarity relating to Article 1.3, it is essential that it is safeguarded. Once again, the DTI/Trade Policy Consultative Forum meeting last November agreed that the horizontal limitation is important to avoid public services falling foul of GATS rules.

13. The UK, like all other WTO Member States, can place public services within the GATS framework if it wishes. We need to protect this voluntary 'agreement', so that the UK is not forced to do what it does not wish to do. If the GATS framework includes a specific exemption for public services, then we must adhere to this. A clear public commitment by the Government that it opposes the removal of the horizontal limitation from the EU's schedule of commitments is urgently required.

Regulation

14. In 'Fact and Fiction', published in March 2001, the WTO stated unequivocally that "the right to regulate is one of the fundamental principles of GATS" and that GATS specifically recognises "the right of Members to regulate, and to introduce new regulations on the supply of services within their territories in order to meet national policy objectives, provided the relevant measures are compatible with the GATS". This

qualification has caused widespread alarm among civil society groups who see GATS Article VI.4 as a threat to a Government's ability to regulate.

15. Article VI.4 states that Members shall develop any "necessary disciplines" to ensure that "measures relating to qualification requirements and procedures, technical standards and licensing procedures do not constitute unnecessary barriers to trade in services". Furthermore, Article VI.4(b) specifies that such disciplines shall aim to ensure that regulatory measures are "not more burdensome than necessary to ensure the quality of the service", and a "necessity test" is applied to determine that regulations are not more "trade restrictive than necessary". We are, consequently, justified to ask, whither regulation given the range of restrictions included within GATS rules?

Modes of Supply – Mode 4, temporary movement of natural persons

16. Specific commitments related to market access are listed according to four "modes of supply". Mode 4, relating to the temporary movement of "natural" persons, as opposed to corporations, is of particular interest to trade unions. We believe this has the potential to assist developed and developing countries, but given the restrictive nature of immigration policy in many countries it may prove difficult to operate. There is a suspicion among immigration authorities, that workers seeking temporary employment in a country under Mode 4 will take up permanent residence without official sanction.

17. We believe temporary workers entering the UK should be granted rights to enable them to carry out their responsibilities effectively and which protect them against all forms of discrimination. We support the statement published last November by the Global Unions/European Trade Union Confederation/World Confederation of Labour, which said that with regard to "Mode 4", (GATS) negotiations should ensure: "Protection of migrant workers against all forms of discrimination, and of the remittance of their contributions to social security and insurance schemes; observance of core international labour standards and national labour law; respect for existing collective bargaining agreements covering the sectors concerned; and full involvement of the ILO". Consequently, we urge the Government to press for these conditions under Mode 4.

Most Favoured Nation Treatment (Article II)

18. The MFN provision states that the best treatment given to any foreign service or service provider must be extended to all like foreign services and service providers. But as this allows countries to be "trade restrictive", as long as it is consistent in its treatment of all foreign services and service providers, it is believed not to be a threat to domestic services and service providers. Nevertheless, we believe that the application of the MFN rule could have a disadvantageous effect on domestic services and service providers through consolidation of commercialisation. Even where

governments retain the right to reverse the commercialisation of services where they have not made any specific market access commitments, they will be opposed by a number of foreign service providers if they attempt to do so. So even though countries are not legally prevented from doing so, the pressure not to reverse commercialisation will be intense, giving a great psychological advantage to non-domestic service providers.

Privatisation

19. In a paper to the Doha round of trade negotiations in November 2001, WTO Director-General Michael Moore said that "There is absolutely no requirement in the GATS to privatise any service. Governments retain the right not to make commitments on health and education services, or indeed any other services if they choose ..." While it is true that GATS is concerned with the liberalisation of trade in services, that is the opening up of domestic markets to competition, liberalisation assumes the existence of private markets. So, while liberalisation and privatisation are not interchangeable terms, they are not incompatible either. As long as there is pressure to liberalise, and GATS is an instrument of pressure, there will be pressure for a change in ownership where services remain in the public sector; and, as we have already noted, liberalisation/commercialisation will become a permanent feature of the services sector.

20. This link between liberalisation and privatisation was expressed in a communication by a number of developing countries in December 2001 who said, "GATS does not mandate countries to liberalise and privatise. However, it certainly does encourage and lock-in a country's liberalisation. Liberalisation in turn encourages privatisation. Many of the problems that have been experienced by countries through privatisation, could therefore well happen through GATS". Trade unions, like UNISON, are well aware of these problems, which vindicates our view that GATS is more of a threat than an opportunity.

Subsidies

21. We make specific reference to the impact of subsidies on employment conditions within the education sector, but there is a wider question that needs to be addressed. The consultation document asks "what kind of domestic subsidies might be considered trade distortive and why?" There is more than a hint here that subsidies for the domestic providers of services may be banned under GATS rules. If this were to happen it would be inconsistent with the provision of subsidies for domestic producers of goods which are excluded from the national treatment standard by GATT Article 111.8(b).

22. If subsidies for the domestic providers of services are deemed to be "trade distortive", then this rule would have to be extended, under the MFN treatment, to all providers of services. EU subsidies to coal and steel industries are rapidly being phased out, and cross-subsidies are disallowed within the UK energy services sector. In some areas, however, subsidies are a method of pursuing national policy objectives and it would be inconsistent with the freedom to regulate to achieve national policy objectives, if they were deemed to be "trade restrictive". We believe that governments should have the right to use subsidies where national policy objectives clearly help to promote social development, economic growth and environmental protection.

Part Two

Service Sectors

a) Education

23. The consultation document stresses that GATS in the school sector only covers private education. However, it could be argued that state schools are in competition with private schools, and that the semi-privatised city academies blur the line further, making it harder to hold against global pressures for opening up the market in services. The private sector is providing services throughout the state system; private capital is funding new schools through PFI and city academies; and governors can now set up companies. Where LEA services, such as school improvement and recruitment, have been taken over by the private sector, they seem to fall under GATS.

24. The consultation document also emphasises that GATS is not intended to cover public services and that the government "*will not make commitments that could call into question the funding and regulation of the state education system".* However, further and higher education is clearly vulnerable to being fully within the scope of GATS.

25. The funding for higher education could be seriously and radically restructured if they were subject to GATS. The fundamental principle of GATS is 'non-discrimination'. This means, in terms of the funding, UK service providers ie the higher education establishments, must be treated the same way as foreign service providers. Not for profit HE providers, therefore, could have to compete with for profit HE providers for public funds.

26. Furthermore, the cross subsidisation of non cost-effective courses using revenues from lucrative courses could be lost as the revenue generating courses are creamed off by for-profit competitors. This could then lead to the closure of 'expensive' courses regardless of their academic, economic or social value.

27. We are also concerned that GATS will erode the maintenance of high standards and undermine the assurance that educational experience and qualifications are comparable. There is a danger that narrow trade rules, focusing on ensuring that qualifications requirements promote free trade, will take precedence over other priorities.

28. We have commented on the general impact of GATS on regulation, but we believe that this could have a particular effect on the education sector's ability to regulate in the interests of the UK's education system. Regulations affecting all service sectors covered by GATS are subject to the WTO disputes panel, and will be judged on the grounds of whether they constitute a barrier to trade. It is essential that the EU/UK retains the ability to regulate the education sector.

29. Employment conditions and pay could be seriously undermined by the increase in competition in the education sector. The institutions and educational establishments would feel increased pressure in competing for public funds against for profit companies, thereby hindering the ability of staff to bargain for improvements in pay and conditions. This could lead to increased casualisation of the workforce.

30. We believe that many areas of public education could be viewed as being supplied through competition with the private sector. All education should, therefore, be ring-fenced from GATS commitments, to protect the regulation of, and subsidies to, state education at all levels.

b) Energy Services

31. The consultation paper refers to the liberalisation of the energy (electricity and gas) market in the UK and draws attention to the benefits of this, largely through price reductions to consumers. It implies that competition has been mainly responsible for the fall in prices, with other factors such as reductions in VAT and the fossil fuel levy also playing a part. The paper also draws attention to the increase in consumer choice of supplier, and states that this has resulted in a significant switch of suppliers in recent years. While there have undoubtedly been gains from energy liberalisation, though energy prices would be even lower if companies passed on a higher proportion of the reduction in costs, there have also been significant losses.

32. These losses have manifested themselves in two ways. First, there have been substantial job losses, not all admittedly due to liberalisation. Secondly, there is greater instability and uncertainty in the energy market, with a number of companies on the verge of bankruptcy only to be 'saved' by a takeover bid or government support. This instability and uncertainty would likely increase were there to be a further opening of energy services through GATS.

33. The consultation paper points out, the EU energy market is moving toward full liberalisation, the establishment of national regulatory

authorities, improved arrangements for third party access to infrastructure, and so on. In fact all the objectives of the GATS. It is difficult to see therefore just what additional advantages would accrue to the UK and EU energy market if the GATS was fully applied. A major concern we have is the impact that extended liberalisation throughout the EU will have on security of supply. Consequently, we believe that no further commitments should be made through GATS and that the focus of government policy should be to promote safe, secure and environmentally benign energy services.

c) Environmental Services

34. UNISON believes it is essential that the UK and developing countries are able to retain public provision of utility services such as energy, transport and waste and that the risk of a 'lock-in' of existing public utilities that have already been privatised is avoided. This is an anti-democratic measure that prevents governments from reversing privatisation on either public policy grounds or for efficiency reasons, for example in the case of Railtrack, now Network Rail.

35. Because of the diverse range of economic models used in the UK to provide public services, including private, voluntary, non-profit making and public, and considering the wide range of services covered from waste to education and health, it is difficult to see how the Government could resist further privatisation, even where particular authorities did not wish to privatise.

36. We believe that the consultation paper is inconsistent with regard to developing countries. On the one hand it promotes the idea that privatisation is desirable ***provided*** that a suitable system of regulation is in place. (We suspect that requests have been made by the EU to include developing countries' water services in the GATS process). On the other hand it says that, 'Nothing in the GATS can prevent countries regulating in this way or pressure them into a specific public or private service delivery model'. The fact is, however, that nowhere in the developing world is there any suitable regulatory capacity, so it is difficult to see how it can apply to developing countries. Moreover the ambiguity of Article 1.3 gives no reason to be confident about the exclusion of public and government services.

37. The EC's classification proposal for 'Environmental Services' are all to a lesser or greater extent existing public services in the UK. Some of these are strategically important regulatory functions, such as protection of ambient air and climate. The former is a function shared by DEFRA and local authorities, while the latter is an Environment Agency function. Indeed the EA performs the regulatory role in solid/hazardous waste management, remediation and clean up of soil and water, protection of biodiversity and landscape and other environmental and ancillary services.

38. UNISON does not believe that the UK should be prepared to agree to bind our current water regime in the GATS as to do so would be anti-democratic. It would place future governments in a straitjacket. Moreover, the GATS regime raises serious questions about the existing OFWAT policy on both ownership and licensing of water companies and the position of the competition commission to water company ownership.

39. UNISON does not believe that any public environmental services should be included in GATS. This should be a matter for domestic public policy decision at national and local level, as to the extent of private sector involvement. A distinction should, however, be made between this and the providers of specialist environmental services.

c) Health

40. UNISON considers that the UK/EU has already entered into far reaching GATS commitments affecting the provision of health services. The main existing commitments with a potential impact on health services are as follows:

- **Hospital services** – full commitments in Modes 2 and 3 with Mode 1 closed. Mode 4 is closed except as stated in the EU's horizontal commitment.
- **Medical, dental and midwifery** – full commitments in Modes 2 and 3 except for a specific limitation on Mode 3, which states that market access for doctors is subject to medical manpower planning. Mode 1 is closed and Mode 4 is closed except as stated in the EU's horizontal commitment.
- **Nurses, Physiotherapists and Paramedical Personnel** – full commitments in Modes 2 and 3. Mode 1 is closed and Mode 4 is closed except as stated in the EU's horizontal commitment.
- **Research and development services** – commitments on social sciences and the humanities. No other commitments.
- **Database services** – full commitments in Modes 1-3.
- **Education services** – full commitments in privately funded education services in Modes 1-3. Mode 4 is closed except as stated in the EU's horizontal commitment.

41. The impact of these existing commitments is far from clear, and may not yet have been fully felt. However, certain observations can be made.

42. Firstly, it is concerning that whilst the UK's GATS schedule clearly stipulates that its commitments in the educational services sector only apply to 'privately funded education services' no such qualification is attached to any of the commitments in the main health related sectors. This disparity gives rise to the question of why the limitation to privately funded services was felt to be necessary in one area but not the other, and reinforces concerns about the impact of current GATS commitments on the NHS.

43. Secondly, it is important to note that public health services are affected not only by GATS commitments in specifically medical sub-sectors such as 'hospital services', but also by commitments in other sectors such as database services and research and development services. This means that if another country wanted to challenge the exemption of the NHS from GATS it could do so not only in a specifically medical sub-sector, but also these other sectors.

44. We believe that a fuller analysis of the impact of existing GATS commitments in health-related fields is required before any further commitments are considered, and calls upon the DTI to undertake and publish such a study with the Department of Health as a matter of urgency.

45. We are deeply concerned that GATS commitments entered into by the UK Government and the EU, both to date and in the future, may compromise the ability of the UK to operate a publicly provided, publicly controlled health service, free to all at the point of use.

46. There is mounting evidence to suggest that the GATS may be used as an engine for greater privatisation in the health sector. The Chair of the US Coalition of Service Industries, Dean O'Hare, has said that "GATS can encourage more privatisation, particularly in the field of health care." The WTO itself has openly expressed its desire to see the GATS lead to a greater role for private companies in healthcare. A background note on health and social services by the WTO Secretariat states that "The forthcoming round of negotiations under the GATS offers an opportunity for WTO Members to reconsider the breadth and depth of their commitments on health and social services, which are currently trailing behind other large sectors." It goes on to suggest that "External opening may play an important role in any market-based reform strategy. While health and social services have long been considered as non-tradables to be provided by public institutions, there has been a change in policy perception in a number of countries."

47. We believe it is essential that the National Health Service is totally exempt from GATS. The application of GATS to the National Health Service would fundamentally threaten the model of the NHS, exposing it to a number of potential legal challenges under the GATS rules. According to the national treatment principle in Article XVII of the GATS, all foreign service providers must be treated at least as well as domestic firms, and government interventions which modify the conditions of competition in favour of their country's own services or service suppliers compared to like services or service suppliers of any other Member are prohibited. In sectors in which the UK has made commitments, therefore, it could be claimed that the monopoly provision of services by NHS providers constitutes a barrier to trade in breech of Article XVII and is unlawful. Such a challenge, if successful, could give private overseas companies the right to compete to provide NHS care, leading to a damaging degree of competition in the NHS. UNISON is already opposed to the Government's policy destabilising publicly provided services, and increasing costs

through the fragmentation of purchasing arrangements. An obligation on Government to allow private companies to compete for NHS work would further increase the level of competition, and would make any subsequent reversal of policy difficult if not impossible.

48. A further important aspect of the NHS that could be affected by the application of GATS commitments is government subsidy of the NHS. The operation of the GATS provisions on subsidies is confused and uncertain. However, there is a serious risk that, should the NHS be brought within the scope of GATS, the government would be required to extend subsidies granted to services in committed sectors to competing private sector companies, or alternatively to withdraw subsidies from NHS providers. This, for example, is the view of the WTO Secretariat, according to which subsidies and similar economic benefits conferred on government owned entities would be subject to the national treatment obligation under Article XVII. Clearly, were this prediction to come to pass, it would radically undermine the model of the NHS, in which health services are provided free to all at the point of use, funded out of general taxation.

49. Finally, it is likely that the application of GATS commitments to the National Health Service would increase inequality of access. Thus, for instance, the application of the market access principle to the NHS could make it impossible for the Government to control where hospitals and GPs were located, allowing private operators to place them in the most affluent areas and to avoid socially deprived locations where conditions might be less favourable. Such results would reinforce existing health inequalities.

50. It is often argued by defenders of GATS that public health services are protected by Article 1.3 of the GATS agreement, which excludes from the scope of GATS services 'supplied neither on a commercial basis, nor in competition with one or more service suppliers.' However, the wording of Article 1.3 is ambiguous and has not yet been clarified by WTO jurisprudence. As a result there in fact exists significant doubt as to whether public health services are included in the services exempted from GATS by Article 1.3.

51. The principal source of uncertainty regarding the exemption of public health services lies in the specification in Article 1.3 that in order to be exempted services must not be supplied in competition with one or more service suppliers. In an increasing number of countries, particularly the UK, public and private health care providers exist and compete side by side. Thus, for example, in the UK the private sector could be said to compete with the NHS both in the sense of selling services as an alternative to NHS funded care, and as a provider of NHS care under schemes such as the Private Finance Initiative, privately run diagnostic and treatment centres and the international establishment scheme. Such developments have led some commentators to suggest that the Article 1.3 exemption may not apply, or may apply only in part, to public health services such as the NHS. This, for instance, is the case with the WTO secretariat, according to which "the coexistence of private and public

hospitals may raise questions, however, concerning their competitive relationship and applicability of the GATS: in particular, can public hospitals be deemed to fall under Article 1.3?"

52. A further possible source of ambiguity in the wording of the Article 1.3 exemption relates to the requirement that to be exempted services must not be supplied on a 'commercial basis'. In the UK context, it has recently been ruled in the *Bettercare* judgement that commissioning by public bodies amounts to a commercial undertaking. This may have the effect of undermining any claim that services such as the NHS are not commercial undertakings, thus further weakening the exemption of the NHS from GATS under Article 1.3.

53. In the absence of reliable protection in the form of Article 1.3, the NHS depends for exemption on the EU's horizontal limitation on member states' sector specific commitments to allow services considered as public utilities to be subject to public monopolies or exclusive rights granted to private operators. However, this protection applies only to some forms of service, being limited to commitments in Mode 3 (commercial presence). Furthermore, as we indicate below, the EU's limitation on public services has been requested for removal as part of the current round of GATS negotiations.

54. UNISON considers that further GATS commitments in health-related sectors could have a damaging impact on the National Health Service and should not be entered into. The following sections explore the different possible commitments that the UK could enter into that would affect the National Health Service, and what their impacts would be.

55. Of the requests for further liberalisation received by the EU/UK under the current GATS negotiations, the most important from the perspective of public health services is that asking for the removal of the EU's horizontal limitation in relation to the applicability of GATS to public utilities.

56. We believe that this horizontal limitation plays a vital role in protecting the governments' ability to run public health services, and that it should under no circumstances be surrendered or weakened. Were the EU's horizontal limitation on the applicability of GATS to public utilities to disappear, this would leave the NHS dependent on only the weakly worded Article 1.3 to protect its ability to operate public monopolies and to grant exclusive rights to private operators.

57. The fundamental impact that the prohibition of public monopolies would have on the NHS has already been discussed above. In addition, however, it is worthwhile noting that the removal of the ability to grant exclusive rights to private operators could also have implications for the operation of the NHS, in particular in relation to a number of the Government's recent initiatives. Thus, for instance, it has been suggested that it could curtail NHS bodies' choice of private sector companies to act as partners in Health Action Zones. Another initiative which could be

affected is the Government's proposed international establishment scheme, under which private sector companies from overseas will set up and run clinical and diagnostic centres with the aim of increasing NHS capacity. Under the terms of the scheme, it is intended that companies will be required to staff the new centres with staff additional to existing NHS personnel. Whilst, however, the UK's GATS schedule includes a specific limitation for medical services in Mode 3, stating that market access for doctors is subject to medical manpower planning, no such limitation exists for other classes of health service personnel. This may mean that, if the EU's horizontal limitation in relation to public utilities is removed, the UK Government will be unable to require companies participating in the international establishment scheme to draw classes of health service personnel other than doctors from overseas.

58. The UK currently lacks any commitments in mode 1 (cross border services) in relation to hospital services, medical, dental and midwifery services or nurses, physiotherapists and paramedical personnel. The WTO has recently clarified that cross border supply of such services is possible (eg. by telephone or internet). As a result, the UK could well be requested to make Mode 1 commitments in these services in the context of the current negotiations, although no such requests have been received as yet.

59. It is important to note that the EU's horizontal limitation in relation to public utilities applies only in relation to Mode 3 supply (commercial presence) and not to Mode 1. This means that if commitments are entered into in Mode 1, the NHS will be protected from their impact only by the unreliable Article 1.3 public services exemption.

60. UNISON is concerned that should Mode 1 commitments be entered into and Article 1.3 not prove effective, this could result in the application of national treatment and market access rules to areas of the NHS such as telemedicine and NHS Direct, opening them up to private sector provision. UNISON is therefore of the view that the Government should not take on any further Mode 1 commitments in health related sectors. In particular, we would oppose the UK entering into Mode 1 commitments in hospital services, medical, dental and midwifery services or nurses, physiotherapists and paramedical personnel.

61. Two specific requests have been received by the UK in relation to the liberalisation of Mode 4 supply (movement of natural persons) in the medical, dental and related services sector. These are:

- to allow foreign medical doctors to practise in the UK, and to allow foreign medical doctors to accompany patients of their own nationality seeking treatment in the UK.
- to remove unnecessary training from licensing requirements for nurses.

62. We would be strongly opposed to the UK taking on any commitments, which might compromise its ability to maintain registration requirements on

foreign medical staff in the UK as a means of ensuring adequate professional standards and patient safety. Nor could we accept any commitment that would exempt nurses from abroad from reaching required minimum standards of training for nurses in the UK.

63. UNISON is concerned that if negotiations under Article VI lead to the development of rules regarding what constitutes permissible domestic regulation, this would have a serious detrimental impact on countries' ability to effectively regulate the provision of health care and to operate public health services. Under the 'necessity test' which is being developed within the current negotiations on Article VI, countries would be required to show that domestic regulations were both in pursuit of a legitimate objective, and implemented in the least trade restrictive way possible. Such a necessity test could force governments to liberalise many of their existing health regulations, for instance in relation to professional accreditation and the observance of minimum employment standards in public health services. This danger is further exacerbated by the fact that it is currently uncertain whether or not Article VI will apply across all sectors, rather than only those in which specific commitments have been entered into.

d) Local Government

Background

64. One of the most fundamental developments in the last twenty years has been the shift in the role of the local authority from direct provider of public services to the "enabling authority". This has involved a split between providers and purchasers of services. The 1991 Consultation Paper on Local Government said, "Local authorities are undergoing a fundamental transformation from being the main providers of services to having the responsibility for securing their provision. The task of setting standards, specifying the work to be done and monitoring performance is better done if it is fully separated from the job of providing services."

65. Compulsory Competitive Tendering (CCT) barred a local authority from carrying out certain defined activities in-house, unless the work had first gone out to tender and had been won in open competition. CCT was first introduced for construction, maintenance and highways work by the Local Government, Planning and Land Act 1980. It was extended to other manual services, such as refuse collection and ground maintenance, through the Local Government Act 1988. Sports and leisure management was added as a further defined activity through secondary legislation in 1989, and other manual activities were added during 1994.

66. CCT was introduced in England for a wide range of local authority professional services, under a phased timetable for implementation, beginning with housing management, legal and construction and property services in 1994, and information technology, finance and personnel services in 1995. Under CCT local authorities were required to expose all

specified services to CCT before they could be undertaken by their own staff, but they were only required to expose a percentage of their work for each professional service.

67. Despite the fact that over 70% of local government contracts were being won by Direct Service Organisations (DSOs), competitive tendering led to further privatisation, as DSOs suffered reduced workload and private companies sought to increase their market share. Thousands of jobs were lost and hundreds of transferred employees cut. By 2000, over 100 local authorities had externalised DSOs, technical services, financial and ICT services, transferred leisure, arts, residential care to trusts and/or transferred all or part of their housing stock to housing associations.

68. Analysis of Labour Force Survey figures by the Employers' Organisation in 2000 shows that the number of people working in local government has fallen by 25% over the past 20 years. The numbers of staff employed in all services other than education and social services have declined substantially since 1979, despite councils acquiring new responsibilities over this period, such as housing benefit. Nonetheless, local government continues to be a major employer, with over two million people directly employed by authorities in England and Wales. Research produced for the Employers' Organisation policy panel highlights that, compared with the rest of the economy, the current local government workforce has more female, part-time and older workers, and better-qualified workers, but fewer black and ethnic minority staff.

69. The cumulative effect of two decades of change-leading to reduced job security, rising workload and downward pressure on wages-- has meant that few local authorities are now free of recruitment difficulties. According to the seventh annual survey conducted by the Employers' Organisation for local government and the Provincial Employers' Organisations, only around one-third of employers reported any recruitment problems in the 1995, 1996 and 1997 surveys but, since then, fewer and fewer local authorities have been trouble-free. The latest survey, conducted in January 2001, found that the proportion of councils affected had risen to 84%.

70. Furthermore, the incidence of recruitment difficulties within an authority seems to be increasing over time. The worst affected occupations are social workers, followed closely by occupational therapists, trading standards officers, IT professionals, teachers and environmental health officers. There is also evidence of recruitment and retention problems among cleaning, catering and other manual staff, who are increasingly attracted by jobs elsewhere in the service and retail sectors.

71. The 2002 Audit Commission Report on Recruitment and Retention in the Public Services found that staff turnover was a growing problem; bringing with it high recruitment costs which undermined service quality. To address the problem the report concluded that work experiences must improve; engaging, valuing and supporting staff. While UNISON's own

surveys indicate that a "commitment to the job" stops council workers quitting their posts despite feeling stressed and undervalued, it is only a matter of time before hard-pressed local government workers vote with their feet.

72. It is important to appreciate the background to events in local government in recent years if one wishes to understand how the GATS will affect the future delivery of services. As we have seen local government has been subject to a significant degree of market discipline in a range of activities. It is unclear, as we state in our introduction and in our comments on other service sectors, whether these services come within the definition of Article 1.3 whereby services "supplied in the exercise of governmental authority" are exempt from GATS disciplines. This needs to be clarified with respect to local government services, as well as education and health.

73. Local authorities' powers under the land-use planning system are arguably the single most effective method of controlling and regulating the social, economic and environmental impact of housing, retail development, transport and waste management. The land-use planning system is therefore crucial to sustainable development. This could be under threat from GATS under the "national treatment" rule, where it is stated that foreign service suppliers should be treated no less favourably than domestic suppliers. Local authorities have significant responsibility for protecting the local environment, as part of their obligations to enhance local sustainability. They have a duty to make policy decisions following full examination of the facts and having a reasonably clear view of the impact of policy on the community. Environmental decisions are governed by the 'precautionary principle' which guards against the impact of rash decisions. This is a valuable protection that could be threatened under the "trade restrictive" test of GATS rules.

74. We are also concerned about the threat to local government's ability to protect the public interest generally and the conditions of employment of staff. For example, the current Local Government Bill includes measures under Clauses 101 and 102 which aim at providing greater employment protection for local authority staff who are transferred to independent/private contractors. This protection may not be granted under Article 1.3 if it is deemed that the service is not "supplied in the exercise of governmental authority", but instead falls within the definition of provision on a commercial basis or in competition with other suppliers. In the UK this has resulted in a 2-tier workforce, which UNISON has campaigned against vigorously.

e) International

75. UNISON is not opposed to world trade. In fact we believe that with effective regulation, trade can bring benefits to developing countries. We are concerned, however, that the current GATS negotiations will have a negative impact on developing countries. Far from providing opportunities for developing countries, the GATS negotiations are a real opportunity for

rich countries to apply pressure on the poor to open up their services for takeover by powerful transnational corporations.

76. Proponents of GATS claim that liberalisation leads to economic growth and that this will help reduce poverty and inequality in developing countries. As far as we are aware there are no studies to show that where it has occurred liberalisation has been of benefit to developing countries.

77. There is a huge difference in export capacity between developed and developing countries in the supply of services. Developing countries are unable to compete in many sectors which are already dominated by multinational corporations. The EU alone has 26% of world trade in services, while WTO data indicates that the US dominates the export market for services. GATS favours countries with strong service industries like the EU and the US.

78. GATS also limits the policy options open to governments to achieve development, thus reducing the ability of developing countries to regulate and to promote domestic business. In addition, developing countries are often not in a position to implement effective regulation due to less developed institutional capacity, as well as the strong bargaining power of monopolistic foreign companies. There have been cases where developed country governments have threatened to withhold aid if their companies are not granted concessions from a particular regulation. The relatively weak regulatory power of developing countries has not been taken into account in the GATS negotiations.

79. Flexibility and the ability to choose what to liberalise depends on a fair process conducted on an equal footing. The GATS negotiations are not being conducted in this way, as they give the advantage to rich countries and multinationals.

80. The negotiating power of developing countries in WTO negotiations is weak, and current negotiations are likely to be highly stacked against them. It is primarily the export interests of the developed countries and the multinationals that are aggressively driving current GATS talks and there will be enormous pressure on developing countries to open up their services.

81. To benefit developing countries, services must be affordable, accessible and of good quality. Access to quality public services must depend on need and not on ability to pay. We have serious doubts that GATS will provide this. There are real dangers that the GATS will merely serve as an excuse to continue the structural adjustment programmes which have been used by the International Monetary Fund and the World Bank over the past two decades or more to force many governments in the South to dismantle their public services and allow foreign-based healthcare, education and water corporations to provide services on a for-profit basis.

82. Under the proposed GATS rules, developing countries will experience a

further dismantling of local service providers, restrictions on the build up of domestic service providers and the creation of new monopolies dominated by corporate service providers based in the North. By dramatically increasing market control by foreign service corporations and by threatening the future of public services, the GATS agenda is likely to trigger an assault on rights and democracy in developing countries. We are particularly concerned that multinationals will use the GATS to bring in foreign workers and to lower working conditions, and that ILO core labour standards will in many cases be ignored.

83. The GATS is a multinationals charter. The chief beneficiaries of the new GATS regime are a breed of corporate service providers for whom GATS will provide guaranteed access to domestic markets in all sectors – including health, education and water – by permitting them to establish their commercial presence in another country and guaranteeing them speedy irreversible market access, especially in developing countries. The GATS will enable these companies to expand their global commercial reach and to turn public services into private markets all over the world. Service industries are the fastest growing sector of the new global economy and health, education water are shaping up to be the most lucrative of all.

84. Although it is stated that privatisation is not forced by GATS, service sector liberalisation could lead to privatisation in developing countries, due to the inability of government and domestic companies to compete. Experience of privatisation in developing countries shows that private companies have failed to deliver to the poorest and neediest, while filtering benefits to the richest sections of society. So far, trade liberalisation has had devastating effects on health and education in developing countries, where key public services have been undermined by the private sector.

Summary and Recommendations

85. It has not been possible in this response to comment adequately on all the issues raised and to answer effectively all the questions. The information provided is of a general nature, with little detail to enable an accurate analysis. This is the result of a process that has so far lacked transparency. Unless this changes and there is greater openness and a willingness to provide proper information, it will be difficult for trade unions and other groups in civil society to form an unbiased judgement on the impact of the GATS.

86. This is compounded by the failure to provide, under Article XIX of the GATS, "an assessment of trade in services in overall terms and on a sectoral basis". A full assessment of the social, economic and environmental impact should be conducted urgently. This should involve the relevant specialised agencies of the UN, including the ILO, trade unions and other representative bodies. We urge the Government to press for such as assessment and to make this known to all interested parties. While such an assessment is being

undertaken the GATS process should be halted, and it should only be continued if it is clearly shown that the gains of GATS greatly outweigh the losses.

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McAuliffe, Andrea (SEN)

From: Jarrod Moran [jmoran@vthc.org.au]
Sent: Friday, 11 April 2003 5:00 PM
To: FADT, Committee (SEN)
Subject: General Agreement on Trade in Services and Australia/US Free Trade Agreement

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11 April 2003

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

ear Sir/Madam,
General Agreement on Trade in Services and Australia/
US Free Trade Agreement
Please find attached the submission of the Victorian Trades Hall Council on the above inquiry.
Representatives of the VTHC are available at any time if you require clarification or further comment on these matters.
Also representatives of the VTHC are available to attend any public hearings that may be programmed.
If further information is required please contact me directly on (03) 9662 3511.

Yours sincerely

LEIGH HUBBARD
Secretary

<<GATS Submission.doc>>

PARLIAMENT OF AUSTRALIA

Senate Foreign Affairs, Defence and Trade Committee

Inquiry into General Agreement on Trade in Services and Australia/US Free Trade Agreement

SUBMISSION OF
VICTORIAN TRADES HALL COUNCIL
APRIL 2003

Terms of reference

1. *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, 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*
2. *The issues for Australia in the negotiation of a Free Trade Agreement with the United States of America 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*
   - (c) *the impact on the Doha Development Round*

Introduction

1. The Victorian Trades Hall Council (VTHC) makes this submission on the above Senate Committee inquiry. The VTHC represents over 50 affiliated union organisations (including some divisions of unions which have maintained separate affiliation), representing approximately 400,000 union members. We welcome this opportunity to comment on the General Agreement on Trade in Services (GATS) and the proposed Australia-United States free trade agreement (AUSFTA).
2. The VTHC notes the submissions of the Australian Council of Trade Unions to:
   - The Office of Trade Negotiations on the GATS Negotiations and Australia's initial offer; and,
   - The Department of Foreign Affairs and Trade, United States Free Trade Agreement Taskforce.
3. The VTHC commends these submissions to the Committee as a critique of the issues raised in the Terms of Reference of this inquiry from the viewpoint of the working men and women of Australia.
4. Before turning to our specific concerns regarding the two agreements, VTHC wishes to comment on the general framework guiding our position on international trade agreements. VTHC does not oppose international trade or the establishment of a rules-based trading system to regulate or facilitate a better trading arrangement, but we argue that the current system does not provide an adequate balance between the interests of international capital and the interests of the broader working public. VTHC believes that the international trading system should be compatible with Australia's obligations under the International Labour Organisation (ILO) Conventions, and other international human rights instruments, particularly the International Covenant on Economic, Social and Cultural Rights.
5. We are pleased to note that under the recent Trade Promotion Authority given to President Bush in 2002 that the United States cannot negotiate trade agreements with other countries unless such agreements have as their principal negotiating objectives the *promotion* of the fundamental core labour standards of the ILO, and provisions relating to environmental protections. VTHC welcomes the inclusion of these objectives in the proposed AUSFTA. This is

long overdue. However, we are well aware that many of the current models have proven inadequate. While investors are able to secure their rights and receive compensation under trade agreements, worker provisions in trade agreements have thus far failed to secure the rights of workers. Given such disappointing results, VTHC hopes that the AUSFTA labour chapter is more substantive.

VTHC - Guiding Framework for Trade Agreements

6. VTHC supports the position on trade, globalisation and labour rights adopted at the ACTU Congress 2000, and the union movement's campaign for fair trade rather than the present model of 'free trade'. As the ACTU points out in its 2000 policy statement, fair trade does not involve protectionism but means trade carried out in a manner which benefits civil society and delivers progress for all countries in terms of:
   - employment growth;
   - improved social protections;
   - implementation of core labour standards
   - sustainable environmental standards
   - elimination of forced labour/child labour; and
   - adherence to human rights and democratic values.
7. In addition to the ACTU policy, we support the International Confederation of Free Trade Unions' (ICFTU) demand that a labour provision/chapter should be included in all trade agreements. Such labour provisions should ensure that no trade agreement undermines adherence to the following core labour standards:
   - Freedom of association and the right to organise (Conventions 87 and 98)
   - Freedom from forced labour and abolition of forced labour (Conventions 29 and 105)
   - Freedom from discrimination (Conventions 100 and 111)
   - Minimum age for employment/elimination of child labour (Conventions 138 and 182)
8. It is the view of VTHC that trade agreements as negotiated to date have largely had a negative impact on workers. This happens directly through the impact of

powerful transnational financial institutions exerting pressure to limit the bargaining strength of unions thereby affecting workers pay and conditions. Or it can impact on workers as consumers. This is of particular concern in relation to the GATS agreement as the threat to public services may result in the undermining of universal coverage and raise the costs of such services. Despite successive governments' espousal of the benefits of free trade, deregulation and privatisation, workers have not benefited. Australia's manufacturing sector has declined with consequent job losses, while privatisation, - in contrast to the claims of efficiency and better affordability, - has resulted in ever-increasing service costs squeezing what is already a tight budget for many working families. We believe that unless public services and public interest laws/regulations are quarantined from WTO challenges the burden on many working families will increase.

9. VTHC also believes that the negotiation process is seriously flawed. Unlike other democratic countries, in particular Canada where the public is kept informed about trade negotiations, Australians are not adequately consulted by the federal government. Senate inquiries are instituted after the negotiation process, and the government can choose to ignore inquiry recommendations. First, the process should be changed to include parliamentary rather than executive oversight. Second, as international trade agreements apply to state and local government, representatives from all levels of governments should be included in the process from the beginning, and third, given the broad scope of agreements such as GATS and their impact on government regulatory powers, 'stakeholders' such as unions and peak civil society groups should also be included in the process. Finally, the dispute panels process also needs to be reformed, it is crucial that the dispute settlement process mirror the procedures of domestic courts in terms of transparency and accountability. Procedures should be open and amicus briefs from interested parties, including unions and NGOs, should be allowed.

10. This submission will be separated into two sections; the first will cover our concerns in relation to GATS, while the second will focus on the Australia-US free trade agreement.

GATS

11. There has been ongoing international debate over the likely impact of GATS on public services. The WTO, concerned about the public apprehension over the threat to services, published a document, *GATS – Fact and Fiction.* This document was designed to dispel public anxiety, however, since that time that anxiety has grown and a careful examination of GATS gives credence to civil society concerns about GATS and public services. There is a major problem with any agreement that locks into place policies that have yet to be assessed in terms of their social and environmental impact, policies that disregard the differentiating bargaining power between different economies, and that fail to acknowledge the disparity in wealth between different levels of society.

12. VTHC notes the Joint Standing Committee on Treaties (JSCOT) report no 42, *Who's Afraid of the WTO? Australia and the World Trade Organisation,* recommended that the *"Commonwealth Government commission multi-disciplinary research to evaluate the socio-economic impact of trade liberalization in Australia since the conclusion of the Uruguay Round in 1994".* JSCOT also recommended that the *"Commonwealth Government assess the likely socio-economic impacts on industry sectors and surrounding communities".* In addition, Article XIX of GATS requires for each round of negotiations, *"an assessment of trade in services in overall terms and on a sectoral basis".* Neither of JSCOT's recommendations were taken up by the government, nor has the government carried out an assessment in accordance with Article XIX. We suggest that the government do so in light of the current GATS negotiations.

13. The WTO, and various governments, including the Australian government, are quick to point out that GATS does not threaten public services. They often cite the statement in the preamble which recognizes the *"right of Members to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives."* However, what is left out of this consoling comment is that preambular statements have no legal authority, they are not binding statements and as such are basically useless to rely on as a tool for the protection of public services. To further allay fears, the

Australian government has pointed to Article 3(b) of GATS to assert that public services are not included in the agreement. Article 3(b) states:

"services" includes any service in any sector except services supplied in the exercise of governmental authority;

however, 3(b) needs to be read in conjunction with 3(c) which necessarily qualifies it and narrows it substantially:

"a service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

14. This means that a public service "supplied in the exercise of governmental authority" to be protected, must be supplied on a non-commercial basis and supplied without being in competition with other suppliers. This is an absurd proposition, as since the economic restructuring beginning in the 1980s, all public services in Australia have been either privatised, partially privatised, contracted-out, or have had commercial elements incorporated into their structure. As the ACTU made clear in its submission relating to Australia's position for the November, 2001, WTO Ministerial Meeting:

"In Australia social services, including health and education services, are supplied by a mix of public and private providers. It can be argued that government schools compete with private schools in the sense that they are competing for enrolments. TAFE colleges also compete with private vocational education and training providers. Similarly, it can be argued that public and private hospitals compete for patients, particularly where a significant proportion of citizens belonging to private health insurance funds which may be charged by either public or private hospitals in certain circumstances.

In the case of higher education institutions, there is competition for fee-paying overseas students and full fee-paying Australian domestic postgraduate students. There is also competition for full-fee paying undergraduate students since the current government permitted public universities to charge fees for up to 25% of the places provided by a mix of government funding and liability for the Higher Education Contribution Scheme. The last-mentioned category of places is further complicated by the ability to pay HECS as an up-front fee, and the competition between public universities for enrolments in HECS-liable places. In certain discipline areas, government funding of undergraduate places

at private providers such as Notre Dame University, Avondale College, and Marcus Oldham Agricultural College, has created a degree of competition for publicly funded places between public and private providers."

15. The above examples, highlighted by the ACTU, demonstrates the complexity of the provision of public services in Australia and how the simple division of public versus private services used by GATS proponents will not work. Any matter brought before the WTO dispute panel on the basis of the Article 1.3(b) and (c) with the above complicated admixture of funding will not be protected. An examination of Article 55 of the EC Treaty illustrates the difficulty evident in these 'so-called' exclusion provisions. Article 55 of the EC Treaty states:
"The provisions shall not apply, so far as any Member State is concerned, to activities which in that State are connected, even occasionally, with the exercise of official authority."
As with GATS Article 1.3(b), Article 55 was designed to protect public services and services exercised under official authority. To date, in cases brought before the European Court of Justice, no activity has been found to be excluded under Article 55. In addition, a perusal of WTO Secretariat Notes indicate that a very narrow interpretation of Article 1.3(b) is likely to be preferred over one that requires a balancing of public and private interests. One of the major objectives of GATS is the "progressive liberalisation of services", that this will define the parameters of legal interpretation is demonstrated by the following Secretariat Notes regarding the co-existence of government owned and private hospitals:
" . . . concerning their competitive relationship and the applicability of the GATS: in particular, can public hospitals nevertheless be deemed to fall under Article 1.3? - that the hospital sector in many countries, however, is made up of government and privately-owned entities which both operate on a commercial basis, charging the patient, or his insurance for the treatment provided. Supplementary subsidies may be granted for social, regional and similar policy purposes. It seems unrealistic in such cases to argue for continued application of Article1.3 and/or maintain that no competitive relationship exists between the two groups of suppliers or services." [1]

[1] Health and Social Services, Background Note by the Secretariat, 19/9/98. S/C/W/50

Likewise a Background Note referring to Environmental Services states:

". . . if services were deemed to be supplied on a commercial basis, then regardless of whether ownership was in public or private hands, the sector would be subject to the main GATS disciplines and to the negotiation of commitments under Articles XVI and XVII. A different issue arises in situations in which the government has privatised certain services as local monopolies and the private firms receive payment from the government rather than individual users. One view could be that these are still services supplied in the exercise of government authority, as defined by GATS Article 1.3 - since they are not supplied on a commercial basis to individual users and they continue to be (local) monopolies - and, therefore, do not fall within the scope of GATS disciplines. Another view could be that these services are being procured by the government and, therefore, the manner of purchase per se would fall within the scope of GATS Article XIII and any future disciplines on procurement." [2]

16. The interpretations given by the Secretariat support the concerns expressed by unions and non-government organisations. We urge the government to exempt public services from GATS as it is clear that the ambiguous language of Article 1.3(b) and the confusion in interpretations evidenced in the Secretariat Notes, does not provide clear protection for public services. Article 1.3(b) must be clarified to make it absolutely clear that "the exercise of governmental authority" allows exclusion of public services, irrespective of whether they operative on a commercial basis or in competition with other service suppliers, the basis for exclusion should be their rationale and function, i.e. public service obligations, not their structure.

17. Further problems relating to GATS include its potential to impact severely on government regulatory power. Many public interest laws and regulations may be in conflict with National Treatment Rules and Market Access Rules. To determine whether this is the case they will be subject to the 'necessity test' or the 'least trade restrictive' qualification. This means that WTO member states would first have to prove that their regulations were necessary in order to receive a legitimate objective and second, they would have to show that no alternative measure was available to achieve the same policy objective in a way

[2] Environmental Services, Background Note by the Secretariat, 6 July 1998, S/C/W/46

that was less trade restrictive. We note that this 'reverse onus' does not apply to regulations relating to security and defence, it is our view that the wellbeing of Australians is just as important as the security of Australians, in fact they are complementary, thus we believe that the same procedure that applies to security should apply to public services. The onus should not be on governments to prove that regulations are necessary, but on those who challenge such regulations to show that they are unnecessary.

18. VTHC also notes that GATS includes a 'built-in agenda' which means that negotiations occur every few years, with the objective for ever-increasing liberalisation of services. This means that the public can never be sure that a service is protected, as a service that is excluded from listing in one round of negotiations may wind-up being included in future rounds. This is another reason why the processes need to be reformed. In a system where there are ever increasing incremental changes, public accountability and public representation needs to occur at a great level than thus far exhibited. Further exacerbating these problems, should governments wish to reverse a decision and later exempt a service area, the process makes it almost impossible to do so. Governments must give three years notice of intention to withdraw a service, once this is over a protracted period of negotiations ensues in which governments must come up with substitute commitments to compensate for the reversal, these substitute commitments must be acceptable to all WTO members, failure to achieve consensus can result in a WTO challenge and possible sanctions. This effectively locks in commitments as the process is cumbersome and potentially costly, this means that if future governments wish to institute public interest measures at some future date the GATS process makes it almost impossible. This is an unacceptable impost on government regulatory powers and should be rejected by the Australian government in the interests of the Australian people and future governments.

Australia – United States free trade agreement

19. It has been reported in various Australian media and is evident in the letter from Mr Zoellick, the United States Trade Representative (published on the DFAT website), that a number of the demands requested by the United States target a

number of policies instituted by successive Australian governments to serve the Australian people. Included amongst these are:

- Abolition of the Foreign Affairs Review Board;
- Abolition of the Pharmaceutical Benefits Scheme (PBS);
- Reduction in quarantine standards, and abolition of our food labelling system; and
- Removal of Australian local content rules and local preferences in government purchasing.

20. The Foreign Investment Review Board is a body established to review foreign investment to ensure that it is consistent with Australia's national interest. Its power is not used arbitrarily nor is it used often, but we believe such a body is appropriate and necessary to ensure that any proposed foreign investment meets Australian requirements, and is not detrimental to the Australian economy.

21. VTHC opposes any changes to the PBS. The PBS was established to ensure that all Australians have access to affordable medicines. A publicly funded health system and affordable medicines are an essential element of an equitable society. The Pharmacy Guild of Australia, in their submission to the Senate, point out that:

"(a) Australia's PBS is recognized around the world as a universal subsidized scheme that is one of the most efficient and effective of its kind, particularly with regard to our systems of evaluation, price regulation and timely distribution;
(b) The Scheme's distribution arrangements – through three major wholesalers and close to 5,000 pharmacies – are efficient and well distributed throughout Australia ensuring ready access to PBS items at affordable charges;
(c) PBS costs are rising, but when our total drug bill is expressed as a percentage of our total health bill (around 12.4 percent in 2000), the amount spent is well below the OECD average of 16 per cent."

Further, unlike the US, Australia has obligations under the International Covenant on Economic, Social and Cultural Rights to ensure availability of affordable health care and medicines to all Australians. We note that in recent days that the US has said it is not targeting the PBS system, Mark Vaile has also stated likewise. If true, we welcome this change, however, we ask the

government to ensure that this does not occur by incremental changes in other legislation or via content rule changes as exemplified with Medicare. While the government has stated it will not abolish Medicare, it has effectively undermined its universal provision through depleted funding and rebates, this should not occur with PBS.

22. The main concern about local content rules centres around the television and film industries. Unlike the US, which has a billion-dollar industry, Australia's industry is still small but growing and many Australian films are receiving acclaim around the world. The rules ensure the continuation of a local skills base, employment and the production of home grown films and television within an Australian cultural framework. Likewise, local preferences in government purchasing provide that small local firms have access to government contracts, ensure local employment and development of local industry. The Australian government must ensure that such requirements are not abolished under the proposed free trade agreement.

23. Australia's quarantine laws are relatively high compared to a lot of other economies. This is a necessary feature due to our status as an island economy, we are free of many of the diseases that infest food stock, vegetables and fruit, that are found in many other countries. The Zoellick letter indicates that the US views many of our measures as means of restricting trade and has requested reform of the system. VTHC opposes any reduction of our quarantine standards. The importation of new diseases could bring about the demise of certain industries which could have a detrimental effect on local communities and local employment. Our quarantine laws were established in the interests of the health and safety of Australians and VTHC believes they should not be watered down in the interest of foreign investors.

24. In recent years unions and NGOs have raised concerns about the investor provisions in bilateral trade agreements. Provisions that mirror the rejected Multilateral Agreement on Investments. Most are lifted from the NAFTA agreement a model that substantially changed traditional expropriation provisions in two ways; one, it allows multi-nationals to directly sue host governments for compensation for expropriation. Traditionally companies were required to get permission from their own governments prior to suing other governments. Secondly, the NAFTA model extends the meaning of

'expropriation' far beyond its prior interpretation, i.e. the seizing of property by government, or some tangible asset similar to property, to 'indirect' expropriation, or measures 'tantamount to expropriation', this has resulted in public interest and/or environmental regulations being determined as a form of expropriation. Sooner or later, this may extend to health and safety laws, or indeed, industrial laws counted as expropriation. Examples include the following (source AFTINET):

- The US Metalclad Corporation was awarded US $16.7 million (later reduced to $15.6 million), because it was refused permission by a Mexican local municipality to build a 650,000-ton/annum hazardous waste facility on land already so contaminated by toxic wastes that local groundwater was compromised (Shrybman, S. (2002) Thirst ForControl, Council of Canadians, Toronto p 57)
- Ethyl Corporation, a US chemical company that produces a fuel additive called MMT containing manganese, a known human neurotoxin, successfully sued the Canadian government when it tried to ban the MMT. In April 1997 the Canadian Parliament imposed a ban on the import and inter-provincial of MMT in 1997, on grounds of public health as well as to reduce air pollution and greenhouse gas emissions. Ethyl Corporation successfully sued the Canadian Government, which was forced to settle the suit by reversing its ban on MMT and paying $13 million in legal fees and damages to Ethyl Corporation (Public Citizen (2001) NAFTA Chapter 11 Investor-to-State Cases: Bankrupting Democracy: Lessons for Fast Track and the Free Trade Area of the Americas, Public Citizen, Washington pp 8-9).
- The U.S.-based Sun Belt Water Inc. is suing Canada for US$ 10.5 billion because the Canadian province of British Columbia interfered with its plans to export water to California. Even though Sun Belt has never actually exported water from Canada, it claims that the ban reduced its future profits. This case reinforces the concerns of many Canadians that NAFTA rules treat an essential service like water as a traded commodity (Shrybman 2002 p 57).

- The US company United Parcel Service (UPS), the world's largest express carrier and package delivery company is suing the publicly owned company Canada Post. UPS argued that Canada Post's monopoly on standard letter delivery was in violation of NAFTA's provisions on competition policy, monopolies and state-run enterprises. UPS is arguing, among other things, that Canada Post abuses its special monopoly status by utilising its infrastructure to cross-subsidise its parcel and courier services. The availability of affordable postal services is a public policy issue in Canada. (Public Citizen 2001 p 32).

VTHC opposes the inclusion of the controversial investor-state provisions based on the NAFTA model. These provisions unfairly tilt the balance in favour of foreign investors and undermine governments' regulatory powers.

25. We support the inclusion of a workers' rights chapter and an environmental chapter in the agreement. The US *Bipartisan Trade Promotion Authority Act of 2002,* mandates that a labour chapter must be included in the agreement. Prior opposition by both major parties in Australia has been an offensive denial of basic workers rights to ordinary Australians. VTHC has examined various labour chapters in bilateral agreements, and we are pleased to see that they have progressed since the ineffectual model exemplified by the NAFTA side agreement. The Jordan-US free trade agreement provides a better model than does NAFTA, though still far from ideal. VTHC recommends that the labour provisions in the Australia-US free trade agreement MUST be subject to the same legal dispute mechanisms as the owners of intellectual property and foreign investors. It is time that Australia, a signatory to the ILO core labour standards make a proper commitment and institute adequate and enforceable mechanisms in bilateral trade agreements. Australia is alone, amongst other western democratic countries, in its refusal to adopt basic human rights or workers rights in trade agreements, it is time this was remedied.