

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

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

**SUBMISSION**

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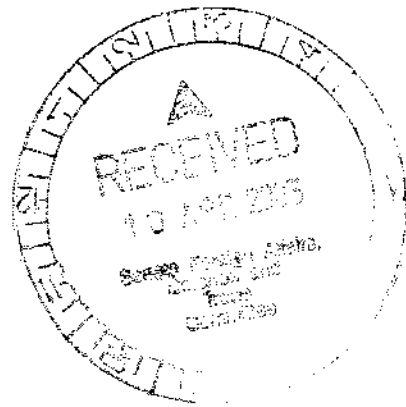
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**Submission to the Senate Foreign Affairs, Defence and Trade Committee Inquiry into the General Agreement on Trade in Services and the Australia/US Free Trade Agreement**

This submission provides a specific critique of the trade agreements in question on **environmental grounds**.

**1) General Agreement on Trade in Services (GATS)**

Worldwide services trade currently makes up roughly one-fifth of total global trade, and in the past decade, trade in services has grown at an average of 6% per year to a total of US\$1.35 trillion. Service sectors touch nearly every aspect of the natural world and the environment. They include **energy (including fossil fuel exploration, extraction, transport and power generation), water, transport, travel and tourism, waste disposal and sewage, construction, and retail distribution**. But despite their rapid growth and massive reach, governments seem to have widely ignored the massive impact of services on the environment.

The World Trade Organisation's GATS agreement will have significant, and mostly negative implications for the natural environment in Australia. By signing onto the agreement in 1994 without any public consultation or any information about its environmental effects, the Australian government once again demonstrated its willingness to ignore environmental issues, where they conflict with trade. The GATS requires Australia to "progressively liberalise" its service sectors to allow greater foreign investment by multinational corporations, irrelevant of citizens views, or the environmental impact of this process. The current negotiations aim not only to expand the reach and scope of privately run services - which in itself will have a significant environmental impact - but to constrain governments and citizens from ameliorating the environmental effects of, and protecting the natural world from, these often damaging service operations.

Most worryingly, the GATS rules will restrict the ability of governments and citizens to protect the environment. The inclusion of commercial presence service operations means that the GATS provides substantial rights for foreign service providers, and can undermine the right of governments to regulate these investors environmental protection. Current GATS negotiations require Australia to expand its specific commitments throughout its already committed service sectors, also take new commitments in other sectors as well. Specific commitments have already been made by the Australian Government to market access and national treatment of foreign investors for a variety of sectors, and at the end of March the government will again expand its commitments

**Market Access**

Market access commitments essentially require Australia to provide unlimited quantitative access to their markets for service operators, regardless of their environmental impact. For each service area in which Australia commits to GATS, the market access commitment will prohibit local, state or federal governments from limiting the the number of service suppliers, the value or number of service operations, or the participation of foreign capital. The environmental consequences of this are vast.

Under market access provisions of GATS, the following kinds of regulations to protect the environment could be found **WTO-illegal**:

- **Energy**: restrictions on the number of oil or gas extractive operations or refineries in an area, possibly including national parks, limitation on the amount of oil extracted, or limitations on the number or length of oil or gas pipelines;
- **Water**: limitations on the right of governments to restrict the quantities of water collected from groundwater sources by private service operators, or state governments refusing to privatise their water systems, if other states had already done so;

- **Environmental Services:** limitations on the number of hazardous waste sites;
- **Tourism:** limitations to the size or numbers of hotels or other tourism constructions in environmentally sensitive areas, limitations on the number of boats allowed on coral reefs or in sensitive waterways.

### **National Treatment**

National treatment commitments require Australia to provide the same or better regulatory treatment to foreign service operators as that provided to domestic operators. This obligation limits Australia governments from taking environmental considerations into account when legislating to regulate service providers - efforts to protect the environment are only acceptable if they don't disadvantage foreign operators in any way. For example, if a domestic operator uses an environmentally friendly process consistent with a certain regulatory standard and a foreign service operator has not adopted the same process, the foreign operator could claim to be disadvantaged by the requirements imposed by the regulatory action.

Under the GATS, the following types of neutral regulation that affect a foreign corporation's competitive advantage could thus be found WTO illegal:

- Regulations for hazardous waste shipment that happen to disadvantage a foreign service operator whose methods differ from those used by most Australian companies;
- Preferences for granting of resource extraction licenses (such as for fishing) to members of local or indigenous communities;
- Limitations on the land available to establish hotels in certain areas, thus disadvantaging foreign latecomers to those areas.

### **The Necessity Test**

Perhaps the most environmentally dangerous elements of GATS are those in Article VI that impose restrictions on the domestic regulatory efforts of governments, including environmental laws and regulations affecting service operations. Article VI restricts "technical standards," which can include almost any type of environmental law or regulation. To be acceptable under Article VI, environmental protection regulations must be "based on objective and transparent criteria" and must "not be more burdensome than necessary to ensure the quality of the service."

Known as the "necessity test", this requirement is a massive constraint on the ability of local, state and federal governments to protect the environment. It effectively gives a WTO disputes resolution panel the power of veto over parliamentary and regulatory decisions. Under the test, WTO member states would first have to prove that their regulations were necessary in order to achieve a WTO-sanctioned legitimate objective. Second, they would have to show that no alternative measure was available which would achieve the same objective and be less trade-restrictive. Under Article VI, corporations could challenge almost any law on the basis that there may be a "less trade-restrictive" way of protecting the environment, even if the cost makes it impossible. Governments will be liable to challenge for almost any environmental regulations they make, placing foreign commercial interests above the public interest. In addition, a country must prove to a trade dispute panel, in the event of a challenge, that its environmental standards are "objective." This turns on its head the "Precautionary Principle" - on which regulations are currently based - which requires scientific proof of environmental safety for a product or service and would allow for regulation even when there is a lack of full scientific certainty of possible harm. Instead, GATS panels might force governments to allow products or services which may be dangerous, but where certainty is not 100%.

The necessity test has already had a trial run in North America via inclusion in the North American Free Trade Agreement (NAFTA). Recently, the state of California banned a gasoline additive MBTE which has contaminated water supplies. A Canadian seller one chemical in MBTE filed a complaint saying the rule fails the NAFTA necessity test. The Canadians assert that California could simply require all petrol stations to

dig up storage tanks, reseal them, and hire inspectors to make sure it's done perfectly. The Canadian proposal might be impossible because of the high costs and be impossible to police, but that may not be reason enough to ban MTBE. If California doesn't drop its ban on MBTE, the US may have to pay US\$976 million to the Canadian chemicals seller.

## **2) Australia/US Free Trade Agreement**

Given that services liberalization will make up a significant element of the proposed Australia/US Free Trade Agreement, the environmental effects of the agreement will in many ways mirror those of the WTO's GATS. Yet the Australia/US FTA will be broader than merely trade in services - it is proposed to cover agriculture, manufacturing, intellectual property, quarantine and other areas. For instance, the USA has specifically stated that it considers Australia's stringent quarantine barriers to be a 'technical trade barrier' which should be relaxed. Any proposed changes to Australian quarantine laws would endanger both the Australian environment and farming sector, both worth many billions to the Australian economy through tourism and farm exports.

But in addition to the serious environmental problems raised by the services and quarantine provisions of the proposed agreement, of particular concern will be the environmental effects of increased exports, particularly in agricultural products, which the agreement will produce. The move towards export-oriented economies is already the main source of Australia's environmental problems:

- A salinity crisis on our farmland that the National Farmers' Federation estimates will cost \$65 billion to fix.
- The fourth highest rate of land clearing in the world, the majority of which is for cattle grazing, largely for export produce.
- The highest per-capita greenhouse gas emissions of any country on Earth. These emissions are in significant part due to increased trade, particularly transporting goods whether exports or imports, by road, sea or air. Pollution from fossil fuels used to transport goods across the globe now makes up almost one sixth of humankind's total greenhouse-gas emissions.
- Water shortages and declining water quality as land is overgrazed and water catchments are logged for export woodchips. Over 80% of Victorian native forests logged are woodchipped, the vast majority for export. In Tasmania, it is over 90%.
- Increased air and water pollution from industrial wastes, as manufacturing industries grow and become more export-oriented.
- Pesticide and fertiliser run-off from farms, polluting waterways and causing algal blooms, which will be exacerbated by increased agricultural exports.

The proposed Australia-US FTA is aimed to specifically to open US markets to increased Australian primary exports, putting ever greater pressure on Australia's fragile environment and deepening the crisis produced by the above problems, among others.

## **Recommendations**

The Senate Inquiry should recommend that the current GATS and Australia/US FTA negotiations be discontinued and the following fully achieved instead:

- Conduct extensive research into both the actual environmental and social impacts thus far and the potential future impacts of the agreements, including impacts on the environment and local communities of increased trade;
- Provide clear, strong and across-the-board exceptions ensuring that no reasonable environmental laws and regulations will be undermined or challenged by GATS or AUSFTA rules;
- Remove Article VI provisions from GATS, including any "necessity" provision, that restrict the right of governments to adopt laws and regulations protecting the public interest and the environment;

- Clearly exclude from any GATS or AUSFTA disciplines any services related to the extraction or collection of energy fuels, minerals and ore, water, timber, and other natural resources;
- Clearly exclude from any GATS or AUSFTA disciplines all publicly provided services.
- Clearly exclude quarantine provisions from the AUSFTA negotiations.

Some material in this submission was sourced directly from David Waskow and Vicente Paojo B. Yu III, "A Disservice to the Earth: The Environmental Impact of the WTO General Agreement on Trade in Services (GATS)", Friends of the Earth, USA. Available at: <http://www.foceurope.org/trade/wto/GATS%20paperfinalFoEUS.pdf>

Yours faithfully,



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