Legislative Assembly for the ACT

STANDING COMMITTEE ON PUBLIC ACCOUNTS

# The General Agreement on Trade in Services (GATS) with special reference to the Australian Capital Territory

AUGUST 2004

Report 11

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## Resolution of appointment

The Standing Committee on Public Accounts was appointed by the Legislative Assembly on 11 December 2001 to:

(i) examine:

- (A) the accounts of the receipts and expenditure of the Australian Capital Territory;
- (B) the financial affairs of authorities of the Australian Capital Territory; and
- (C) all reports of the Auditor-General which have been presented to the Assembly;

(ii) report to the Assembly, with such comments as it thinks fit, any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Assembly should be directed;

(iii) inquire into any question in connection with the public accounts which is referred to it by the Assembly and to report to the Assembly on that question; and

(iv) examine matters relating to economic and business development, small business, tourism, market and regulatory reform, public sector management, taxation and revenue and sustainability.

## Terms of reference

To undertake an inquiry into the General Agreement on Trade in Services (GATS) with special reference to:

(1) The implications for governance in the ACT;

(2) The impact on regulation, funding and provision of essential services;

(3) The capacity for flexibility in local decision-making;

(4) Consultation with the community;

(5) Sustainability; and

(6) Any other related matter.

## Conduct of the inquiry

Through unsolicited letters, the Committee invited selected community and public sector individuals and organisations to lodge submissions to the inquiry, and also advertised the inquiry in the local print media on 23 and 27 August 2003. The Committee received 10 submissions. The submissions are listed at Appendix A. Subsequently, the Committee held three public hearings on 12, 13 and 14 November 2003. A list of witnesses that appeared before the Committee at public hearings can be found at Appendix B.

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# Recommendations

The Committee recommends that:

**Recommendation 1**

The ACT Government recommend to the Commonwealth that it take to the World Trade Organization a proposal to amend the dispute settlement process to ensure that environmental and social expertise informs the decision making.

**Recommendation 2**

The ACT Government not support the liberalisation of any new service sector until the following have occurred:

(1) The ACT Government recommend to the Commonwealth that they:

(a) commission comprehensive independent research into the social and economic impact on all proposed trade agreements, including regional impacts and publish it for public debate before negotiations begin; and

(b) undertake more thorough consultation, which commences early in the negotiation process, with state, territory and municipal governments, with an agreed timeframe in relation to the sector agreements and any proposed bilateral trade agreements.

(2) The ACT Government provide an adequate process for informing the members of the ACT Legislative Assembly and the ACT public about treaties and trade agreements.

**Recommendation 3**

The ACT Government communicates the concerns raised about the AUSFTA to the Commonwealth Government urgently.

# 1. Introduction

1.1. On 6 August 2003, the Standing Committee on Public Accounts resolved to inquire into the General Agreement on Trade in Services (GATS) with special reference to the ACT.

1.2. At the Commonwealth level, the General Agreement on Trade in Services (GATS) has been the focus of an inquiry undertaken by the Senate's Standing Committee on Foreign Affairs, Defence and Trade.[1]

1.3. Globally, in recent years, trade issues have attracted a considerable amount of attention. The Committee undertook the inquiry to attempt to identify the implications the GATS and other trade agreements could have on the Australian Capital Territory (ACT).

1.4. The Committee acknowledges that international trade is a Commonwealth responsibility. However the Committee believes that the impact of the GATS has far reaching and as yet largely unknown consequences for Australian jurisdictions. As the GATS and other trade agreements bind all levels of government, the Committee believes that they warrant inquiry at the state/territory and local levels, and that there should be full engagement with local communities on trade issues which affect them.

1.5. Of particular importance are the implications and impact the GATS may have on the governance of the Territory, regulation, funding, the provision of essential services, as well as the adequacy of community consultation.

1.6. While this inquiry's main focus is the possible impact of GATS on the Australian Capital Territory (ACT), several submissions and witnesses have also included comment on the Australia-United States Free Trade Agreement (AUSFTA). The Committee has also provided brief comment about particular aspects of the possible implications of the AUSFTA and other bilateral agreements.

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[1] The Senate's Foreign Affairs, Defence and Trade Committee tabled its report titled 'Voting on trade, The General Agreement on Trade in Services and an Australia-US Free Trade Agreement', on 26 November 2003, <http://www.aph.gov.au/Senate/committee/fadt_ctte/gats/report/index.htm>

# 2. Background

## The General Agreement on Trade in Services

2.1. The General Agreement on Trade in Services (GATS) is a multilateral trade agreement that was entered into force in January 1995 as a result of the Uruguay Round of international trade negotiations. The GATS follows on from and has similar objectives to its predecessor, the General Agreement on Tariffs and Trade (GATT).

2.2. Essentially, the GATS extends the 'rules based multilateral trading system' to the area of services.[2] The GATS is different from its predecessor as 'for the first time it extends internationally-agreed rules and commitments, broadly comparable with those of the GATT, into a huge and still rapidly growing area of international trade. The reach of the GATS rules extends to all forms of international trade in services. This means that the GATS agreement represents a major new factor for a large sector of world economic activity'.[3]

2.3. The current Doha Round[4] of trade negotiations commenced in November 2001. The Doha Round gave commitment to negotiations relating to 'agriculture, services, industrial products, a register of geographical indications for wines and spirits, WTO rules (anti-dumping, subsidies and countervailing measures, fisheries subsidies, and regional trade agreements), dispute settlement, trade and environment, and trade and development'.[5]

2.4. All World Trade Organization (WTO) members participate in the trade negotiations. Currently[6] 147 countries are members of the WTO and around 30 additional countries are observers. A list of these countries can be found at Appendix C. Australia has been a member of the WTO since 1 January 1995.[7]

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[2] In economic terms a service is commonly defined as an intangible activity that is used to satisfy a need or want.
[3] World Trade Organization (WTO) Secretariat, Trade in Services Division, 'An Introduction to the GATS', Overview, October 1999; <http://www.wto.org>
[4] so called because the negotiations were launched in Doha, Qatar.
[5] Department of Foreign Affairs and Trade, Public Discussion Paper, June 2003, p 1.
[6] As at 23 April 2004, WTO, <http://www.wto.org>
[7] WTO, <http://www.wto.org>

## Services included in the GATS

2.5. The GATS contains three parts. These are:

(1) 'the overall framework agreement of 29 Articles which sets out principles and rules;

(2) a schedule for each Member country listing its commitments regarding access and its most favoured nation (MFN) exemptions; and

(3) eight annexes with special rules for some sectors'.[8]

2.6. The GATS includes 12 service sectors. These are: 'business, communication, construction and engineering, distribution, education, environment, financial, health, recreational, cultural and sporting, tourism and travel, transport, and a residual "other" category'.[9] This is with the exception of public services, including the regulation of public services, and those services affecting air traffic rights. A copy of the GATS is provided at Appendix D.

2.7. The GATS recognises that there are four modes of the supply of services. These are:

(1) **Cross-border supply**[10] includes the supply of services 'from the territory of one Member into the Territory of any other Member'.[11]

(2) **Consumption abroad**[12] includes the supply of services 'in the territory of one Member to the service consumer of any other Member'.[13]

(3) **Commercial presence**[14] includes the supply of services 'by a service supplier of one Member, through commercial presence in the territory of any other Member'.[15]

(4) **Presence of natural persons**[16] includes the supply of services 'by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member'.[17]

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[8] Department of Foreign Affairs and Trade, Main Features of the GATS Agreement, 6 August 2003, <http://www.dfat.gov.au>.
[9] ibid.
[10] DFAT, loc. cit.
[11] GATS, Article I, Scope and Definition.
[12] DFAT, loc. cit.
[13] GATS, loc. cit.
[14] DFAT, loc. cit.
[15] GATS, loc. cit.

2.8. Article I of the GATS outlines the scope and definition of the agreement. Article 1 states the application of the agreement, defines 'trade in services' and the exemption of government services and regulation, from the agreement. The Annex on Air Transport Services also provides exemption for measures affecting traffic rights and services directly related to the exercise of traffic rights. Following are the exemptions provided for in the GATS.

2.9. The first exemption is for the provision and regulation of government services. Article I(3) of the GATS provides that

> (b) "services" includes any service in any sector except services supplied in the exercise of governmental authority;
>
> (c ) "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.[18]

2.10. The second and final exemption relates to air transport services. The Annex on Air Transport Services provides that

> 2. The Agreement, including its dispute settlement procedures, shall not apply to measures affecting:
>
> (a) traffic rights, however granted; or
>
> (b) services directly related to the exercise of traffic rights,
>
> except as provided in paragraph 3[19] of this Annex.[20]

## Member commitments and obligations under the GATS

2.11. World Trade Organization (WTO) member's obligations under the GATS are separated into two categories. These are (i) general obligations and (ii) specific obligations. General obligations automatically apply to 'all members and service sectors'. General obligations include specific commitments or obligations relating to 'market access and national treatment

[16] DFAT, loc. cit.

[17] GATS, loc. cit.

[18] WTO Secretariat, Annex 1B, General Agreement on Trade in Services, <http://www.wto.org>

[19] Paragraph 3 of the Annex on Air Transport Services provides that the agreement applies to measures affecting (a) aircraft repair and maintenance services; (b) the selling and marketing of air transport services; (c) computer reservation system (CRS) services; GATS, <http://www.wto.org>

[20] WTO Secretariat, GATS, <http://www.wto.org>

in designated sectors'. These commitments are included in 'individual country schedules'. Each individual country schedule is different and outlines areas within the member nation where access to markets is guaranteed and also areas where access will be limited.[21]

2.12. Specifically, member's obligations consist of the most favoured nation (MFN) and transparency obligations. The MFN obligations require a Member country to 'treat services and service suppliers of Members no less favourably than it treats like services and service suppliers of any other country'. Further, 'the transparency obligation requires governments to make public all relevant laws and regulations, set up enquiry points with their (federal) bureaucracies and notify WTO Members of any changes in regulations that apply to services covered by specific commitments'. [22]

2.13. Consensus on additional general obligations within the GATS has not yet been reached. Negotiations in this area are still at an early stage. One of the areas where GATS is still being negotiated is in 'domestic regulation' and 'subsidies'. The Department of Foreign Affairs and Trade has specified that the

> … mandate on domestic regulation provides for the development of disciplines to ensure that licensing requirements and procedures, technical standards and qualification requirements do not constitute unnecessary barriers to trade in services. The mandate on subsidies provides for the development of disciplines to avoid the trade-distortive effects of subsidies.[23]

2.14. Member specific obligations are outlined in individual country schedules once a member agrees to make a commitment 'to liberalise a service sector'.[24] The two main obligations within this category are 'market access' and 'national treatment'.

> Market access commitments are guarantees that foreign service providers will be able to enter the domestic market under the conditions specified in their schedule. National treatment requires that, subject to the conditions listed in a member's schedule, foreign service providers must be treated no less favourably than domestic providers.[25]

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[21] WTO Secretariat, (GATS), objectives, coverage and disciplines, <http://www.wto.org>
[22] DFAT, loc. cit.
[23] ibid.
[24] ibid.
[25] ibid.

2.15. According to the Department of Foreign Affairs and Trade, the GATS framework allows members to

> …choose whether and to what extent to open up a particular service sector to foreign competition and whether and to what extent foreign suppliers should be afforded the same treatment as domestic suppliers in that sector. It is possible for Members to make no or very limited commitments in a sector, or to structure their commitments so that they retain the ability to discriminate between foreign and domestic suppliers.[26]

2.16. Grievances, which may arise from service providers whose exporting rights may be impinged upon by an importing country,[27] can be dealt with through the 'formal dispute settlement mechanism' under the WTO.

## The status of GATS negotiations

2.17. There are currently 42 offers being negotiated, which cover 63 Member countries. Of the 42 offers made, only 13 have been made public on the WTO website. Australia's offer is among them.[28]

2.18. On 31 March 2003, Australia lodged with the WTO, its initial GATS offer. The offer includes 35 requests for 'improved access to the services markets of other WTO Members'. Fourteen of the 35 requests remain unanswered. Member countries that have yet to respond include: 'Brazil, Brunei, Egypt, Ghana, Indonesia, Malaysia, Mozambique, Nigeria, Pakistan, PNG, Philippines, Tanzania and the United Arab Emirates'.[29]

2.19. Australia's initial requests have been made of the 'European Union; USA; Canada; countries in North, South and South East Asia; some countries in Latin America, the South Pacific and Asia'.[30]

2.20. Australia has targeted the following service sectors in its requests.

- Accountancy

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[26] ibid.
[27] Once an agreement is in place.
[28] The Department of Foreign Affairs and Trade has provided a summary of WTO Member's offers to date in its Discussion Paper on the WTO's General Agreement on Trade in Services (GATS) – Current state of play, 22 June 2004, <www.dfat.gov.au>
[29] DFAT, Discussion Paper on the WTO's General Agreement on Trade in Services (GATS) – Current State of Play, 22 June 2004, <www.dfat.gov.au>
[30] Submission No 8 (Minister for Trade), p 18.

- Architecture
- Engineering
- Legal
- Services related to mining
- Computer and related services (e.g. software implementation, data processing, installation of computer software)
- Construction
- Distribution
- Private education
- Environmental services
- Financial
- Private health and aged care
- Maritime transport
- Pipeline transport
- Freight logistics (i.e. services related to the movement of goods through and within national borders, such as cargo-handling, storage and warehousing, transport agency, container station and depot services, and inventory management services)
- Air Transport (i.e. air transport services not directly related to the exercise of traffic rights such as food and beverage serving, cargo handling, and bulk storage or liquids and gases)
- Telecommunications
- Tourism
- Sporting services (e.g. sporting event organisation and promotion, operation of sporting facilities)
- Other business services, such as management consulting, and landscape architecture and urban planning[31]

[31] ibid., pp 18-19.

2.21. Australia has received 26 requests from 'the European Union, USA, Canada, Japan, countries in North, South and South East Asia, Africa, Latin America and Europe, Sri Lanka, Thailand and Trinidad and Tobago'.[32]

2.22. Requests from the above listed countries include the following services:

- Business services (e.g. Research and development, real estate, advertising, printing and publishing)
- Professional services (e.g. legal, accountancy)
- Transport (e.g. road, rail, maritime, air)
- Recreational, cultural and sporting services
- Tourism
- Health services
- Financial services
- Environmental services
- Education
- Distribution
- Construction
- Audiovisual
- Telecommunications
- Postal and courier services
- Horizontal issues relating to the temporary movement of service suppliers, foreign investment screening requirements and transparency[33]

2.23. There are a number of developing country members who have not made commitments in services as they are 'awaiting progress on agricultural negotiations before committing to a services offer'.[34]

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[32] ibid., p 19.
[33] ibid., pp 19-20.

2.24. Developing nations have also found that the offers to date of developed countries have shown 'no real improvement in the temporary movement of natural persons'.[35] Another area of concern for developing countries is that market access negotiations are progressing ahead of negotiations on GATS rules, such as the establishment of an Emergency Safeguards Mechanism (ESM). Developing (particularly ASEAN[36]) and developed countries disagree on whether ESM would be beneficial to negotiations.

2.25. Australia is expecting improved member offers once issues about 'agriculture, industrials and special and differential treatment for least developed and developed countries'[37] are clarified.

2.26. The Doha Round agreement framework was scheduled for negotiation in July 2004. The Department of Foreign Affairs and trade has indicated that the framework will provide the process for negotiations on agriculture and later, services. Negotiations relating to trade in services for 2004 were scheduled to take place on 23 June – 2 July and continue from 20 September – 1 October and 22 November – 3 December.[38]

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[34] DFAT, Discussion Paper on the WTO's General Agreement on Trade in Services (GATS) – Current State of Play, 22 June 2004, <www.dfat.gov.au>

[35] ibid.

[36] The Association of South East Asian Nations (ASEAN) consists of the following countries: Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Phillipines, Singapore, Thailand and VietNam, <www.aseansec.org>

[37] DFAT, Discussion Paper on the WTO's General Agreement on Trade in Services (GATS) – Current State of Play, 22 June 2004, <www.dfat.gov.au>

[38] ibid.

# 3. GATS and its implications for governance in the ACT

## The impact on the capacity for flexibility in local decision making

3.1. When a country makes specific commitments under the GATS, all levels of Government, authorities and private sector bodies within that country automatically become bound to those commitments. Article I(3) of the GATS stipulates that

> In fulfilling its obligations and commitments under the Agreement, each Member shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territories.[39]

3.2. The Australian Services Union (ASU) makes the point that,.

> …[Trade] Agreements are signed at [the] Ministerial level and unlike the USA and other countries, [in Australia trade agreements], do not receive full Parliamentary consideration prior to negotiation and sign off.[40]

3.3. This point is also made by a number of other submissions.[41]

3.4. Another submission states that once binding 'liberalisation' commitments are made under the GATS, it is impossible for the Government to

> … withdraw or to avoid incurring huge "fines", even if the service is of poor quality, environmentally damaging, fails to fulfil universal service obligations or is unaffordable to the poor. No future government will be able to introduce changes of policy.[42]

3.5. Further, the Community and Public Sector Union (CPSU) has stated that the dispute resolution process under the WTO does not allow an action to be brought before it by a party other than a national government. Under the

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[39] GATS, Article 1.
[40] Submission No 6 (Australian Services Union), p 1.
[41] Submission No 4 (Australian Fair Trade and Investment Netword), pp 7 & 24; Submission No 5 (J.C. Iltis) p 1; Submission No 7 (CPSU) p 3; Submission No 10 (ACTCOSS), p 8.
[42] Submission No 5 (J.C. Iltis) p 2.

GATS, this provision would not allow the ACT Government to directly challenge any grievance that may be made against it by another party.[43] This issue is dealt with further under the heading of 'Dispute resolution mechanism under the GATS'.

3.6. The preceding outlined implications of GATS would have the effect of limiting the power and capacity for flexibility in local decision-making of the ACT Government and Legislative Assembly if they are not consulted and involved in each part of the GATS negotiation process.

3.7. The Minister for Trade has outlined a number of service areas, which are outside of the GATS. These are:

- Immigration matters
- Services supplied under governmental authority
- Fiscal policy and taxation measures
- Customs systems
- Certain aspects of investor protection, concerning the movement of capital
- Monetary policy and exchange rate management
- Privatisation – although there are disciplines for state-owned trading entities and monopolies
- Services directly related to the exercise of air traffic rights.[44]

3.8. In addition, the Minister for Trade lists the following general exemptions under Article XIV of the GATS, which

> …enable measures to be adopted or enforced, providing that they are applied in a non discriminatory manner, and are not a disguised restriction on trade in services. These cover measures necessary to:
>
> - protect public morals or to maintain public order
> - protect human, animal or plant life or health
> - prevent fraud and protect the privacy of individuals
> - protect safety.[45]

[43] Submission No 7 (Community and Public Sector Union), p 4.
[44] Submission No 8 (Minister for Trade), p 31.
[45] ibid.

3.9. Further to these are security exemptions, which do not prevent a country from 'taking any action or withholding any information which it considers necessary for the protection of its essential security interests'.[46]

3.10. The Minister for Trade argues that the GATS

> …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; and
>
> Beyond these very substantial general affirmations, the right of WTO members to frame GATS commitments how they wish provides further basic flexibility and protection.[47]

3.11. The Committee notes the Minister's comments in relation to the right of governments to regulate. The Committee stresses the point that the exclusions under the GATS (that is those sectors not listed on a member countries service commitments) are as yet untested.

3.12. The Australian Consumers' Association takes this point further suggesting amendment to the GATS to guarantee a government's right to regulate.

> Based on the research carried out by its members, Consumers International has concluded that the impact of liberalised trade in services needs additional study before the GATS is expanded. In particular, GATS should be amended to state explicitly that governments retain the right to regulate their domestic affairs and to continue to provide some services directly, on terms they decide without challenge under the GATS rules.[48]

## The impact on regulation, funding and the provision of essential services

3.13. As mentioned, Article I (3) of the GATS provides for the exclusion of 'services supplied in the exercise of governmental authority', which is defined as 'any service, which is supplied neither on a commercial basis, nor in competition with one or more service suppliers'.[49]

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[46] ibid.

[47] ibid.

[48] Submission No 3 (Australian Consumers Association), p 4.

[49] GATS, Article 1

3.14. A number of submissions have expressed concern about the unclear definition of 'services supplied in the exercise of governmental authority' or 'public services', under the GATS.[50] This concern centres on the fact that increasingly private sector providers are delivering public services on behalf of the Government. Under the GATS such areas (which would also include competitive tendering) may be subject to it, leaving open an avenue for private providers to bid for these services and also possibly seek a share of any subsidies, which may be provided to the public sector by the Government.

3.15. The Australian Fair Trade and Investment Network (AFTINET) makes the point that the ambiguity of the definition of public services is complicated because of the public and private mix of services offered in particular areas such as education and health and the lack of certainty as to whether particular areas are recognised as being provided by the public or private sectors.

> … in Australia, as in many other countries, public and private services are provided side by side. This includes education, health, water, prisons, telecommunications, energy and many more.
>
> It is legitimate to ask whether, for example, there is any guarantee that public TAFE will not be subject to GATS, as it is operating in an increasingly competitive vocational education and training market.[51]

3.16. AFTINET states that it is likely that any ambiguity will be resolved through the rulings of the WTO dispute panels, further limiting the flexibility of local-decision making and negatively affecting the Government in providing essential services.

> The likely resolution of this ambiguity will be through rulings of the WTO Dispute Panels, deciding on challenges by a member state to the public service arrangements of another member state. The panels may well adopt interpretations similar to that offered by the WTO Secretariat, which would bring many services currently considered to be public services under the coverage of the GATS agreement.

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[50] Submission No 1 (David Hopkins); Submission No 2 (Media, Entertainment and Arts Alliance, pp 7&8); Submission No 4 (Australian Fair Trade and Investment Network, p 6); Submission No 7 (Community and Public Sector Union, pp 7&8); Submission No 10 (ACT Council on Social Service Inc., p 3).

[51] Submission No 4 (Australian Fair Trade and Investment Network), p 17.

> Other governments have taken steps to protect themselves from such an outcome through horizontal limitations. For example, the EU has made a horizontal commitment stating that 'services considered as public utilities at a national or local level may be subject to public monopolies'. In contrast, Australia has made no such horizontal commitment, and so is dependent on an interpretation of Article 1(3) which finds that public services are not subject to GATS unless specific commitments have been made. [52]

3.17. The Minister for Trade responded to the concern about the exemption and definition of public services in the GATS in his submission stating

> Apart from the view that these public and private services are not provided in competition (and that public services are excluded) there are at least two other reasons why these concerns are overstated. Firstly the issue could only ever arise if a member had made a mode 3[53] commitment in a sector with public and private elements, and secondly the argument assumes that the payments to the public sector are in fact subsidies. The work on subsidies in the GATS has barely started, but if the rules of the WTO Agreement on Subsidies and Countervailing Measures were to be applied, it seems unlikely, under the specifity provisions, that a payment by a Government to the public sector would be characterised as a subsidy.[54]

3.18. Of the possible future impact of the GATS on the provision of public services, the Minister for Trade added

> The possible future impact of GATS on the provision of public services will need to be kept under review as the negotiations develop with a view to adopting the most effective approach to "putting to bed" any doubts on the exclusion from the GATS of public services and of public payments for service provision. Article XV (Subsidies) requires members to enter into negotiations with a view to developing the necessary multilateral disciplines to avoid the trade distortive effects of subsidies. Article XV also notes (recognising the likely complexity of developing subsidies disciplines, including because of the public provision of many services) that the negotiations should take into account the needs of Members for flexibility in this area.

[52] ibid.

[53] Commercial presence.

[54] Submission No 8 (Minister for Trade), p 30.

> In the meantime, Australia's position of principle is clear and the Government is committed to doing nothing in the negotiations that would limit the right of WTO members to regulate and fund public services for social policy reasons.[55]

3.19. The point made by AFTINET that increasingly it is unclear which services provided by the Government will be subject to the GATS, is also made in the majority of submissions received by the Committee. Evidence presented to the Committee makes the claim that the ambiguity of the definition of public services under the GATS has the negative impact of inclusion of areas, which are deemed to be exempt.

3.20. One particular area of concern is the provision of water services. Jonathan Pickering in his paper[56], uses the example of environmental services with reference to the provision of water to expose the consequences of the ambiguity of the definition of public services under the GATS.

3.21. Under Australia's schedule of commitments are environment services relating to sewage services, refuse disposal services and sanitation and similar services.[57]

3.22. The European Union (EU) has been lobbying Australia to make commitments to liberalise 'water supply including water collection, purification and distribution services through mains, except steam and hot water'. The EU has proposed the reclassification of environmental services to include 'water for human use and wastewater management', and Australia has indicated its 'in principle support for the proposal'. This follows on from commitments already made by Australia in relation to water supply, including 'engineering for water supply and sanitation services'. [58]

3.23. Pickering continues to explain that the WTO is unsure about how public services relating to the provision of environment services would be dealt with under the GATS.

> The substantial involvement of private contractors in areas such as domestic waste collection lend further support to the inference that these exceptions may not cover local government services in these areas. If it were found that the governmental exceptions did not apply, there could be considerable implications for

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[55] ibid.
[56] Jonathan Pickering, 'GATS, public services and domestic regulation: current issues and implications for local government in Australia', p 37.
[57] ibid.
[58] ibid., p 38.

> councils' provision of environmental services, particularly where councils give preference to service suppliers within their local government area in tendering processes, or impose quality requirements on facilities such as sewerage and waste disposal plants.[59]

3.24. Of this outcome, AFTINET has stated

> The effect would be that supply of water – a substance essential to human life, and which is in crisis globally and within Australia – would become subject to the rules of GATS, which operate on a market basis. This change is sought to be made in a global context in which 10 major water multinational corporations dominate the market[60] and exercise great influence.
>
> The supply of water in Australia, as elsewhere, involves the weighing of public policy objectives, including the need to ensure access to all and the need to conserve the resource. Currently in Australia a robust public debate is underway as to the appropriate and fair means of regulating water supply, particularly with the drought affecting eastern and southern Australia. A broadening of the definition of environmental services to bring water for human use within GATS would dramatically change the balance of interests in this important area without public debate as to the merits of such a change.[61]

3.25. A number of submissions received have also expressed concern about the inclusion of water services under the GATS.[62]

3.26. ACTCOSS highlights the possible risks associated with privatising water services using the example of catchment management post the 2003 Bushfires.

> The current situation in the ACT with the disastrous January bushfires and the long drought could not be managed effectively by the private sector. The ACT Government has just purchased a $40m filtration plant to filter out soot residues from the fires, from

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[59] ibid., p 39.

[60] Two French companies, Vivendi and Suez account for over 50% of world water sales, Submission No 3 (Australian Consumers' Association), p 19.

[61] Submission No 4 (Australian Fair Trade and Investment Network), p 19.

[62] Submission No 1 (David Hopkins), p 1; Submission No 3 (Australian Consumers' Association), p 19; Submission No 4 (Australian Fair Trade and Investment Network) p 19; Submission No 5 (J.C. Iltis) p 2; Submission No 6 (Australian Services Union) p 2; Submission No 7 (Community and Public Sector Union), p 16; Submission No 10 (ACT Council on Social Service), p 5.

> the extremely drought-stressed water supplies. Writing a contract which foresees such occurrences, and their frequency, would be impossible. The development and management of contracts for such major endeavours has been shown to be the source of major problems in water services elsewhere.[63]

3.27. Another concern is that privately managed water services do not guarantee quality of product. This is evident in the recent outbreaks of Cryptosporidium[64] in Adelaide and Sydney.[65] This point was also made by the ASU when it appeared before the Committee.[66]

3.28. Other areas with similar consequences to water services include: education services; health services; postal and courier services; audio visual services[67]; transport services; railway industry; employment arrangements in Australia and regionally[68]; energy; air transport and computer services.[69]

3.29. A country's right to regulate comes into play as 'regulation' guarantees 'protection for local consumers [and] small business…to ensure a fair society'.[70]

3.30. The preamble to the GATS maintains a Government's right to regulate. The preamble states that the GATS 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….[71]

3.31. The CPSU has raised questions about how much weight the preamble holds, especially if it comes into conflict with other clauses in the GATS. Further the CPSU has stated

63 Submission No 10 (ACT Council on Social Service), p 5.
64 Cryptosporidium is a single-celled parasite that lives in the intestines of animals and people. This microscopic pathogen causes a disease called cryptosporidiosis. Drinking untreated surface water (such as streams, rivers, and lakes) or swallowing a small amount of water when swimming, even in a chlorinated pool, can cause cryptosporidiosis. The parasite may also be spread in uncooked foods, beverages, or ice prepared with contaminated water. <http://www.nal.usda.gov/wqic/cornell.html>
65 Submission No 10 (ACT Council on Social Service), p 5.
66 Transcript of evidence, Thursday, 13 November 2003, p 36.
67 Submission No 4 (Australian Fair Trade and Investment Network), pp 18-23.
68 Submission No 6 (Australian Services Union), pp 14-17.
69 Submission No 4 (Australian Fair Trade and Investment Network), pp 20-21.
70 Submission No 6 (Australian Services Union), p 2.
71 GATS, preamble.

> It is likely that the preamble may only function as a generalised tool to assist with the interpretation of specific clauses where any uncertainty arises, not as a specific rule in its own right.[72]

3.32. In accordance with the preamble to the GATS, the Minister for Trade has stated that the 'purpose of the GATS is trade liberalisation and not to lower or eliminate regulations or to change the jurisdictional authority of regulating bodies'.[73]

3.33. In relation to the impact on regulation, funding and the provision of essential services, the Minister for Trade has stated

> Some in Local Government are concerned that the GATS will affect their right to regulate in its areas of competence. Almost all local government regulation (according to the Australian Local Government Association) is concerned with licensing the provision of services (such as food outlets), issuance planning permits and general discretionary powers, such as giving preference to local suppliers. In some cases local government provides a range of services such as sewage and water. Many of these issues relate to health and safety and are exempted from the GATS under the general exemptions. Government procurement including services procurement is addressed in the Government Procurement Agreement (GPA). Australia is not a member of the GPA. Rules on transparency in government procurement are under negotiation in the Working Party on GATS rules, although little substantive progress has been made, even on the issue of the relationship between the GPA and the transparency work. Beyond this services provided by local government are services delivered in the exercise of government authority and are therefore excluded from the scope of the GATS.[74]

## Sustainability

3.34. The Committee believes that the possible social and environmental impact of the areas included in Australia's member commitments needs further consideration.

3.35. As previously stated in one submission, there is a view that any commitments Australia makes to liberalise particular service areas is effectively binding regardless of negative social or environmental outcomes. The reason given is that under the GATS all liberalised areas where there is a

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[72] Submission No 7 (Community and Public Sector Union), p 5.
[73] Submission No 8 (Minister for Trade), p 32.
[74] Submission No 8 (Minister for Trade), pp 32 & 33.

challenge will be open to legal action and monetary penalties. This is regardless of the fact that Article XIV of the GATS provides for a number of exemptions as stated in paragraph 3.8 of this report.

3.36. A number of submissions have drawn the Committee's attention to particular case studies, which highlight examples of the types of disputes, which could occur once liberalisation of services is extended.

3.37. One particular example is that of Tasmania's salmon industry, which was negatively affected economically and environmentally by Canada's decision, to use the WTO dispute resolution process to challenge Australia's ban on the import of Atlantic salmon.

3.38. Worsening the situation was the fact that the Tasmanian government could not resolve the issue because under WTO rules, the matter could only be settled through nation-to-nation negotiation.

3.39. The Tasmanian salmon example raises important questions about the adverse effect on environmental sustainability of areas included in Australia's commitment schedule, which will be subject to trade liberalisation.

3.40. The Committee agrees with ACTCOSS that

> Global trade rules in general should enhance cooperation and environmentally sustainable trade between nations. However, the WTO and the GATS, because they do not deal individually with issues or sectors and because they do not place due emphasis on environment protection, have often led to outcomes which do not enhance the quality of life of people. Enhanced quality of life for citizens and environment must be the overall objective of such agreements.[75]

3.41. The Committee believes that the impact on social sustainability should also be a consideration under the GATS.

3.42. The Australian Consumers Association gives the example that as a result of liberalisation of water services in Bolivia, the price of water increased significantly, making it unaffordable for poorer people.

> …the costs of some basic services like water have soared beyond the means of many poor people. In Bolivia, this resulted in bloody confrontations between the people and the government. In other countries, consumer groups discovered that foreign-owned, under regulated private monopolies – with little or no

[75] Submission no 10 (ACT Council on Social Service), p 2.

improvement in service – replaced inefficient government monopolies.[76]

3.43. In evidence presented to the Committee, there is also a view that WTO agreements reflect the interest of the powerful countries and corporations. An example of this is the corporate lobbying of governments and participation in government delegations.[77]

> The most recent powerful example of this was the lobbying by US pharmaceutical companies in December 2002 which resulted in the US government blocking proposals to change the interpretation of the TRIPs [trade-related aspects of intellectual property rights][78] agreement to make medicines more affordable to developing countries. This issue, which was hailed as a key gain for developing countries in the Doha round of negotiations, remains unresolved. The increasingly dominant and unilateral role of the US in the WTO has reflected its recent behaviour in the context of the United Nations and is the subject of increasing commentary.[79]

3.44. Further to this, AFTINET made the point that the Department of Foreign Affairs and Trade's discussion paper on the GATS does not state how GATS negotiations fit with Australia's foreign policy objectives.

> The discussion paper does not address the issue of how Australia's approach to the GATS negotiations fits with Australia's foreign policy objectives regarding developing countries, which is particularly striking given the effect that Australia's requests might have on these countries. Other countries have incorporated their development policies into their approach to the GATS negotiations.[80]

3.45. AFTINET states that there are further impacts on social sustainability. AFTINET has stated that the process of negotiations and proposals under the GATS and AUSFTA have the ability to undermine Australia's democracy and sovereignty. They claim that this is because of the lack of: wide consultation and public debate; transparency; parliamentary debate; government's ability

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76 Submission No 3 (Australian Consumers Association), p 4.

77 Submission No 4 (Australian Fair Trade and Investment Network), p 5.

78 The TRIPs applies to all WTO members and includes all categories of intellectual property which are: copyright and related rights, trademarks, geographical indications, industrial designs, patents, integrated circuit layout designs and protection of undisclosed information., WTO website, <www.wto.org>

79 Submission No 4 (Australian Fair Trade and Investment Network), p 5.

80 ibid., p 12

to regulate and make laws; emphasis on social and cultural policy; and independent foreign policy.[81]

3.46. In relation to transparency, AFTINET states

> The lack of transparency [in the negotiation process] means that the public is unable to assess whether the bargains struck are appropriate, and in fact is hardly able to ascertain what bargains have been struck at all. The small amount of information made available by governments on particular requests is presented as being unrelated to other requests and offers. There are also trade-offs with negotiations in other areas such as agriculture. This was illustrated clearly in the comment of the EU [European Union] Trade Commissioner, Pascal Lamy in his visit to Australia last year. The Australian Financial Review reported that Mr Lamy said that 'the EU wanted Australia to lift restrictions on foreign ownership of Telstra and the sensitive water-distribution industry in return for any concessions from Europe on barriers to agricultural trade in coming world trade talks' *(Australian Financial Review, 17 July 2002, pp 1-9).*[82]

3.47. AFTINET makes further comment in relation to how regulation is affected under GATS. In particular, the proposed changes to trade rules through the Working Parties on GATS rules and on Domestic Regulation.

3.48. Under Article VI of the GATS, the Working Party on Domestic Regulation is tasked with developing policy measures, which ensure least trade restrictive government regulation. AFTINET has stated that

> As part of these negotiations, the Australian government has supported a necessity test for domestic regulation. This would allow regulation to be challenged on the basis that another measure is reasonably available, taking into account technical and economic feasibility that achieves a legitimate policy objective and is significantly less restrictive to trade. Such an idea seeks to fit public policy making, which involves a range of non-economic as well as economic values, within criteria that require that particular economic characteristics (the quality of being 'least trade restrictive') be preferred.[83]

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[81] ibid., p 6.
[82] ibid., p 10.
[83] ibid., p 14.

3.49. AFTINET is not supportive of the least trade restrictive policy stance, which does not take into full account the social and environmental implications.

3.50. The Committee acknowledges this view.

## The dispute resolution mechanism under the GATS

3.51. As already stated the majority of submissions have expressed concern that the GATS is not subject to parliamentary scrutiny and the negative impact this has on the democratic process at all levels of Australian society.[84] It has previously been stated that this has the effect of limiting the flexibility of decision-making at the local level. A further concern in this vein is the ACT being unable to represent itself directly through any dispute resolution process, if there is a grievance made against it by another party.

3.52. Most submissions have expressed concern and reservation about the dispute resolution process provided for under the GATS. Specifically, as there is ambiguity in relation to the definition of public services, and predominantly there is a public/private mix in the delivery of government services, this opens the door for increased challenges from aggrieved parties, competing to provide these services.

3.53. Of the inclusion of particular areas for trade liberalisation, ACTCOSS has stated that

> …once a country has signed up to the GATS, it will be subject to pressure to extend the area of GATS coverage to any areas which are covered in other countries.[85]

3.54. Various submissions provide examples of the types of disputes that could occur once liberalisation of services is extended. ACTCOSS gives the following example.

> In a preview of the type of cases that could become routine under the GATS, tobacco giant Philip Morris recently assailed the Canadian Government's proposal to remove the 'light' and 'mild' descriptors from cigarette packages. The company argued that less burdensome regulatory alternatives exist and that the

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[84] Submission No 1 (David Hopkins); Submission No 3 (Australian Consumers' Association); Submission No 4 (Australian Free Trade and Investment Network); Submission No 5 (J.C Iltis); Submission No 6 (Australian Services Union); Submission No 7 (Community and Public Sector Union); Submission No 10 (ACT Council on Social Service).

[85] Submission No 10 (ACT Council on Social Service), p 4.

> regulations would create 'unnecessary obstacles to trade'. The proposed GATS restrictions on domestic regulation are excessive and a recipe for regulatory chill. Scott Sinclair and Jim Grieshaber-Otto, *Facing the Facts: A Guide to the GATS* Canadian Centre for Policy Alternatives.[86]

3.55. Another such example, mentioned previously is provided by the CPSU.

> An example of this situation occurred when Canada used the WTO Dispute Resolution process to overturn Australia's 24 year quarantine ban on the import of Atlantic salmon. This impacted directly on the Tasmanian salmon industry, where the Tasmanian State Government was unable to protect the island's disease-free status which was threatened by this decision. The Tasmanian State Government accused the Federal Government of surrender to the WTO over this issue when it did not appeal against the international trade body's decision. The Tasmanian Government was unable to pursue this issue themselves; it could only be negotiated between the Australian and Canadian Governments on a nation-to-nation basis.[87]

3.56. Further examples are provided by J.C. Iltis in relation to grievances made under the North American Free Trade Agreement (NAFTA).

> The Mexican municipality sued by the US Metalclad Corporation because it was refused permission to build a large hazardous waste facility on land already so contaminated by toxic wastes that local groundwater was compromised.
>
> The US was sued by the Canadian Methanex Corporation because of a ban on a fuel additive which has become a major groundwater contaminant.
>
> Canada was sued by Sun Belt Water because a province interfered with its plans to export water to California.[88]

3.57. Of the dispute settlement process under the GATS, the Minister for Trade has made the point that foreign companies already have access to the Australian legal system to challenge any regulatory decisions, similarly to Australian businesses.

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[86] Submission No 10 (ACT Council on Social Service), pp 4-5.
[87] Submission No 7 (Community and Public Sector Union), p 4.
[88] Submission No 5 (J.C. Iltis), p 3.

> In Australia, foreign business already have recourse to the Australian legal and administrative system should they wish to challenge regulatory decisions as do Australian businesses. The GATS does not add significant new issues of substance for Australia in the domestic regulatory area. The further development of the domestic regulatory disciplines in much of the world will ultimately serve the interests of Australian services exporters as they seek to deal with a range of regulatory barriers inhibiting their export growth.[89]

## Committee comment

3.58. As previously stated by AFTINET, other member countries (excluding Australia) are taking steps to protect their public services from WTO Dispute Panels, through horizontal limitations. Australia is relying on the interpretation of Article I(3) of the GATS which states that public services are not part of the GATS unless included in specific country commitments.[90]

3.59. The Committee has received evidence, which questions and provides specific examples of the negative consequences of the current definition of public services under the GATS.

3.60. The Committee is particularly concerned about the possible negative economic, social and environmental impacts on individual member countries in relation to relying on the definition of public services under the GATS, and the possible disputes that could result.

3.61. The Committee recommends that:

**Recommendation 1**

**The ACT Government recommend to the Commonwealth that it take to the World Trade Organization a proposal to amend the dispute settlement process to ensure that environmental and social expertise informs the decision making.**

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[89] Submission No 8 (Minister for Trade), p 33.
[90] Submission No 4 (Australian Fair Trade and Investment Network), p 17.

## Community consultation about the GATS

3.62. A further concern, which is stated in all the submissions received and the majority of witnesses that appeared before the Committee[91] is that, assessment of the impact of the GATS is inadequate. This includes consultation about the GATS.

3.63. In relation to this issue, ACTCOSS has stated that

> One of the major problems with both the GATS and the World Trade Organisation framework is that they develop 'umbrella' agreements which gather numerous issues or industries together, precluding both proper consideration of the impact on particular sectors, as well as precluding thorough consultation on any issues.
>
> Protection of the health of citizens and protection of the environment should be the highest priority for policy makers. The WTO and the free trade agreements regularly judge these factors to be less important than trade per se. [92]

3.64. All submissions make reference to the issue that consultation has been inadequate. This lends strength to the argument that the GATS does little to enhance the democratic process.

3.65. When asked about the consultation that had taken place regarding the GATS at the Territory level, representatives from the Department of Foreign Affairs and Trade stated that

> We have had consultations with lots of stakeholders. We have met with all state and territory governments, with 164 industry associations and companies and with 80 [non government organisations] NGOs and have accepted 73 submissions from civil societies specifically on the GATS and 23 in the lead-up to Cancun. We do not consult all these people at the same time; we frame our consultations according to a negotiating cycle and what is required at the time. At certain times we need industry input and at certain times we need broader community input—that is how we structure our consultation. We are very keen to maximise the opportunities for ACT service providers and welcome the chance to have a close dialogue with the ACT government on market access barriers and discriminatory practices that prevent

[91] With the exception of representatives from the Department of Foreign Affairs and Trade.
[92] Submission no 10 (ACT Council on Social Service), p 2.

> ACT services exporters from securing a bigger share of world services trade.
>
> We have had quite a number of debriefs of state and territory governments on the GATS negotiations and separate meetings in February and mid-April this year with senior ACT government officials, including with Business ACT. At this point, we would just like to reiterate the message that we convey to all state and territory governments: we are very happy to discuss GATS negotiations. If people wish to do so, they are welcome to come in and see us.[93]

3.66. The Committee was interested to know whether the ACT Government had been consulted in relation to the GATS and the level of consultation that had occurred.

3.67. The Chief Minister confirmed that the ACT Government had been consulted by the Department of Foreign Affairs and Trade (DFAT), which was initiated by the Commonwealth's release of the Discussion paper on GATS in January 2003.

> State and Territory officials were briefed by DFAT on Australia's initial offer on 13 February 2003. State and Territory Governments were subsequently given two weeks in which to raise any concerns in relation to Australia's initial offer.
>
> Consultation between ACT Government departments identified a number of minor ACT legislative or regulatory requirements that could possibly conflict with the Australian Government's Legal Services offer. In addition, potential interests in overseas liberalization of the Education-Related Travel Service and Personal, Cultural and Recreation Service sectors were identified. Due to the tight deadline imposed by the Commonwealth, it was not possible to consult with ACT peak industry bodies. It has also been suggested that future developments in the GATS may have implications for ACT government procurement practices. At this stage in the negotiations, however, it is not clear what if any impacts may arise.[94]

3.68. The Chief Minister consequently wrote to the Minister for Trade on 13 March 2003 and 'expressed concern (in concert with other States and Territories) over the Commonwealth's lack of prior consultation, and the

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[93] Transcript of evidence, Wednesday, 12 November 2003, p 17.

[94] Letter to the Standing Committee on Public Accounts in relation to its inquiry into the General Agreement on Trade in Services (GATS) with special reference to the ACT, from Mr Jon Stanhope MLA, Chief Minister, dated 19 January 2004.

narrow timeframe allotted for submissions'.[95] A copy of this letter is provided at Appendix E.

3.69. The ACT Government has stated that it will continue to monitor the Commonwealth Government's participation in the GATS to protect ACT interests.[96]

3.70. In relation to the Australia-United States Free Trade Agreement (AUSFTA), the ACT Government has stated that it has made submissions to the Joint Standing Committee on Treaties and the Senate Select Committee on the AUSFTA. A copy of the letter from the Chief Minister to the Committee in relation to the GATS and AUSFTA can be found at Appendix F.

3.71. The Government has also stated that the view it has put forward in submissions is

> …based on consultation between relevant ACT agencies and knowledge of the range of ACT interests potentially affected by the [Australia-United States Free Trade Agreement].[97]

3.72. Of the Government's submissions, the Chief Minister stated the following

> Our submissions to the two Commonwealth Parliamentary Committee inquiries expressed a range of significant reservations about the [AUSFTA], including in relation to potential impacts on the Pharmaceutical Benefits Scheme, government regulation to protect and enhance the environment, foreign investment review arrangements, and Australian content rules for new forms of media. The ACT Government's submissions make it clear that ACT participation in the Government Procurement Chapter of the [AUSFTA] does not constitute an endorsement of the Agreement as a whole.[98]

## Committee comment

3.73. The Committee remains concerned about the issues that have been presented to it in relation to the possible negative impact of GATS on: the flexibility of local decision-making; regulation and provision of essential

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[95] ibid.
[96] Letter from Mr Jon Stanhope, MLA, ACT Chief Minister to the Standing Committee on Public Accounts, dated 9 August 2004.
[97] ibid.
[98] ibid.

services; the dispute resolution process; and the level of and timeframe for consultation with the Australian community.

3.74. These concerns are based on the unanimous evidence presented to the Committee, with the exception of the Commonwealth Government's submission. Of particular note is the issue of the definition of public services and as a consequence, the possible expansion of the GATS into areas where social and environmental considerations may be compromised. Also of concern are the possible disputes, which may arise as a result, and the inability of Territory, State and Local Governments to represent themselves in such disputes.

3.75. Having examined the submissions received, the Committee is of the view that while there may be opportunities for some ACT based service providers to benefit from the liberalisation of some services e.g. education, there are serious concerns about in particular, community consultation.

3.76. The Committee recommends that:

**Recommendation 2**

**The ACT Government not support the liberalisation of any new service sector until the following have occurred:**

**(1) The ACT Government recommend to the Commonwealth that they:**

- **(a) commission comprehensive independent research into the social and economic impact on all proposed trade agreements, including regional impacts and publish it for public debate before negotiations begin; and**

- **(b) undertake more thorough consultation, which commences early in the negotiation process, with state, territory and municipal governments, with an agreed timeframe in relation to the sector agreements and any proposed bilateral trade agreements.**

**(2) The ACT Government provide an adequate process for informing the members of the ACT Legislative Assembly and the ACT public about treaties and trade agreements.**

# 4. Other matters: The Australia-United States Free Trade Agreement (AUSFTA)

4.1. A number of submissions also made reference to the AUSFTA. The difference between the two agreements is that the AUSFTA is a trade agreement between the USA and Australia and not between large numbers of countries. Unlike the GATS, those items, which are exempt from the agreement, are listed.

4.2. Most notably, concerns have been raised about the social and cultural impacts the agreement could have on Australia. AFTINET takes the stance that

> Australia should not negotiate a Free Trade Agreement with the US. The overwhelming size and strength of the US economy places Australia in an extremely weak bargaining position, which is reflected in the admission by even the advocates of such an agreement that Australia is perceived in economic terms as another state of the US. The government's own study showed that economic gains from such an agreement were extremely low and unlikely to be realised, as removal of all trade barriers was unlikely. An independent study has shown predicted economic losses, not gains, thus undermining the whole rationale for such an agreement. The linking of trade and security issues undermines our independence on both trade and security issues, and is likely to harm our relationships with other countries. The investment provisions sought by the US would deliver a degree of influence to US corporations that would undermine Australian government's sovereignty and threaten democratic public policy making. Finally, the US is challenging a wide range of specific Australian social policies. This is unacceptable and would endanger Australia's economic independence, culture, access to essential services, and health and safety.

4.3. AFTINET urged the Federal Government to observe the following items in all proposed trade negotiations.

- Cease any negotiations which could endanger important social policies;
- Commission comprehensive independent research into both social and economic impact on all proposed trade agreements, including regional impacts and publish it for public debate before negotiations begin;

- Ensure that essential public services like health, education and water, and health and social policies like access to medicines, food labelling and quarantine are excluded from all trade negotiations;

- Ensure that cultural and audio-visual services are excluded from all trade negotiations; and

- Ensure that all trade agreements are debated and decided by parliament, not just by Cabinet.[99]

4.4. The Committee acknowledges this view and suggests the Commonwealth take these points into consideration.

4.5. The Committee recommends that:

**Recommendation 3**

**The ACT Government communicates the concerns raised about the AUSFTA to the Commonwealth Government urgently**

[99] Submission No 4 (Australian Fair Trade and Investment Network), pp 41-42.

# 5. Conclusion

The Committee would like to thank all individuals and organisations that contributed to the inquiry, either through submissions and or appearing at public hearings.

Brendan Smyth, MLA
Chair

20 August 2004

# Appendix A – Written submissions received by the Committee

(1) Mr David Hopkins, private citizen

(2) Mr Michael White, ACT Branch Secretary, Media, Entertainment and Arts Alliance

(3) Ms Louise Sylvan, Chief Executive Officer, Australian Consumers' Association

(4) Dr Patricia Ranald and Ms Louise Southalan, Public Interest Advocacy Centre, Australian Fair Trade and Investment Network

(5) J C Iltis, private citizen

(6) Mr Greg McLean, Assistant National Secretary, Australian Services Union

(7) Mr Graham Rodda, Acting Divisional Secretary, Community and Public Sector Union Policy Division

(8) The Hon. Mark Vaile MP, Minister for Trade

(9) Ms Elizabeth Rogers, Director, Canberra Arts Marketing

(10) Mr Daniel Stubbs, Director, ACT Council of Social Service Incorporated

# Appendix B – Witnesses who appeared before the Committee at public hearings

**Wednesday, 12 November 2003**

Mr Graham Rodda, Secretary, Public Sector Policy Division
Ms Jane Mulligan, Parliamentary Liaison Officer
Community and Public Sector Union

Mr Michael White, ACT Branch Secretary
Media Entertainment and Arts Alliance

Ms Lisa Filipetto, Assistant Secretary
Mr Trevor Peacock, Director
Services and Intellectual Property, Department of Foreign Affairs and Trade

**Thursday, 13 November 2003**

Mr Gregory McLean, Assistant National Secretary
Australian Services Union including the USU Branch

Mr Daniel Stubbs, Director
Ms Kathryn Kelly, Policy Adviser
ACT Council on Social Service Incorporated

**Friday, 14 November 2003**

Dr Patricia Ranald, Convenor Australian Fair Trade and Investment Network and Principal Policy Officer, Public Interest Advocacy Centre

# Appendix C – Member and observer countries of the World Trade Organization (WTO) and the date membership commenced[100]

## Member countries

**Angola** 23 November 1996
**Antigua and Barbuda** 1 January 1995
**Argentina** 1 January 1995
**Armenia** 5 February 2003
**Australia** 1 January 1995
**Austria** 1 January 1995
**Bahrain, Kingdom of** 1 January 1995
**Bangladesh** 1 January 1995
**Barbados** 1 January 1995
**Belgium** 1 January 1995
**Belize** 1 January 1995
**Benin** 22 February 1996
**Bolivia** 12 September 1995
**Botswana** 31 May 1995
**Brazil** 1 January 1995
**Brunei Darussalam** 1 January 1995
**Bulgaria** 1 December 1996
**Burkina Faso** 3 June 1995
**Burundi** 23 July 1995
**Cameroon** 13 December 1995
**Canada** 1 January 1995
**Central African Republic** 31 May 1995
**Chad** 19 October 1996
**Chile** 1 January 1995
**China** 11 December 2001
**Colombia** 30 April 1995
**Congo** 27 March 1997
**Costa Rica** 1 January 1995
**Côte d'Ivoire** 1 January 1995
**Croatia** 30 November 2000
**Cuba** 20 April 1995
**Cyprus** 30 July 1995
**Czech Republic** 1 January 1995

[100] World Trade Organization, <http://www.wto.org.au>

**Democratic Republic of the Congo** 1 January 1997
**Denmark** 1 January 1995
**Djibouti** 31 May 1995
**Dominica** 1 January 1995
**Dominican Republic** 9 March 1995
**Ecuador** 21 January 1996
**Egypt** 30 June 1995
**El Salvador** 7 May 1995
**Estonia** 13 November 1999
**European Communities** 1 January 1995
**Fiji** 14 January 1996
**Finland** 1 January 1995
**Former Yugoslav Republic of Macedonia (FYROM)** 4 April 2003
**France** 1 January 1995
**Gabon** 1 January 1995
**The Gambia** 23 October 1996
**Georgia** 14 June 2000
**Germany** 1 January 1995
**Ghana** 1 January 1995
**Greece** 1 January 1995
**Grenada** 22 February 1996
**Guatemala** 21 July 1995
**Guinea** 25 October 1995
**Guinea Bissau** 31 May 1995
**Guyana** 1 January 1995
**Haiti** 30 January 1996
**Honduras** 1 January 1995
**Hong Kong, China** 1 January 1995
**Hungary** 1 January 1995
**Iceland** 1 January 1995
**India** 1 January 1995
**Indonesia** 1 January 1995
**Ireland** 1 January 1995
**Israel** 21 April 1995
**Italy** 1 January 1995
**Jamaica** 9 March 1995
**Japan** 1 January 1995
**Jordan** 11 April 2000
**Kenya** 1 January 1995
**Korea, Republic of** 1 January 1995
**Kuwait** 1 January 1995
**Kyrgyz Republic** 20 December 1998
**Latvia** 10 February 1999

**Lesotho** 31 May 1995
**Liechtenstein** 1 September 1995
**Lithuania** 31 May 2001
**Luxembourg** 1 January 1995
**Macao, China** 1 January 1995
**Madagascar** 17 November 1995
**Malawi** 31 May 1995
**Malaysia** 1 January 1995
**Maldives** 31 May 1995
**Mali** 31 May 1995
**Malta** 1 January 1995
**Mauritania** 31 May 1995
**Mauritius** 1 January 1995
**Mexico** 1 January 1995
**Moldova** 26 July 2001
**Mongolia** 29 January 1997
**Morocco** 1 January 1995
**Mozambique** 26 August 1995
**Myanmar** 1 January 1995
**Namibia** 1 January 1995
**Nepal** 23 April 2004
**Netherlands** — For the Kingdom in Europe and for the Netherlands Antilles 1 January 1995
**New Zealand** 1 January 1995
**Nicaragua** 3 September 1995
**Niger** 13 December 1996
**Nigeria** 1 January 1995
**Norway** 1 January 1995
**Oman** 9 November 2000
**Pakistan** 1 January 1995
**Panama** 6 September 1997
**Papua New Guinea** 9 June 1996
**Paraguay** 1 January 1995
**Peru** 1 January 1995
**Philippines** 1 January 1995
**Poland** 1 July 1995
**Portugal** 1 January 1995
**Qatar** 13 January 1996
**Romania** 1 January 1995
**Rwanda** 22 May 1996
**Saint Kitts and Nevis** 21 February 1996
**Saint Lucia** 1 January 1995
**Saint Vincent & the Grenadines** 1 January 1995

**Senegal** 1 January 1995
**Sierra Leone** 23 July 1995
**Singapore** 1 January 1995
**Slovak Republic** 1 January 1995
**Slovenia** 30 July 1995
**Solomon Islands** 26 July 1996
**South Africa** 1 January 1995
**Spain** 1 January 1995
**Sri Lanka** 1 January 1995
**Suriname** 1 January 1995
**Swaziland** 1 January 1995
**Sweden** 1 January 1995
**Switzerland** 1 July 1995
**Chinese Taipei** 1 January 2002
**Tanzania** 1 January 1995
**Thailand** 1 January 1995
**Togo** 31 May 1995
**Trinidad and Tobago** 1 March 1995
**Tunisia** 29 March 1995
**Turkey** 26 March 1995
**Uganda** 1 January 1995
**United Arab Emirates** 10 April 1996
**United Kingdom** 1 January 1995
**United States of America** 1 January 1995
**Uruguay** 1 January 1995
**Venezuela** 1 January 1995
**Zambia** 1 January 1995
**Zimbabwe** 5 March 1995

## Observer countries

Algeria
Andorra
Azerbaijan
Bahamas
Belarus
Bhutan
Bosnia and Herzegovina
Cambodia
Cape Verde
Equatorial Guinea
Ethiopia

Holy See (Vatican)
Iraq
Kazakhstan
Lao People's Democratic Republic
Lebanese Republic
Russian Federation
Samoa
Sao Tome and Principe
Saudi Arabia
Serbia and Montenegro
Seychelles
Sudan
Tajikistan
Tonga
Ukraine
Uzbekistan
Vanuatu
VietNam
Yemen

# Appendix D – The General Agreement on Trade in Services[101]

**ANNEX 1B**

**GENERAL AGREEMENT ON TRADE IN SERVICES**



[101] WTO Secretariat, Annex 1B, The General Agreement on Trade in Services, <www.wto.org>. Please note that the formatting of the document is slightly different to that which appears on the WTO website.

Second Annex on Financial Services

Annex on Negotiations on Maritime Transport Services

Annex on Telecommunications

Annex on Negotiations on Basic Telecommunications

## GENERAL AGREEMENT ON TRADE IN SERVICES

*Members,*

*Recognizing* the growing importance of trade in services for the growth and development of the world economy;

*Wishing* to establish a multilateral framework of principles and rules for trade in services with a view to the expansion of such trade under conditions of transparency and progressive liberalization and as a means of promoting the economic growth of all trading partners and the development of developing countries;

*Desiring* the early achievement of progressively higher levels of liberalization of trade in services through successive rounds of multilateral negotiations aimed at promoting the interests of all participants on a mutually advantageous basis and at securing an overall balance of rights and obligations, while giving due respect to national policy objectives;

*Recognizing* 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 and, given asymmetries existing with respect to the degree of development of services regulations in different countries, the particular need of developing countries to exercise this right;

*Desiring* to facilitate the increasing participation of developing countries in trade in services and the expansion of their service exports including, *inter alia*, through the strengthening of their domestic services capacity and its efficiency and competitiveness;

*Taking* particular account of the serious difficulty of the least-developed countries in view of their special economic situation and their development, trade and financial needs;

Hereby *agree* as follows:

# PART I

# SCOPE AND DEFINITION

## *Article I*

## *Scope and Definition*

1. This Agreement applies to measures by Members affecting trade in services.

2. For the purposes of this Agreement, trade in services is defined as the supply of a service:

   (a) from the territory of one Member into the territory of any other Member;

   (b) in the territory of one Member to the service consumer of any other Member;

   (c) by a service supplier of one Member, through commercial presence in the territory of any other Member;

   (d) by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member.

3. For the purposes of this Agreement:

   (a) "measures by Members" means measures taken by:

      (i) central, regional or local governments and authorities; and

      (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

   In fulfilling its obligations and commitments under the Agreement, each Member shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory;

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

(c) "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.

## PART II

## GENERAL OBLIGATIONS AND DISCIPLINES

### *Article II*

### *Most-Favoured-Nation Treatment*

1. With respect to any measure covered by this Agreement, each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country.

2. A Member may maintain a measure inconsistent with paragraph 1 provided that such a measure is listed in, and meets the conditions of, the Annex on Article II Exemptions.

3. The provisions of this Agreement shall not be so construed as to prevent any Member from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

### *Article III*

### *Transparency*

1. Each Member shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Agreement. International agreements pertaining to or affecting trade in services to which a Member is a signatory shall also be published.

2. Where publication as referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly available.

3. Each Member shall promptly and at least annually inform the Council for Trade in Services of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this Agreement.

4. Each Member shall respond promptly to all requests by any other Member for specific information on any of its measures of general application or international agreements within the meaning of paragraph 1. Each Member shall also establish one or more enquiry points to provide specific information to other Members, upon request, on all such matters as well as those subject to the notification requirement in paragraph 3. Such enquiry points shall be established within two years from the date of entry into force of the Agreement Establishing the WTO (referred to in this Agreement as the "WTO Agreement"). Appropriate flexibility with respect to the time-limit within which such enquiry points are to be established may be agreed upon for individual developing country Members. Enquiry points need not be depositories of laws and regulations.

5. Any Member may notify to the Council for Trade in Services any measure, taken by any other Member, which it considers affects the operation of this Agreement.

### *Article III bis*

### *Disclosure of Confidential Information*

Nothing in this Agreement shall require any Member to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

*Article IV*

*Increasing Participation of Developing Countries*

1. The increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments, by different Members pursuant to Parts III and IV of this Agreement, relating to:

(a) the strengthening of their domestic services capacity and its efficiency and competitiveness, *inter alia* through access to technology on a commercial basis;

(b) the improvement of their access to distribution channels and information networks; and

(c) the liberalization of market access in sectors and modes of supply of export interest to them.

2. Developed country Members, and to the extent possible other Members, shall establish contact points within two years from the date of entry into force of the WTO Agreement to facilitate the access of developing country Members' service suppliers to information, related to their respective markets, concerning:

(a) commercial and technical aspects of the supply of services;

(b) registration, recognition and obtaining of professional qualifications; and

(c) the availability of services technology.

3. Special priority shall be given to the least-developed country Members in the implementation of paragraphs 1 and 2. Particular account shall be taken of the serious difficulty of the least-developed countries in accepting negotiated specific commitments in view of their special economic situation and their development, trade and financial needs.

*Article V*

*Economic Integration*

1. This Agreement shall not prevent any of its Members from being a party to or entering into an agreement liberalizing trade in services between or among the parties to such an agreement, provided that such an agreement:

(a) has substantial sectoral coverage[102], and

(b) provides for the absence or elimination of substantially all discrimination, in the sense of Article XVII, between or among the parties, in the sectors covered under subparagraph (a), through:

(i) elimination of existing discriminatory measures, and/or

(ii) prohibition of new or more discriminatory measures,

either at the entry into force of that agreement or on the basis of a reasonable time-frame, except for measures permitted under Articles XI, XII, XIV and XIV bis.

2. In evaluating whether the conditions under paragraph 1(b) are met, consideration may be given to the relationship of the agreement to a wider process of economic integration or trade liberalization among the countries concerned.

3. (a) Where developing countries are parties to an agreement of the type referred to in paragraph 1, flexibility shall be provided for regarding the conditions set out in paragraph 1, particularly with reference to subparagraph (b) thereof, in accordance with the level of development of the countries concerned, both overall and in individual sectors and subsectors.

(b) Notwithstanding paragraph 6, in the case of an agreement of the type referred to in paragraph 1 involving only developing countries, more favourable treatment may be granted to juridical persons owned or controlled by natural persons of the parties to such an agreement.

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[102] This condition is understood in terms of number of sectors, volume of trade affected and modes of supply. In order to meet this condition, agreements should not provide for the *a priori* exclusion of any mode of supply.

4. Any agreement referred to in paragraph 1 shall be designed to facilitate trade between the parties to the agreement and shall not in respect of any Member outside the agreement raise the overall level of barriers to trade in services within the respective sectors or subsectors compared to the level applicable prior to such an agreement.

5. If, in the conclusion, enlargement or any significant modification of any agreement under paragraph 1, a Member intends to withdraw or modify a specific commitment inconsistently with the terms and conditions set out in its Schedule, it shall provide at least 90 days advance notice of such modification or withdrawal and the procedure set forth in paragraphs 2, 3 and 4 of Article XXI shall apply.

6. A service supplier of any other Member that is a juridical person constituted under the laws of a party to an agreement referred to in paragraph 1 shall be entitled to treatment granted under such agreement, provided that it engages in substantive business operations in the territory of the parties to such agreement.

7. (a) Members which are parties to any agreement referred to in paragraph 1 shall promptly notify any such agreement and any enlargement or any significant modification of that agreement to the Council for Trade in Services. They shall also make available to the Council such relevant information as may be requested by it. The Council may establish a working party to examine such an agreement or enlargement or modification of that agreement and to report to the Council on its consistency with this Article.

(b) Members which are parties to any agreement referred to in paragraph 1 which is implemented on the basis of a time-frame shall report periodically to the Council for Trade in Services on its implementation. The Council may establish a working party to examine such reports if it deems such a working party necessary.

(c) Based on the reports of the working parties referred to in subparagraphs (a) and (b), the Council may make recommendations to the parties as it deems appropriate.

8. A Member which is a party to any agreement referred to in paragraph 1 may not seek compensation for trade benefits that may accrue to any other Member from such agreement.

*Article V bis*

*Labour Markets Integration Agreements*

This Agreement shall not prevent any of its Members from being a party to an agreement establishing full integration[103] of the labour markets between or among the parties to such an agreement, provided that such an agreement:

(a) exempts citizens of parties to the agreement from requirements concerning residency and work permits;

(b) is notified to the Council for Trade in Services.

*Article VI*

*Domestic Regulation*

1. In sectors where specific commitments are undertaken, each Member shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

2. (a) Each Member shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Member shall ensure that the procedures in fact provide for an objective and impartial review.

(b) The provisions of subparagraph (a) shall not be construed to require a Member to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

[103] Typically, such integration provides citizens of the parties concerned with a right of free entry to the employment markets of the parties and includes measures concerning conditions of pay, other conditions of employment and social benefits.

3. Where authorization is required for the supply of a service on which a specific commitment has been made, the competent authorities of a Member shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Member shall provide, without undue delay, information concerning the status of the application.

4. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Council for Trade in Services shall, through appropriate bodies it may establish, develop any necessary disciplines. Such disciplines shall aim to ensure that such requirements are, *inter alia*:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service;

(b) not more burdensome than necessary to ensure the quality of the service;

(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

5. (a) In sectors in which a Member has undertaken specific commitments, pending the entry into force of disciplines developed in these sectors pursuant to paragraph 4, the Member shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which:

(i) does not comply with the criteria outlined in subparagraphs 4(a), (b) or (c); and

(ii) could not reasonably have been expected of that Member at the time the specific commitments in those sectors were made.

(b) In determining whether a Member is in conformity with the obligation under paragraph 5(a), account shall be taken of international standards of relevant international organizations[104] applied by that Member.

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[104] The term "relevant international organizations" refers to international bodies whose membership is open to the relevant bodies of at least all Members of the WTO.

6. In sectors where specific commitments regarding professional services are undertaken, each Member shall provide for adequate procedures to verify the competence of professionals of any other Member.

## *Article VII*

### *Recognition*

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of services suppliers, and subject to the requirements of paragraph 3, a Member may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

2. A Member that is a party to an agreement or arrangement of the type referred to in paragraph 1, whether existing or future, shall afford adequate opportunity for other interested Members to negotiate their accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Member accords recognition autonomously, it shall afford adequate opportunity for any other Member to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Member's territory should be recognized.

3. A Member shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing or certification of services suppliers, or a disguised restriction on trade in services.

4. Each Member shall:

   (a) within 12 months from the date on which the WTO Agreement takes effect for it, inform the Council for Trade in Services of its existing recognition measures and state whether such measures are based on agreements or arrangements of the type referred to in paragraph 1;

(b) promptly inform the Council for Trade in Services as far in advance as possible of the opening of negotiations on an agreement or arrangement of the type referred to in paragraph 1 in order to provide adequate opportunity to any other Member to indicate their interest in participating in the negotiations before they enter a substantive phase;

(c) promptly inform the Council for Trade in Services when it adopts new recognition measures or significantly modifies existing ones and state whether the measures are based on an agreement or arrangement of the type referred to in paragraph 1.

5. Wherever appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, Members shall work in cooperation with relevant intergovernmental and non-governmental organizations towards the establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions.

*Article VIII*

*Monopolies and Exclusive Service Suppliers*

1. Each Member shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Member's obligations under Article II and specific commitments.

2. Where a Member's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Member's specific commitments, the Member shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.

3. The Council for Trade in Services may, at the request of a Member which has a reason to believe that a monopoly supplier of a service of any other Member is acting in a manner inconsistent with paragraph 1 or 2, request the Member establishing, maintaining or authorizing such supplier to provide specific information concerning the relevant operations.

4. If, after the date of entry into force of the WTO Agreement, a Member grants monopoly rights regarding the supply of a service covered by its specific commitments, that Member shall notify the Council for Trade in Services no later than three months before the intended implementation of the grant of monopoly rights and the provisions of paragraphs 2, 3 and 4 of Article XXI shall apply.

5. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Member, formally or in effect,
(*a*) authorizes or establishes a small number of service suppliers and
(*b*) substantially prevents competition among those suppliers in its territory.

### *Article IX*

### *Business Practices*

1. Members recognize that certain business practices of service suppliers, other than those falling under Article VIII, may restrain competition and thereby restrict trade in services.

2. Each Member shall, at the request of any other Member, enter into consultations with a view to eliminating practices referred to in paragraph 1. The Member addressed shall accord full and sympathetic consideration to such a request and shall cooperate through the supply of publicly available non-confidential information of relevance to the matter in question. The Member addressed shall also provide other information available to the requesting Member, subject to its domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Member.

### *Article X*

### *Emergency Safeguard Measures*

1. There shall be multilateral negotiations on the question of emergency safeguard measures based on the principle of non-discrimination. The results of such negotiations shall enter into effect on a date not later than three years from the date of entry into force of the WTO Agreement.

2. In the period before the entry into effect of the results of the negotiations referred to in paragraph 1, any Member may, notwithstanding the provisions of paragraph 1 of Article XXI, notify the Council on Trade in Services of its intention to modify or withdraw a specific commitment after a period of one year from the date on which the commitment enters into force; provided that the Member shows cause to the Council that the modification or withdrawal cannot await the lapse of the three-year period provided for in paragraph 1 of Article XXI.

3. The provisions of paragraph 2 shall cease to apply three years after the date of entry into force of the WTO Agreement.

## *Article XI*

### *Payments and Transfers*

1. Except under the circumstances envisaged in Article XII, a Member shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments.

2. Nothing in this Agreement shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Member shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article XII or at the request of the Fund.

## *Article XII*

### *Restrictions to Safeguard the Balance of Payments*

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Member may adopt or maintain restrictions on trade in services on which it has undertaken specific commitments, including on payments or transfers for transactions related to such commitments. It is recognized that particular pressures on the balance of payments of a Member in the process of economic development or economic transition may necessitate the use of restrictions to ensure, *inter alia,* the maintenance of a level of financial reserves adequate for the

implementation of its programme of economic development or economic transition.

2. The restrictions referred to in paragraph 1:

(a) shall not discriminate among Members;

(b) shall be consistent with the Articles of Agreement of the International Monetary Fund;

(c) shall avoid unnecessary damage to the commercial, economic and financial interests of any other Member;

(d) shall not exceed those necessary to deal with the circumstances described in paragraph 1;

(e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

3. In determining the incidence of such restrictions, Members may give priority to the supply of services which are more essential to their economic or development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector.

4. Any restrictions adopted or maintained under paragraph 1, or any changes therein, shall be promptly notified to the General Council.

5. (a) Members applying the provisions of this Article shall consult promptly with the Committee on Balance-of-Payments Restrictions on restrictions adopted under this Article.

(b) The Ministerial Conference shall establish procedures[105] for periodic consultations with the objective of enabling such recommendations to be made to the Member concerned as it may deem appropriate.

(c) Such consultations shall assess the balance-of-payment situation of the Member concerned and the restrictions adopted or maintained under this Article, taking into account, *inter alia,* such factors as:

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[105] It is understood that the procedures under paragraph 5 shall be the same as the GATT 1994 procedures.

(i) the nature and extent of the balance-of-payments and the external financial difficulties;

(ii) the external economic and trading environment of the consulting Member;

(iii) alternative corrective measures which may be available.

(d) The consultations shall address the compliance of any restrictions with paragraph 2, in particular the progressive phaseout of restrictions in accordance with paragraph 2(e).

(e) In such consultations, all findings of statistical and other facts presented by the International Monetary Fund relating to foreign exchange, monetary reserves and balance of payments, shall be accepted and conclusions shall be based on the assessment by the Fund of the balance-of-payments and the external financial situation of the consulting Member.

6. If a Member which is not a member of the International Monetary Fund wishes to apply the provisions of this Article, the Ministerial Conference shall establish a review procedure and any other procedures necessary.

*Article XIII*

*Government Procurement*

1. Articles II, XVI and XVII shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.

2. There shall be multilateral negotiations on government procurement in services under this Agreement within two years from the date of entry into force of the WTO Agreement.

*Article XIV*

*General Exceptions*

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures:

(a) necessary to protect public morals or to maintain public order;[106]

(b) necessary to protect human, animal or plant life or health;

(c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:

(i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

(iii) safety;

[106] The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

(d) inconsistent with Article XVII, provided that the difference in treatment is aimed at ensuring the equitable or effective[107] imposition or collection of direct taxes in respect of services or service suppliers of other Members;

(e) inconsistent with Article II, provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Member is bound.

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[107] Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Member under its taxation system which:

(i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Member's territory; or

(ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Member's territory; or

(iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or

(iv) apply to consumers of services supplied in or from the territory of another Member in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Member's territory; or

(v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or

(vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Member's tax base.

Tax terms or concepts in paragraph (d) of Article XIV and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Member taking the measure.

*Article XIV bis*

*Security Exceptions*

1. Nothing in this Agreement shall be construed:

(a) to require any Member to furnish any information, the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent any Member from taking any action which it considers necessary for the protection of its essential security interests:

(i) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;

(ii) relating to fissionable and fusionable materials or the materials from which they are derived;

(iii) taken in time of war or other emergency in international relations; or

(c) to prevent any Member from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. The Council for Trade in Services shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

*Article XV*

*Subsidies*

1. Members recognize that, in certain circumstances, subsidies may have distortive effects on trade in services. Members shall enter into negotiations with a view to developing the necessary multilateral disciplines to avoid such trade-distortive effects.[108] The negotiations shall also address the appropriateness of countervailing procedures. Such negotiations shall recognize the role of subsidies in relation to the development programmes of developing countries and take into account the needs of Members, particularly developing country Members, for flexibility in this area. For the purpose of such negotiations, Members shall exchange information concerning all subsidies related to trade in services that they provide to their domestic service suppliers.

2. Any Member which considers that it is adversely affected by a subsidy of another Member may request consultations with that Member on such matters. Such requests shall be accorded sympathetic consideration.

## PART III

## SPECIFIC COMMITMENTS

*Article XVI*

*Market Access*

1. With respect to market access through the modes of supply identified in Article I, each Member shall accord services and service suppliers of any other Member treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.[109]

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[108] A future work programme shall determine how, and in what time-frame, negotiations on such multilateral disciplines will be conducted.

[109] If a Member undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(a) of Article I and if the cross-border movement of capital is an essential part of the service itself, that Member is thereby committed to allow such movement of capital. If a Member undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in

2. In sectors where market-access commitments are undertaken, the measures which a Member shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:

(a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;

(b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

(c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;[110]

(d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;

(e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and

(f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

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subparagraph 2(c) of Article I, it is thereby committed to allow related transfers of capital into its territory.

[110] Subparagraph 2(c) does not cover measures of a Member which limit inputs for the supply of services.

*Article XVII*

*National Treatment*

1. In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.[111]

2. A Member may meet the requirement of paragraph 1 by according to services and service suppliers of any other Member, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Member compared to like services or service suppliers of any other Member.

*Article XVIII*

*Additional Commitments*

Members may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles XVI or XVII, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Member's Schedule.

[111] Specific commitments assumed under this Article shall not be construed to require any Member to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

## PART IV

## PROGRESSIVE LIBERALIZATION

### *Article XIX*

### *Negotiation of Specific Commitments*

1. In pursuance of the objectives of this Agreement, Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalization. Such negotiations shall be directed to the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access. This process shall take place with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations.

2. The process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors. There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV.

3. For each round, negotiating guidelines and procedures shall be established. For the purposes of establishing such guidelines, the Council for Trade in Services shall carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of this Agreement, including those set out in paragraph 1 of Article IV. Negotiating guidelines shall establish modalities for the treatment of liberalization undertaken autonomously by Members since previous negotiations, as well as for the special treatment for least-developed country Members under the provisions of paragraph 3 of Article IV.

4. The process of progressive liberalization shall be advanced in each such round through bilateral, plurilateral or multilateral negotiations directed towards increasing the general level of specific commitments undertaken by Members under this Agreement.

*Article XX*

*Schedules of Specific Commitments*

1. Each Member shall set out in a schedule the specific commitments it undertakes under Part III of this Agreement. With respect to sectors where such commitments are undertaken, each Schedule shall specify:

(a) terms, limitations and conditions on market access;

(b) conditions and qualifications on national treatment;

(c) undertakings relating to additional commitments;

(d) where appropriate the time-frame for implementation of such commitments; and

(e) the date of entry into force of such commitments.

2. Measures inconsistent with both Articles XVI and XVII shall be inscribed in the column relating to Article XVI. In this case the inscription will be considered to provide a condition or qualification to Article XVII as well.

3. Schedules of specific commitments shall be annexed to this Agreement and shall form an integral part thereof.

*Article XXI*

*Modification of Schedules*

1. (a) A Member (referred to in this Article as the "modifying Member") may modify or withdraw any commitment in its Schedule, at any time after three years have elapsed from the date on which that commitment entered into force, in accordance with the provisions of this Article.

(b) A modifying Member shall notify its intent to modify or withdraw a commitment pursuant to this Article to the Council for Trade in Services no later than three months before the intended date of implementation of the modification or withdrawal.

2. (a) At the request of any Member the benefits of which under this Agreement may be affected (referred to in this Article as an "affected Member") by a proposed modification or withdrawal notified under subparagraph 1(b), the modifying Member shall enter into negotiations with a

view to reaching agreement on any necessary compensatory adjustment. In such negotiations and agreement, the Members concerned shall endeavour to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in Schedules of specific commitments prior to such negotiations.

(b) Compensatory adjustments shall be made on a most-favoured-nation basis.

3. (a) If agreement is not reached between the modifying Member and any affected Member before the end of the period provided for negotiations, such affected Member may refer the matter to arbitration. Any affected Member that wishes to enforce a right that it may have to compensation must participate in the arbitration.

(b) If no affected Member has requested arbitration, the modifying Member shall be free to implement the proposed modification or withdrawal.

4. (a) The modifying Member may not modify or withdraw its commitment until it has made compensatory adjustments in conformity with the findings of the arbitration.

(b) If the modifying Member implements its proposed modification or withdrawal and does not comply with the findings of the arbitration, any affected Member that participated in the arbitration may modify or withdraw substantially equivalent benefits in conformity with those findings. Notwithstanding Article II, such a modification or withdrawal may be implemented solely with respect to the modifying Member.

5. The Council for Trade in Services shall establish procedures for rectification or modification of Schedules. Any Member which has modified or withdrawn scheduled commitments under this Article shall modify its Schedule according to such procedures.

PART V

INSTITUTIONAL PROVISIONS

*Article XXII*

*Consultation*

1. Each Member shall accord sympathetic consideration to, and shall afford adequate opportunity for, consultation regarding such representations as may be made by any other Member with respect to any matter affecting the operation of this Agreement. The Dispute Settlement Understanding (DSU) shall apply to such consultations.

2. The Council for Trade in Services or the Dispute Settlement Body (DSB) may, at the request of a Member, consult with any Member or Members in respect of any matter for which it has not been possible to find a satisfactory solution through consultation under paragraph 1.

3. A Member may not invoke Article XVII, either under this Article or Article XXIII, with respect to a measure of another Member that falls within the scope of an international agreement between them relating to the avoidance of double taxation. In case of disagreement between Members as to whether a measure falls within the scope of such an agreement between them, it shall be open to either Member to bring this matter before the Council for Trade in Services.[112] The Council shall refer the matter to arbitration. The decision of the arbitrator shall be final and binding on the Members.

[112] With respect to agreements on the avoidance of double taxation which exist on the date of entry into force of the WTO Agreement, such a matter may be brought before the Council for Trade in Services only with the consent of both parties to such an agreement.

*Article XXIII*

*Dispute Settlement and Enforcement*

1. If any Member should consider that any other Member fails to carry out its obligations or specific commitments under this Agreement, it may with a view to reaching a mutually satisfactory resolution of the matter have recourse to the DSU.

2. If the DSB considers that the circumstances are serious enough to justify such action, it may authorize a Member or Members to suspend the application to any other Member or Members of obligations and specific commitments in accordance with Article 22 of the DSU.

3. If any Member considers that any benefit it could reasonably have expected to accrue to it under a specific commitment of another Member under Part III of this Agreement is being nullified or impaired as a result of the application of any measure which does not conflict with the provisions of this Agreement, it may have recourse to the DSU. If the measure is determined by the DSB to have nullified or impaired such a benefit, the Member affected shall be entitled to a mutually satisfactory adjustment on the basis of paragraph 2 of Article XXI, which may include the modification or withdrawal of the measure. In the event an agreement cannot be reached between the Members concerned, Article 22 of the DSU shall apply.

*Article XXIV*

*Council for Trade in Services*

1. The Council for Trade in Services shall carry out such functions as may be assigned to it to facilitate the operation of this Agreement and further its objectives. The Council may establish such subsidiary bodies as it considers appropriate for the effective discharge of its functions.

2. The Council and, unless the Council decides otherwise, its subsidiary bodies shall be open to participation by representatives of all Members.

3. The Chairman of the Council shall be elected by the Members.

*Article XXV*

*Technical Cooperation*

1. Service suppliers of Members which are in need of such assistance shall have access to the services of contact points referred to in paragraph 2 of Article IV.

2. Technical assistance to developing countries shall be provided at the multilateral level by the Secretariat and shall be decided upon by the Council for Trade in Services.

*Article XXVI*

*Relationship with Other International Organizations*

The General Council shall make appropriate arrangements for consultation and cooperation with the United Nations and its specialized agencies as well as with other intergovernmental organizations concerned with services.

## PART VI

## FINAL PROVISIONS

*Article XXVII*

*Denial of Benefits*

A Member may deny the benefits of this Agreement:

(a) to the supply of a service, if it establishes that the service is supplied from or in the territory of a non-Member or of a Member to which the denying Member does not apply the WTO Agreement;

(b) in the case of the supply of a maritime transport service, if it establishes that the service is supplied:

(i) by a vessel registered under the laws of a non-Member or of a Member to which the denying Member does not apply the WTO Agreement, and

(ii) by a person which operates and/or uses the vessel in whole or in part but which is of a non-Member or of a Member to which the denying Member does not apply the WTO Agreement;

(c) to a service supplier that is a juridical person, if it establishes that it is not a service supplier of another Member, or that it is a service supplier of a Member to which the denying Member does not apply the WTO Agreement.

*Article XXVIII*

*Definitions*

For the purpose of this Agreement:

(a) "measure" means any measure by a Member, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

(b) "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;

(c) "measures by Members affecting trade in services" include measures in respect of

(i) the purchase, payment or use of a service;

(ii) the access to and use of, in connection with the supply of a service, services which are required by those Members to be offered to the public generally;

(iii) the presence, including commercial presence, of persons of a Member for the supply of a service in the territory of another Member;

(d) "commercial presence" means any type of business or professional establishment, including through

(i) the constitution, acquisition or maintenance of a juridical person, or

(ii) the creation or maintenance of a branch or a representative office,

within the territory of a Member for the purpose of supplying a service;

(e) "sector" of a service means,

(i) with reference to a specific commitment, one or more, or all, subsectors of that service, as specified in a Member's Schedule,

(ii) otherwise, the whole of that service sector, including all of its subsectors;

(f) "service of another Member" means a service which is supplied,

(i) from or in the territory of that other Member, or in the case of maritime transport, by a vessel registered under the laws of that other Member, or by a person of that other Member which supplies the service through the operation of a vessel and/or its use in whole or in part; or

(ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other Member;

(g) "service supplier" means any person that supplies a service;[113]

(h) "monopoly supplier of a service" means any person, public or private, which in the relevant market of the territory of a Member is authorized or established formally or in effect by that Member as the sole supplier of that service;

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[113] Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under the Agreement. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

(i) "service consumer" means any person that receives or uses a service;

(j) "person" means either a natural person or a juridical person;

(k) "natural person of another Member" means a natural person who resides in the territory of that other Member or any other Member, and who under the law of that other Member:

(i) is a national of that other Member; or

(ii) has the right of permanent residence in that other Member, in the case of a Member which:

1. does not have nationals; or

2. accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, as notified in its acceptance of or accession to the WTO Agreement, provided that no Member is obligated to accord to such permanent residents treatment more favourable than would be accorded by that other Member to such permanent residents. Such notification shall include the assurance to assume, with respect to those permanent residents, in accordance with its laws and regulations, the same responsibilities that other Member bears with respect to its nationals;

(l) "juridical person" means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;

(m) "juridical person of another Member" means a juridical person which is either:

(i) constituted or otherwise organized under the law of that other Member, and is engaged in substantive business operations in the territory of that Member or any other Member; or

(ii) in the case of the supply of a service through commercial presence, owned or controlled by:

1. natural persons of that Member; or

2. juridical persons of that other Member identified under subparagraph (i);

(n) a juridical person is:

(i) "owned" by persons of a Member if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Member;

(ii) "controlled" by persons of a Member if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;

(iii) "affiliated" with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;

(o) "direct taxes" comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

*Article XXIX*

*Annexes*

The Annexes to this Agreement are an integral part of this Agreement.

ANNEX ON ARTICLE II EXEMPTIONS

*Scope*

1. This Annex specifies the conditions under which a Member, at the entry into force of this Agreement, is exempted from its obligations under paragraph 1 of Article II.

2. Any new exemptions applied for after the date of entry into force of the WTO Agreement shall be dealt with under paragraph 3 of Article IX of that Agreement.

*Review*

3. The Council for Trade in Services shall review all exemptions granted for a period of more than 5 years. The first such review shall take place no more than 5 years after the entry into force of the WTO Agreement.

4. The Council for Trade in Services in a review shall:

(a) examine whether the conditions which created the need for the exemption still prevail; and

(b) determine the date of any further review.

*Termination*

5. The exemption of a Member from its obligations under paragraph 1 of Article II of the Agreement with respect to a particular measure terminates on the date provided for in the exemption.

6. In principle, such exemptions should not exceed a period of 10 years. In any event, they shall be subject to negotiation in subsequent trade liberalizing rounds.

7. A Member shall notify the Council for Trade in Services at the termination of the exemption period that the inconsistent measure has been brought into conformity with paragraph 1 of Article II of the Agreement.

*Lists of Article II Exemptions*

[The agreed lists of exemptions under paragraph 2 of Article II will be annexed here in the treaty copy of the WTO Agreement.]

ANNEX ON MOVEMENT OF NATURAL PERSONS

SUPPLYING SERVICES UNDER THE AGREEMENT

1. This Annex applies to measures affecting natural persons who are service suppliers of a Member, and natural persons of a Member who are employed by a service supplier of a Member, in respect of the supply of a service.

2. The Agreement shall not apply to measures affecting natural persons seeking access to the employment market of a Member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

3. In accordance with Parts III and IV of the Agreement, Members may negotiate specific commitments applying to the movement of all categories of natural persons supplying services under the Agreement. Natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment.

4. The Agreement shall not prevent a Member from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment.[114]

[114] The sole fact of requiring a visa for natural persons of certain Members and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

# ANNEX ON AIR TRANSPORT SERVICES

1. This Annex applies to measures affecting trade in air transport services, whether scheduled or non-scheduled, and ancillary services. It is confirmed that any specific commitment or obligation assumed under this Agreement shall not reduce or affect a Member's obligations under bilateral or multilateral agreements that are in effect on the date of entry into force of the WTO Agreement.

2. The Agreement, including its dispute settlement procedures, shall not apply to measures affecting:

(a) traffic rights, however granted; or

(b) services directly related to the exercise of traffic rights,

except as provided in paragraph 3 of this Annex.

3. The Agreement shall apply to measures affecting:

(a) aircraft repair and maintenance services;

(b) the selling and marketing of air transport services;

(c) computer reservation system (CRS) services.

4. The dispute settlement procedures of the Agreement may be invoked only where obligations or specific commitments have been assumed by the concerned Members and where dispute settlement procedures in bilateral and other multilateral agreements or arrangements have been exhausted.

5. The Council for Trade in Services shall review periodically, and at least every five years, developments in the air transport sector and the operation of this Annex with a view to considering the possible further application of the Agreement in this sector.

6. Definitions:

(a) "Aircraft repair and maintenance services" mean such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance.

(b) "Selling and marketing of air transport services" mean opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions.

(c) "Computer reservation system (CRS) services" mean services provided by computerised systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued.

(d) "Traffic rights" mean the right for scheduled and non-scheduled services to operate and/or to carry passengers, cargo and mail for remuneration or hire from, to, within, or over the territory of a Member, including points to be served, routes to be operated, types of traffic to be carried, capacity to be provided, tariffs to be charged and their conditions, and criteria for designation of airlines, including such criteria as number, ownership, and control.

ANNEX ON FINANCIAL SERVICES

1. *Scope and Definition*

(a) This Annex applies to measures affecting the supply of financial services. Reference to the supply of a financial service in this Annex shall mean the supply of a service as defined in paragraph 2 of Article I of the Agreement.

(b) For the purposes of subparagraph 3(b) of Article I of the Agreement, "services supplied in the exercise of governmental authority" means the following:

(i) activities conducted by a central bank or monetary authority or by any other public entity in pursuit of monetary or exchange rate policies;

(ii) activities forming part of a statutory system of social security or public retirement plans; and

(iii) other activities conducted by a public entity for the account or with the guarantee or using the financial resources of the Government.

(c) For the purposes of subparagraph 3(b) of Article I of the Agreement, if a Member allows any of the activities referred to in subparagraphs (b)(ii) or (b)(iii) of this paragraph to be conducted by its financial service suppliers in competition with a public entity or a financial service supplier, "services" shall include such activities.

(d) Subparagraph 3(c) of Article I of the Agreement shall not apply to services covered by this Annex.

2. *Domestic Regulation*

(a) Notwithstanding any other provisions of the Agreement, a Member shall not be prevented from taking measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of the Agreement, they shall not be used as a means of avoiding the Member's commitments or obligations under the Agreement.

(b) Nothing in the Agreement shall be construed to require a Member to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities.

3. *Recognition*

(a) A Member may recognize prudential measures of any other country in determining how the Member's measures relating to financial services shall be applied. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.

(b) A Member that is a party to such an agreement or arrangement referred to in subparagraph (a), whether future or existing, shall afford adequate opportunity for other interested Members to negotiate their accession to such agreements or arrangements, or to negotiate comparable ones with it, under circumstances in which there would be equivalent regulation, oversight, implementation of such regulation, and, if appropriate, procedures concerning the sharing of information between the parties to the agreement or arrangement. Where a Member accords recognition autonomously, it shall afford adequate opportunity for any other Member to demonstrate that such circumstances exist.

(c) Where a Member is contemplating according recognition to prudential measures of any other country, paragraph 4(b) of Article VII shall not apply.

4. *Dispute Settlement*

Panels for disputes on prudential issues and other financial matters shall have the necessary expertise relevant to the specific financial service under dispute.

5. *Definitions*

For the purposes of this Annex:

(a) A financial service is any service of a financial nature offered by a financial service supplier of a Member. Financial services include all insurance and insurance-related services, and all banking and other financial services (excluding insurance). Financial services include the following activities:

*Insurance and insurance-related services*

(i) Direct insurance (including co-insurance):

(A) life

(B) non-life

(ii) Reinsurance and retrocession;

(iii) Insurance intermediation, such as brokerage and agency;

(iv) Services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.

*Banking and other financial services* (excluding insurance)

(v) Acceptance of deposits and other repayable funds from the public;

(vi) Lending of all types, including consumer credit, mortgage credit, factoring and financing of commercial transaction;

(vii) Financial leasing;

(viii) All payment and money transmission services, including credit, charge and debit cards, travellers cheques and bankers drafts;

(ix) Guarantees and commitments;

(x) Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:

(A) money market instruments (including cheques, bills, certificates of deposits);

(B) foreign exchange;

(C) derivative products including, but not limited to, futures and options;

(D) exchange rate and interest rate instruments, including products such as swaps, forward rate agreements;

(E) transferable securities;

(F) other negotiable instruments and financial assets, including bullion.

(xi) Participation in issues of all kinds of securities, including underwriting and placement as agent (whether publicly or privately) and provision of services related to such issues;

(xii) Money broking;

(xiii) Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;

(xiv) Settlement and clearing services for financial assets, including securities, derivative products, and other negotiable instruments;

(xv) Provision and transfer of financial information, and financial data processing and related software by suppliers of other financial services;

(xvi) Advisory, intermediation and other auxiliary financial services on all the activities listed in subparagraphs (v) through (xv), including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy.

(b) A financial service supplier means any natural or juridical person of a Member wishing to supply or supplying financial services but the term "financial service supplier" does not include a public entity.

(c) "Public entity" means:

(i) a government, a central bank or a monetary authority, of a Member, or an entity owned or controlled by a Member, that is principally engaged in carrying out governmental functions or activities for governmental purposes, not including an entity principally engaged in supplying financial services on commercial terms; or

(ii) a private entity, performing functions normally performed by a central bank or monetary authority, when exercising those functions.

SECOND ANNEX ON FINANCIAL SERVICES

1. Notwithstanding Article II of the Agreement and paragraphs 1 and 2 of the Annex on Article II Exemptions, a Member may, during a period of 60 days beginning four months after the date of entry into force of the WTO Agreement, list in that Annex measures relating to financial services which are inconsistent with paragraph 1 of Article II of the Agreement.

2. Notwithstanding Article XXI of the Agreement, a Member may, during a period of 60 days beginning four months after the date of entry into force of the WTO Agreement, improve, modify or withdraw all or part of the specific commitments on financial services inscribed in its Schedule.

3. The Council for Trade in Services shall establish any procedures necessary for the application of paragraphs 1 and 2.

## ANNEX ON NEGOTIATIONS ON MARITIME TRANSPORT SERVICES

1. Article II and the Annex on Article II Exemptions, including the requirement to list in the Annex any measure inconsistent with most-favoured-nation treatment that a Member will maintain, shall enter into force for international shipping, auxiliary services and access to and use of port facilities only on:

(a) the implementation date to be determined under paragraph 4 of the Ministerial Decision on Negotiations on Maritime Transport Services; or,

(b) should the negotiations not succeed, the date of the final report of the Negotiating Group on Maritime Transport Services provided for in that Decision.

2. Paragraph 1 shall not apply to any specific commitment on maritime transport services which is inscribed in a Member's Schedule.

3. From the conclusion of the negotiations referred to in paragraph 1, and before the implementation date, a Member may improve, modify or withdraw all or part of its specific commitments in this sector without offering compensation, notwithstanding the provisions of Article XXI.

## ANNEX ON TELECOMMUNICATIONS

1. *Objectives*

Recognizing the specificities of the telecommunications services sector and, in particular, its dual role as a distinct sector of economic activity and as the underlying transport means for other economic activities, the Members have agreed to the following Annex with the objective of elaborating upon the provisions of the Agreement with respect to measures affecting access to and use of public telecommunications transport networks and services. Accordingly, this Annex provides notes and supplementary provisions to the Agreement.

2. *Scope*

(a) This Annex shall apply to all measures of a Member that affect access to and use of public telecommunications transport networks and services.[115]

(b) This Annex shall not apply to measures affecting the cable or broadcast distribution of radio or television programming.

(c) Nothing in this Annex shall be construed:

(i) to require a Member to authorize a service supplier of any other Member to establish, construct, acquire, lease, operate, or supply telecommunications transport networks or services, other than as provided for in its Schedule; or

(ii) to require a Member (or to require a Member to oblige service suppliers under its jurisdiction) to establish, construct, acquire, lease, operate or supply telecommunications transport networks or services not offered to the public generally.

[115] This paragraph is understood to mean that each Member shall ensure that the obligations of this Annex are applied with respect to suppliers of public telecommunications transport networks and services by whatever measures are necessary.

3. *Definitions*

For the purposes of this Annex:

(a) "Telecommunications" means the transmission and reception of signals by any electromagnetic means.

(b) "Public telecommunications transport service" means any telecommunications transport service required, explicitly or in effect, by a Member to be offered to the public generally. Such services may include, *inter alia*, telegraph, telephone, telex, and data transmission typically involving the real-time transmission of customer-supplied information between two or more points without any end-to-end change in the form or content of the customer's information.

(c) "Public telecommunications transport network" means the public telecommunications infrastructure which permits telecommunications between and among defined network termination points.

(d) "Intra-corporate communications" means telecommunications through which a company communicates within the company or with or among its subsidiaries, branches and, subject to a Member's domestic laws and regulations, affiliates. For these purposes, "subsidiaries", "branches" and, where applicable, "affiliates" shall be as defined by each Member. "Intra-corporate communications" in this Annex excludes commercial or non-commercial services that are supplied to companies that are not related subsidiaries, branches or affiliates, or that are offered to customers or potential customers.

(e) Any reference to a paragraph or subparagraph of this Annex includes all subdivisions thereof.

4. *Transparency*

In the application of Article III of the Agreement, each Member shall ensure that relevant information on conditions affecting access to and use of public telecommunications transport networks and services is publicly available, including: tariffs and other terms and conditions of service; specifications of technical interfaces with such networks and services; information on bodies responsible for the preparation and adoption of standards affecting such access and use; conditions applying to attachment of terminal or other equipment; and notifications, registration or licensing requirements, if any.

5. *Access to and use of Public Telecommunications Transport Networks and Services*

(a) Each Member shall ensure that any service supplier of any other Member is accorded access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions, for the supply of a service included in its Schedule. This obligation shall be applied, *inter alia*, through paragraphs (b) through (f).[116]

(b) Each Member shall ensure that service suppliers of any other Member have access to and use of any public telecommunications transport network or service offered within or across the border of that Member, including private leased circuits, and to this end shall ensure, subject to paragraphs (e) and (f), that such suppliers are permitted:

(i) to purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to supply a supplier's services;

(ii) to interconnect private leased or owned circuits with public telecommunications transport networks and services or with circuits leased or owned by another service supplier; and

(iii) to use operating protocols of the service supplier's choice in the supply of any service, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally.

(c) Each Member shall ensure that service suppliers of any other Member may use public telecommunications transport networks and services for the movement of information within and across borders, including for intra-corporate communications of such service suppliers, and for access to information contained in data bases or otherwise stored in machine-readable form in the territory of any Member. Any new or amended measures of a Member significantly affecting such use shall be notified and shall be subject to consultation, in accordance with relevant provisions of the Agreement.

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[116] The term "non-discriminatory" is understood to refer to most-favoured-nation and national treatment as defined in the Agreement, as well as to reflect sector-specific usage of the term to mean "terms and conditions no less favourable than those accorded to any other user of like public telecommunications transport networks or services under like circumstances".

(d) Notwithstanding the preceding paragraph, a Member may take such measures as are necessary to ensure the security and confidentiality of messages, subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade in services.

(e) Each Member shall ensure that no condition is imposed on access to and use of public telecommunications transport networks and services other than as necessary:

(i) to safeguard the public service responsibilities of suppliers of public telecommunications transport networks and services, in particular their ability to make their networks or services available to the public generally;

(ii) to protect the technical integrity of public telecommunications transport networks or services; or

(iii) to ensure that service suppliers of any other Member do not supply services unless permitted pursuant to commitments in the Member's Schedule.

(f) Provided that they satisfy the criteria set out in paragraph (e), conditions for access to and use of public telecommunications transport networks and services may include:

(i) restrictions on resale or shared use of such services;

(ii) a requirement to use specified technical interfaces, including interface protocols, for inter-connection with such networks and services;

(iii) requirements, where necessary, for the inter-operability of such services and to encourage the achievement of the goals set out in paragraph 7(a);

(iv) type approval of terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to such networks;

(v) restrictions on inter-connection of private leased or owned circuits with such networks or services or with circuits leased or owned by another service supplier; or

(vi) notification, registration and licensing.

(g) Notwithstanding the preceding paragraphs of this section, a developing country Member may, consistent with its level of development, place reasonable conditions on access to and use of public telecommunications transport networks and services necessary to strengthen its domestic telecommunications infrastructure and service capacity and to increase its participation in international trade in telecommunications services. Such conditions shall be specified in the Member's Schedule.

6. *Technical Cooperation*

(a) Members recognize that an efficient, advanced telecommunications infrastructure in countries, particularly developing countries, is essential to the expansion of their trade in services. To this end, Members endorse and encourage the participation, to the fullest extent practicable, of developed and developing countries and their suppliers of public telecommunications transport networks and services and other entities in the development programmes of international and regional organizations, including the International Telecommunication Union, the United Nations Development Programme, and the International Bank for Reconstruction and Development.

(b) Members shall encourage and support telecommunications cooperation among developing countries at the international, regional and sub-regional levels.

(c) In cooperation with relevant international organizations, Members shall make available, where practicable, to developing countries information with respect to telecommunications services and developments in telecommunications and information technology to assist in strengthening their domestic telecommunications services sector.

(d) Members shall give special consideration to opportunities for the least-developed countries to encourage foreign suppliers of telecommunications services to assist in the transfer of technology, training and other activities that support the development of their telecommunications infrastructure and expansion of their telecommunications services trade.

7. *Relation to International Organizations and Agreements*

(a) Members recognize the importance of international standards for global compatibility and inter-operability of telecommunication networks and services and undertake to promote such standards through the work of relevant international bodies, including the International Telecommunication Union and the International Organization for Standardization.

(b) Members recognize the role played by intergovernmental and non-governmental organizations and agreements in ensuring the efficient operation of domestic and global telecommunications services, in particular the International Telecommunication Union. Members shall make appropriate arrangements, where relevant, for consultation with such organizations on matters arising from the implementation of this Annex.

ANNEX ON NEGOTIATIONS ON BASIC TELECOMMUNICATIONS

1. Article II and the Annex on Article II Exemptions, including the requirement to list in the Annex any measure inconsistent with most-favoured-nation treatment that a Member will maintain, shall enter into force for basic telecommunications only on:

(a) the implementation date to be determined under paragraph 5 of the Ministerial Decision on Negotiations on Basic Telecommunications; or,

(b) should the negotiations not succeed, the date of the final report of the Negotiating Group on Basic Telecommunications provided for in that Decision.

2. Paragraph 1 shall not apply to any specific commitment on basic telecommunications which is inscribed in a Member's Schedule.

# Appendix E – Letter from the ACT Chief Minister to the Minister for Trade regarding consultation about the GATS, dated 13 March 2003


Jon Stanhope MLA

CHIEF MINISTER
ATTORNEY GENERAL MINISTER FOR ENVIRONMENT
MINISTER FOR COMMUNITY AFFAIRS

MEMBER FOR GINNINDERRA


The Hon Mark Vaile MP
Minister for Trade
House of Representatives
Parliament House
CANBERRA ACT 2600

Attention: Ms Lisa Filipetto, Assistant Secretary, Department of Foreign Affairs and Trade

Dear Minister

I am writing to you in relation to the General Agreement on Trade in Services (GATS) offer which the Commonwealth Government proposes to make to other World Trade Organisation (WTO) members by 31 March 2003.

I understand that at a meeting on 13 February 2003, the Department of Foreign Affairs and Trade (DFAT) requested that State and Territory Governments provide comment on the 22 requests received from WTO members in relation to a variety of sectors of the Australian economy.

ACT Government Departments were subsequently asked to:

i. examine a list of questions (provided to ACT Government officers by DFAT) on possible legislative impacts of, or barriers to, the implementation of the GATS offers; and

ii. offer suggestions as to any additional service sectors which the Territory believes could be included as part of Australia's initial offer, or as part of subsequent offers.


ACT LEGISLATIVE ASSEMBLY

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In response to the first issue, there may be minor legislative or regulatory barriers to your proposal within the ACT. In response to the second issue, there are a number of further sectors which the ACT would be interested in having opened to trade liberalisation as part of the current round of negotiations, or if that is not possible, during future negotiations. ACT Government comments in relation to both these matters are described in full at Attachment A to this letter.

However, you should note that due to the time constraints imposed by your Department on this project, it has not yet been possible to consult with ACT peak industry bodies. The ACT Government is now in the process of doing so, and you may expect further comments as soon as this is completed.

I would also like to raise with you several matters which have come to my attention in relation to State and Territory consultation on the current round of WTO GATS negotiations.

Firstly, it is my understanding that DFAT was unable to release the details upon which this consultation was based until very close to the 31 March deadline in which offers are to be submitted, as this may have compromised the Australian Government's bargaining position. Unfortunately, this has not allowed my Department to consult as fully as it would otherwise have wished with other ACT Government Departments. It has also not allowed sufficient time for my Department to consult with ACT industry peak bodies, many of which may have legitimate issues which should be addressed.

Secondly, it would also be appreciated if DFAT could in future provide States and Territories with information on any community or business consultation undertaken by the Commonwealth. Having this information would aid the ACT Government in conducting its own consultation process.

Thank you for the opportunity to comment on the offers being made by the Commonwealth Government for the current round of GATS negotiations.

Yours sincerely

Jon Stanhope MLA
Chief Minister

13 MAR 2003

## Legislative or Regulatory Barriers

*Legal Services*
It is noted that the Commonwealth intends to include the ACT as one of the jurisdictions which allows revenue sharing between foreign and domestic law firms. This is technically true within the exact wording of the sector specific comments schedule provided to the ACT Government, where the sector or sub sector is defined as "home country law, including public international law".

However, it should be noted that section 196 of the ACT *Legal Practitioners Act 1970* (the Act) would create situations where this revenue sharing would only be partial. Whilst it is true that the proceeds of any legal work of an international or home law nature could be fully shared between Australian and international law firms, where foreign and domestic law firms work together on a case involving foreign, international and domestic Australian legal work, only the proceeds for international or home law legal work might be shared equally between the partners, whilst the proceeds from any domestic law work undertaken may not be shared. If you would like further information in regards to this issue, the contact officer is Mr Tiru Valal, phone 6207 0583.

## Additional Service Sectors that might be included as part of Australia's initial offer, or as part of future offers

*Education-related Travel Services*

Liberalising overseas acceptance of Australian academic qualifications would potentially increase the number of overseas students in Australia, increasing in turn the amount of education-related travel services that the ACT exports. The ACT would therefore appreciate further overseas liberalisation in this area.

Following "Government services not included elsewhere", the next most important service type for the ACT in terms of exports is Travel Services (i.e. expenditure on goods and services in Australia by non-resident visitors). The value of ACT travel services exports in 2001-02 was $190 million and the value of imports (expenditure by ACT residents overseas) was $15 million.

In 2001-02, the education-related component of travel services exports (which relates to the expenditure by foreign students in the ACT on education fees, and other goods and services) was $86 million, making this kind of travel service provision a matter of importance to the ACT.

The extent to which academic qualifications (particularly for the professions) are recognised overseas affects the nature of international trade in education related travel services and is therefore an issue which the ACT would be interested in seeing liberalised in the markets of WTO members. This issue could be raised in the context of the GATS Doha Round, or a later round. If you would like further information in regards to this issue, the contact officer is Mr Daniel Stewart, phone 6207 0307.

***Personal, cultural and recreation services***

In 2001-02, the value of exports of personal, cultural and recreation services from the ACT was $20 million. Although not separately identified in the ABS statistics due to confidentiality constraints, this estimate includes service exports related to sport and recreation.

From an ACT perspective, particularly given the world leading status of the Australian Institute of Sport (including the development and conduct of talent identification programs), there is interest in ensuring liberal trade in these services. Also from a national perspective, Australia may have a comparative advantage in some aspects of these services. If you would like further information in regards to this issue, the contact officer is Mr Daniel Stewart, phone 6207 0307.

# Appendix F – Letter from the ACT Chief Minister to the Standing Committee on Public Accounts - the ACT Government's comment about the GATS and AUSFTA, dated 4 August 2004


**Jon Stanhope** MLA

CHIEF MINISTER
ATTORNEY GENERAL MINISTER FOR THE ENVIRONMENT
MINISTER FOR COMMUNITY AFFAIRS

MEMBER FOR GINNINDERRA


Mr Brendan Smyth
Chair
Standing Committee on Public Accounts
ACT Legislative Assembly
GPO Box 1020
Canberra ACT 2601

Dear Mr Smyth

Thank you for your letter of 21 July 2004 concerning the Standing Committee on Public Accounts inquiry into the General Agreement on Trade in Services (GATS).

As you will recall, Australia's initial services market access offer in the GATS negotiations was lodged by the Commonwealth Government with the World Trade Organisation (WTO) on 31 March 2003. The offer covers elements of telecommunications, financial services, computer services, legal services, mining services, environmental services, landscape architectural services, maritime transport services, and air transport (ground handling) services. Australia's initial offer is non-binding and can be amended or withdrawn at any time prior to the conclusion of the negotiations.

In my letter of 19 January 2004, I noted that as a consequence of the breakdown of the WTO Meeting at Cancun in September 2003, the GATS negotiations had experienced a significant slowing of momentum. Since that time only slow progress has been made in the negotiations. By April 2004, only 42 offers of services liberalisation had been made covering 57 WTO members (including the European Union's offer which covers 15 EU members).

Some new momentum may be given to the GATS process by the agreement of the WTO General Council on 31 July 2004 to adopt a Framework Package to guide the next phase of the Doha Round negotiations. Annex C of the Framework Package reiterates calls on WTO members who have not submitted offers of services liberalisation to do so as soon as possible and in any case, before a May 2005 deadline. It remains to be seen whether this latest agreement will in fact energise the GATS negotiations.

The ACT Government will continue to monitor the Commonwealth Government's participation in the GATS negotiations with a view to identifying and protecting ACT interests.

With regard to the Australia - United States Free Trade Agreement (AUSFTA), the ACT Government made submissions to both the Joint Standing Committee on Treaties (JSCOT) and the Senate Select Committee on the AUSFTA. These submissions represented a whole-


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of-government perspective based on consultation between relevant ACT agencies and knowledge of the range of ACT interests potentially affected by the AUSFTA.

The ACT Government's submissions have been released publicly and can be found at:

*Submissions to JSCOT*

http://www.aph.gov.au/house/committee/jsct/usafta/subs/SUB180.pdf

http://www.aph.gov.au/house/committee/jsct/usafta/subs/SUB180_1.pdf

*Submissions to Senate Select Committee*

http://www.aph.gov.au/Senate/committee/freetrade_ctte/submissions/sub174.pdf

http://www.aph.gov.au/Senate/committee/freetrade_ctte/submissions/sub174a.pdf

Our submissions to the two Commonwealth Parliamentary Committee inquiries expressed a range of significant reservations about the AUSFTA, including in relation to potential impacts on the Pharmaceutical Benefits Scheme, government regulation to protect and enhance the environment, foreign investment review arrangements, and Australian content rules for new forms of media.

The ACT Government's submissions make it clear that ACT participation in the Government Procurement Chapter of the AUSFTA does not constitute an endorsement of the Agreement as a whole. The ACT's position is recorded in Chapter 3 of the Report of the Joint Standing Committee on Treaties that was tabled in the Commonwealth Parliament on 23 June 2004.

The JSCOT report can be found at:

http://www.aph.gov.au/house/committee/jsct/usafta/report.htm#chapters.

With regard to the Australia-Singapore Free Trade Agreement (SAFTA), you may be aware that that Commonwealth Minister for Trade, the Hon Mark Vaile MP, and the Singapore Minister for Trade and Industry, BG (NS) George Yeo, held the first Ministerial Review of the Agreement in Sydney on 14 July 2004.

The Joint Ministerial Statement released after this meeting indicates that Ministers agreed that, consistent with the relevant provisions of the SAFTA, officials will work to achieve the extension of the coverage of the key obligations of the SAFTA chapters on trade in services and investment to the Australian States and Territories.

Together with other States and Territories, the ACT Government anticipates further dialogue with the Commonwealth Government on these issues with a view to agreement on reservations to the application of the SAFTA services and investment chapters at least broadly equivalent to those contained in equivalent chapters of the AUSFTA.

I hope that the above information is of assistance to your Committee.

Yours sincerely

Jon Stanhope MLA
Chief Minister
- 9 AUG 2004

## Appendix G – Acronyms

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| AUSFTA | Australia United States Free Trade Agreement |
| ESM | Emergency Safeguards Mechanism |
| GATS | General Agreement on Trade in Services |
| GATT | General Agreement on Tariffs and Trade |
| MFN | Most Favoured Nation |
| NAFTA | North American Free Trade Agreement |
| TRIPs | Trade Related Aspects of Intellectual Property Rights |
| WTO | World Trade Organization |