



NSW.ACT

**Submission to Department of Foreign  
Affairs and Trade concerning WTO  
negotiations in 2001**

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## Submission to the Department of Foreign Affairs and Trade concerning WTO negotiations in 2001.

1. UnitingCare NSW.ACT recognises the importance of international trade in goods and in many types of services, and the need for rules governing that trade. It also recognises the importance of there being internationally recognised rules to regulate trade.
2. However, UnitingCare is concerned that international trade negotiations, both through the WTO and through other mechanisms (eg the Australia-Singapore agreement) are not sufficiently transparent.
3. UnitingCare sees the WTO criterion of “least trade restrictive practice” as inadequate on its own for assessing government regulation of trade. We do not accept the assumption that all trade is always to the benefit of all the countries involved.
4. UnitingCare would support general concerns among NGOs about the way development, environment and labour are handled through the WTO. There is a distinct problem in saying that these issues need to be handled through other international arrangements, when the WTO is the only international body which can arbitrate on trade arrangements and enforce its decisions. It is dangerous to have a body, namely the WTO, that enforces least trade restrictive practice, without taking seriously environmental, labour and human rights issues that might undergird a national government’s decisions about what is in the public interest. Trade arrangements have to embody human and environmental values, or those values will be neglected, ignored and violated.
5. We support the submission of AFTINet regarding WTO negotiations. Our submission is intended as a supplementary submission, picking up issues that are relevant to our core operations and the clients of our services.
6. The particular concern of UnitingCare is trade in services.
7. We note that Australia’s negotiating position has been that there should be more liberalisation in all services sectors.

The services negotiations should improve market access significantly for developed and developing countries. To do so, the negotiations should achieve higher levels of liberalisation in all services sectors, including air and maritime transport; simplification of schedules and greater transparency in commitments; limitation of the scope and number of MFN exemptions; and the development of binding rules on domestic regulation. (Objectives for GATS 2000 Negotiations: Joint Communication from Australia, Chile and New Zealand [http://www.dfat.gov.au/trade/negotiations/services/fin\\_and\\_gats.html](http://www.dfat.gov.au/trade/negotiations/services/fin_and_gats.html)).

8. The approach taken at the DFAT/NGOs consultation in Sydney in June 2001 suggests that this is still the negotiating position assumed by DFAT.
9. We question two assumptions implicit in the position stated in the joint communique:
  - that all service sectors need higher levels of “liberalisation” and
  - that it is appropriate to have binding rules on domestic regulation regarding all service sectors.
10. We have a general concern that liberalisation of services is seen as a purely economic matter, without regard to the importance of some services to human wellbeing. We see services as being divisible into at least three areas.
11. The first, services where there are not direct human rights implications, and human well-being is probably best served by trade in services. These include areas such as building and engineering services.
12. Second, services that are important for both industry and for individuals. For example, electricity,

gas, water, and banking have one significance for business and commercial production, and another significance for individuals on low incomes, who without adequate access to utilities (electricity, gas, water, telecommunications) and bank accounts find that their basic well being suffers and their human rights are violated. The human rights dimensions of market failure needs to be taken seriously in the liberalisation of a number of services.

13. Third, services which involve clear human rights obligations, such as health, education, family support services, income support and community services.
14. The position taken in the joint communique is inappropriate with regard to those services such as electricity, water, gas, and telecommunications that are essential to the wellbeing of people. At the very least, governments must be able to regulate the provision of such services in the public interest and protect consumers against market failure.

**Recommendation 1: The Australian Government should oppose any reduction in the rights of national regulation in the public interest, including the application of a “necessity test” and “least trade restrictive” criteria.**

15. We are opposed to the position stated in the joint communique, with regard to health, education, income support and community services. All of these need to be delivered in a culturally appropriate way, and need to work with the community. The very nature of the service requires that they focus on the agenda of those who need the service (patient, student, client), and those who support and care for them, rather than the pecuniary interests of shareholders.
16. The relevant WTO Discussion Papers on the WTO website show no understanding of the distinctive nature of these services, nor the particular role of the not-for-profit sector, which in WTO thinking seems to be subsumed under “private” sector, in the sense of the commercial sector.
17. The particular focus of our statement is trade in community services. UnitingCare is a major deliverer of community services in Australia. It includes aged care, child care, substitute care for children at risk, disability services, provision of services to the homeless, and counselling of various types. While we have structures to provide oversight and ensure good governance and high quality services, most of the actual services are provided through local boards and committees of management. They are an intrinsic part of their local community.
18. Community services are about relationships, mutuality, reciprocity. They are about organisations facilitating local communities providing for their own needs in a way that builds up social capital, that is increases local trust, cooperation and control. They are about empowering local communities.
19. Like most not-for-profit organisations, we do not “trade” in services. We work with communities and clients to develop services which met the needs of clients in a way appropriate to the people and the local community. We develop services through community development processes.
20. There are similarities between the nature of community services, and the nature of health and education services. All need to be driven by client need, to work with local communities and to be culturally appropriate, and all need to be accessible on the basis of need rather than ability to pay.
21. We note that at the consultation on June 28, DFAT staff gave only limited undertakings with regard to health and education. They assured NGO representatives that there was no intention on Australia’s part to bring primary and secondary education and public health services into the negotiations.
22. There are several reasons why those assurances do not allay the concerns of UnitingCare.
23. First, DFAT staff quite clearly excluded tertiary education from their assurances. This is very disturbing. While some forms of technical and managerial training may be provided adequately by the commercial sector, there is an essential role for public tertiary education to ensure breadth and depth of research, development of human knowledge, and education of the whole person. Governments have a responsibility to promote and encourage human knowledge and human

culture as ends in themselves, undistorted by short term commercial gain.

24. Second, GATS only provides exemptions for public sector services which are not in competition with commercial provision of similar services. In both health and education, Australian public policy seems to be encouraging more provision by commercial and not-for profit organisations.

GATS states in Part I

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.*

25. **Recommendation 2: That the Australian government make a clear public commitment and incorporate into its basic negotiating position for all future WTO and other international trade negotiations that it is the role of government to provide health and education (primary, secondary and tertiary) services, whether or not some services are also provided commercially.**
26. Third, the assurances did not cover community services such as aged care, child care, and disability services. In these areas, commercial organisations already are eligible to receive government subsidies. There seems to be no recognition of the difference between provision of services through the community, not-for-profit sector, and their provision on a commercial basis.
27. Our concern is that the services that the community sector provides are seen by economists, DFAT and the WTO as tradeable commodities, open to commercial activity and profit-making.
28. Traditionally, activities such as aged care, child care, disability services, family support, substitute care and counselling have been seen as community services because the focus has been on community involvement in meeting need.
29. Fundamental to all these types of services is meeting the needs of the client, to the greatest extent possible with limited resources. Generally, there is more that could be done if there were greater resources. It is therefore important that surpluses are reinvested in the services themselves, not siphoned off as profits for other purposes.
30. Equally fundamental is the concept of community in community services. The community sector is citizens acting together to meet the needs of the people in their community. The community sector does not simply dictate what services will exist – it relies on community development, so that people have control over what is happening in their local community and how their needs are met. It is about mutuality, respect, reciprocity. It involves fostering relationships between people in the community, and responding respectfully to community concerns and needs. It is about the provider serving, not gaining advantage from, the community and people in need.
31. The community sector is a large employer. We employ large numbers of professional staff. The services under the oversight of UnitingCare NSW.ACT employ well over 10,000 people. But we also make significant use of volunteers in many different ways, such as fund-raising, activities for clients, and governance. Child care committees, for example, involve both church representatives and parents.

32. The role of volunteers assists in providing quality of life, meeting the needs of the whole person, rather than merely meeting basic standards of physical care.
33. Government payments to the community sector for the provision of services is thus an investment in Australian communities, in social capital, in people exercising their rights and responsibilities as citizens and as human beings through voluntary associations.
34. Government provides some benefits to the community sector, such as tax concessions, precisely because services are provided on a not for profit basis – money remains in the sector, and is not distributed to shareholders. Also, the focus of service provision is on the financially disadvantaged.
35. Commercialisation of community services changes these dynamics. The provision of human care ceases to be an end in itself and becomes a means to another end – the profit of shareholders, who require a satisfactory return on their investment and expect management decisions to serve their interests. Efficiency takes on a different meaning – the provision of defined services at minimum cost, rather than using all resources to the advantage of clients.
36. For example, the Australian Government provides a daily capital subsidy for nursing home residents who are financially disadvantaged, and requires that other residents pay a daily accommodation charge as a contribution towards capital works. In UnitingCare nursing homes the amount averages \$10 per resident per day. In 100 bed home, this yields \$365,000 per annum. There is no requirement that operators account for the use of this money. Commercial operators can receive the subsidy for years, not invest it in capital works, and eventually close down the nursing home, taking the accumulated capital funds as profit. In the not for profit sector, the funds at least have to remain in the sector.
37. It is crucial that GATS recognise that governments provide some benefits and concessions to not-for-profit providers of services only because they operate on a different basis from commercial organisations, ie they do not distribute profits to shareholders. It would be inappropriate for WTO negotiations to open the way to commercial operators being treated in exactly the same way as not-for-profit operators – unless they are willing to provide the same benefits to the community, ie to give up their profit.
38. UnitingCare rejects the argument that the market is a helpful mechanism in most people getting the community services they need. Many of the reasons for this have already been outlined – the nature of care means that it is not a tradeable commodity. However, there are also economic reasons. The care needs of the young and the old, people with disabilities, dysfunctional families, people in poverty or people suffering addiction, cannot be effectively expressed through their expenditure, since most have only limited income and high level needs. Market failure is inevitable, since the market can only provide for people whose income is commensurate with their level of need – a situation that applies only to the wealthy, not to people on low or middle incomes.
39. UnitingCare notes that on a world scale inequality is much greater than in Australia, and the idea that community services can be provided on a commercial basis through a global market becomes quite absurd, as market failure will be worse than in the Australian situation.

40. Recommendations:

**Recommendation 3 That the Australian government cease its encouragement of for-profit-provision of community services such as aged care hostels and nursing homes, child care, substitute care for children, family support services, and disability services.**

**Recommendation 4 That the Australian government adopt as part of its negotiating position in the WTO and other international trade fora that community services (or “social services”) such as aged care hostels and nursing homes, child care, substitute care for children, family support services, and disability services should not be subject to the General Agreement on Trade in Services (GATS).**

**Recommendation 5 That the Australian government adopt as part of its negotiating position that**

**any changes to GATS should recognise that not-for-profit organisations play a particular economic and social role in societies, a role that deserves government encouragement and financial support. The not-for-profit sector should be clearly differentiated from the commercial sector in all GATS arrangements, and should not be seen as in competition with the commercial sector.**

(This submission was prepared by Rev. Dr. Ann Wansbrough for UnitingCare NSW.ACT and authorised by the Executive Director, Rev. Harry Herbert 31 July 2001)