



Free trade or genuine progress?

A position paper on the WTO GATS and the USA-Australia Free Trade Agreement

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UnitingCare NSW.ACT

Contact: Rev. Dr. Ann Wansbrough
PO Box A 2178 Sydney South NSW 1235
Telephone 02 8267 4280 Fax 02 9267 48423
annw@nsw.uca.org.au
[http:// http://unitingcarenswact.org.au/](http://unitingcarenswact.org.au/)

Uniting Justice Australia

Contact: National Director, Rev. Elenie Poulos
Tel: 02 82674236 Fax: 02 82674222
eleniep@nat.uca.org.au
PO Box A2266, Sydney South, NSW 1235
<http://nat.uca.org.au/unitingjustice>

Submission to the Senate inquiry into WTO GATS and the USA-Australia free trade agreement

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This paper has been prepared by Rev. Dr. Ann Wansbrough and Tanya Richmond in consultation with the UnitingCare board and the Uniting Justice Australia Reference Committee.

List of Abbreviations

AFTINET Australian Fair Trade and Investment Network
DFAT Department of Foreign Affairs and Trade
FTA Free Trade Agreement
GATS General agreement on trade in services
HMO Health Management Organisation (USA)
NAFTA North American Free Trade Agreement
PBS Pharmaceutical Benefits Scheme
STE State Trading Enterprise
TBT Technical Barriers to Trade
USA United States of America
WTO World Trade Organisation

Introduction

1. UnitingCare NSW.ACT is an agency of the NSW Synod of the Uniting Church in Australia. Uniting Justice Australia (formerly National Social Responsibility and Justice) is an Assembly agency of the Uniting Church in Australia. Our work is shaped by the Christian faith as expressed in the *Basis of Union* and other faith documents of the Uniting Church, and by the Church's commitments to social justice, environmental responsibility, and human rights. We work to maintain the prophetic voice of the Church and contribute to public debates on directions for Australia. We work in cooperation with other parts of the Uniting Church and with church and community organizations. UnitingCare NSW.ACT and Uniting Justice Australia are members of the Australian Fair Trade and Investment Network (AFTINET).
2. Our Christian beliefs, especially our belief in God as Creator and as the one who provides for and redeems all humankind, underlie our strong support for the international human rights conventions and the international agreements related to environmental protection and biodiversity. Like other members of the National Council of Churches in Australia, and World Council of Churches, we have a strong commitment to "justice, peace and the integrity of creation". World peace, including an end to terrorism, cannot be achieved apart from nations, particularly those with the greatest economic and military power, respecting

- (a) human rights, including economic, social and cultural rights, and core labour standards
 - (b) the environment, as required by the international treaties protecting the environment, and
 - (c) international law and the United Nations Charter with its commitment to the rule of law, non-violent resolution of disputes and military action only under the direction of the United Nations.
3. The Uniting Church in Australia recognizes the importance for human welfare of a healthy national economy and international trade and communication. We are not “anti-globalization”. Indeed, certain forms of globalization are intrinsic to the work of the church. But we are opposed to the current global trade agenda to the extent that it
- (a) gives priority to trade over human rights, labour rights and environmental protection, instead of creating a coherent system of law that takes account of these areas of international obligations;
 - (b) assumes that increased economic production and consumption in already highly affluent nations always and necessarily improves human well-being;
 - (c) fails to take account of the complex policy and human issues that are raised by the movement towards a single global market governed by a single set of rules; and
 - (d) regulates government rather than business
 - (e) creates a single global market, rather than respecting national policy priorities in each nation.
4. The Uniting Church in Australia has experience both in Australia and overseas, working with a range of churches, community groups and individuals in meeting human need and encouraging human development. Our concerns about trade policy are based on that experience.

The significance of the debate

5. The arguments in favour of free trade and investment often appear to assume that there is a single valid economic viewpoint, and that it supports the liberalization agenda without conditions. Joseph Stiglitz, a former Chief Economist for the World Bank and winner of the Nobel Prize for Economics in 2001, is one of a number of economists who challenge this. In *Globalisation and its discontents* (Allen Lane, The Penguin Press, 2002), Stiglitz argues that the global liberalization agenda has been largely based on ideology, rather than sound economic theory or empirical evidence. He criticizes the agenda of multilateral organizations that ignore the impact that policies have on people. He argues that the way policies are implemented matters. Economics does not and cannot justify the sacrifice of human beings for some purported benefit in the future.

6. Stiglitz also argues that international rules for trade and investment

...must be – and must be seen to be – fair and just, must pay due attention to the poor as well as the powerful, must reflect a basic sense of decency and social justice. In today’s world, those rules have to be arrived at through democratic processes; the rules under which the governing bodies and authorities work must ensure that they will heed and respond to the desires and needs of all those affected by policies and decisions made in distant places” (page xv)

7. Stiglitz cannot be accused of being ignorant of economics, or being anti-globalization. He points to the many good forms of globalization. He argues that both opponents and supporters have been unbalanced and that those who support trade liberalization have often been triumphalist in their advocacy of capitalism. He points out that many developing nations have not enjoyed the economic benefits that the supporters of liberalization promise. People have been actively harmed by the liberalization agenda when it has been pursued without due regard to adequate regulatory processes and the needs of people.

8. The Uniting Church in Australia shares these concerns. The NSW Synod recently considered the issue of health. It noted that health depends not merely on medical and surgical treatment but on sound social policy both nationally and internationally. It recognized that trade will only benefit people’s health and well-being when trade policies take seriously internationally recognized human rights, labour rights and environmental responsibilities. Any trade policy that fails to take account of these matters, will damage people’s health and the health of Australian society. Increased trade that is not subordinate to these concerns will be accompanied by increased health costs and increased costs in other policy areas. It will erode social capital and diminish the well-being of Australians.

9. The Uniting Church therefore urges the Australian government to review comprehensively the likely impacts of the proposed free trade agreement and any new commitments under GATS. Economic modeling is not sufficient to assess impacts. What needs to be considered is the way particular provisions in the agreement will affect the shape of the Australian nation, its political sovereignty, its culture and its ability to ensure the well-being of its people. The CSIRO and the Australian Bureau of Statistics have recognized that economic measures are grossly inadequate for assessing the well-being of Australians, and are developing a range of measures that allow a more comprehensive assessment to be made. This means that the assumption of DFAT’s econometric study that increased household consumption can be equated with improved “welfare” is highly questionable. See, for example,

(a) ECKERSLEY, Richard (ed) *Measuring progress: is life getting better*
Collingwood: CSIRO 1998

(b) Australian Bureau of Statistics *Measuring Australia’s progress 2002*

(c) Australian Collaboration *A just and sustainable Australia* and *Where are we going* Melbourne 2001

10. DFAT's papers sometimes seem to underestimate the validity of the criticisms of trade liberalization. We suggest that DFAT has examined those criticisms from too narrow a viewpoint, and needs to set them in the context of the above-mentioned work on measuring progress and well-being. In that framework, the criticisms and concerns make much more sense, and the analysis prepared by or on behalf of DFAT appears to be very narrow and inadequately informed about the real issues.

General criteria for the acceptability of trade agreements

11. We use the following criteria to assess trade agreements.
12. Any agreement on trade must be subordinate to Australia meeting its **international obligations** regarding human rights, core labour standards and environmental responsibilities.
13. Australian public policy must be determined by **proper policy development processes** in each portfolio area, in consultation with all relevant Australian stakeholders, and not as an adjunct to trade negotiations.
14. **No company should be able to litigate** against Australian governments for exercising responsibility to fulfill its obligations regarding human rights, core labour standards and environmental standards or to legislate in the public interest (defined as the interest of the Australian people, not overseas corporations).
15. Any free trade agreement should protect the right of Australian governments to retain or return to **traditional roles in the provision and regulation of services** such as education, health, community services and essential utilities. Whether a government provides any or all of those services now or in the future should be a matter for political decision by Australians at the time, not something to be imposed by agreements with other nations. The nature of health, education and community services, which must be sensitive to local needs, values and culture, make it appropriate that governments have the right to place restrictions on foreign corporations providing such services.
16. Any free trade agreement should protect the right of the Australian government to allocate **subsidies** to public sector enterprises and community organizations, or to research in any sector, without making those subsidies available to foreign corporations operating in Australia.
17. Any free trade agreement should protect the right of Australian governments to have **procurement policies** that assist local economic development. We note that at the present time USA federal government procurement policies favour USA businesses. If the largest economy in the world protects its own business interests in this way, then it can be argued that any smaller economy should also protect its local businesses by such policy. It is a legitimate strategy for strengthening the local economy. Because it is such a large economy, even if the USA were to give up this policy, it would not necessarily be appropriate for other governments to do likewise

18. Any free trade agreement should allow Australia to protect its **culture** through measures such as regulation of the media , subsidies to Australian arts and film companies and special measures for Indigenous peoples to protect and transfer their own cultures.

19. A number of international non-government organisations have commented:

The privatization of essential public services, which has already advanced very far in developing countries under the IMF structural adjustment programs, has led to foreign control of services, a resulting loss of national sovereignty, and a permanent exclusion of the majority of the population from crucial health, education and other services. GATS rules make it highly burdensome for countries to return to provision of these services by the public sector if they are unhappy with the privately-provided services.

20. We urge the Australian government to work for changes in the GATS agreement to ensure that nations can return to public provision of services after they have been privatized.

21. Any trade agreement should be **reciprocal** with regard to these criteria. That is, we should not request other nations to give up rights that we preserve for ourselves to regulate and to provide services. We are particularly concerned about this with regard to **developing nations**, many of whom do not have well developed public services, but who must be allowed the right to develop those services in the future, as resources become available, rather than being locked in commercial provision of key services.

22. Trade negotiations must take account of the **needs of developing nations**. Trade agreements must demonstrably be tools for the better functioning of societies and cultures, and for poverty reduction. It cannot be assumed that rules that serve developed nations are appropriate to developing nations, since these often lack the regulatory framework and the economic base that is necessary to benefit from international competition.

General Concerns about the USA-Australia Free Trade Agreement

23. In entering into a free trade agreement with the USA, Australia is opening itself to free trade with the largest economy in the world. Australia needs to be realistic in assessing the risks of allowing the huge USA economy, and particularly the huge USA companies it generates, to participate the Australian economy with minimal regulation. Trade with Australia, even were it to become the overriding feature of the Australian economy, would be only a minor part of the USA economy. While this means that Australia has more to gain from the positive aspects of a free trade agreement, it also means that negative impacts of a USA-Australia free trade agreement will be much more significant in Australia than the USA.

24. The differences between the USA are not merely about size, but about social values, commitments and attitudes to international law. Australia has ratified the International Covenant on Economic, Social and Cultural Rights. The USA signed this covenant, but has failed to ratify it – thereby rejecting basic obligations related to work, health,

housing, social security and other basic requirements of human life and society. The USA is the richest nation in the world, but has 40 million people who are lacking health coverage through either government or private programs. It has an enormously high rate of murder and other forms of violence. It has a high rate of illiteracy. A high proportion of its voters are alienated from the political system and do not bother to vote. It clearly has an inadequate grasp of how to protect and provide for its citizens in an effective, adequate and accountable fashion. The USA has also refused to ratify the Statute of Rome regarding the International Criminal Court, or the Statute for the International Court of Justice. For many years, until September 11 2001, the USA failed to fulfill its financial responsibilities to the United Nations. It paid its dues only when it wanted UN action in response to terrorism. *It is therefore simply untrue to assert, as the DFAT Discussion Paper does, that Australia's interests and the interests of the USA coincide in either trade or other matters of foreign policy.* As nations, we clearly have a different approach to what is important in national and international relationships.

25. Ross Garnaut (“Protectionism stalks free trade with the US, *The Australian* 4/3/03 – full paper at www.theaustralian.news.com.au) has expressed strong reservations about the arguments on which DFAT’s assessment of the potential benefits of the USA-Australia FTA are based. We share his concerns about

- (a) the validity and reliability of the econometric modeling used in the DFAT assessment of its potential benefits, because the assumptions are invalid and unsupportable;
- (b) the move to preferential bilateral FTAs alongside multilateral agreements;
- (c) the linking of trade and security issues
- (d) the worthwhileness of the proposed agreement.

26. We urge the government to commission further studies based on more realistic assumptions, including sector specific studies.

The inappropriateness of NAFTA as a model

27. The Uniting Church urges the Australian government to learn from the problems that have become evident in the operation of the North American Free Trade Agreement (NAFTA). The DFAT Issues Paper acknowledges that problems exist. It appears, however, too sanguine about the possibilities of a USA-Australia agreement avoiding such problems.

28. Under NAFTA, companies have sued governments for not allowing particular proposed activities. These include US Metalclad Corporation (suing a municipality in Mexico for over \$16 million), Canada based Methanex (suing the USA for nearly \$1 billion) and US based Sun Belt Water (suing Canada for \$10 billion). This approach undermines democracy, by punishing governments for fulfilling their role. It overrides human rights, particularly the right of peoples to sovereignty over their own resources and the right to

determine democratically what happens within their nation. Other bilateral agreements based on the NAFTA model have also resulted in other companies suing other governments. DFAT acknowledges that the governments that are party to NAFTA are now looking at ways of rectifying this problem, but has neither stated that any Australia-USA FTA will not include dispute mechanisms for investors, nor put forward a model that would avoid the problems that have arisen from NAFTA.

29. The Uniting Church would oppose a free trade agreement along the lines of the North American Free Trade Agreement (NAFTA). Any USA-Australia trade agreement should explicitly state that it cannot be used as the basis for corporations to sue governments or to challenge legislation. Any Australian USA FTA should also make clear that it may not be construed in a way that gives foreign corporations any greater or different rights from those that national corporations currently enjoy under domestic legislation.

Concerns about the USA Agenda for the USA-Australia FTA

30. In preparing this submission, we have considered the USA agenda as outlined in the letter of Robert B. Zoellick (US Secretary of Commerce) to the Honorable Robert C Byrd, (President Pro Tempore of the US Senate). This letter is official notification to the Senate of the intention to commence trade negotiations 90 days from the date of the letter, and is required under the US Trade Act.
31. The USA statement on the proposed FTA specifically mentions concern about **sanitary and phytosanitary (SPS) measures** (quarantine measures) and comments “we and Australia have agreed that SPS measures must be based on science and be fully transparent”. While that looks superficially like a good principle, it depends on how much scientific research is available and how much controversy there is within the scientific community about particular measures. We urge the Australian Government to require that the FTA put the onus on those who seek the removal of any of Australia’s sanitary and phytosanitary measures to provide adequate peer reviewed scientific research to back their request. It would be inappropriate for the Australian Government to have to provide the scientific research to justify sanitary and phytosanitary measures. In quarantine matters, Australia should adopt a precautionary approach.
32. The official USA agenda includes challenging the **export monopolies of Australia’s state trading enterprises** (STEs) for the marketing of agricultural commodities such as wool and wheat. The USA agenda also wants to end any subsidies to these enterprises and any special rights and privileges that they enjoy. The USA also seeks more information on these STEs. It is not our role to canvas the strengths and weaknesses of Australia’s STEs. We would support information on their rights and activities being available on the grounds that we support information on the activities of all government departments, state enterprises and statutory authorities being publicly available for the sake of transparency and accountability. However, any change in STE arrangements, rights or subsidies should be based on Australia reviewing its current arrangements, consulting with Australian producers and consumers and other Australian stakeholders, and determining an appropriate, coherent agricultural marketing policy for Australia.

Changes in our agricultural marketing arrangements should not be driven by the USA free trade agenda – particularly given that the USA has not adopted a free trade policy with regard to its own agriculture.

33. The official USA agenda includes **USA textile and apparel having full access to the Australian market.** As a Senate inquiry has found, core labour standards have been violated in Australia in the garment industry in much of its use of outworkers. The Justice and Mission Unit of the Uniting Church, Synod of Victoria and Tasmania, has recently provided a submission to the Productivity Commission about the current situation (7 March 2003). Hard work that has been done in Australia to protect and restore the rights of outworkers in the garment industry. Australia should not give up any of the protections that are in place to protect outworkers. In particular, the Australian government should ensure that Australia can continue to develop the NO SWEATSHOP label and the consumer awareness that has been promoted through the Fairwear campaign and supported by the NSW government. An FTA that prevented or limited government legislation and community action to protect exploited workers in this or any other industry would diminish the human rights of both workers and consumers.
34. Under **Technical Barriers to Trade**, the USA is seeking “to have Australia reaffirm its WTO TBT commitments, including those relating to **labeling requirements** on U.S. food and agricultural products produced through biotechnology, and eliminate any unjustified TBT measures.” We note that the USA opposes food labeling such as labeling of genetically modified products. We oppose the USA approach in this area. It is inconsistent with a commitment to free trade and reliance on the market. The proper working of the market requires that consumers have access to all the information that they want as the basis for making an informed choice of the products that they buy. Labeling of these products was the result of consumer campaigns. Any attempt to restrict labeling requirements subverts the proper working of the market by depriving consumers of information that they consider relevant to their market choices. It is totally inappropriate in a free market for government or corporations to limit the information available to consumers. Only with full information can consumers make rational purchases. Rational purchases must be defined and understood as those that consumers consider rational – rationality should not be defined by corporations. If consumers want their governments to require that genetically modified foods are labeled as such, it undermines both the market, and democracy, for corporations to oppose this.
35. **The USA has made a number of requests about intellectual property rights.** We have several concerns in this area.
 - (a) **Patenting of human genetic material.** In the USA, courts have recently allowed human gene sequences to be patented. We oppose any definition of intellectual property rights and patenting that would allow aspects of the human genome (gene sequences) and its associated naturally occurring biological mechanisms (such as RNA sequences) or functions to be patented. No naturally occurring material or function should be patentable: knowledge about it belongs in the realm of scientific discovery, not human invention. The Australian Attorney General has recently asked the Australian Law Reform Commission to inquire

into the matter of gene patenting, and we urge the Australian Government not to enter into an FTA that pre-empts that inquiry or ignores the concerns that have led to it.

(b) **Patenting of other naturally occurring biological material.** On similar grounds we oppose any definition of intellectual property rights that allow the patenting of any naturally occurring species or varieties or any naturally occurring gene sequences in any species. We note that some USA corporations have patented seed varieties traditionally used by farmers in particular countries and communities. This is a misuse of the patent system to patent scientific discoveries instead of inventions. The USA approach in this area should be strongly challenged as unjust and as destructive of traditional agricultural practice and food security.

(c) **International arrangements which give priority to protecting patent rights over patient rights with regard to pharmaceuticals.** We have two concerns here. There appears to be an increasing attack on Australia's pharmaceutical benefits scheme (PBS). We would oppose any FTA that placed the PBS in jeopardy or significantly increased the cost of that scheme. The market mechanism requires that pharmaceutical companies compete with one another to provide pharmaceuticals to Australia at a price that the nation is willing to pay. Corporations are perfectly happy to increase their own power in the market and to ensure that they pay the lowest possible prices for their inputs. It is therefore totally inappropriate for them to complain when governments use their market power to ensure that they pay the lowest possible price for the pharmaceuticals they purchase on behalf of citizens. It is noteworthy that in the USA, the cost of pharmaceuticals is a major problem facing governments and HMOs in their provision of health care. Huge numbers of Americans lack access to the pharmaceuticals that they need. The USA model is not an appropriate model to follow.

36. Our second concern in this area is the **provision of pharmaceuticals to developing nations.** The issues paper on the USA-Australia FTA argues that one of the outcomes of the agreement will be to advance the global free trade agenda. Australia should ensure that any agreement about intellectual property rights in the area of pharmaceuticals does not have negative consequences for poor nations seeking affordable pharmaceuticals for their people. Health is a human right and should take priority over the interests of already profitable pharmaceutical companies.

37. The US agenda is reducing or eliminating the **screening of foreign investment in Australia.** We urge that Australia retain the right to screen foreign investment in Australia. This is about national sovereignty and the rights of peoples to determine whether particular forms of economic development or particular projects are in their best interests. In particular, Australia should screen foreign investment taking into account factors such as the interests of Indigenous people, labour standards, the fragility of the Australian environment, and the opposition of Australians to activities such as the dumping of nuclear or toxic waste from other countries.

38. The US agenda is **competition: issues of ... state monopolies, and state enterprises**. We suggest that the issue of what services Australian governments provides whether through state monopolies, state enterprises or by other means is something that must be determined and regularly reviewed by the Australian people. It should not be the substance of a free trade agreement, which should only deal with areas of commercial activities, not define or control a nation's understanding of the role of government. We would oppose any FTA that limited the ability of a present or future Australian government to provide services to the Australian people.
39. **The US agenda includes core labour standards**. We support any provisions that will safeguard core labour standards and the human rights relevant to work and unionism, as set out in the International Covenant on Economic, Social and Cultural Rights (which the USA has not ratified) and the ILO (International Labour Organization) conventions.
40. **Environmental standards**. The USA agenda includes "Establish that Australia will strive to ensure that it will not, as an encouragement for trade or investment, weaken or reduce the protections provided for in its environmental laws." We support the FTA including a requirement for effective laws to protect the environment. However, we believe that both the Australian and the USA governments have inadequate policies in these areas, and need to improve legislation in these areas. We urge the Australian government to negotiate an FTA that allows for stronger and more effective environmental protection, and in particular, that recognizes the international requirements such as the Kyoto protocol as minimum standards.
41. The US agenda refers to **dispute mechanisms**. We would oppose any FTA that placed the onus on the Australian government to justify legislation and regulation adopted in the public interest. We would also oppose any FTA that allowed corporations to sue Australian governments on account of such legislation or regulation, or decisions taken in the public interest. Democracy and human rights require that governments be accountable to their citizens, not to foreign corporations.
42. Other **U.S. objectives** include, but not limited to, the protection of legitimate health or safety, essential security, and consumer interests. We recognize the right of the USA to such objectives. We urge that Australia ensure that the FTA takes account of the **interests of the Australian people** in these areas. Australian interests in these areas cannot be assumed to be exactly the same as the interests of the USA.

Concerns about the Australian agenda for the USA-Australia FTA

43. DFAT sets out several expected benefits of the FTA on page ix of the Issues Paper. These are:
- Increase investment and trade between the two countries;
 - Produce dynamic benefits from closer economic links with the world's biggest and most competitive economy and the heartland of the Information Economy;
 - Strengthen the overall bilateral relationship; and
 - Give momentum to liberalisation in the WTO and in APEC.

44. These proposed advantages are too limited to provide an adequate rationale for an FTA. If trade agreements that enhance the well-being of the Australian people are to be developed, then the goals and concerns need to be much broader than these, which seem to amount to an argument that a free trade agreement with the USA will enhance and facilitate trade and investment generally, and the free trade agenda. This makes trade an end in itself. The real issue is not whether free trade enhances trade, or increases the size of the economy, but whether it enhances the *overall well-being of Australians*. The current nnnnnnnnnnconfuse means and ends, turning economic means into ends, and losing sight of the real nature of the national interest that economic mechanisms should serve rather than usurp.
45. We urge a clearer set of objectives that will contribute to progress of Australia in the areas which are now being benchmarked by the ABS in its measuring of Australia's progress.
46. The issues paper refers to the FTA as a way of revitalizing Australia's relationship with the FTA. All DFAT's arguments related to this concept provide a very inadequate and unconvincing argument for a free trade agreement.
- DFAT's own papers show that there is a strong, ongoing and expanding trade relationship between the two countries already.
 - Australia seems to be actively pursuing a strong relationship with the USA through its support for the war in Afghanistan and the war on Iraq. It is unclear why we need a free trade agreement to enhance the relationship further. It is questionable whether Australia should so closely identify its interests with the interests of the USA. We are an independent nation, with our own culture and identity and we should not subordinate ourselves to the USA.
 - The arguments adduced in relation to this concept have no bearing on the question of what should or should not be included in an FTA.
47. Another rationale appears to be to use the USA-Australia FTA as "*an exemplar*" of *trade liberalization* for others to follow through bilateral and regional agreements and the WTO itself. This assumes that the trade liberalization agenda should be pushed harder and faster and that the WTO agenda needs to be expanded. We oppose this approach on several grounds
- (a) We disagree with the assumption that increases in free trade are always in the public interest of Australia or other smaller or less developed economies. We have argued this in previous submissions to the Treaties Committee and DFAT.
 - (b) We object to an agreement between two affluent nations being used as an exemplar, since other nations cannot participate in or comment on its development or implications. In particular, an Australia-USA free trade agreement should not be assumed to be appropriate as a model for agreements with less developed nations, who need entry into overseas markets, but who can

be damaged by unregulated operation of foreign companies on their soil, given the small size of their economy and their limited legislation on matters such as environmental protection, labour rights and protection of traditional culture. One need look no further than the terrible environmental damage inflicted by mining and logging companies in PNG and the Solomons to see that free trade is not always to the benefit of nations. (These problems have been drawn to our attention by our partner churches in these countries, but are also evident from the research of organizations such as the Mineral Policy Institute).

48. We also question the *analysis provided in the DFAT papers*. The economic and econometric analysis provided by DFAT is inadequate to evaluate proposed contents of an FTA. It is macro-analysis that by its very nature can only indicate very generalized outcomes. What happens to states or regions, Indigenous communities, particular cultural groups or other groups with significant, specific needs and vulnerabilities is not explored in the modeling that has been done. This means that the analysis provided is a very blunt instrument for assessing the real outcomes, including the harm that may be caused if particular aspects of the free trade agenda are implemented. Thus the economic analysis provided by DFAT is insufficient to assess whether a USAA-Australia free trade agreement really is in the national interest, since the national interest must take account of the needs of the states, regions, Indigenous people and other identifiable groups whose human rights and well-being are at stake.
49. DFAT notes that Australia's position has been that environmental and labour standards should be excluded from trade agreement (page 44). The Uniting Church NSW.ACT disputes this approach. We urge a change. There must be a **coherence in the international agreements** that shape Australia's responsibilities and actions. This can only occur if trade agreements recognize the responsibilities of government with regard to human rights, labour rights and environmental standards, so that the various agreements connect with one another and build on one another. This is particularly important where trade agreements include dispute mechanisms – it is inappropriate that a government be challenged for trade policy that is shaped by international obligations with regard to human rights, labour standards and the environment. Any free trade agreement between the USA and Australia should include acknowledgement of international obligations in these other areas.

Concerns about the Impact of USA-Australia FTA negotiations on the "development round"

50. Many Australians share the concerns of people in developing nations about the effects of rapid liberalization on local farmers and producers, including those who produce for local markets, and in their concerns about the impacts that agreements can have on local manufacturing industries, including conditions for workers in these industries.
51. Australia is in a unique position where many of our exports could be strengthened alongside a genuine commitment to support developing nations working to improve their standing in international trade. The Uniting Church believes that it is possible to find a better balance between the pursuit of Australia's interests and our commitment to the

needs of developing nations. However, we are concerned that the agendas being pursued in FTA negotiations will see us take a step backward from this goal.

52. At the November 2001 WTO Ministerial at Doha, governments committed to "continue to make positive efforts designed to ensure that developing countries, and especially the least-developed among them, secure a share in the growth of world trade commensurate with the needs of their economic development."¹
53. The Government has been clear that they expect the results of bi-lateral or regional trade liberalization will later be multilateralised through WTO negotiations. The Uniting Church rejects the idea that agreements between wealthy nations should be used to drive the agenda in multilateral forums. We oppose any trade agreement that is predicated upon policies and assumptions that are not in the interest of a fairer world trading system. The move toward FTA negotiations with the US has already seen a number of issues arise that are inconsistent with the commitment to a development round and are not in the best interest of a fairer world trading system where developing nations can increase their share of world trade and where trade reduces poverty and inequality. We would oppose an FTA that restricts Australia's ability to formulate and defend a just position in multilateral trade negotiations.
54. Many of the concerns raised throughout this submission, and by other community groups, in relation to the possible details of an FTA and the likely impacts of these on Australians (as citizens, indigenous people, workers, farmers, participants in industry, or consumers) and on our natural environment echo concerns that people in developing nations have been raising in response to similar pressures faced in multilateral trade negotiations (and in development policies of financial institutions). We are concerned that Australia is pursuing an agenda that is at odds with the aims of the development round.
55. **Agriculture:** The Doha Declaration included "A commitment to comprehensive negotiations to improve market access, phase out all forms of export subsidies, and reduce trade-distorting domestic support." The US provides domestic income support to farmers that has resulted in the flooding of markets in developing nations and artificially low prices that cause producers in developing nations extreme hardship. In international forums, and in Australia's development and aid policies, the Australian Government has called for a reduction in barriers against agricultural produce from developing nations. Australia's pursuit of agricultural concessions from the US in a bilateral agreement is in conflict with our commitments to developing nations. The US has not demonstrated any intention to alter its position on agriculture and, since Doha, has increase domestic subsidies. USA agricultural policy is clearly set against the needs of developing nations and local producers and it is clear that any progress toward liberalization of agriculture in the FTA would not be multilateralised. It will therefore be achieved at the expense of the needs of developing nations. The Australian Government should pursue the agenda for reform in agricultural trade in the multilateral environment - through the WTO and in consultation with Governments and people in developing countries.

¹ WTO, Ministerial Declaration, Ministerial Conference Fourth Session, Doha, 9-14 November 2001

56. As Stiglitz points out, the global trade agenda has so far been unbalanced, favouring developed over developing nations, insisting that developing nations open up their economy and remove subsidies while retaining agricultural subsidies in developed countries and limiting the access of developing countries to their markets for agricultural products. Australia is committed to seeking a better deal for its own agricultural products – it should ensure that the USA and Europe take seriously the need to balance the trade agenda by taking seriously the needs of developing nations for a fairer deal on agriculture as well. For example, in the New York Times recently, there was an article that argued that corn farmers in Mexico were struggling because of subsidized USA produce being dumped on the Mexican market under NAFTA arrangements. (Tina Rosenberg “Why Mexico's Small Corn Farmers Go Hungry” NYT 3/3/3).
57. **Manufactured goods, including textiles:** The Doha Declaration included an agreement to negotiations to reduce and eliminate tariffs and non-tariff barriers "in particular on products of export interest to developing countries", with the special needs and interests of developing nations and least-developed countries taken into account - "including through less than full reciprocity in reduction commitments". Poor countries' exports of labour-intensive manufactured goods face average tariffs four times higher than when rich countries trade between themselves - as well as an array of non-tariff barriers. Garments and textiles is an export industry of particular interest to a number of developing nations and (during the preceding round of negotiations) it was agreed that all import quotas would be phased out by 2005. So far, the US has liberalized one fifth of quota restrictions. Even after all quotas are removed, tariffs for garments will remain around four times higher than the average for industrial goods.²
58. In the FTA negotiations, the US is seeking full access to Australia's textiles market. We are concerned that any concessions made by either or both countries in an FTA would further distort the inequalities in the global application of tariffs and protections (i.e., overall, they are higher against products from developing nations than against products from industrialized nations) and would have a negative effect on developing nations attempts to expand their share of world markets. We note that the Australian Government has preferential trading arrangements with developing and least developed countries, under a system of tariff preferences³, and would object to an FTA that eroded the value of these. Multilateral negotiations on textiles have not progressed sufficiently and, due to the industry's importance to developing nations, Australia should pursue reform multilaterally and in consultation with developing nations. It would be inappropriate to either seek from or grant concessions to the US in this industry whilst commitments made in multilateral forums remain outstanding.
59. **Liberalization of investment and procurement:** At Doha, it was agreed that negotiations on investment, competition law, and government procurement would take place after the 2003 WTO Ministerial. This was agreed because developing nations objected to these 'new issues' being included in trade negotiations. At Doha, it was also agreed that development concerns would be integral to the framework when the

² Watkins, K, 2002: What Became of WTO's Development Round?, in Bangkok Post, November 14 2002.

³ WTO, 2002: The Secretariat's report: summary, Trade Policy Review Body: Australia.

negotiations take place. Instead of respecting this commitment, wealthy nations have been aggressively pursuing the liberalization of investment and procurement in bilateral and regional agreements and through the GATS negotiations. The Australian Government's stated intention, to negotiate trade agreements covering these areas with a view to using these rules as the basis for their proposals in the multilateral arena, is at odds with the agreement that development concerns will be integral to the agenda for multilateral agreements on investment and procurement. The Uniting Church believes that the Australian Government should bring to the WTO policies that reflect a much wider perspective on global trade issues than the outcomes of a bi-lateral agreement with the USA. We oppose any expectation that a USA-Australia FTA should be used as the basis for agreements involving developing nations.

60. **Intellectual property:** At Doha, it was affirmed that implementation and interpretation of TRIPS would be "in a manner supportive of public health, by promoting both access to existing medicines and research and development into new medicines". We are concerned about the **provision of pharmaceuticals to developing nations**. Australia must ensure that it does not make any agreement about intellectual property rights in the area of pharmaceuticals that could have negative consequences for poor nations seeking affordable pharmaceuticals for their people. Access to health care is a basic human right and should take priority over the rights of pharmaceutical companies. For people living in conditions of poverty, both in Australia and in developing nations, it is vital that Australia defends the right to health over the profits of companies. We also oppose any definition of intellectual property rights that allow the **patenting of any naturally occurring species** or varieties or any naturally occurring gene sequences in any species. We would oppose any FTA that implied endorsement of the practice of patenting seed varieties that belong to local people.
61. We also oppose any definition of intellectual property rights that allows the **patenting of any naturally occurring** varieties of biological organisms or any naturally occurring gene sequences in any species. We note that some USA corporations have patented seed varieties traditionally used by farmers in particular countries and communities. This is a misuse of the patent system to patent scientific discoveries instead of inventions. The USA approach in this area should be strongly challenged as unjust and as destructive of traditional agricultural practice and food security.
62. **Pursuing trade with the USA is diversionary.** Even if there is an increase in overall trade it is *pre-emptively diverted*. When we decide to trade with one partner, we are deciding not to trade with another. The Doha Declaration aim of *securing for developing nations a share in the growth of world trade commensurate with the needs of their economic development* will not be achieved whilst ever wealthy Governments seek bi-lateral agreements where trade benefits are shared exclusively between wealthy nations.
63. We want Australia to make a real commitment to working toward fair global trading relations by working to find a better balance between the pursuit of economic objectives for Australia and our response to the need for developing nations to access more of the benefits of trade. A serious commitment to a development round includes not only working to address the existing biases and unfair rules in trade, but also to **prioritize**

trade with those who need it to survive and ensuring that this trade is conducted fairly. There are many developing nations who would greatly benefit if we put our efforts into pursuing 'fair trade' bi-lateral and regional agreements that could act as exemplars of 'real progress'.

WTO GATS negotiations

64. The DFAT discussion paper (January 2003) does not indicate the specific requests made by Australia to other nations or the specific requests that other nations have made to Australia. It also does not indicate Australia's likely response. This limits the ability of organizations to comment.
65. We urge DFAT and the Australian Government to make the negotiation process transparent and accountable. It is about public policy, and should be conducted in a way consistent with the development of public policy in democracies. That is, Australia should make its specific requests and offers public and undertake consultative processes before making commitments.
66. There are potentially six aspects of trade negotiations
 - (a) Australia's response to the requests of other nations for changes in Australia's commitments:
 - a. Matters where Australia should as a matter of principle, not agree to the request
 - b. Matters where Australia should, as a matter of principle, agree to the request
 - c. Matters where crucial issues of human rights and environment are not at stake and on which we, as a church, have no reason to comment.
 - (b) Australia's request to other nations for changes in their policy
 - a. Requests which Australia, as a matter of principle, ought not to make
 - b. Requests which Australia, as a matter of principle, ought to make
 - c. Requests where crucial matters of principle do not appear to be at stake and where we, as a church, have no reason to comment.

Australia's objectives in the GATS negotiations

67. We welcome the following commitment under "Australia's objectives" in the DFAT Discussion Paper on GATS, as meeting some of our concerns about protecting and preserving the role of the public sector:

Nevertheless, there are important interests with regard to the services sector that need to be taken into account in negotiations. The Government has already made clear that it

will not agree to any diminution of our overall right to regulate that would constrain our ability to pursue legitimate policy objectives in the regulation of services sectors, or compromise the capacity of governments to fund and maintain public services.

68. We urge the Australian government to recognize that this is a principle that all governments should observe, and to ensure that it does not make requests to other nations that would be inconsistent with this principle. For example, if Australia makes requests to other nations regarding health, education, the provision of utilities such as water, energy, and communications (action that we will argue against below), then consistency requires that it restrict the request to the area of private services. We recognize that there are some developing nations where public services are not adequately developed and regulated private provision may be helpful at the present time. That does not justify asking those nations to make commitments that would limit their ability in the future to provide those services publicly. Developing nations need the same policy freedom that we insist on for Australia. Therefore even requests regarding private services in areas like health, education, water, energy and communications should not be for commitments that lock nations into private provision of those services.

69. DFAT draws attention to the provision in GATS that protects Government provision of public services. The problem is that this GATS provision is not unconditional – there is an exception where public services are provided in competition with commercial services. This is occurring more and more in Australia, for example in aged care, child care, Job Network, electricity, water, gas, hospitals and other health services, security services, legal mediation services, and waste disposal services.

70. The DFAT Discussion Paper argues:

The GATS covers services in any sector “except those services supplied in the exercise of governmental authority”. But the definition of such a service is “any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers”. On that basis GATS critics sometimes argue that many public services are caught by the GATS and will somehow be targeted but this is not so.

Services delivered by government, say in health or education or via post office, are delivered for a mix of social policy reasons, which are unique – they differ from private services even in the same sector. For that reason Australia has already made GATS commitments on private secondary and private tertiary education, but not on public education. Australia is seeking from other Members commitments in this round on private health and private aged care but not public services in these sectors.

71. We agree with the argument in the first sentence of the second paragraph: government services are provided for a mix of social policy reasons that are unique. However, in the discussions between AFTINET representatives (including a member of staff of UnitingCare NSW.ACT) and DFAT on 14 February 2003, DFAT acknowledged that there is very little jurisprudence on GATS, and that Australia’s interpretation could be open to challenge. The Government should seek amendment to GATS to clarify this, rather than wait for the outcome of cases to see if their interpretation of GATS will be upheld.

72. Until such amendment is made, Australia should take a precautionary approach to commitments (both those made and those requested of others), to ensure that Australia's right (and the right of other nations) to public provision of services is protected, even if the above interpretation of GATS is challenged.
73. Australia should resist any attempt by other nations to change the nature of GATS from the current arrangement which is that nations have to name deliberately those services on which they will make commitments and the extent of the commitment, rather than naming exceptions.
74. Given that "government services are provided for a mix of reasons that are unique", we urge the government to reconsider and reduce Australia's reliance on commercial provision of services such as health, aged, care, social services, child care and the provision of utilities.

Comments on specific requests listed in the Discussion Paper

75. The following comments deal with the summaries of requests to Australia in the DFAT discussion paper on GATS, and uses the headings found there. They are not a comprehensive review of the areas covered in the requests; they touch on the requests only where we think significant social impact is at stake. We focus on the question of what commitments Australia should or should not make in WTO GATS agreements, not the question of what is the most appropriate policy in Australia at any particular time. The comments indicate those areas where there is good reason for Australia to insist on retaining its right to regulation or public provision.

Investment

76. We would oppose Australia agreeing to the requests to abolish current restrictions on foreign investment. Australia must have the right to oversee the development of its economy.

Mode 4 regarding entrance of foreign nations for business reasons

77. There appear to be two different types of requests here. The first type is change in policy, e.g. removal of various requirements for permits, labour market testing etc. Australia should not give up its right to determine policy regarding entry to Australia even in those cases where, at the present time, its practice conforms to the request. Business interests should not be sufficient reason to have a right of entry to Australia and residence in Australia. The second type of request is about more efficient implementation of policy. Such requests would appear to be consistent with the principle that all public policy should be transparent, consistent and administered in an efficient manner that does not place an undue burden on either public administration or business. The church supports this principle. It does not support Australia allowing business interests to determine right of entry to Australia, especially when Australia ignores the human rights of asylum seekers .

MFN exemptions

78. We believe that it is appropriate that the Australian government continue with arrangements that allow it to encourage foreign companies to collaborate with Australian companies in cultural productions rather than operating alone.

Professional services

79. Our concern in this area is that professional services that focus on the needs and rights of people should be provided in accordance with the local culture and conventions and meet appropriate standards of professional competence. Changes to arrangements for any professional services should be determined by review of Australia's needs and be consistent with better provision of professional services for all Australians. It is appropriate that professional services be regulated.
80. A number of the examples given refer to legal services. We would oppose changes in provision of legal services that have a negative impact on the Australian legal system as a whole. For example, it is doubtful that it is in Australia's interest to replicate the high level of litigation found in the USA.
81. We recognise that some of the requests relate predominantly to the provision of legal services to corporations that operate internationally. The nature of law differs in different cultures and societies. It is therefore important that the access of foreign lawyers and legal firms is regulated in accordance with Australia's need for specialist legal expertise, rather than simply allowing free trade of professional services. For the same reason, it is important that foreign lawyers seeking access to Australia and Australian lawyers seeking access to other nations are subject to regulation and specific training requirements relevant to the areas of law that they practice.

Computer and related services

82. No comment

Research and development services

83. Australia should not enter into commitments that require it to make research grants and subsidies available to foreign corporations or non-citizens. Australia should retain the right to invest research moneys in Australian research by and for Australians and for the common good, rather than being available to foreign corporation for their commercial benefit.

Real estate services

84. We would be opposed to Australia agreeing to any request that resulted in reduced consumer protection, especially for residential tenancies.

Other business services

85. The listing is too general to know the nature and implications of the requests.
86. With regard to the requests concerning conciliation and arbitration, we would be opposed to any commitment that diminished the right or ability of Australia to provide public conciliation and arbitration services, or that limited Australia's ability to regulate private services for conciliation and arbitration.
87. With regard to the requests concerning hunting, fishing and forestry, we would similarly be opposed to any commitment that diminished the right or ability of Australia to provide public services, or to favour domestic providers of such services or that required that foreign corporations be treated similarly to non-government organizations or organizations of Australia's Indigenous peoples. We would also be opposed to any commitments that limited the ability of Australia to protect old growth forests and regulate the forest industry to protect biodiversity and habitat.

Postal services

88. We understand that the European Union is requesting greater market access for EU firms to compete against Australia Post, including in the delivery of standard letters.
89. We would be opposed to any commitment that changed the ability of government to provide a monopoly postal service and to cross-subsidize unprofitable areas of postal service.

Telecommunications services

90. We understand that the European union is requesting removal of limits on foreign ownership of Telstra and more flexibility for foreign investors to buy into Optus and Vodafone.
91. We would be opposed to any commitment that limited the ability of the Australian government to regulate foreign ownership of telecommunications.

Audio-visual services

92. We oppose any commitment that diminished the ability of Australia to pursue cultural policy, to require local content, or to encourage domestic service providers or providers willing to collaborate with domestic service providers.

Construction and related engineering services

93. No comment

Distribution services

94. It is not clear from the Discussion Paper what requests have been made. However, we would oppose any commitment by Australia that diminished the ability of Australia to provide state marketing services for agricultural products, and any commitments that required changes to the Pharmaceuticals Benefits Scheme or that limited the ability of the Australian government to negotiate low prices for pharmaceuticals.
95. As Stiglitz points out, the global trade agenda has so far been unbalanced, favouring developed over developing nations, insisting that developing nations open up their economy and remove subsidies while retaining agricultural subsidies in developed countries and limiting the access of developing countries to their markets for agricultural products. Australia is committed to seeking a better deal for its own agricultural products – it should ensure that the USA and Europe take seriously the need to balance the trade agenda by taking seriously the needs of developing nations for a fairer deal on agriculture as well. For example, in the New York Times recently, there was an article that argued that corn farmers in Mexico were struggling because of subsidized USA produce being dumped on the Mexican market under NAFTA arrangements. (Tina Rosenberg “Why Mexico's Small Corn Farmers Go Hungry” NYT 3/3/3).

Educational services

96. In summary, no commitments or requests should be made that would allow or encourage the substitution of commercial provision of educational services (at all levels) currently provided in the public and not for profit systems. Requests to other countries should not require commitments that would limit their freedom to further develop their public provision of educational services at any level.

(a) Primary and secondary education

97. We recognize that Australia has only made commitments regarding private secondary and higher education. No further commitments should be made.
98. Education is culturally sensitive. It needs to focus on the needs of the students and the society to which they belong. This applies particularly at the primary and secondary level.
99. It is important to recognize that while we talk about “private” education in Australia, most, if not all, non-government schools are not for profit. That is appropriate. Schools should exist to serve the needs of the student, the student’s family, the local community and the nation. A commercially run school would immediately face a conflict of interest, having to balance the needs of these legitimate stakeholders with the need to make a profit. Schools need the involvement of parents and other citizens as volunteers – they serve on school councils (thereby shaping the educational vision and practice of the educational institution), raise funds, and assist with school programs. The role of volunteers is problematic in for-profit institutions, since only part of the benefit goes to students, the other part going to shareholders.

100. We therefore have some reservations with the present commitments. We question the provision of secondary educational services on a commercial basis and by foreign corporations whether in Australia or in other nations.

101. We oppose commitments or requests that allow provision of primary or secondary education on a commercial basis, while affirming the appropriateness of not for profit non-government schools as a supplement to a strong, well funded and effective public school system. This applies both to Australia and to other nations.

(b) Higher education

102. There should be a strong, well-funded and effective public higher education system in Australia. Other nations must be able, under GATS, to develop such systems whenever they have the resources to do so, whether now or in the future.

103. Australian education debate often points to the higher education system in the USA, but ignores the fact that almost all so-called private colleges and universities in the USA are not only not for profit, but also have extensive scholarship programs for students so that admission is usually on merit rather than ability to pay. They are not commercial institutions.

104. All suitably qualified Australians should have access to appropriate higher education in a well-funded public system, with entry to courses being determined by merit and not ability to pay. Commercial provision of services should not be a substitute for public higher education in any field currently taught at university or TAFE.

105. Australia is a large exporter of higher education. Education exports are a major source of revenue for universities. At the same time, Australia allows only very limited provision of higher education by overseas suppliers or on a commercial basis. This is clearly an area where Australia must resist the temptation to seek from other nations commitments on higher education that Australians would oppose for Australia.

106. Australia should not enter into any commitments or make any requests that diminish public higher education.

(c) Professional education

107. Professional education is also culturally sensitive. We draw attention to Professor Miles Little's book *Humane Medicine*, which argues that while medicine is scientifically based, it is not merely the application of science. The opinion of this highly regarded orthopaedic surgeon and rehabilitation specialist is that good medicine requires human as well as scientific understanding, and must be culturally sensitive. This applies to diagnosis, treatment and rehabilitation. The purpose of his book is to argue for a different type of medical education, that enables students to integrate the scientific, human and cultural approaches to medicine.

108. A similar case could be made for all other professions which are primarily about people – education, social work, psychology, and so on.

109. The church has learned about the culturally sensitive nature of professions through its own mistakes in mission work. The Uniting Church has had to learn humility and recognize the importance of partnerships in which its workers are willing to learn from the church and the people they go to serve. This applies with regard to health, education, development aid and many other types of work that we provide internationally.

110. This concern is now influencing public policy in some nations. We note that Malaysia, for example, has been bringing Australian medical educators to Malaysia, so that students and staff have to come to terms with the Malaysian context in which medical treatment occurs, rather than relying on students undertaking their training in Australia. (Information from Dr Sam Abraham, a leading pediatrician in Malaysia who also works extensively with less developed nations through the WHO).

111. We would oppose any commitments on higher education that ignored the need for professional education to be provided through a public system of higher education, or that limited the ability of nations to ensure that professional education is culturally appropriate.

(d) TAFE education

112. Australia has an effective, publicly funded TAFE system that makes technical education available to all students at a reasonable price. We would oppose any commitment on education that limited the ability to provide public education of this nature, or that required that commercial providers to have access to public funding.

(e) Other educational services

113. It is not possible to comment, as it is not clear from the paper what this phrase covers.

Environmental services

114. We understand that the European Union is seeking access to the local market for water collection and distribution services for EU firms.

115. Water is fundamental to human existence and wellbeing. It needs to be accessible to every person, whatever their circumstances. It must not be controlled by commercial firms.

116. We would be opposed to Australia making any commitments that meant that the Australian Government was limited in the future in its ability to supply and regulate water collection and distribution services.

117. We would be opposed to Australia making any commitment that meant that a future Australian government was unable to reverse privatization of these services.

118. Australia's requests to other nations with regard to water should take seriously the concerns of the International Year of Fresh Water and the right of government to ensure all citizens have access to fresh water of an appropriate standard.

Health and social services

119. Health is a fundamental human right. Australia should make no commitments that limit its ability to provide a comprehensive health system that fulfils the principles upon which Medicare is based, namely universality, access, equity, simplicity and efficiency. The health system also needs to be culturally sensitive, and shaped by the community it serves. The health system and the particular services it provides should not be shaped by commercial or foreign interests. Even where private services are provided, they must be subject to government regulation and determined by the public interest, especially the interest of the most needy users of health services.
120. We recognize that Australia is an exporter of health services. However, Australia should respect the rights of other nations to regulate health services in the public interest and to supply public health services. It should not seek commitments in this area that would limit those rights.
121. We would be opposed to any commitments or requests on health or social services.

Tourism

122. No comment

Transport services and Energy Services

123. These are separate areas in the GATS and cover a wide range of activities, including many activities that are appropriately undertaken by commercial enterprises. We note, however, that the requests to Australia include the marketing of energy, which may impinge on the affordability of energy for households. We also note that at least one request wants commitments on all rail and road transport.
124. Our concern here would be that Australia did not make commitments that limited the ability of local, state and the Australian governments to provide public services in these sectors, to regulate these sectors in the public interest, and to provide subsidies on a basis that it determines as in the public interest.

Concerns about the impact of GATS negotiations on developing nations

125. GATS negotiations are not likely to see developing nations benefit from increased exports in the services sector. The services sector is dominated by 'Northern' multinationals and there has been little progress toward the increased participation of developing nations in services trade (GATS Article IV). Developing nations are not large exporters of services. In the service sectors where some developing nations do appear to

have comparative advantage, including labour and opportunities for contract workers, negotiations for liberalization remain sidelined from the GATS agenda.

126. There are many concerns about the effects of the GATS on service industries and the provision / regulation of essential services and public services in Australia. For developing nations, who often face this agreement without strong regulatory environments or established effective provision of essential services, these threats are even greater. Many of the concerns expressed by people in Australia are already realities for people in developing nations where the liberalization of many sectors has occurred as a result of development policies of international financial institutions. Negotiations to expand GATS continue to threaten more of the same.

127. GATS negotiations aim to expand blanket liberalization - an agenda of de-regulation and privatization that is not in the interest of developing nations or poor people. The problems associated with this are amplified because GATS locks future governments into commitments made. This means that, if a service is listed, future government will be limited in their ability to prioritize policy decisions in the public interest over the interests of investors. GATS commitments are almost impossible to reverse and, for developing nations who need to build stability and democracy, inability to alter decisions could result in conflicts and violence if governments are placed in a position where they cannot respond to any civil unrest that may arise over inadequate service delivery or local exclusion from jobs and markets.

128. **GATS principles of market access and national treatment hinder development.** These principles restrict governments' ability to regulate so that local people benefit from foreign investment (for example by creating links between investors and local industries) or from private provision of services (for example by regulating prices, or ensuring that services are delivered in non-profitable sectors of a market). They prevent governments from being able to selectively support local companies. Expansion of GATS threatens to further reduce developing nations' ability to nurture their own industries and to implement poverty reduction programs based on support of suppliers in impoverished areas or to specific groups.⁴ Navigating around the principles of market access and national treatment requires clever scheduling of commitments, pre-empting future needs by listing partial exclusions to a sector when making a commitment, and specifying specific national treatment exemptions.

129. GATS negotiations are being used as a forum for demanding rapid liberalization of financial services (such as insurance and banking) and liberalization of basic utilities (such as water). Many developing countries have limited regulatory capacity, so there is little hope that privately provided services will be accessible to poor people.⁵ The privatization of basic utilities is damaging to the poor unless regulations ensure that supply is affordable and accessible. Developing countries need to retain the right to regulate services, including to introduce new regulations, and to make their own decisions about privatization including to return to government provision if the need

⁴ Gould, E. and Joy, C. 2000: In Whose Service, World Development Movement

⁵ Watkins, K, 2002: What Became of WTO's Development Round?, in Bangkok Post, November 14 2002.

arises. Expansion of GATS threatens this as, once a service is listed, both existing and new regulations are open to challenge on grounds of market access and national treatment.

130. GATS negotiations are being used to further the liberalization of investment, with attempts to limit the regulatory capacity of developing countries in investment. This poses a serious threat to a country's ability to reduce poverty and undermines development. GATS rules limit governments' ability to follow national development strategies that ensure local people benefit from the presence of overseas investors.
131. We are concerned that developing countries are being pressured to open up services to foreign interests. GATS' built-in commitment to continuous liberalization means that demands will continually be made and that negotiations continue without adequate assessment of the impact on developing nations. Developing nations are said to feel pressured to give GATS concessions as a precondition to concessions in textiles and agriculture. The commitments made to developing nations in the Doha Declaration should be upheld without regard to GATS negotiations. The linking of these minor and long-overdue concessions to the expectation of developing nation concessions through GATS has undermined the legitimacy of the development round.
132. The agenda for trade in services is progressing at a faster pace than most people, most societies and economies, and the multilateral trading system itself are ready for. On development grounds, the negotiations to expand GATS, including the agendas of liberalizing essential services and investment, should be dropped. The current negotiations threaten to leave developing nations further behind in world trade.
 - (a) Privatized services need an effective regulatory environment to ensure affordable and equitable access. This regulatory capacity needs to be maintained so that Governments can continue to ensure equitable service provision. GATS focus on investor's rights threatens developing country governments' ability to regulate and therefore impinges upon ability to achieve development i.e.: to realize people's access to water, sanitation, health services, education etc.
 - (b) Developing nations are not in a position to compete in trade in most services sectors. Further liberalization of service delivery sectors now will result in the long-term exclusion of developing nation's industries from these sectors.
 - (c) Global trade negotiations need to focus on the areas where developing nations can benefit. The services agenda should be put aside while the international community works on getting trade in goods right. At the very least, implementation of all existing commitments by northern / industrialized nations must occur before any extension of the GATS agreement.

An alternative trade agenda for Australia – linking trade policy back to people and addressing the needs of developing nations

133. We support the Australian Government in the development of trading relationships but also recognize the importance of the regulation of trade. We believe that trade, and the agreements and regulations that govern it, should always retain the primary aim of meeting people's needs and improving the lives and opportunities of all people. We understand the complexities involved in the realization of this aim, and encourage the Government to:

- (a) Pursue sustainable economic relations that will assist our country into the future and that will sustain both our environment and our democracy, with the aim of meeting the needs of Australia's people, and upholding our economic, social, cultural and political rights, including labour rights.
- (b) Pursue fair and ethical trading relations that have the interests and real needs of both the Australian people and the people of other nations as a priority, striving for a just balance between our national interest and the interests of other countries - particularly poorer and developing nations.

134. Australia is using GATS negotiations to gain access for service companies as providers in areas that include telecommunications, finance, and education. GATS is not a suitable forum for the expansion of our service sector, in particular into developing nations, due to the anti-regulation agenda of market access and national treatment. We recommend that, if the Australian government is going to pursue expanded opportunities for Australian services industries, they first move to establish regulations of the activities of companies who provide essential services to ensure that, when such services are provided to people in developing nations, they are consistent with development objectives, adhere to rather than challenge (other) government regulations and, in cases where insufficient government regulations exist, adhere to (mutually agreed to) standards on affordability, access, and delivery to vulnerable groups.

135. Australia should give priority to ensuring that international trade negotiations effectively address the needs of developing nations. A true development round would be prioritizing the commitments made at Doha that were said to be in the interests of developing nations which included:

- (a) Reform in agricultural to improve market access and reduce export subsidies and trade-distorting domestic support, with special and differential treatment for developing nations to enable developing nations to take account of development needs including food security and rural development.
- (b) Negotiations to reduce and eliminate tariffs and non-tariff barriers "in particular on products of export interest to developing countries". It was also agreed that this would take into account the special needs and interests of developing nations and

least-developed countries "including through less than full reciprocity in reduction commitments".

- (c) Using the trade system to contribute to a durable solution to the problem of external indebtedness of developing and least-developed countries.
 - (d) Continuing to address developing nations concerns about the agreement on intellectual property.
 - (e) Reviewing and strengthening special and differential treatment for developing nations.
 - (f) Supporting diversification and capacity building for least-developed countries
 - (g) Supporting mechanisms to ensure that core labour standards are implemented in all nations in all industries, whether providing goods or services.
136. In addition, Australia should be ensuring that

Conclusion

137. Free trade is not a panacea. Free trade does not automatically lead to progress, that is, improvement in human well-being and the health of the environment. Australia must resist attempts by the USA and other nations to dismantle significant Australian social policies in the name of trade. Australia's welfare and progress depends on making trade subordinate to our responsibility as a nation to enhance human rights, labour rights, and environmental responsibility. Australia should support the developing nations seeking a fairer trade regime that allows them to develop strong regulatory frameworks, makes it easier for them to trade their exports internationally and protects their natural resources, environment, culture and genetic heritage.