

## AFTINET Bulletin No. 44, 27 August, 2002

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### 1) Marrickville Council passes GATS resolution

The Marrickville Council, a large suburban municipality in Sydney, last week unanimously passed a resolution on the GATS negotiations outlining the dangers for local government and calling for consultation about them. It has also placed the issue on the agenda of the NSW and National Local Government Association Conferences. See the Bulletin 43 or the AFTINET website [www.aftinet.org.au](http://www.aftinet.org.au) for the draft resolution which can be moved at your local council.

### 2) Government Responses to GATS issues

These responses are interesting because they are contradictory, and show that the government is under increasing pressure on GATS. In answer to the first set of questions, which were asked in June, but answered under parliamentary rules on August 19, the government tries to avoid the issues raised by referring to the existing GATS agreement and ignoring the proposed changes to the agreement being made in the negotiations.

Despite this tactic, the answer to question 1b on publication of responses to specific negotiating requests due in March 2003, the government leaves itself some room to move on public disclosure in response to public pressure.

The responses to the letter are more direct, and admit that the issues we raise are in fact being discussed in the negotiations. The government admits that trade offs will occur in the negotiations, but asserts that they are more complex than the EU demands for privatisation of Telstra, post and water services in exchange for concessions on agriculture. The government admits that there is discussion of applying a "least trade restrictive" test to some government regulation of services, but claims that, while this would allow the Australian government to challenge "new, arbitrary or unreasonable" regulations by others, it will not reduce the right of Australian governments to regulate services. The final point admits that there is discussion of defining the funding of public services as "subsidies" which may have to be opened up to transnational companies, but claims that the discussions are "at an early stage" and that the possibility is "extremely remote."

### a) Minister Vaile's Response to Parliamentary Questions on Notice, asked by John Murphy (ALP) Member for Lowe, June 18, answered on August 19

(1) In relation to the World Trade Organisation negotiations on the General Agreement on Trade in Services (GATS), will the Government make public its specific:

- (a) requests to other governments which are due on 30 June 2002; if not, why not and
- (b) responses to requests from other countries which are due on 30 March 2003; if not, why not.

**Reply**

(a) The Government will release as much general information as practicable, including on sectoral and country coverage and the nature of the commitments sought, where this would be consistent with any commercial confidentiality and does not compromise our negotiating interests.

(b) The Government will consult widely on any requests received by Australia in the GATS negotiations and will consider its position on the public release of its offers closer to the due date.

(2) Will the Government support the exclusion of all public services from the GATS, including public health services, public education services, postal services and water services; if not, why not.

**Reply**

Australia ratified the General Agreement on Trade in Services in 1995; the treaty excludes those services supplied in the exercise of governmental authority. The Government supports the exclusion of such services under the GATS.

(3) Will the Government support the exclusion of cultural services from the GATS, so that Australia can continue to have laws which limit foreign ownership in the media and which require local content in film and television; if not, why not.

**Reply**

The Government has indicated that it would always take cultural policy objectives and issues relating to the maintenance of cultural diversity into account in any trade negotiation, and this remains its policy.

(4) Will the Government oppose any proposals which would remove the right to regulate levels of foreign investment in any industry; if not, why not.

**Reply**

The Government supports the right of all WTO Members to regulate the supply of services, including those delivered through the establishment of a commercial presence in their territory through foreign direct investment.

(5) Will the Government oppose any proposals which would open up the funding of public services to privatisation; if not, why not.

**Reply**

The GATS treaty features no obligation for governments to privatise or open up public services to competition, nor does it dictate any specific role for the public and private sectors. These issues remain matters for individual WTO Members in their domestic policy contexts.

(6) Will the Government oppose any proposals which would reduce the right of governments to regulate services, including the application of a "least trade restrictive" test to regulation; if not, why not.

**Reply**

The GATS explicitly recognises the right of members to regulate and introduce new regulations on the supply of services in order to meet national policy objectives. This "right to regulate" was explicitly re-affirmed in the WTO (Doha) Ministerial Declaration of 14 November 2001 by all members including Australia. Under the GATS, there is a mandate to develop multilateral disciplines to ensure that licensing requirements, technical standards and qualification requirements and procedures do not constitute unnecessary barriers to trade, but this would not derogate from the right to regulate or compromise the ability to maintain a required level of protection.

(7) Will the Government submit all policies on GATS to full parliamentary debate and a parliamentary vote before commitments are made; if not, why not.

**Reply**

The Government will apply the existing policy on treaty review to any amendments that are ultimately proposed to Australia's schedule of commitments under GATS.

**b) Minister Vaile's response to a letter from AFTINET, 12 August 2002**

This letter is a response to an AFTINET letter written in July. Points from the AFTINET letter are summarised with the government reply below each point.

1) Our letter quoted a statement by the EU Trade Commissioner Pascal Lamy in the Financial Review of July 17 that Australia would "have to lift restrictions on foreign ownership of Telstra and in the sensitive water distribution industry in return for any concessions from Europe on barriers to agricultural trade"

**Reply**

"As indicated in my letter to you of 24 May, policy decisions about service sectors in Australia, such as telecommunications or water management, will not be determined or driven by requests other WTO members make of Australia in the GATS negotiations. Major changes to the regulation of services in Australia, such as the ones you describe, are matters of domestic policy (involving various levels of government in the case of water management services), which would be determined by national economic, social and political considerations, not the imperatives of trade negotiations.

Claims and suggestions made in your document - *Government GATS fact sheet exposed* - that Australia may agree "behind closed doors" to "list" public services or that Australia will trade off a reduction in European agricultural trade barriers with privatisation of essential water and postal services, are inaccurate and irresponsible. Despite EC posturing to the contrary, there is no simple trade off between agriculture and services for Australia or any other WTO member.

The Doha Round is a complex and comprehensive set of multilateral negotiations, covering not only market access issues relating to agriculture, industrials and services, but also significant rules-based issues relating to trade and environment, geographical indications, trade remedies such as anti-dumping, trade and development, and investment and competition rules. Australia, like all WTO

members, will be seeking a balance of interests across this broad-ranging agenda, consistent with our trade policy objectives and priorities. Australia's positions on key issues at critical points in the negotiating process will be determined by the Government, taking into account the views of the community and based on our overall interests. In this context, I emphasise again that Australia will ensure that it retains the right to regulate and introduce new regulation."

2) Our letter emphasised that the application of the "least trade restrictive" test to some regulation of services, which is now being discussed in the GATS negotiations could reduce the right of governments to regulate services in some areas by making it easier for other governments to challenge such regulation on the grounds that it was a barrier to trade .

### **Reply**

"With regard to your statements about the "least trade restrictive" test, Australia supports the development of disciplines on necessity and transparency as part of the negotiation of multilateral rules on domestic regulation under Article VI.4 of the GATS. Such rules would be of significant benefit to our service exporters and will help to ensure that WTO members cannot undermine the value of specific commitments on market access or national treatment by erecting new, arbitrary or unreasonable trade restrictions in relation to licensing requirements, technical standards and qualification requirements and procedures. Indeed, WTO members have already agreed to disciplines for domestic regulation relating to the accountancy sector - to take legal effect at the end of the Doha Round - which include a form of necessity test. Australia has been active in these discussions, but we nevertheless have an open mind on the precise form that any necessity test for other service sectors might take, and have not advocated any constraints on the range of legitimate policy objectives that members may pursue in exercising their right to regulate."

3) Our letter also raised the issue of the proposals in the GATS Rules Committee to define government funding as "subsidies" to which transnational corporations should have access

### **Reply**

"Finally, your comments about "subsidies" in the GATS are wholly speculative, since there are no multilateral disciplines on subsidies under the treaty at present. Although a mandate to develop such rules is provided for in Article XV of the GATS, the discussions are only at a very early stage. As with all WTO negotiations, it can be expected that members, including Australia, will seek to protect their interests. The likelihood, therefore, that these proposed negotiations will ever result in the kinds of scenarios you outline must be regarded as extremely remote."