



**National Council of
Women of New Zealand**

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Wahine O Aotearoa

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**Submission to the Minister of Foreign Affairs and Trade on the
General Agreement on Trade in Services (GATS)**

The National Council of Women of New Zealand (NCWNZ) is an umbrella organisation representing 42 nationally organised societies. It has 33 branches throughout the country attended by representatives of those societies and some 150 other societies. The Council's function is to serve women, the family and the community at local, national and international levels through research, study, discussion and action.

Ten specialist Standing Committees, working through various forms of correspondence, study issues relating to their particular subjects and, with input where possible from the general membership, prepare submissions on legislation and discussion documents

NCWNZ initially responded to the negotiations with the World Trade Organisation (WTO) on a General Agreement on Trade in Services (GATS) during the very brief consultation period in March 2003 by way of a letter of concern to the Prime Minister. A copy of this letter has been attached for your reference. The main issues raised in that letter were the lack of information in the public arena and the implications for women in any such agreement, given that a high proportion of women are involved in the services currently under discussion.

It is noted that the 31 March 2003 deadline was for New Zealand to notify its WTO co-members of its initial offers. Since our letter to the Prime Minister we have learned through the Ministry of Foreign Affairs and Trade (MFAT) website that this initial offer has no legal status and may be amended or withdrawn at any time. Two points arise from that statement.

- a. Some members found the MFAT website difficult or impossible to access and of course those without computers lacked the ability to familiarise themselves with the GATS issues.
- b. It is pleasing that the negotiations will be on-going as NCWNZ would like the opportunity to make further submissions as those negotiations progress.

Executive Summary

NCWNZ commends the Government for not including in the initial round, commitments in the sectors of health, public education, and privatisation of public services or public entities. It is noted however, that within those areas the boundaries between public and private provision have become blurred. The membership noted that GATS rules appearing under Article II, and Part III, Article XVIII, and Article XX enable the government's initial commitments to be revoked and reviewed.

There is concern that the impact of GATS on the Treaty of Waitangi is not clearly defined.

There is also concern that the mechanisms used for communicating public consultations relating to GATS were not effective in reaching the wider community.





Members' responses all upheld the existing 1998 NCWNZ policy¹ which urges *the Government not to approve international treaties and/or legal obligations (consequent thereon) until a Select Committee has reported to the House and the matter debated.*

The membership indicated a general unease with possible loss of both sovereignty and uniqueness of the New Zealand way of life.

Members noted that within the current climate without GATS, some New Zealand companies were already moving into service provision in areas overseas. Members queried whether under GATS such services would be required to change.

NCWNZ submits that, to redress the perceived paucity of information about the GATS negotiations, even now is not too late to make very public statements via all the media, detailing the impact that GATS will have on New Zealand.

General comments

Input into this submission was sought from all NCWNZ members and branches and its ten specialist Standing Committees, by way of an Action Item in the April issue the NCWNZ monthly newsletter, The Circular. This submission is based on the responses to the seven questions asked in the Action Item, plus other comments members attached to their responses.

Q 1 *New Zealand is a signatory to another agreement, the General Agreement on Tariffs and Trade (GATT). Can you suggest any lessons to be learned from working within that Treaty that could assist with negotiations with the GATS?*

Members felt that there had been very little opportunity for the public to have input into the decision making about GATT and noted only a slight improvement with the GATS process.

There was general unease about possible loss of sovereignty and the ability to make decisions for our own good. The Transrail experience is seen as an example of what could happen with other services, and GATS was not seen as being able to offer better protection.

Some members expressed disappointment that lessons had not been learned from the fiasco of the Multilateral Agreement on Investment (MAI) as part of the WTO negotiations, where no public consultation was intended and the public backlash was loud. One respondent stated that the Government needs to realise that the New Zealand public understand complex issues and can give an informed response.

The general perception held by the membership is that the New Zealand Government seems to be prepared for far greater liberalisation than most other governments. It would appear that there is an expectation that other countries will open up access for New Zealand to their services. The membership is concerned that there is little regard for the vulnerable economic position New Zealand could be placed in arising from the mutual access of services. The implications of economies of scale exhibited by some foreign corporations, coupled with the invitation to access our market are areas that have not been sufficiently addressed by the Government to date.

Some of the membership hold strong reservations about the continuing development of overseas-based interests controlling what goes on in New Zealand and that these companies could have the best interests of New Zealand at heart.

¹ *107 years of resolution* 11.16.8



There is a concern that foreign influences could be detrimental to our uniqueness. In an atmosphere of reviews, overseas experts tend to be consulted at great expense, when often there are local people who are experts about local issues. This import of experts could increase if overseas owners order the reviews.

NCWNZ is comforted by Minister Sutton's statement as reported by Craig Howie in the Dominion Post 5 April 2003² that the Government would not back any negotiations deal until the World Trade Organisation freed up agricultural exports. Recent moves by European agricultural interests seem to have ensured that this blockage has been reduced, however the importance of mutual and equitable access can not be understated, nor should it be subject to marginalising negotiations.

Q2 *Could there be a conflict between any service that New Zealanders currently consider as a 'public good' and opening them up to be traded?*

NCWNZ applauds the Government for not including in the initial round, commitments in the sectors of health, public education, and privatisation of public services or public entities. Members stated that Education, Health and Public Services should not be part of any negotiation package within the GATS. However it is noted that within those areas the boundaries between public and private provision have become somewhat blurred, with the potential for foreign companies to gain access to public funds to the disadvantage of local interests.

Members identified all areas that attract public funding, especially those currently supplied through national and territorial authorities, as being unsuitable for inclusion in any GATS negotiations. These were seen as human rights, citing as examples, water, waste management, postal services, transport, telecommunications, social services. Other areas which could be affected are employment and recruitment personnel; regulation of services affecting the environment; control and regulation of our culture e.g. media, tourism, bi-culturalism.

It is pleasing to note that the Government will make no initial offer involving privatisation of public services or of public entities. However, the membership does note the word 'initial' infers a temporary status and there is unease that subsequent offers will result in a change in the next or future rounds. Concern was also raised about various requirements as stated in the GATS paper being:

Article II: Members are held to extend immediately and unconditionally to services and service suppliers of all other Members 'treatment no less favourable than it accords to like services and service suppliers of any other country.'" The Most Favoured Nations (MFN) principle in GATS is qualified as members were allowed to list exemptions on entry into force of the agreement. MFN exemptions are, in principle, to last no longer than 10 years and are subject to negotiation in the current and future trade rounds.

Part III, Article XVIII: Members may also negotiate additional commitments (*not additional restrictions*) [emphasis in the paper].

Article XX: Circumstances may well arise in which a government may wish to take back something it has given in past negotiations. It can do so, but only at *a price and after due notice*. [NCWNZ emphasis].

² 'NZ gives nothing away in trade deal.' Dominion Post 5 April 2003 Edition 2 page 1



Members noted that some New Zealand companies were already moving into service provision in areas overseas. Some universities provide and receive services off-shore and in particular Otago University has been providing distance learning for some time. This has transpired within the current climate without GATS, so members ask what will change under GATS. Two areas where the membership has indicated they would appreciate a direct answer from the Government include:

- Will these services be more or less restricted?
- Will the current ability of Government to regulate for protection change under GATS?

Q3 *What services do you think should not be part of any trade agreement? Why?*

NCWNZ acknowledges the information from the MFAT paper that 'The GATS covers all service except "services supplied in the exercise of government authority". These services are defined as services which are supplied "neither on a commercial basis nor in competition with one or more services suppliers".' NCWNZ assumes that this includes national and local territorial authorities. Members observed that within those areas the boundaries between public and private provision have become somewhat blurred, with the potential for foreign companies to gain access to public funds to the disadvantage of local interests.

Members agree that the supply and treatment of water and the management of sanitation and waste should be excluded from any agreement, because these are the 'commons' i.e. public good to which every person is entitled as of right in order to maintain life. If in private instead of public control, as would inevitably happen if opened up to international investment under GATS rules, the cost could become profit-driven. On a user-pays basis those on the lowest income level could be denied access through being unable to afford necessary public utilities. Some members reported that this has happened overseas - noting that in terms of both ethics and public health it was seen as reprehensible. It is also worth noting that under the Free Trade Agreement between Canada and the USA, Canada would be prevented from restricting the sale of its water resources to the USA even in times of local water scarcity.

Members expressed the firm opinion that utilities such as power generation, which are seen to be necessary for the well-being of the population, should not be included in any negotiations.

The membership questions the possible implications of the [GATS rules] 'necessity test' i.e. that any regulation, for example to protect the environment, local interest and employment, or labour conditions, can be challenged to prove that it is a 'legitimate goal' and hence necessary; and that there are no alternatives less burdensome to a foreign company.

Many respondents displayed a strongly held belief that decisions made by the WTO lack procedural transparency; that these over-ride regulations at local as well as national government level - hence threaten our sovereignty and control over our own resources. Increased liberalisation through progressive roll-back of any existing regulations; and the veto on introducing any new ones to meet changing circumstances, were also identified as a risk.

NCWNZ agrees that the New Zealand Schedule should exclude health, education and social services, regardless of whether they have a commercial element. Environmental services are also important for New Zealand, for example our bio-security is a valuable asset. Other essential services to be excluded should be water, energy, public transport, public broadcasting, postal communications, legal services and ACC.

Members believe that education, broadcasting and printed media need to reflect the New Zealand way - our views, values, and societal and geographical position. Members claimed that, as with te reo, no other country, with even the best of intentions, can do that.



Q4 *With the liberalisation of trade in services, what impact, if any, could there be on women?*

Members made two strong initial statements in response to this question; being:

- all issues affect women, and
- any impact would be the same for men as for women.

However these were followed by the qualifying acknowledgement that a large proportion of the people in part-time and casual work in service occupations are women. International research shows that the caring and people skills required in many women's jobs are undervalued

There is a belief that foreign control of trade in services, such as tourism, where large numbers of women are involved could adversely affect employment rates and conditions and create unemployment. Women could be at risk from other cultural attitudes, differences and expectations. Many services are big employers of low paid women, and gains made in conditions of employment need to be protected.

Women in New Zealand do not enjoy true pay equity, yet New Zealand is considered more advanced than many other countries. Likewise, women continue to be under represented in decision-making positions and still New Zealand would rank as better than most. Whether New Zealand women could realistically expect an improvement in the two aforementioned areas, or if we wouldn't instead be forced to reaffirm our expectations should employment be under increased foreign-control, remains a troubling question for New Zealand women.

Q5 *What benefits could accrue from the proposed liberalisation of trade in services?*

NCWNZ notes that as a signatory to GATS, New Zealand would become a participant in the world organisation with a voice. However considering the size of the US or Japanese economies, New Zealand's voice may carry less weight.

There could be financial benefits although some fear that there may be strings attached.

One group within the membership felt that possibly liberalisation could allow for the introduction of high standard health facilities or high quality education opportunities. Huge amounts of capital could be available from overseas, but the expertise available with it may not be empathetic towards local conditions. Our entrepreneurial skills using global knowledge may give access to more up-market technology and markets

Many members believe there will be few benefits from the proposed liberalisation of trade in services. The international community successfully put a stop to the MAI proposal from the WTO because the dangers to ordinary people were apparent. People around the world are now opposing the GATS because there do not appear to be any benefits for the ordinary people of New Zealand or any other country. It is widely felt that the basic services should be governed by and for the people of New Zealand and not WTO in the interests of transnational corporations

One group of respondents stated very strongly that they see the GATS as fundamentally anti-democratic. They felt it would prohibit central and local government and bodies, who are performing delegated responsibilities, from using policies, regulations and practices that give preference to local firms and restrict foreign control of our services, once the government has committed those sectors to the rules of GATS. It would, they felt, lock us all into the free market model of privatisation, deregulation, unrestricted foreign investment, user charges, contracting out and flexible labour markets.

While praising the exclusion of education from the negotiation package, members acknowledged that Private Training Establishments (PTEs) were one way education was being supplied in New Zealand with possible overseas input, but were unsure how much of the education vote was now



going to those PTEs. They queried whether the number of these PTEs could be limited in order to preserve the education system that has been developed in New Zealand which provides for equal opportunities for all children.

Members also asked whether the immediate effect of the 'income' generated by the huge increase in numbers of overseas fee paying students, has been analysed or evaluated for the long term effects on our schools.

Q6 *What implications could there be for Maori and the Treaty of Waitangi process from such liberalisation?*

The response of one group was to say that the Government has been negotiating the GATS, a binding international treaty that overrides the Treaty of Waitangi. It excludes Maori from participating in the Treaty making process. Under GATS, central and local government, Iwi and Maori bodies who are performing delegated responsibilities, cannot give preference to local firms and restrict foreign control of those services which have been committed to GATS rules.

It is perceived that the protection that has been reserved for Maori only covers 'individuals and organisation engaged in a commercial or industrial undertaking.' It makes no mention of the Treaty of Waitangi and does not address the real impact of GATS on the recognition of manawhenua, protection of taonga and te reo, creation and protection of jobs, culturally appropriate models of development, affordable access to good quality utilities and services and ensuring that foreign investment applications do not impede Treaty claims.

Some members indicated that the present international trading system of which GATS is a part does not recognise the rights and ethics of indigenous peoples. Further some members sought assurance that GATS could not be used as grounds for non-compliance with Waitangi Tribunal recommendations.

NCWNZ recommends that a Treaty impact analysis be undertaken and the findings be made public.

However one group felt the Government may have caveat control.

Q7 *What comments would you like to make about the consultation process undertaken by the Ministry?*

All responses upheld the existing 1998 NCWNZ policy³ which *urges the Government not to approve international treaties and/or legal obligations (consequent thereon) until a Select Committee has reported to the House and the matter debated.*

NCWNZ strongly believes that the process should be public and allow adequate time for participation and input, including from local government interests. It is felt that any agreement should go through the select committee process and be debated in Parliament, not decided by Cabinet. They also commented adversely on the original, very short time frame provided for the consultation on General Agreement on Trade in Services (GATS). The restriction of information to electronic media immediately discounted those people without access to a computer, which is contrary to an open, fair and inclusive democratic process. There was concern expressed about the lack of transparency and public scrutiny in the current [consultation] process.

Members believed that the public submission process is an effective way of gathering responses from a broad cross section of New Zealanders.

³ 107 years of resolution 11.16.8



It is also noted from the *Facts and Myths*⁴ paper that the 'Government has consulted with New Zealanders on this offer' and 'received more than 200 submissions over a month-long period and held meetings in six centres around the country'. It is significant that not one NCWNZ member mentioned having heard about those meetings, which raises the question of how and where they were advertised and whether a feasible amount of notice was provided for people to attend. NCWNZ must reiterate that for it to consult its New Zealand-wide membership one month is too short a time frame, especially when the month in this instance finished on 28 February, thereby covering a period when NCWNZ branches were not functioning due to the New Zealand summer recess.

Members aver that as the Government is required by the people to act on their behalf, it is therefore essential that not only should the Government exercise caution in what it offers under the schedule but also that there must be a long and full education process with the wider public before the government considers signing binding agreements.

Members were concerned about how little was known about GATS and the wide range of economic activities it covers.

NCWNZ believes that fair, open and inclusive consultation coupled with outcomes that are recognisably in the public's interest will reduce the potential for much conflict.

8 General comments

One group reported that quotes from Transnational Corporations (TNCs) contain words like 'growing market', 'commercial opportunities' and 'lucrative'. They felt these terms suggested that company profits were more important than people were and that these terms were not appropriate when dealing with issues of Public Good.

Again if this policy of 'private profit before people' was applied to health, for example, it could mean that New Zealand might possibly have the advantage of the most up-to-date medical services but the area of preventative medicine would be ignored because it is not a 'lucrative' market.

It was further suggested that if the Government wished to put in place measures to promote good health these could be interpreted as 'barriers to trade' to the suppliers of medical services and the Government could find itself in breach of GATS. Enforceable dispute mechanisms could result in economic sanctions being imposed.

There were concerns raised about the impact for New Zealand qualified professionals, should foreign workers be imported to provide those same services. While some people suggest that our Government has in place enough checks and balances to protect our own providers, this would seem to be unlikely considering the basic rules of GATS that say a government cannot treat suppliers from one WTO country better than those from another. It cannot give better treatment to its local providers than it gives to foreign suppliers. Further, it cannot limit the access of foreign suppliers to its market by imposing limits on the total number of requirements for local content and/or local labour.

This would mean that the objectives peculiar to New Zealand whether educational, social, environmental or cultural, and specifically Treaty of Waitangi issues, would not be enforceable as they could be interpreted as 'barriers to trade' and as such in breach of the GATS agreement.

⁴ New Zealand & WTO GATS Facts and Myths MFAT website 3 June 2003



NCWNZ agrees that service sectors are *key infrastructural components of a healthy and well-performed economy, in their own right and as critical inputs to the production of goods*. It is noted that 75% of New Zealand's workforce is employed in services⁵.

NCWNZ applauds the Government's intention to 'adopt a hard-nosed approach' when advancing the nation's interests in these negotiations and acknowledges that in the agricultural sector this may already have paid off.

Conclusion

NCWNZ members recognise that the New Zealand Government has entered into these WTO negotiations with goodwill and in good faith.

However, the possibility of sanctions when stronger member countries claim barriers to trade, are seen as being a very real prospect and a feature of the GATS that does not rest comfortably with the NCWNZ membership. At the heart of the membership's concerns are the loss of sovereignty and the uniqueness of life in New Zealand, the undermining of the local economy and the challenging of our laws and obligations.

NCWNZ submits that greater accessibility, openness, transparency and provision of time in the consultation process and in the supportive information would have been more appropriate. It is suggested that even now is not too late to make very public statements via all the media, detailing the impact that GATS will have on New Zealand based on the analyses it is assumed have already been undertaken.

Beryl Anderson
National President

⁵ 'NZ gives nothing away in trade deal.' Dominion Post 5 April 2003 Edition 2 page 1