



## CONFERENCE OF LEADERS OF RELIGIOUS INSTITUTES IN NSW

Member of Catholic Church Religious Group  
ABN 52 476 362 010

The Hon. Mark Vaile  
Minister for Trade  
Parliament House  
Canberra ACT 2600

28 July 2006

Dear Mr Vaile

I write to you on behalf of the Conference of Leaders of Religious Institutes (NSW) a body which represents several thousand Catholic Religious women and men in this State. The CLRI (NSW) and its members are engaged in a range of programs which include education and advocacy for trade justice.

I am writing to express opposition to any GATS proposals that could undermine the ability of governments (local, state or national) to regulate in the public interest.

I am deeply concerned that the Australian government has supported a proposal sponsored by Chile, Hong Kong, New Zealand and other countries dated June 9 that argues for :

- the inclusion of a 'necessity test' for governments in Article VI.4 with regards to disciplines pertaining to domestic regulation;
- the inclusion of new disciplines in relation to qualification requirements and procedures, licensing requirements and procedures, and technical standards; and
- the inclusion of "prior comment" clauses that would give WTO members the right to comment on future rules and regulations.

I understand that, although these proposals would affect state and local government regulation, there was no consultation with state or local government about the proposal.

According to the WTO Secretariat, there are two aspects of a potential GATS necessity test: "the first aspect is the general requirement that regulations not be more trade restrictive than necessary; the second aspect is to examine whether an individual measure is actually necessary to achieve the specified legitimate objective." [WTO Secretariat, "Necessity Tests in the WTO," Working Party on Domestic Regulation, S/WPDR/W/27, 2 December 2003, p. 1]. Under a necessity test, therefore, the WTO disputes settlement panels would be in a position to determine whether or not the

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measure a particular government proposed to undertake was 'necessary' to achieve certain policy objectives.

In effect, a 'necessity test' would allow any WTO member to challenge new rules and regulations of another WTO member through the Dispute Settlement Understanding. Hence, the ability of governments to exercise their right to regulate in the interest of its people and environment would be severely restricted. Almost all regulations can be interpreted as being in some way a barrier to trade simply because they deliberately seek to curb or influence commercial activity in order to promote other objectives such as the public interest. As a result, regulations aimed at public health, municipal planning, or consumer, and environmental protection could all be deemed to be "more burdensome than necessary" and therefore challenged via WTO dispute panels. The U.S.-Antigua gambling case, in which the WTO Dispute Settlement body ruled that U.S. federal and state laws restricting on-line gambling violated WTO rules, illustrates the kind of interference that is possible under the GATS.

If a "necessity test" was included in the GATS, national, provincial or state and municipal governments might find the regulations they authorize overturned by WTO dispute settlement panels. Indeed, some proposals before the WTO go so far as to require that member states submit proposed legislative and regulatory measures to other WTO member states for comments before they are voted on by national parliaments. This implies WTO members would have the right to comment on another member's proposed legislation as it might affect their companies' ability to export, before the WTO member's own democratic institutions decide on proposed law.

At the WTO, only a small number of countries, including Australia, are now aggressively pushing for the inclusion of a 'necessity test' in the GATS. The majority of WTO members, including the U.S. and the EU, now oppose a necessity test.

The Chair of the Working Party on Domestic Regulation is expected to table a draft consolidated text of the proposed regulatory restrictions early this summer as the basis of negotiations to finalize new disciplines by the end of the year.

I oppose the imposition of a 'necessity test' including proposal of "prior comment" in any new domestic regulation disciplines, as I believe that these proposals undermine responsible democratic governance. Governments should retain full rights to regulate in the public interest. I urge you to withdraw Australian government support for these proposals.

I look forward to your response.

Yours sincerely,

Suzette Clark rsc  
CLRI NSW Social Justice Committee

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