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SUBMISSION BY THE
SEARCH FOUNDATION TO:

THE JOINT STANDING
COMMITTEE ON
TREATIES INQUIRY
INTO AUSTRALIA'S
RELATIONSHIP WITH
THE WORLD TRADE
ORGANISATION

OCTOBER 12, 2000

TERMS OF REFERENCE

- opportunities for community involvement in developing Australia's negotiating positions on matters with the WTO;
- the transparency and accountability of WTO operations and decision making;
- the effectiveness of the WTO's dispute settlement procedures and the ease of access to these procedures;
- Australia's capacity to undertake WTO advocacy;
- the involvement of peak bodies, industry groups and external lawyers in conducting WTO disputes;
- the relationship between the WTO and regional economic arrangements;
- the relationship between WTO agreements and other multilateral agreements, including those on trade and related matters, and on environmental, human rights and labour standards; and
- the extent to which social, cultural and environmental considerations influence WTO priorities and decision making.

INTRODUCTION

The Social Education and Research Concerning Humanity (SEARCH) Foundation is a non-profit company whose objectives are to promote democracy, social justice and environmental sustainability by understanding and promoting the main factors that affect social change.

The SEARCH Foundation supports the development of trading relationships between all countries and regions, and supports international regulation of trading relationships in a way that promotes democracy, social justice and environmental sustainability.

The collapse of the MAI negotiations in late 1998, followed by the failure to launch a new “millennium” negotiating round at Seattle in late 1999 shows that the sustained trend of applying neo-liberal market theory to all markets on a global scale has over-reached itself, and run into severe political constraints.

The recent failure of the Australian government to convince ASEAN to commit to a merger of the Closer Economic Relations between Australia and New Zealand, and the ASEAN Free Trade Area, again underlines the severe political constraints on extending the neo-liberal agenda, even on a regional basis.

The SEARCH Foundation argues that big changes are needed to the international trade negotiating framework. The view that changes are needed is not only held by community organisations in Australia and elsewhere, but is shared by many developing country governments and the European Union.

As we explain in the submission, the community has no genuine involvement in Australia’s relations with the WTO, the WTO itself is an undemocratic structure whose decisions undermine the legitimacy of national governments, including Australia’s, its complaints and enforcement mechanisms are obscure, unfair, unbalanced and draconian, and the WTO agreements are unfairly given precedence over international treaties dealing with human rights, labour rights and the environment.

We note that the Committee’s Terms of Reference do not directly focus on the content of the WTO agreements, but we feel that the substance of the neo-liberal agenda of the WTO is at the heart of the problems it is now facing, and the problems that the Australian government is now having in advancing its own trade and investment agenda, and in convincing the Australian people that it is a good agenda.

**OPPORTUNITIES FOR COMMUNITY INVOLVEMENT IN DEVELOPING
AUSTRALIA'S NEGOTIATING POSITIONS ON MATTERS WITH THE WTO**

The Australian government voted to ratify the results of the Uruguay Round of GATT negotiations in 1994, which included creating the WTO, without any reference to the community, except for some specific big business groups, especially in agriculture. There has been no representative character in the Trade Advisory Policy Council and WTO delegations.

That treaty imposed on the Australian community the new concepts of TRIPS (Trade Related Intellectual Property Rights) and TRIMS (Trade Related Investment Measures) and opened up services to negotiation for international trade. These undertakings affect a broad scope of government policy, in ways that are detrimental to the public good.

TRIPS is a particularly objectionable aspect of the treaty because it strengthens the advantage held by the rich countries in their research and development capacity and is not a trade liberalising measure. TRIPS poses a major threat to the traditional knowledge of peasant and indigenous communities in developing countries, and to indigenous Australian cultural rights. Yet this was not discussed at the time.

The Uruguay Round also included an agreement on Government Procurement, and we support Australia's decision not to join in that agreement. Government Procurement is an important lever in any genuine industry development policy for Australia.

It is essential that government policy be open, publicly discussed and publicly accountable before agreements are signed.

Therefore the Australian government should hold a formal public consultation process about possible positions to take in WTO negotiations, and then hold a formal parliamentary debate on these issues, before sending negotiating teams to specific sessions or to the Ministerial Meetings.

Since there has been no community consultation worthy of the name so far, the government has very significant scope to create a genuine community consultation process.

Efforts in 1999 by the Department of Foreign Affairs and Trade to "consult" have been barely disguised efforts in brow-beating and pushing a predetermined neo-liberal policy, and only antagonised community groups seeking to have a genuine dialogue.

In February 2000, DFAT officers participated in a public forum in Sydney to acknowledge the 'wake-up' call the WTO had received at Seattle. Again, this was used to challenge community organisations to have a genuine input into Australia's policy, rather than offering to facilitate such an input.

THE TRANSPARENCY AND ACCOUNTABILITY OF WTO OPERATIONS AND DECISION MAKING

As stated already, under the Uruguay Round agreements, the scope and content of agreements supervised and negotiated through the WTO has greatly expanded, but the WTO is neither transparent nor accountable compared with other international bodies, such as the UN, the ILO or the International Court of Justice.

The WTO has closed meetings, no majority voting, no public debate, no formal NGO observers at debates, and the drafting process is dominated by the big four - the USA, Canada, EU and Japan.

So transparency and accountability in the WTO is a joke, leading to its severe loss of legitimacy since 1994, demonstrated so graphically at Seattle, both on the streets and inside the Ministerial. Developing countries are excluded from most drafting meetings, and lack resources. They have made specific requests for structural changes that often parallel the demands of labour, environmental and other grassroots organisations on the outside.

Agreements made at the WTO restrict domestic government policy-making, thus reducing the transparency and accountability of national governments, including Australia's federal and state governments.

A review of WTO structures is urgently needed to address these issues. Such a review should take place before any new negotiating round.

At a minimum, the 'Green Room' must be abolished. All delegations must have a minimum level of resources. Decisions should be made by majority vote and require ratification by referendum in member countries. NGO forums should be part of the process. Social and environmental impact assessments must be basic components of the information publicly available. These aspects of transparency and accountability are only part of the overall review of the WTO that must take place before any further trade and investment liberalisation is negotiated.

**THE EFFECTIVENESS OF THE WTO'S DISPUTE SETTLEMENT PROCEDURES
AND THE EASE OF ACCESS TO THESE PROCEDURES**

In general, the WTO disputes settling procedures place trade and commercial values above other values in international law.

The WTO disputes settling procedures appear to be very effective in overwhelming domestic government policy on health and the environment and human and cultural rights, because the panels are made up of trade lawyers who have no interest in other vital aspects of life. They meet in secret and use obscure technical language.

The threat of potential complaints, as well as actual complaints, is now being used to influence domestic government policy, eg on GMO labelling, labelling hormone-fed beef, quarantine standards.

The dispute settlement process should be reviewed in the context of a general review of WTO structures. It should take into account other international law. It should be open and its decisions should be accessible.

AUSTRALIA'S CAPACITY TO UNDERTAKE WTO ADVOCACY

Australia is a middle range trading country, and finds it difficult to negotiate effectively on trade in manufactured products, intellectual property rights and cultural products, but has a presence in agricultural and mineral trading markets that gives it some power at the WTO, particularly through the Cairns Group.

This uneven power relationship means that Australian negotiators have been eager to trade off national policy in many areas of economic life in order to gain more global market access for agricultural products.

This form of advocacy in the WTO needs to be urgently reviewed in an informed public debate so that government can adopt a policy that takes better care of the whole of Australian society and so that Australia's aggressive policy in agricultural trade does not lead to social crisis in other countries where the majority of the population rely on farming for subsistence.

**THE INVOLVEMENT OF PEAK BODIES, INDUSTRY GROUPS AND EXTERNAL
LAWYERS IN CONDUCTING WTO DISPUTES**

The recent dispute between Canada and Australia over Australia's quarantine restrictions on the import of fresh salmon showed just how poorly even a state government can fare in the WTO dispute procedures.

This experience and some others have brought the WTO dispute procedure into the public domain, only leading to its de-legitimation, and to damage to the Australian government's image as a representative of Australian interests.

The WTO dispute settling procedure is a major issue in the overall review of the impact of trade and investment liberalisation that should take place before any new WTO negotiating round is commenced.

**THE RELATIONSHIP BETWEEN THE WTO AND
REGIONAL ECONOMIC ARRANGEMENTS**

The WTO has been a slower vehicle for trade and investment liberalisation than many multinational corporations and some governments would like. However, WTO agreements are enforceable and it has so far been very effective, along with the International Monetary Fund and World Bank, in reshaping global economic affairs to suit big multinational corporations.

Regional economic arrangements like NAFTA and APEC are smaller in scope than the WTO, but can set the pace by adopting radical free trade goals, also backed up by powerful complaints procedures.

APEC Summits have often taken the form of a caucus prior to a WTO Ministerial, often to good effect in some trading sectors, though not all.

As trouble has mounted for ambitious global agendas such as the Multilateral Agreement on Investment and then the Millennium Round of the WTO, new energy has been directed at regional free trade agreements that could help overcome the obstacles.

In this regard, Australia and New Zealand's exploration of a free trade agreement with AFTA is a good example. It is a highly contentious idea that was launched without any public discussion in Australia or New Zealand, after the Seattle fiasco.

While Tim Fischer led a team that investigated the costs and benefits of this idea, he did not widely consult the Australian community. Even so, his conclusions should have signalled to the federal government that the concept would have difficulties. About 75% of the projected economic benefits for the CER-AFTA region were to go to Australia. No wonder that the governments of Malaysia, Indonesia and even the Philippines decided that there was just not enough benefit for their combined populations of 310 million people.

**THE RELATIONSHIP BETWEEN WTO AGREEMENTS AND OTHER
MULTILATERAL AGREEMENTS, INCLUDING THOSE ON TRADE AND RELATED
MATTERS, AND ON ENVIRONMENTAL, HUMAN RIGHTS
AND LABOUR STANDARDS**

The WTO agreements are more easily enforced than UN General Assembly Resolutions or International Labour Organisation Conventions, or important environmental agreements such as the UN Climate Change Convention adopted at Rio de Janeiro in 1992, or decisions of UN Women's Summits.

The effect of this heightened power for WTO rules is that trade considerations consistently win through when there is a conflict between the values upheld by the different Conventions or Treaties.

In general, the UN and ILO Conventions are adopted by a much more public consultation and debating process and a formal vote. Community organisations have a formal presence at the UN through NGO accreditation, and trade unions and employers are formally represented at the ILO. In contrast, there is no public debate, no formal voting and no recognised role for community organisations in WTO processes.

In short, the WTO is an aggressive anti-democratic force, suffering a huge deficit in legitimacy, and it is in urgent need of a major review.

**EXTENT TO WHICH SOCIAL CULTURAL AND ENVIRONMENTAL
CONSIDERATIONS INFLUENCE WTO DECISIONS**

The WTO's one-size-fits-all global rules do not take into account the specific histories, social, cultural and environmental development issues of particular countries. So far, it appears that social, cultural and environmental considerations do not influence WTO decisions, except where a powerful government, such as France, has chosen to defend its cultural industries.

Culture, environment, heritage values and basic services are areas that should be protected from trade and commercial agreements. These are areas such as the cultural and land rights of indigenous peoples, other national cultural activities, public health, social security and public education, access to essential services like water and electricity.

Yet Australian governments, both Labor and Coalition, have decided to support agribusiness policy to maximise Australian agricultural exports by imposing global free trade in agricultural products, whatever the social and environmental consequences in Australia or other countries.

In the last four years, National Competition Policy has been used to dismantle the single desk trading structures for most Australian agricultural commodities, and to deregulate the dairy industry, and to eliminate a national pricing structure for the sugar industry. All of these changes are used by Australian negotiations to try to persuade the US and EU governments to allow more Australian agricultural products into their markets, and to reduce their subsidies for exports into other markets which Australian exporters supply.

The social consequences in rural and regional Australia are evident, and are a major reason why Australia's free trade policy and its relations with the WTO are now held in disrepute.

Various state governments have also privatised banks and insurance companies, water services, public transport and electricity, and have tried to privatise public hospital services. Apart from the banks and insurance companies, almost all of these public assets have been bought by overseas corporations.

CONCLUSION

The SEARCH Foundation congratulates the Joint Standing Committee on Treaties for holding this inquiry into Australia's relations with World Trade Organisation.

Our consideration of the terms of reference leads us to recommend that Australia itself hold a major national public review of the results of its commitment to the treaty which came out of the Uruguay Round, and review its own global free trade and investment agenda.

Australia should demand a major review of the WTO itself, both in the economic, social and environmental outcome of the Uruguay Round, and a review of its undemocratic decision-making processes and its oppressive disputes settling procedures.

There should be no new WTO negotiating round until such a credible review takes place.

Australia should not use regional forums such as APEC or its relations with ASEAN to continue to push the free trade and investment agenda which has failed so dramatically in the OECD's MAI and in the Seattle WTO Ministerial Meeting. These efforts are doomed to failure, and in the process, the Australian government will further damage itself, and its relations with other peoples in our region and world-wide.

Australia should not pursue new areas of liberalisation in services and agriculture without a full public debate and parliamentary debate and decision on the specific agendas involved.