

WtwatchACT

Submission to the Joint Standing Committee Inquiry into Australia's Relationship with the World Trade Organisation (WTO)

September 2000

wtowatchACT is a network which was set up in December 1999 to raise awareness of trade-related issues in the ACT and beyond during the Ministerial meeting of the WTO in Seattle. Our activities have included the organisation of a public rally at Parliament House to coincide with the Seattle meeting, a survey of federal politicians of their attitudes to Australia's membership in the WTO, a public meeting in September 2000 and a regular information bulletin on trade and related global issues which is broadcast electronically to interested people in the ACT and elsewhere.

wtowatchACT is a member of the Australian Fair Trade and Investment Network (AFTINET) and endorses the submission prepared by that organisation. In preparing this submission, we have attempted not to repeat the points of AFTINET's submission, except where we want to highlight them or add new considerations. Similarly, although wtowatchACT is concerned about the gendered effects of trade liberalisation, we have left discussion of these issues to the submission prepared on behalf of International Womens Development Agency. This submission elaborates on the headings established by the terms of reference for the inquiry and makes some general points in conclusion. It has been prepared by the convenor and bulletin editor, Deb Foskey.

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1. Opportunities for community involvement in developing Australia's negotiating positions on matters with the WTO

Australians were never given an opportunity to discuss their government's decision to join the WTO, for which reason this inquiry is welcome. Although there have been a number of public fora on trade-related issues, the basic assumptions of the WTO's

agenda are seen as non-negotiable. This Inquiry, therefore, should be the beginning of a longer process of public information and debate.

wtowatchACT is concerned that the government has adopted the agenda of Australia's main business groups, which, in turn, represent 'the big end of town' rather than the thousands of small businesses which have no voice in deliberations about trade policy. The consultations organised by the trade section of DFAT are heavily dominated by representatives of business lobby groups, with an *ad hoc* selection of NGOs in attendance. Since no funding is made available, only organisations with paid or unpaid workers in Canberra have been able to attend. Between these rare 'consultations, DFAT officers meet with the Trade Advisory Policy Council, which represents only business interests. Despite attempts by NGOs to have a representative included, the Australian delegation to the Seattle conference included eight business lobbyists but no NGOs. The promised interaction with the two NGO representatives which attended did not occur.

The need to organise sessions in which DFAT officers interface with NGOs became evident to the government after the huge public outcry against the Multilateral Agreement on Investment (MAI). Terms such as 'accountability' and 'transparency' were often reiterated prior to the Seattle meeting of the WTO, and called for, as a minimum reform, at Australian meetings. However, these meetings were by invitation only, and did not seek the views of attending NGOs. Thus, the government's commitment to the values of accountability and transparency has proved to be tenuous.

These have proven to be consultations in name only; rather, they have been information sessions at which the government, through DFAT officers, has informed NGOs of some aspects of their plans in relation to the WTO, in particular, the agenda of the Cairns group of which Australia is part. The sessions were not designed to be a full briefing, and many questions were not answered. Critical points raised by NGO representatives have been answered defensively, with little attempt from the chair to tone down the aggressive responses of some business lobbyists. Further, business representatives meet with DFAT trade officers outside these meetings and have a great deal more knowledge of government's intentions than is ever revealed to NGOs at these consultations.

2. Transparency and Accountability of WTO decision-making

The WTO is neither transparent nor accountable. The governments of many of the countries which have high proportions of the world's poor people are excluded from the decision-making processes of the WTO. This was a major reason why a new round of talks was not begun at Seattle. Ordinary citizens of all participating countries are also excluded from WTO discussions and information at the most rudimentary levels is difficult for people to access, particularly in everyday speech.

There is a tendency by trade-related bureaucrats to believe that only business people and economists have any authority or legitimate interest in trade issues.

Through its Disputes Panel, the WTO has the power to over-ride the policies and other decisions of democratically-elected governments. It tends to reflect the priorities of those who benefit from trade liberalisation and deregulation. These beneficiaries are more likely to be transnational companies (TNCs) whose prime responsibility is to shareholders and not the ordinary people of the world, especially the poor. Their power is evident in the fact that many TNCs have budgets greater than many governments.

The governments which make up 'the quad' – Canada, United States, Europe and Japan – wield most power within the WTO and other governments are presented with the outcomes of their deliberations. The US and Europe are often referred to as G2, to reflect the congruence of their aims, while the United States, as the home state of the world's most powerful corporations, is referred to as the 'Superquad'. (Barry 2000). Developing countries complain that many meetings are held in the style of the 'Green Room' among invited delegates and excluding less powerful states. Australia, although not a developing country, is not a member with access to all deliberations.

The WTO reaches its decisions without public debate in the countries affected by its decisions. The way in which DFAT conducts its consultations indicates that its officers believe that trade is an area of public policy in which the public has no right to participate. Furthermore, because the narrowest possible view is taken of trade - excluding issues related to the environment, development and human rights - it is seen as a matter only for economists and business people to discuss. Although trade liberalisation affects every aspect of life, and every group of people, they are not informed of the governments' deliberations and are excluded from decision-making.

The next Director of the WTO, Supachai Panitchpakdi, has proposed that the WTO set up a process by which NGOs can provide information to ministers - this would need to be a process both in-country and at the level of the WTO, perhaps through committees comprised of accredited NGOs (Brevetti 2000).

The Australian government recently announced its intention to reassess its role in the UN treaty committee system, with a particular focus on ensuring adequate recognition of the primary role of democratically elected governments and the subordinate role of non government organisations (NGO's). This suspicion of UN bodies, which recognise the sovereignty of governments and work democratically, contrasts with the federal government's support of the WTO agenda and modes of operation.

3. Effectiveness of WTO dispute settlement procedures and ease of access

The Dispute Settlement Procedures are the disciplinary arm of the WTO. It is the only international body which has the power to force sovereign governments to take actions which may go against the perceived interests of citizens. The International Court, the Commission for Human Rights, environmental bodies and the International Labour Organisation lack the ability to enforce their decisions, although they also are made up of state representatives and have jurisdiction over matters of profound importance.

Dispute Settlement Processes are conducted in secret, even from the bulk of member governments. Developing countries are particularly disadvantaged by the expense of participation in these processes. There is no opportunity for NGOs to put evidence before the Dispute Settlement Body, and the narrowest of issues are considered in decisions. Communities affected by decisions may not necessarily have their interests represented by their governments; consequently, they should have the right to present evidence.

Many developing countries are unable to afford to maintain WTO missions in Geneva and certainly cannot afford to pay for the legal expertise necessary to present their case. It is to be noted that at this point in time, no developing country has been able to bring a case against a wealthier country before the Disputes Resolution Body. Most of the 170 disputes considered up until the end of 1999 were brought to the DRB by the European Union and US.

4. Australia's capacity to undertake WTO advocacy for the benefit of developing countries

Trade relations have always been of the utmost importance to Australian governments, a situation which is reflected in the pre-eminence given to this aspect of international relations in DFAT. Although DFAT's section on human rights becomes smaller, the section on trade has prospered, due to our membership in, and lobbying of, organisations like the Asia Pacific Economic Commission (APEC) and the WTO. These priorities are reflected in our relationship with other governments, as our recent history of uncritical acceptance by successive federal governments of Indonesia's annexation and abuse of human rights in East Timor reveals. The shift to bilateral dialogue on human rights with China reflects a similar desire to soften our criticisms of Chinese government's human rights abuses. While we may appear to be furthering our relationship with governments by such uncritical acceptance, we are missing opportunities to build security in our region based upon human rights, appropriate development and fair trade.

In theory, Australia could use its membership in the WTO, particularly as an influential participant in the Cairns group, to improve the access of developing countries to markets. However, the Australian government has been more concerned

to open up the markets of other countries, including developing countries', to our own products, particularly through the Agreement on Agriculture. Developing countries have been more concerned to have existing agreements put into operation; until this occurs, they will oppose the introduction of new issues.

If old concerns are not resolved before new issues are raised, the South will once again be forced into a disadvantaged negotiation position. They will be forced to provide further market access concessions, including approving the new issues on the North's negotiating agenda, in exchange for new promises to achieve the balance previously promised in the UR agreements.

Kwa 1999

By contrast, the developed countries wish to move on to new issues of government procurement regulations, tariff reductions, national treatment of foreign investors, competition policy and trade in agricultural biotechnology products (Kwa 1999). While Southern governments want to talk about anti-dumping rules, and are supported in this by some Northern governments including the EU and Japan, the US has refused to allow these to go ahead, indicating where the power of the WTO lies.

The Trade Related Aspects of Intellectual Property Rights (TRIPS) which allows the patenting of life forms is another aspect of WTO rules promoted by the Quad and other developed countries which impacts negatively on developing countries. This is of particular concern since it restricts the accessibility of food and medicines if they have been patented. It is a continuance of colonisation when indigenous processes and varieties are acclaimed as 'new' by Western corporations simply because they are not known in developed countries.

5. The involvement of peak bodies, industry groups and external lawyers in conducting WTO disputes

As noted above (1), the current methods by which the Australian government determines its approach to the WTO reflects the priority of lobbyists from organisations which wish to increase the size of the markets to which they have access. In this, they do not always reflect the best wishes of their constituencies. It is crucial to involve representatives from peak citizen's groups to democratise our involvement if Australians are to feel prerepresented in these processes.

6. The relationship between the WTO and regional economic arrangements

Australia has been involved in APEC for some time, and has always used its membership primarily to increase its access to markets in our region. So far, it has not been particularly successful, and many Asian governments are yet to be convinced of the benefits of this regional arrangement to their interests.

The relationship of regional economic organisations to WTO is not clearcut. There are arguments that some were formed to frustrate the process of furthering multilateral trade agreements; contrarily, it is suggested that they may be useful in stimulating the multilateral trade agenda (Senate Foreign Affairs, Defence and Trade References Committee 2000, 182-185).

Experience since the failure of the Seattle round of talks indicates that regional arrangements are stronger than the WTO, since industrialised countries have pursued the implementation of their preferred reforms at the regional level, and through bilateral agreements. This mechanism also allows countries like the United States to insert clauses which would be against WTO rules. As Ricupero, Secretary-General of UNCTAD says, unilateralism is still the major impetus in international trade (Capdevila 2000). It is unlikely that international or regional groupings will be supported if they contravene national objectives, as set by powerful elites within states.

7. The relationship between WTO arrangements and other multilateral agreements, including those on trade and related matters, and on environmental, human rights and labour standards.

The WTO is committed, through its preamble, to raise standards of living and enhance sustainable development. While the preamble provides a list of seemingly contradictory goals (achieving full employment in every member state is not an inevitable result of expanding trade in goods and services, for instance), it does contradict the notion that a number of goals are outside the parameters of the WTO, as the government has claimed in consultations with NGOs.

As Dernbach (2000) points out, the concept of sustainable development has provided a unifying theme for many who wish to see the WTO take a more responsible attitude to trade and related issues. Trade is a means of attaining sustainable development rather than an end in itself, although this is often ignored in international debates. However, less than token reference is made to sustainable development in WTO-related literature and most states, including Australia, are further from achieving it in 2000 than they were when they committed themselves to it in 1992.

The United Nations treaty system, which has developed a system of internationally-accepted human rights norms, is the result of over fifty years of meetings, between governments and at all levels of civil society, negotiations and ratifications. It ensures a degree of social justice across borders which is essential to global security and individual well-being. Trade liberalisation processes, in which the WTO is a major player, have increased disparities in wealth both between and within countries, and this is a violation of the human rights to development, to freedom from want and to the right to be involved in fulfilling work without exploitation. UN treaties on human

rights, labour laws and environmental protection should be inviolate, and in this instance, should define the parameters of free trade.

Since TNCs are such important players in global trade, the WTO should use its power to ensure that international codes of conduct are upheld, regardless of where they conduct their productive activities. The recently completed OECD guidelines for Transnational Corporations should be upheld by the WTO, and reflected in Australian government legislation.

8. The extent to which social, cultural and environmental considerations influence WTO priorities and decision making

The WTO reflects a culture which is based upon a particular economic perspective which regards environmental and other issues as 'externalities'. Thus, environmental costs are not factored into measures of economic growth and disparities in income are not captured by per capita economic statistics. Furthermore, a model of development is assumed which ignores the specific geographies and histories of participating countries. Sovereign governments, whether or not democratically elected, are expected to 'move over' or actively encourage financial investment, which often reduced the level of domestic control of national economies. At the same time, capital investment which could be providing employment within country may be invested overseas, as the Australian-based TNC BHP has recently illustrated.

There is only one area where the WTO allows governments to retain sovereignty. The WTO protects the war industry through a security exemption, Article XXI of the GATT. The security exemption allows governments free reign to do anything in the name of national security: such action as traffic in arms, ammunition and instruments of war or maintaining a military establishment. Governments may define their security interests in any way that suits them.

In shielding the war industry from WTO restrictions, governments have the opportunity to provide jobs and protect new emerging industries under the guise of national security. In 1999, the Technology Partnerships program that Canada used to subsidise its aerospace and defence industry was ruled against by the WTO disputes panel. At the time it was being used by Bombardier Aerospace to build and export passenger jets. This was against WTO principles. Only by turning it into a subsidy program for weapons corporations to build new weapons could it be deemed acceptable - so this is what the Canadian government did.

General Comments

There is a growing literature on aspects of economic globalisation in general and the WTO in particular which indicate that the impacts of the trade liberalisation agenda are complex and vary according to the specific circumstances of groups. The growing

protest movement is comprised of diverse voices with varying demands. wtowatchACT has not determined a stance *vis a vis* the WTO; we are a network of individuals of various perspectives and our aim is to increase public awareness of the issues related to economic globalisation and to explore its implications.

We are not 'anti-globalisation' or 'anti-trade'. We want to encourage substantive public discussion on the nature of the processes involved, to draw out those areas which governments can take control of for the benefit of Australian people, especially the most disadvantaged groups. On the other hand, we believe that Australia, as a relatively wealthy country, has an important role in developing a global institutional architecture which promotes the qualities our government has advocated at other international fora: sustainable development, human rights and efforts to overcome disparities between the poor and rich of this world.

In conclusion, I would like to draw the Committee's attention to a document recently produced by the UN Sub-Commission on the Promotion and Protection of Human Rights, which examines the impact of economic globalisation on the full enjoyment of human rights (Oloka-Onyango and Udagama 2000) and says:

[T]he problems of WTO are much larger than simply its approach to the substantive elements of its mandate. As in the case of OECD and MAI, WTO must radically review its mechanisms of operation, the role and place of both developing country participation and that of non-State actors such as NGOs, and its relation to the United Nations system as a whole. In other words, what is required is nothing less than a radical review of the whole system of trade liberalization and a critical consideration of the extent to which it is genuinely equitable and geared towards shared benefits for rich and poor countries alike. WTO must take on board the many suggestions that have been made with respect to improving access and transparency at the organization, not only for the purposes of improving internal democracy, but also for the good of constructing a more equitable and genuinely beneficial international trading system

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