

**SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE
REFERENCES COMMITTEE**

**INQUIRY INTO GENERAL AGREEMENT ON TRADE IN
SERVICES AND AUSTRALIA/US FREE TRADE AGREEMENT**

SUBMISSION

Submission No: 165

Submittor: *AIDWATCH*

Contact: Ms Marina Carman
Ms Anna Huggins and
Mr Tim O'Connor

Address: 19 Eve Street
ERSKINEVILLE NSW 2043

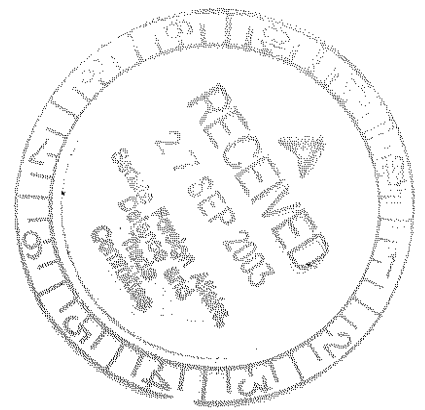
Tel: (02) 9557 8944

Fax: (02) 9557 9822

Email: aidwatch@aidwatch.org.au

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AIDWATCH Submission to the Senate Committee on Foreign Affairs Defence and Trade

Inquiry into the General Agreement on Trade in Services and Australia/US Free Trade Agreement

Prepared By: Marina Carman,
Anna Huggins and
Tim O'Connor

19 Eve St, Erskineville, NSW 2043

PHONE (+61) (02) 9557 8944 FAX (+61) (02) 9557 9822 EMAIL aidwatch@aidwatch.org.au

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**AID/WATCH Submission to the Department of Foreign Affairs and Trade on
General Agreement on trade in Services (GATS) and the proposed Australia –
United States Free Trade Agreement (Aus/USFTA)**

“...full trade liberalisation is not the way forward. A different approach is needed: one that recognises the importance of managing trade with the objective of achieving development goals.”

Stephen Byers,
British MP and former UK Trade Secretary

“The prosperity of the developing world is clearly in Australia's national interest – not only for regional stability but also for our own economic future. In an increasingly interdependent world, the people of the developing world are our future partners in business and trade.”

The Simon's Review: One Clear Objective
Alexander Downer Commissioned Aid Review

July 2003

AID/WATCH is a not-for-profit organisation monitoring and campaigning on Australian overseas aid and trade policies and programs. We receive no government or corporate funding and therefore operate completely independently.

AID/WATCH recognises that trade is an important contributor to the international and national economy and acknowledges the benefits that are to be obtained from engaging in this age-old practice. We support the call for a fair trading system that weighs the social, cultural and environmental impacts of development equally with the economic.

AID/WATCH would also like to recognise the Senate and the very important role it plays as a legislative check on the Australian Parliament and thank the Senate Committee into Foreign Affairs, Defence and Trade for undertaking this very important enquiry that has vast ramifications for Australia and the relationships we have with our regional neighbours.

We believe that current negotiations for a Free Trade Agreement with the US need to be seen within the context of Australia's broader economic, trade and foreign affairs agenda, and the dynamics of international trade negotiations. AID/WATCH believes that the history of trade negotiations through the World Trade Organisation (WTO), the recent history of other bilateral agreements with the United States in combination with the policy preferences of the current Australian government, equates to a situation where the interests of the developing world and other disadvantaged peoples within the developed world will be sacrificed in the quest for trade liberalisation. The Australian government, by currently undertaking Gats and the current FTA negotiations, is posing a significant risk to public services in Australia and to development and our relationships with developing countries.

National Interest

There has been considerable debate over whether the proposed FTA with the US will further Australia's 'national interest', the mantra of the current government. Little discussion has ensued in regard to what the 'national interest' actually entails. The Australian government and the current predominant ideology promotes economic objectives above all others. In this section we will outline broad issues which we will return to throughout our submission.

Firstly, "national interest" must be more broadly defined to include social factors, cultural concerns and environmental considerations. These matters are fundamentally important in gauging the long-term impact of the proposed agreement on Australian society.

Central to this issue, and of immense importance to this enquiry, is the relationship that Australia has with the Asia-Pacific region. Currently, sixty-one per cent of the total of Australia's trade is conducted with countries from the Western Pacific (Garnaut, 2002, p.7). These countries constitute our immediate geographic neighbours.

While several detailed studies have failed to actually agree upon what the economic benefits will be (see Economic Impacts Section) of the proposed Aus/US FTA, there has been inadequate consideration of what the agreement will mean for our relationships with Asia.

The second point refers to the undemocratic nature of the 'closed door' negotiations that are characteristic of contemporary trade negotiations. This is completely unacceptable and contravenes what is in the 'national interest' of the Australian public. All meetings whether negotiations on the Aus/US FTA, GATS or other WTO negotiations must be completely open, transparent and accountable, all minutes must be presented to the public for full and open discussion, and all positions adopted by our elected representatives must be openly publicised.

Following is an example which illustrates this very point. A recent article in the Australian Financial Review by ex-Chairman of the Industries Assistance Commission and CEO of the Tariff Board, Bill Carmicheal summarises the patronising nature of the bureaucracy who are negotiating this agreement (AFR, 16 July 2003). On one hand the Prime Minister, Mr Howard, is quoted saying "The dynamic supporting trade liberalisation in democracies will only succeed if communities in each country believe it is in their interests to do so" and calls for "informed public discussion of the economy wide effects of major trade initiatives".

On the other hand, Carmicheal quotes Ashton Calvert, Secretary of DFAT suggesting those expressing very real concerns that are raised in a number of the aforementioned studies and by other civil society groups and individuals have "frozen minds" and "out of date ideas". Carmicheal goes on to list DFAT's failure to offer sound economic advice in the past and thus asks why we should settle for their 'we know better' bluster now. This attitude adopted by DFAT cannot be considered to be in the 'national interest'. Another recent indication of the real concerns of DFAT was given at a public meeting held to discuss the implications of the Aus/US FTA in Armidale. When asked about the implications of the proposed agreement, NSW Secretary of DFAT, Phillip Green, responded to the effect that agreement was a matter of 'administrative convenience' and would thus make the job easier for his employees in future trade arrangements (a matter

highly contested by the leading critic of FTAs, Jagdish Bhagwati from Colombia University, who suggests the 'criss-crossing obligations and requirements under these agreements impose a major administrative burden' (AFR, Davis, 21 July 2003). Such a response raises the obvious questions: should such a deal be made to suit the convenience of Australia's bureaucrats and, in turn, how then can this decision be seen to be in the 'national interest' of all Australians?

Is a policy that has highly contentious economic advantages and that poses unknown threats to the relationships with our immediate neighbours really in Australia's national interest?

Economic agenda

In general, the Australian and the US governments are publicly committed to a policy of "free trade", which involves the progressive removal of tariffs and government restrictions on trade in goods, services and/or on investment. Both governments support the policy prescriptions of minimal state intervention in the market, strict budgetary controls (including on social spending), and privatisation/corporatisation to increase competition and efficiency. Trade negotiations being undertaken by the US and Australia, whether multilateral or bilateral, reflect these ideological policy preferences.

In its submission to the Senate Committee, DFAT wrote: "Pursuit of an FTA with the US is consistent with the Australian Government's integrated multilateral, regional and bilateral approach to trade policy, based on a pragmatic pursuit of economic benefits for Australian industry" (DFAT, 2003, p.3). Our concern is that social needs – in Australia, and importantly within developing countries – are not prioritised within this approach.

There are a growing number of people in Australia who have concerns about funding cuts to, and privatisation/corporatisation of, healthcare, education, welfare, etc. Generally these relate to the fact that removal of government controls can mean removal of important safety nets, higher prices due to monopoly control, and a growing inequality between the services available to those who can afford to pay and those who cannot. As one indication of this, an opinion poll, announced in May 2003, after the federal budget, found that 77 per cent of Australians would rather see the government's tax cuts devoted to health and education; 72 per cent said that they opposed increased student fees announced with the government's higher education changes (Riley, 2003).

In Australia and overseas, concerns about the globalisation of neoliberal policy prescriptions have been expressed in large public protests. Internationally, people and their governments in developing countries, non-government organisations and people's movements have raised many criticisms of these policy prescriptions – enforced through institutions like the WTO, International Monetary Fund (IMF), the World Bank (WB) and other international financial institutions. These policy prescriptions relate to the undermining of the financial (and thus political) independence and stability of developing countries due to an influx of foreign multinational investment, and the growth of poverty/inequality due to cuts to social spending.

In terms of trade, a major concern is that developing countries in general will be less able to take advantage of, or compete within, a generalised liberal trading regime such as that being negotiated through the WTO. Agreements reached in the WTO have consistently favoured first world countries. In addition, questions have been raised about democracy within the WTO (see Kwa, 2002a). While on a formal level all countries have

one vote, the negotiations progress through a series of informal meetings within which the "quad" (US, Canada, Europe and Japan) holds disproportionate power.

We believe that the Aus/USFTA is an extension of the consensus-building exercise amongst developed countries to push forward the "free trade" agenda due to a stalemate in WTO negotiations. Further, the US push towards bilateral trade agreements represents a dismissal of multilateral decision making because of concerns about the high-risk potential outcomes. The Aus/USFTA can be regarded as a reaction by the US to the widespread politicisation of the WTO (and the WB and IMF) and subsequent reforms within these institutions. In this sense, the FTA should be considered as a more radical approach as it comes from attempts to avoid accountability, democracy and transparency – elements that did not permeate, but did to some extent exist, within the WTO.

A new round of trade negotiations in the WTO were launched at Doha, Qatar, in November 2001. The negotiations are supposed to conclude in January 2005. The WTO ministerial in Cancun, Mexico, in September this year is an important mid-term stock take. In recent months, key deadlines have been missed, one after another – on drug patents and public health, agriculture, "special and differential treatment" for developing countries and "implementation issues" (the failure of many first world countries to abide by trade rules). The agriculture talks failed because the European Union (EU) and the US want to continue to pay huge subsidies to their farmers and thereby continue to subsidize their exports.

The US has signed FTAs with Singapore and Chile this year, and is pursuing negotiations with Bahrain and Morocco. It hopes to negotiate a Central America FTA and is also pursuing the possibility of a Middle East FTA. These are strategic countries within Asia, South America, the Middle East and Africa that are now set to pursue the American trade agenda. Australia has followed suit, signing an FTA with Singapore this year, and pursuing negotiations with Thailand, Japan and has mooted negotiations with Indonesia. A number of recent FTAs involving these countries have included higher standards of intellectual property rules than have successfully been negotiated through the Trade Related Intellectual Property Rights (TRIPS) agreement in the WTO. Australia's recent FTA with Singapore included a "negative list" approach on investment and services – where all areas are included unless specifically exempted. This model is a step further than what has been negotiated through the General Agreement on Trade in Services (GATS) in the WTO. It was included in the Multilateral Agreement on Investment which was defeated by robust public opposition in 1998.

Agreements between key partners could be a way to revive the WTO round – in which public services and development in developing countries will actually lose out. The US's current enthusiasm for an FTA with Australia is linked to Australia's key role in the Cairns lobby group.

The Cairns Group was formed in 1986 with the objective of putting agriculture on the multilateral trade agenda. Initially a group of agricultural exporting countries (though the Asian financial crisis of 1997 has meant that several are now net importing countries of agricultural products), the group is permanently chaired by Australia and is named after the city where it was founded. The group was formed to force the hand of the US and EU who have the most heavily subsidised agricultural sectors (figures show the US exports corn at 20% and wheat 46% below production costs) (Kwa, 2002, p.2). The current members of the Cairns group are Argentina, Australia, Bolivia, Brazil, Canada,

Chile, Colombia, Cost Rica, Malaysia, New Zealand, Paraguay, Philippines, South Africa, Thailand and Uruguay.

Our concerns are that any deals done on agriculture between Australia and the US are more likely to squeeze out developing countries. Through the Cairns group, Australia has pursued liberalisation of trade in agriculture in the new WTO round on the basis that it will help Australian exports and help to reduce world poverty. While the massive agricultural subsidies paid to farmers in Europe and the US are an anomaly, and all members of the Cairns group are concerned about access to these markets, putting agriculture on the WTO agenda will not alone assist poorer countries. Even within the Cairns group, most developing countries are now net importers of basic foodstuffs – and are thus concerned about protecting their local food producing capacity through subsidies and protection from an influx of imports or “dumping”. As a major food exporter with an established and competitive agricultural sector, Australia is in a very different position. Agribusiness based in the first world is in a much better position to take advantage of any liberalisation which occurs. Because of this it is also likely that any gains from an Aus/USFTA will benefit agribusiness, most likely at the expense of producers in developing countries and smaller farmers.

The Pacific Islands Forum Secretariat (PIFS) recently (ABC Asia Pacific Radio National, 15 July 2003) accused the WTO of dragging its feet in negotiations on issues affecting small economies. The Doha round of negotiations, currently taking place, is supposed to have the interests of developing countries as a top priority. Little has been achieved. Australia currently has a significant interest in the Pacific region and this proposed bilateral deal with the US will certainly have an influence on these small island states, many of which rely on Australian aid money for their survival. Thus it can be seen that this FTA with the USA is a move to shore up votes for the US position at the WTO Cancun meeting and in future multilateral trade negotiations. Such a move would certainly upset a number of our neighbours in an environment that is often described lately as the ‘arc of instability’.

Surely with such a fragile regional environment and particularly in light of the deployment of Australian troops to the Solomon Islands and the consequent concerns voiced by other countries in the region (Dateline 2 July 2003, Dorney, 2003), about this drastic intervention and potential concerns regarding other neighbouring countries’ sovereignty, Australia should be attempting to strengthen our relationships in the region and not undermine them with a renewed trading focus outside the regional spectrum.

Eminent ANU Professor of neo-classical economics Ross Garnaut has suggested that the impacts of

“trade diversion would put at risk the fruits of nearly two decades of careful trade diplomacy” (AFR, Davis, 21 July 2003).

If trade diplomacy is threatened what are the other likely impacts upon Australia’s relationship with our neighbours? There have been no studies conducted into this very important area of concern that has vast ramifications for the security of Australia in the longer term. The current Government is obsessed with the importance of security and is busy implementing horrifically oppressive legislation to counter this perceived threat (see the ASIO Bill). Yet instead of embracing our nearest neighbours and ensuring that we begin to rely more heavily upon each other we are threatening that relationship by diverting trade and the consequent economic benefits that are associated with it.

Economic Impacts

The direct economic gains of the proposed Aus/USFTA are highly contentious. ACIL Consulting, a favoured deliverer of Australian aid programs and key strategist in the 1997 Waterfront dispute for the Australian Government, have suggested in a study commissioned by the government, the Australian economy will incur a net *loss* in GDP as a result of the proposed agreement (ACIL Consulting, 2003, p.38). The government, however, has publicly supported the predictions of economic gains from a FTA made by the Centre for International Economics (CIE) of a modest \$4 billion increase in GDP which CIE suggest should come to fruition by 2010 (CIE, 2001, pp.1-2). This is, of course, assuming the total removal of all identified trade barriers between the two countries, which, when considering the electoral strength of the farm lobby in the USA, is at best unlikely.

There is a further issue relating to the potentially deleterious impacts of a US FTA on Australia's trading relations with Asia and the Pacific. The CIE report asserts that the trade diversionary impacts of a US FTA would be outweighed by the trade created by the agreement (2001, p.26). Conversely, the more recent ACIL study concludes that "improved trade relations with the US would have been achieved at the expense of deteriorated relations with more important trading partners, unless the improved access was also extended to them" (2003, p.35). The predictions in the ACIL report are supported by the findings of recent research conducted by the Australian Productivity Commission which reveals that a majority of recent preferential trade agreements have diverted more trade than they have created. In their study of 18 such agreements, 12 had the net effect of *reducing* the total volume of trade due to the negative impacts of trade diversion (2003, p.XII).

The proposed FTA looks set to follow the trend identified in this study and divert more trade from the Asia-Pacific region than it will create with the US. The US accounts for approximately 10 per cent of Australia's exports, compared to almost two-thirds with the Western Pacific region (Garnaut, 2002, p.7). Australian exports to the Western Pacific increased at a far greater rate in the decade from 1991-2001 than exports to the United States (Garnaut, 2002, pp.7-8).

A study commissioned by the Department of Foreign Affairs and Trade (CIE 2001) indicates that there would be considerable diversion of imports away from East Asia if the FTA were to come into fruition. For example, the Centre for International Economics report identified Thailand and the Philippines as two countries in East Asia that are likely to be effected by the diversion of Australia's sugar trade (Centre for International Economics, p.93). Significant volumes of Australian imports of motor vehicles and components from Japan and South Korea, and textiles, clothing and footwear from China would be diverted to suppliers in the US under the proposed agreement (Centre for International Economics, pp.39, 41 and 44).

The implementation of the FTA will create risks of retaliatory trade measures and resentment towards Australia in the region. As Garnaut reflects,

"It would be naïve in the extreme to think that systematic trade discrimination against East Asian economies, leading to reductions in Australian imports from and overall rates of return on investment in these economies, would not lead to reactions which reduced Australian market access" (2002, p.7).

The negative trade ramifications of the proposed FTA on both the Asia-Pacific region and Australia outweigh the potential economic gains resulting from freer trade with the US.

A further linkage could also be made between the renewed interest in bilateral trade deals and the US security agenda.

Security Agenda

The beginning of negotiations for an Aus/USFTA has publicly been linked to the increasingly close security relationship between the two countries.

The issue of security has been identified as one of Australia's prime motivations in pursuing a FTA with the US. In a speech to the Institute for International Economics on May 8 this year, the US Trade Representative Robert Zoellick referred to the tendency of the US to link trade agreements to accession to US demands in other areas. He posed the question that given that the US has interests beyond trade, "why not try to urge people to support our overall policies?" (Hartcher, 2003, p.23). Effectively this means that the US is offering incentives to support its agenda – whether this be in trade or security.

Our concerns with this are that important decisions about trade and security are taken out of the hands of the Australian public. There was a high degree of public opposition to the recent involvement of Australian troops in Iraq, and there are strong public opinions on many of the public policies which have been flagged for negotiation in a Australia/US Free Trade Agreement. These policies need to be open to public debate, and decision-making at a national level.

Furthermore, the likely negative response in the Asia-Pacific region of Australia's increased co-operation with the US in trade and other areas has not been sufficiently taken into account. By pursuing a narrow security policy focused on the US, Australia is effectively putting all its eggs in one basket at the risk of alienating our closest neighbours. In this current climate of economic and political uncertainty, it is more important than ever to maintain and foster positive relations within the Asia-Pacific region.

A narrow view of strengthening Australia's security through increased ties with the US may come at the price of weakened relations and security threats from other quarters. For example, there have been concerns that strengthened security ties with the US may be construed as support by Australia for projects such as the proposed US anti-ballistic defence system, which has generated considerable concern in the region, particularly in China (APEC report, 2003, p.90). The FTA is ostensibly promoting Australia's security on the one hand whilst potentially compromising it on the other.

Aid Policy Implications and Policy Consistency

In total, the Asia-Pacific region will receive \$1.1 billion of the 2003-4 aid budget, accounting for 87 per cent of Australia's total direct bilateral foreign aid (AusAID Aid

Budget Summary 2003-4, pp.1-3). The central aim of Australia's foreign aid program is the promotion of Australia's 'national interest'.

As the Committee will be aware AusAID is administered under the Department of Foreign Affairs and Trade. This in itself exposes the complex political nature of how our aid is delivered. Aid, in the Australian context, is therefore inherently linked with trade and does not have the same philanthropic nature of which many people perceive aid should be about.

AID/WATCH has been critical of Australia's aid program and particularly the focus on promoting the interests of private Australian companies to conduct the contracts funded by Australian taxpayers and administered by AusAID. Our research has revealed Australia is giving a substantial amount of aid money that is not focussed on alleviating poverty or promoting sustainable development, as AusAID suggest are secondary objectives, but in furthering the very narrow view of what the Australian Government perceives as Australia's 'national interest'.

While this corporate welfare approach funded by our aid program is good for a handful of Australian businesses, it is having a drastic effect on the communities many of these projects are impacting upon.

The effectiveness of the aid program can be gauged by the ongoing problems in the Pacific with particular reference to the current situation in the Solomon's and the so-called 'arc of instability'. While this Committee, with its recent trip to Papua New Guinea, will be very familiar with the term 'Boomerang aid', it is also true that some of our aid money is delivering some significant outcomes. AID/WATCH believes these positive outcomes and the important relationships they promote will be undermined by an Aus/FTA and the implicit policy objectives that are associated with it.

This mixed message Australia is sending, is having a serious effect on how Australia is perceived by our aid recipients.

Our concern with the aid implications of the Aus/US FTA is that by compromising Australia's economic and security interests in the region, it will effectively negate the positive outcomes that AusAID suggest we are attempting to achieve through Australia's aid program. This has adverse ramifications for both the recipients of Australia's aid and Australia itself.

Through diverting Australian trade away from Asia and the Pacific, (See economic Impacts Section), the FTA will undermine the positive outcomes of Australia's aid program in attempting to foster sustainable economic growth and poverty alleviation in the region. This in turn impacts negatively on Australia, whose national interest is best served by a robust regional economy. Thus, the proposed US FTA directly contradicts and compromises Australia's regional aid program.

The Direct 'Australian' Impacts

The following section details the likely impacts of the proposed Aus/US FTA and the GATS negotiations and raises some significant concerns about these impacts on Australian services and thus the Australian people.

Public Healthcare

Free Trade Agreement

Mark Vaile has said, "We remain committed to a Pharmaceutical Benefits Scheme that provides Australians with access to affordable, quality medicines." (DFAT, 2003a) However, our concern remains that changes to the PBS will be included in the agreement.

US pharmaceutical companies have stated that they want to remove price controls and push for full market access. The industry group representing pharmaceutical manufacturers in the US – the Pharmaceutical Research and Manufacturers Association – believes that the PBS represents an \$860 million subsidy from companies to consumers in Australia.

In general, the main concerns of the US in FTA negotiations relate to public policies which it sees as restricting full market access in terms of trade and investment. The relatively weak economic bargaining position of Australia compared to the US increases the pressure to bargain away such policies. The removal of public protection in areas such as this would greatly increase the power of US companies to access Australian markets and determine prices, and put pressure on government policy. Despite publicly recognising the importance of the PBS to Australia, the US has not fully clarified its negotiating position.

While also publicly recognising the importance of the PBS, the Coalition government has pursued a number of policies aimed at opening up the healthcare system to private competition. The May federal budget included changes to Medicare which would allow doctors to charge co-payments for higher income earners in addition to bulk-billing, and promote the use of health insurance to cover gap payments for out of hospital costs. It has also previously flagged changes to the PBS.

Any changes to the PBS under the FTA would be aimed at transferring costs within Australia to the Australian government and/or consumers. Given that simultaneously, the perceived government priority is to contain the costs of the PBS, this means that any agreements reached in an FTA could increase pressure to change the PBS. It is possible that the while PBS subsidies may remain, other changes may be proposed – such as changing the price control mechanisms and allowing advertising direct to the public – which would have substantial cost implications.

We believe that all aspects of the PBS should be specifically quarantined from negotiations.

TRIPS

Of more general concern to us is the affirmation of Australian and US commitments to the TRIPS agreement within the WTO – as part of the FTA negotiations.

With the formation of the WTO in 1994, developed countries and pharmaceutical companies were able to successfully lobby for strengthened international patent law through the TRIPS agreement – such as extending patents from 10 to 20 years, increasing the range of patents, and strengthening punitive measures. In terms of TRIPS, the developed world responded to developing countries' concerns at Doha about access to medicines by delaying the deadline for least developed countries to implement patent law consistent with TRIPS to 2016, officially recognising that nothing in the TRIPS agreement should be interpreted to prevent members taking action to

defend public health objectives, and reconfirming the ability of countries to use compulsory licensing.¹ Another issue still under discussion is that of parallel importing – the purchase of patented drugs from another country where they are cheaper, rather than from the manufacturer.

A deadline was set for the end of 2002 to find a solution to the problems countries face in making use of compulsory licensing – due to lack of adequate domestic manufacturing capacity, fear of litigation and inexperience in contesting patent law. At the moment TRIPS requires that production under compulsory licensing be primarily for a domestic market. TRIPS is ambiguous on whether countries can export generics to poor countries without patenting, or to countries which want to issue a compulsory license but can't manufacture the drugs themselves. This issue is important in terms of whether countries can import generics from major manufacturers such as Brazil and India.

By the end of 2002 no agreement had been made – partly due to US attempts to limit compulsory licenses to a set list of diseases. HIV/AIDS is included on the list, but many other common causes of mortality in the developing world are not. The US government's role in these negotiations has been to consistently block moves to increase use of compulsory licensing or trade in generics. TRIPS will be a major discussion at the WTO ministerial meeting in Cancun, Mexico, in September this year.

The Australian government should not be demonstrating support for the US's role in negotiations around TRIPS. In addition, the Australian government should change its own priorities in negotiations towards promoting any action which helps developing countries to access the cheapest medicines in the interests of public health.

GATS

FTA negotiations have also included an affirmation of US/Australian support for continuing WTO negotiations aimed at liberalisation of trade in services.

Along with TRIPS, GATS was included in the initial brief of the WTO. GATS aims to liberalise trade in services through the gradual phasing out of government controls on international competition. GATS applies to all WTO members, with countries being liable for trade sanctions if they discriminate against an outside supplier. According to GATS regulations, discrimination could include such things as labour laws, consumer protection, local content laws, licensing standards or social equity requirements. The aim of negotiations is to gradually increase the number of services listed.

At the moment, GATS does not apply directly to public services, but it does apply to services which are provided on a commercial or competitive basis. The increased corporatisation of public services, and the existence of a parallel public/private system in areas such as health, means that it is possible that in the case of a dispute, GATS could be interpreted to cover public services. There are other proposals on the negotiating table to bring all public services into GATS. This could be achieved, for instance, by defining any government payments to organisations (like public hospitals) as a subsidy, which should be open to competitive tender. First world countries with developed service industries are most interested in GATS. For instance, health care is a lucrative service area, considered to be a 3.5 trillion dollar market worldwide.

¹ Compulsory licensing is domestic legislation which allows for the use of patented material within the country (outside of that permitted by the right holder) under certain circumstances. Compulsory licensing can be used to permit the manufacture or registration of cheaper generic versions of patented drugs.

The implications of this for the future of services such as public healthcare in Australia are significant. GATS could mean further steps towards a privatised health system, such as exists in the US. Under this system many cannot afford health insurance or access to healthcare, and the price of basic medicines is three times the price of those in Australia. Despite government assurances that it: "will not agree to any diminution of our overall right to regulate that would constrain our ability to pursue legitimate policy objectives in the regulation of services sectors, or compromise the capacity of governments to fund and maintain public services" (DFAT, 2003b, p. 10), this still leaves open the possibility of further moves towards corporatisation/privatisation, and a two-tier public/private system.

In addition, while GATS is supposed to form part of the WTO's "development" round launched at Doha, specific measures to assist development or minimise potential negative effects on developing countries have been very limited. Agreements are currently being held up by disagreement between developed and developing countries over emergency safeguard measures (ESM). Agreement on ESM has been moved back until March 2004.

The government's initial GATS offer in April did not contain any new offers on public services. However, this may be partially due to the lull in negotiations. Only five countries met the deadline for tabling initial GATS offers in March – probably due to countries holding out for parallel movement on agriculture. As stated earlier, the government has stated that its initial offer can be changed at any time over the next 18 months of negotiations – without any public discussion.

We believe that the government should withdraw from GATS negotiations immediately, due to the ambiguity over coverage of public services and the limited development potential the agreement offers developing countries.

Other services

Current negotiations around GATS and an FTA with the US also threaten other public services/policies which could be identified as "market barriers".

Education – As with healthcare, there is a significant possibility that public education services could come under the auspices of GATS. This could mean the abolition of policies including preferential government funding to public universities/schools, regulation of the number of universities in Australia, and restrictions on ability to charge fees. There is already widespread concern that creeping privatisation/corporatisation of education is leading to inequity in access and standard of education services in Australia.

Water services – The EU has proposed a redefinition of environmental services in GATS which would include water for human use. Australia has supported this proposal, which could mean removal of restrictions on private ownership. In a large and drought-prone country like Australia, water management and cross-subsidisation are important public issues that should remain in public hands.

Australian content and ownership rules in audio-visual services – These are also likely to be affected by GATS and have been raised by the US as an issue in FTA negotiations. The US film and television industry is particularly interested in removal of governmental restrictions and subsidies.

Postal services – Leaked requests from the EU under GATS include opening up competition on the fixed price standard letter (50 cents) which involves cross-subsidisation of costs between rural and urban areas.

Telecommunications services – In FTA negotiations, the US has flagged increased investment access for US corporations. Telecommunications and postal services could also both be affected by GATS.

Other policies which have already been flagged by the US in FTA negotiations include requirements that genetically-modified food be labelled, Australia's quarantine laws, and preferential government purchasing.

The policy preferences of the Coalition mean that all of these policies are "on the table" in a general sense, whether they form part of an Australia/US FTA or not. The federal government has already signalled changes in some of these areas – such as changes to media ownership laws and selling off the rest of Telstra. We are opposed to any negotiations which could result in these sorts of changes, especially given that they are important public policies which need to be considered, discussed and decided at a domestic level.

One important, and perhaps less publicly-understood, part of these trade negotiations relates to removal of control over investment. We believe that this is part of creating pressure towards removing the sorts of public policies outlined above. In FTA negotiations, the US has put Australia's already very limited controls on the table – legislative requirements of Australian ownership in areas such as media, telecommunications, airlines and banking; and the abolition of the Foreign Investment Review Board. In addition, the US is seeking a complaints mechanism as exists under the North American Free Trade Agreement – where corporations can, and have, taken governments to court in order to change any laws which can be argued to conflict with the agreement, or to sue for damages. The EU has also targeted investment controls in requests submitted in GATS negotiations.

We believe that the directions in which all of these policies head is towards greater power for large corporations to influence public policy or towards public policy being primarily determined by the interests of business, rather than social need. Whether it be in bilateral or multilateral negotiations, it is the most vulnerable who are most likely to lose out. For these reasons, we oppose an FTA, and we believe that Australian government priorities in multilateral negotiations need to be substantially changed towards supporting explicit protection of public services and public control, and preferential treatment for developing countries.

AID/WATCH Recommendations:

- 1. The Australian government should cease negotiations for an FTA immediately.**
- 2. An independent inquiry should be conducted into the potential outcomes of the proposed Free Trade Agreement with the USA which incorporates regional, social, cultural and environmental impacts in assessing Australia's 'national interest'.**
- 3. Any multilateral negotiations undertaken by the Australian government should specifically promote a policy of differential treatment in favour of developing countries – i.e. in the case of agriculture, allowing these countries to maintain or institute subsidies and protection from imports.**
- 4. All negotiations upon the GATS treaty should cease until full, open and transparent negotiations are conducted and all issues raised within document MEMORANDUM ON THE NEED TO IMPROVE INTERNAL TRANSPARENCY AND PARTICIPATION IN THE WTO (Appendix 1) are satisfactorily attended to.**
- 5. The Australian government should specifically renounce a linkage between trade and security in present and future trade negotiations.**
- 6. The Australian government should specifically exempt all public services from any current and future trade negotiations.**
- 7. All negotiations should be open to full community consultation and full parliamentary debate and not be matters only for Cabinet. In response to community lobbying, the Australian government made its initial GATS offer public for the first time in April. However, the government has stated that its initial offer can be changed at any time over the next 18 months of negotiations – without any public discussion. This is a matter of great concern.**

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Appendix 1:

MEMORANDUM ON THE NEED TO IMPROVE INTERNAL TRANSPARENCY AND PARTICIPATION IN THE WTO

Prepared by:

**The Third World Network
Oxfam International
Public Services International
WWF International
The Center for International Environmental Law
Focus on the Global South
The Institute for Agriculture and Trade Policy
The Africa Trade Network
The International Gender and Trade Network
The Tebtebba International Centre for Indigenous Peoples' Rights**

Submitted to:

**The Director General, WTO
Minister of Trade, Mexico and Chairperson, WTO Fifth Ministerial
Conference
Chairman, General Council, WTO
Chairman, Trade Negotiations Committee, WTO
Ministers of Trade and Commerce, Member States, WTO
Permanent Representatives of Member States, WTO**

13 July 2003

MEMORANDUM ON THE NEED TO IMPROVE INTERNAL TRANSPARENCY AND PARTICIPATION IN THE WTO

PART I. BACKGROUND

1. Through this Memorandum, several non-governmental organisations and civil society groups wish to highlight the serious problems of the lack of internal transparency and the lack of participation of developing countries in decision-making processes in the World Trade Organisation.

2. Among the organisations launching this initiative are the Third World Network, Oxfam International, Public Services International, WWF International, the Center for International Environmental Law, Focus on the Global South, the Institute for Agriculture and Trade Policy, the Africa Trade Network, the International Gender and Trade Network, and the Tebtebba International Centre for Indigenous Peoples' Rights.

3. Our organisations have for several years been involved in WTO issues and in the activities of the WTO in Geneva and with policy makers in the capitals. We have thus been able to observe at close range the WTO's operations, methods of work and decision-making procedures.

4. Over the years we have become increasingly concerned about the lack of proper rules of procedures and the lack of transparency and as well as the lack of participation or exclusion of a majority of Members in decision making processes.

5. Although these shortcomings have been pointed out and highlighted by WTO Members, NGOs and the media, and even admitted by previous high officials such as a former Director General and former Trade Ministers, and although reforms have been talked about and promised many times through the years, the situation has not improved. It has in fact worsened.

6. This lack of internal transparency, participation and democracy is appalling in such an important international organisation whose decisions and actions have such far reaching effects on the lives of billions of people and the environment upon which they depend. It is even more ironic and inexcusable in an agency that prides itself for being a "rules-based organisation" and for championing the principles of "transparency, non-discrimination and procedural fairness."

PART II: IMBALANCES IN RULES AND SUBSTANCE ARE LINKED TO UNDEMOCRATIC PROCESSES

7. Our organisations have been critical of many of the rules developed in the WTO which we believe to be against the interests of developing countries and detrimental to the rights of local communities, small farmers, workers, consumers, women, indigenous people, and to the environment. We had high expectations when some developing country Members took joint initiatives to correct the imbalances and the defective rules, such as resolving implementation-related issues and strengthening special and differential treatment. But we then witnessed how these commendable efforts have yielded hardly any effective results after years of endless discussions. We are also very critical of proposals and pressures to introduce new issues into the WTO even when many developing country Members are either opposed to or unprepared to begin negotiations. We believe the proposed new agreements will be damaging to development, to the environment, to working people and to vulnerable groups including the poor and women.

8. The rules of WTO have a tremendous impact on the lives of people all over the world. This is why it is so crucial that the correct decisions are made in the WTO.

9. We now believe that original imbalances in the WTO rules, the failure so far of attempts to reform them, the many missed deadlines after Doha on issues of importance to developing countries, the unsatisfactory content and progress of current negotiations on services, agriculture and industrial products, are in large part linked to the non-transparent and undemocratic decision-making processes in the WTO.

10. These processes are weighted against and work against the developing countries that form the great majority of the Membership. Unless these processes are changed, further initiatives and attempts to reform the existing rules, and to have fair outcomes in current and future negotiations, will fail.

11. It would be difficult to exaggerate the serious adverse consequences if governments fail to act. Hundreds of millions of people's lives and livelihoods are already damaged by the dumping of agricultural products by rich countries in world markets, which is facilitated by the agriculture agreement and the high prices of medicines and other consumer items due to the TRIPS agreement. Reforms to the agriculture and TRIPS agreements, to name just two, are urgently needed. The WTO needs to take stock and change tracks to make sustainable development – rather than a particular economic orthodoxy – its central goal.

12. The key to the needed changes in the content and substance of the WTO's rules and policies is the reform of its decision-making processes. Indeed, the problems related to process in the WTO are acute, and have undermined the WTO's credibility. Unless there are appropriate changes to both substance and process in the WTO, its legitimacy and credibility in the eyes of its main stakeholders and constituencies will sink even further.

PART III: LIST OF PROBLEMS OF LACK OF TRANSPARENCY AND PARTICIPATION AND IMBALANCES IN DECISION-MAKING PROCESSES

13. The following is illustrative of what is presently wrong with the WTO's processes:

A. General

14. **Unfair Practice of the Consensus System.** The practice in the WTO is that decisions are made by "consensus." This may at first glance seem to be "democratic." The problem is that, in practice, consensus often has a double-standard meaning. When the major developed countries agree among themselves, an emerging consensus is said to exist, and all others are asked to "join the consensus." Those countries that do not agree are often cast in an unfavourable light, and thus there is pressure for all countries to conform to the position of the major developed countries. On the other hand, when a majority of countries agree, but one or a few of the major developed countries do not, a consensus is said not to exist.

15. **Overloaded Agenda and Too Many Meetings put resource deficient Developing Countries at a disadvantage.** There is a very heavy workload and the pace of negotiations is punishing particularly for developing country missions with less capacity and resources. The agenda is too full, and too many meetings are held simultaneously. The developing countries, which have small delegations, are unable to cope and are at grave disadvantage: (i) because they cannot participate effectively; (ii) they are counted as part of the consensus if they are not physically present to air their views. In addition, many developing country members, as well as observer countries and some of those in the process of accession have no permanent mission in Geneva, so they cannot take part in negotiations at all.

16. **Political Pressures applied on Developing Countries.** Developing countries are subjected to pressures from developed countries, including the use of leverage outside of the WTO. Those countries taking positions that the

powerful countries do not like can be subjected to pressures or incentives linked to bilateral aid, IMF-World Bank loans, and more political issues. Developing country diplomats who are viewed to be too "effective" have been known to be removed from their Geneva post after some major developed-country members in the capitals lodged complaints.

17. **Difficulties or Impossibility of Changing Rules.** Due to the consensus principle and the way it is currently used, it is very difficult, indeed almost impossible, to change a rule in the WTO once it is made, unless the major developed countries propose the change or support it. It would be very hard for developing countries to succeed in changing rules to their favour, as this would be opposed by at least some of the developed countries. This has proved to be difficult and onerous for developing countries since many rules and agreements at the Uruguay Round were formulated and adopted without the informed participation of many developing countries. Many countries signed on to agreements such as those dealing with agriculture and intellectual property without adequately appreciating their technicalities or realising their implications.

B. Problems in the Processes linked to preparations for Ministerial Conferences

18. All the above points apply but the situation is even worse during the preparatory process for Ministerial Conferences, where major decisions are taken.

19. **"Informal", Undocumented and Exclusive Meetings.** Many, even most, meetings are held in "informal" mode, where minutes are not taken, thus adding to their non-transparent nature. Many of these meetings are not announced to all the members, only a few countries are invited to them, and most delegations do not know what meetings are taking place or what was decided in them. No report of the proceedings is made available to members who were unable, or not invited, to attend.

20. **Informal "heads of delegations" meetings replacing General Council meetings.** There are few formal meetings of the General Council (where minutes are published) as the Ministerial Conference approaches. Instead, "informal heads of delegations" meetings are held, to which only very few officials per country are invited. Minutes of these meetings are not published or confirmed, thus adding to the lack of transparency.

21. **Meetings held at short notice.** Meetings are often held at short notice. For informal meetings in small groups, delegations are often given only a few hours'

notice, and developing countries find it difficult or impossible to attend at such short notice especially since other meetings are going on.

22. Documents not distributed in time. Documents related to meetings are not distributed early enough for delegations (especially small ones) to consider them properly or send back to capitals for views and instructions.

23. Important documents not available in various languages. Moreover, some documents are in English only. This applies especially to "informal" WTO documents (those carrying a JOB number, drafts of proposed language for texts and decisions, Chairmen's proposed or draft reports, etc). Thus, several countries are unable to adequately comprehend the documents, and are unable to send the content to the officials in capitals in a language, which they use.

24. WTO discussions, negotiations becoming Chair driven instead of Member driven. As seen in the preparatory period before Doha and as practically institutionalised during the Cancun preparatory process the consultations on issues are increasingly held by the Chairman of the group (or the General Council Chairman) on a bilateral basis or with a small number of delegations. Many countries are excluded. The negotiations are increasingly between delegations and the Chairman, when the negotiations should be among the Members themselves. This results in members negotiating with Chairs in consultations where records are not made available, rather than amongst themselves.

25. No Formal Selection procedure or roles of Chairs. The present practice, especially in the Cancun preparatory process, also gives unprecedented powers to individuals as Chairs who have not been properly elected by the membership and who have no defined limits to their roles as chairs. Chairs emerge with their own understanding of various consultations without the membership being able to cross check whether the Chair's report fully integrates and faithfully reflects all views expressed as these consultations remain informal.

26. Divergence of views ignored through "clean" draft texts and Declarations. The views and positions of many countries are not reflected, or not reflected adequately, in the draft elements and decisions, or in the draft Declaration that is taken to the Ministerial Conference. Before Seattle, the views of different delegations were placed together in the same draft. It was transparent where there were differences of positions and easier for a country to identify its own position. Thus the playing field was relatively level as negotiations were carried out on the basis of the different views. However, before and at Doha, the draft text was mainly a "clean document" (without brackets) reflecting the Chairman's view, and on many issues the positions of many developing countries were not reflected. This puts at a great disadvantage those countries whose views are not represented in the Chairman's texts. The mere lack of reflection of divergence of views makes it harder for countries to voice divergent views.

27. **Not enough time for discussing drafts.** Even though there is no consensus on a draft Declaration or other document, and indeed even if there are serious disagreements on many parts of the draft, the Members are not given enough time to discuss it and to narrow their differences. For example, during the end phase of Geneva preparatory process for the Doha Ministerial in 2001, there were only a few days for members to consider the revised draft of the Doha Ministerial Declaration and when many members asked that changes be made or at least that their divergent views be recorded and transmitted to Doha, this request was not accepted on the ground that there was no time left as the Ministerial would start in a few days.

28. **Transmission to Ministerial Conference of Drafts that are not approved by Members.** The new and appalling practice in WTO is to transmit the draft Declaration or other texts on to the Ministerial Conference as the basis for negotiations there, even though the views of many delegations are not reflected, nor are the differences noted within the draft or on a separate explanatory document. Even though many Members express their frustration, and do not give permission for the draft to be transmitted to the Ministerial Conference, the Chairman of the General Council and the Director General transmit the controversial draft "on their personal responsibility" to the Ministerial Conference. This is what happened before the Doha conference. The transmission of such a draft that disguises the divergence of views makes it difficult for Ministers from developing countries to understand and analyse which views are being held by which countries and also makes it more difficult for them to defend their own position, especially since they may not have the same grasp of technical details as their diplomats and experts.

29. **Neutrality of the Secretariat.** The Secretariat (and especially its Director General) of any membership organisation is supposed to be neutral and impartial, especially if the Members are split on important issues. Yet, before Doha, the then Director General was actively and personally campaigning for the launch of negotiations of the Singapore issues, even though a large number of developing countries were against the negotiation of the new issues. These actions seriously undermined the impartiality of the secretariat. Before the Singapore Ministerial, the then Director General pushed for the introduction of an investment agreement in the WTO, despite strong opposition from many developing countries. These actions by key WTO officials placed developing countries that were opposed to the "new issues" at a grave disadvantage.

30. **"Mini Ministerials" creating a disguised unelected "steering group."** There is also a very disturbing trend of some countries organising so-called "Mini-Ministerials" to which only the major developed countries, a few developing countries, and senior WTO Secretariat officials are invited. There is an increasing tendency for business (discussion on key issues) to be carried out through these Mini-Ministerials, thus perpetuating a "super green room" system

throughout the year. In effect this creates a non-elected steering committee in disguise and in the process excludes the vast majority of the membership. This establishment of a de facto parallel decision-making system is highly discriminatory against the majority of members who are not invited and undermines the multilateral nature of the trading system.

C. Problems with Processes during Ministerial Conferences

31. Lack of a functional, operative general assembly. There is no formal “general assembly” that operates throughout the Ministerials. There are formal opening and closing plenary sessions but in between these only informal meetings are held, with no minutes published or adopted. Thus there is a lack of transparency and the lack of a forum for decision-making where Members can officially make their views known, with their views being officially recorded.

32. Misuse of the Opening Ceremony for obtaining approvals for Conference. Opening ceremonies of conferences are supposed to be ceremonial in nature. Important decisions are normally taken at the first business session of conferences. At Doha, the ceremonial Opening Ceremony was made use of to adopt the controversial and disputed Draft Ministerial Declaration (which had not been approved by the General Council for transmission to Doha, and which many Members had requested not to be made the basis for negotiations in Doha) as the basis for negotiations at the Conference. There was no opportunity for Members to discuss whether the text should form the basis for negotiations.

33. Undemocratic adoption of Draft Declaration as basis for Conference negotiation. Raising the matter of the Draft Declaration at the Opening ceremony in Doha means that the WTO Ministerial Conferences do not have a proper procedure for adoption of texts to be used as the basis of negotiations at the Conference. In Doha, Members were not given the opportunity to comment on them or to suggest revisions or alternatives. In this manner, the draft Declaration that had been so controversial and so contested by Members in Geneva was “adopted” in Doha. This lack of a procedure to adopt the texts for negotiations is a major process flaw in Ministerial Conferences.

34. Undemocratic selection of Chairpersons or so-called Friends of the Chair. In Doha, the conference Chairman personally appointed “Friends of the Chair” to conduct negotiations on specific issues that were contentious. There had been no prior discussion or decision by the General Council or by the Ministerial Conference to give the Chairman the authority to personally select the facilitators for the issues. The appointment by the Chairman (instead of election by Members) of important officials of the Conference who play such a key function in directing or guiding negotiations on critical issues that are unresolved, is a major undemocratic feature of the WTO system. At other international Conferences (e.g. the UN World Conferences), the chairpersons of negotiating

groups are elected through an open and transparent process, with each region being able to make proposals for candidates, etc. In the WTO, the criteria with which the facilitators were chosen were not made known. At Doha, those who were appointed 'Friends of the Chair' were from the same grouping of countries that supported the launching of a New Round, including negotiations on new issues, and members that did not have the same views (e.g. The Like Minded Group of Developing Countries) were not chosen. Even though several Members at the first plenary meeting questioned the Chairman's appointment, the Chairman ignored the criticisms and proceeded with the appointments and the work of the groups.

35. Undocumented and Closed Meetings that undermine transparency. "Informal consultations" were held, led by the facilitators, during the Doha conference. Records of these informal meetings were either not kept, or if kept, they were not made available to the Members or the public. Most meetings were not open-ended. The schedule of open-ended meetings (to which everyone is invited) was usually not known within proper time. The whole scheduling of meetings was unpredictable.

36. Views of Members ignored and not reflected in the negotiating texts. Although there was the appearance that Members were being consulted, the views of large numbers of countries were not reflected (or not adequately reflected) in the new drafts of the main Ministerial Declaration that were produced in Doha, and especially in the sections on the Singapore issues. This is very unlike the normal procedures in UN conferences, where drafting is done openly by Members, with all countries allowed to participate, and with the text containing the different views available to all. More recently, the different proposals and positions and the process of amendments have been projected on a big screen in the negotiating room so that everyone can clearly follow the negotiations. In the case of WTO Ministerial conferences, as most recently seen in Doha, the drafting of WTO texts is non-transparent. Indeed, it is not known to Members, let alone the public, how the texts were drafted, or by whom, and on whose authority.

37. "Green Room" process excludes Members from meetings. In Singapore and at Seattle, almost all the negotiations on the draft Declaration were carried out in the so-called "Green Room" exclusive process, where only a few countries were invited and allowed to participate. Security guards stood outside the meeting rooms to prevent uninvited Members, including Ministers, from entering. Shouting matches between guards and "uninvited" officials could be observed. Most Ministers and officials were shut out of the process and were left "languishing in the corridors, canteens and in hotel rooms" in the colourful language of one diplomat. At and after Singapore, the then Director General of the Secretariat promised this exclusionary process would never happen again. Yet it re-emerged in Seattle. The entire process was non-inclusive and indeed seriously exclusionary and discriminatory. It ran completely against the most-

favoured nation (MFN) treatment sub-principle that is so prominent in the GATT/WTO non-discrimination principle. The process was also extremely untransparent. Up to now, it has not been revealed who made the decision to adopt the "Green Room" process, who selected the invited delegations, on what basis, and what were the legal basis or rules of procedure (if any) for these exclusive meetings.

38. Members excluded from major decisions, e.g. extending the Conference. At Doha, when it was clear that a majority of developing countries were against the launch of negotiations on the Singapore Issues, a decision was made to extend the conference by one day. The decision for extension was not made by the Members, as no proposal for extension was put before the Members and indeed there was not even a formal Assembly or Committee in which such a proposal could be put forward and a decision taken. Up to now it is not clear who made the decision, nor under which procedure. Many Ministers, who had booked their flights out, did leave as scheduled, as they did not have advance knowledge nor had their views been sought on the matter, and they missed the important last (extended) day's events.

39. Exclusive "last night" marathon meetings. On the final night at Doha, a marathon "Green Room" exclusive meeting was held involving a small number of countries. Once again, it is not clear who chose and invited the participants, on what criteria and legal and procedural basis. Again, Members who were not selected were not allowed into the room and some were stopped by security guards. During the meeting, the Director General played an important and partial role. Moreover, new drafts of texts were brought in for consideration, some (reportedly the section on environment) at around 3am. Again, the whole process was non-transparent, non-inclusive and discriminatory. Some of the senior Secretariat staff again played a critical role in facilitating and sometimes in leading the process.

40. Untransparent production of the new Declaration draft. A new draft of the main Declaration arrived on the last (extended) day in Doha, which reflected even less the views of a large number of developing countries, especially on the Singapore issues. Many ministers were not even aware on 14th November 2001 (the final day) afternoon, when they adopted the declaration in the plenary, that fundamental changes have been made to the earlier draft that had been brought out on 13th November.

41. Proposals for amending the Draft Declaration ignored. At the last "informal" plenary session, many countries proposed changes but due to the lateness of the hour ("the planes will leave in a few hours"), the pressure of time became an additional factor why the suggested changes to the declaration were not accommodated. At the end, an unsatisfactory compromise was reached in which the Conference Chairman read an understanding on the Singapore issues

regarding the nature of an explicit consensus. Members continue to dispute one another's interpretation of what an explicit consensus requires.

PART IV: OUR PROPOSALS

42. From the above experience, it is clear that lack of proper procedures, the proliferation of non-transparent "informal meetings", the way important decisions and declarations are drafted and produced for adoption, the Green Room process, etc, all add up to a most unacceptable process that is top-down, authoritarian and undemocratic. Ironically the supposed principles which the WTO is supposed to uphold in its rules -- transparency, non-discrimination, procedural fairness -- are grossly violated in its processes.

43. It is this process that underlies much of the decision-making and that contributes to the many unbalanced and inappropriate rules and agreements of the WTO.

44. Changes to the WTO process are long overdue. Many organisations (at international, regional, or national levels) have rules and procedures that enable fair participation of the membership. It is not so difficult to envisage that the WTO also establish and practice similarly fair rules and procedures.

45. Towards this end, the following are among our proposals:

A. General

46. **The consensus system should respect the views of developing country Members.** The consensus system should not be made use of by major developed countries as a "veto" against proposals, which have the support of a majority of the developing country Members. Also, when proposals are put forward by the major developed countries and these are not agreed to by some developing countries, the major countries should accept that these other countries are merely exercising their right under the consensus system, and not seek to portray them as some kind of "enemies" of the multilateral system which are "blocking consensus."

47. **Views of every Member must be respected in a decision involving consensus and explicit consensus.** In the case of important issues, especially where it has been specified by Members that a consensus or an explicit consensus is required for a decision to be adopted, the views of each Member must be recognised and respected, including the right not to agree to a proposed decision.

48. **Adopt a realistic agenda and work schedule that is fair especially for smaller delegations.** The WTO should not take on a workload that is too heavy for small developing countries to handle. Negotiations should not be scheduled for too rapid a pace. There should not be more than two meetings going on at the same time, to enable small delegations to participate.

49. **Developing countries should not be subjected to economic and political pressure.** Developed countries should not use pressure (some of which amounts to bullying and blackmail) on developing countries to "pull them into line" with their positions. Nor should they use trade preferences, bilateral aid, military aid, the dependence of developing countries on loans from the international financial institutions, as points of leverage to get the developing countries to agree.

50. **Decisions should not be made until all Members are technically ready.** Decisions and agreements should not be made until and unless all Members, especially the developing countries, are able to understand the technicalities of the issues and the implications for their economies and societies.

51. **Developed countries should be ready to resolve development issues without exacting a new price.** Developed countries should stop taking the attitude that existing rules and agreements cannot or should not be changed unless other parties are willing to pay a new price. They should be sympathetic to the requests for amending and clarifying the agreements in ways that are in line with the interests and needs of developing countries. They should therefore be more forthcoming in accepting effective solutions to implementation issues and special and differential treatment proposals.

B. Processes linked to preparations for Ministerial Conferences

52. **Meetings and schedules for meetings should be open.** All Members should know all the meetings, and Members should participate in and have knowledge of the entire schedule of meetings, including agenda, participants and outcomes. Meetings should all be official, with minutes taken down and circulated to Members for amendments or confirmation.

53. **More formal meetings of General Council and TNC.** There should be many more formal meetings of the General Council and the Trade Negotiating Committee, which are open to all Members. These should become the main decision-making fora instead of the non-transparent informal meetings.

54. **Proper notice of meetings and documents distribution.** Proper notice should be given for all meetings and documents related to meetings should be distributed early enough for full consideration by all Members.

55. **Procedures for smaller, issue-based meetings.** In the event that smaller issue-based meetings are proposed to be held to discuss or resolve certain issues, authorisation to hold these meetings should come from all members. Such meetings should also be governed by rules to ensure transparency and fairness. The rules could include the following: (a) the authority wishing to convene a group meeting should announce in the plenary that he is convening such a meeting and indicate the purpose of the meeting, and it should be subject to plenary approval; (b) the authority should announce the list of invitees and also announce that any other delegation which feels that it has a strong interest in the subject matter is also entitled to attend the group meeting; (c) as early as possible after the meeting, the authority convening the meeting should report to the plenary the gist of proceedings/outcome of the meeting; (d) such group meetings should be designed to facilitate consensus building rather than to take decisions behind the back of a large number of Members.

56. **Role of Chairs.** Terms of reference for the roles of the Chairs of the various Councils, Committees and formal or "informal" issue-based groups must be drafted by WTO members. The role of Chairs should be to facilitate discussions among the Members. The increasing trend of negotiations being held between delegations and the Chair should stop, especially since there are no records of what transpires at these meetings, and all the information resides with the Chair, who is then given too much power to interpret the situation. The negotiations should mainly be among Members themselves.

57. **Drafting of texts.** It should not be assumed that the Chairs would draft the texts that then form the basis of negotiations or discussions. Texts should be drawn up in a transparent and fair manner by Members. Members must agree on the latest text, which can contain the different position of the Members. The practice of a Chair producing a draft text "under my personal responsibility" should stop.

58. **Fair reflection of diverse views in texts.** The views and positions of different Members should be adequately reflected in the draft Declaration and in draft elements and decisions. The different views should be listed out in the same document so each Member's view has the chance to be part of the negotiated texts. The new custom of producing "clean texts" by the Chairman makes the process non-transparent because the differing views are not listed as the starting point of negotiation.

59. **Proper time required to consider and discuss texts.** Members should be given sufficient time to discuss the drafts and to narrow their differences.

Whatever drafts are submitted to the Ministerial Conference should be the result of adoption by consensus in the General Council.

60. **Drafts must fairly reflect different views.** If Members are unable to agree on some parts of a draft Ministerial Declaration or other draft texts, the contending views can be put in square brackets. The Ministerial Conference can then decide on the final formulation of these parts of the texts. This is a common practice in international conferences, including in the United Nations system. In several major conferences, including the UN Summits, texts with many "square brackets" have been sent on to the Summits or Ministerial-level conferences, and the differences have been resolved at the meetings with a consensus reached on the texts. The WTO Ministerial Conferences should be treated no differently.

61. **The Secretariat must maintain neutrality.** The Secretariat, and especially the Director General and other senior officials must be (and be seen to be) neutral and impartial at all times, especially if the Members are split on important issues.

62. **Holding of "Mini Ministerials" should cease.** Members should not continue the practice, which is proliferating, of holding "Mini-Ministerials" before Ministerial Conferences. This practice discriminates against the vast majority of members that are not invited. In the meanwhile, decisions taken at such "Mini-Ministerials" should not be made use of by participants to influence the multilateral preparatory process in Geneva.

C. Problems with Processes during Ministerial Conferences

63. **Opening ceremony should be only ceremonial.** The opening ceremony of the Conference should be only ceremonial in nature. It should not be used to adopt the Conference agenda or work programme, to adopt drafts of texts that form the basis of Conference negotiations, or to affirm the appointment of Conference officials.

64. **General Assembly of Members should operate regularly throughout Conference.** At the start of the Ministerial, a "General Assembly" or in UN language a "Committee of the Whole" should be formed, comprising all the Members, to conduct and oversee discussions and negotiations. This is separate from the official plenary sessions where Ministerial speeches are made. It should meet in formal mode regularly, and at least once a day. It should be the main forum in which decisions, especially the important decisions regarding negotiations, are made. Records of the meetings should be circulated promptly and subjected to approval.

65. **Adoption of negotiating drafts.** The agenda, work programme and the draft declaration used as the basis for negotiations, should be discussed, if necessary amended, and adopted, at the first business meeting of the whole membership.

66. **Election of chairs and facilitators.** The Facilitators or Chairs for conducting discussions or negotiations of specific issues should be selected by all the members, and not by the Conference Chairman. Their role and terms of reference should be specified by all the Members. They should be accountable to all the members and not only to the Conference Chairman.

67. **All meetings should be inclusive and transparent.** The meetings organised by the Chairs and Facilitators should be open-ended, and minutes should be kept and subject to approval of the Members present. The views of all Members should be transmitted to drafters of the decisions.

68. **Drafting of texts and decisions should be transparent and inclusive, and texts distributed to all.** The process by which decisions and texts are drafted should be transparent and participatory, and it should be decided by all Members, which should be allowed to be present at meetings where decisions are drafted. The latest drafts of texts on all issues being discussed should be made available to all Members who should be kept informed on all issues at all times. These should also be presented to all Members at official plenary sessions to be held at least once a day.

69. **Green Room system should cease.** The practice of the "Green Room" system, or exclusive meetings, to which only a few countries are invited to participate on behalf of all, should be stopped.

70. **Proper rules and procedures for smaller issue-based meetings.** In the event that during a Ministerial Conference it is felt that meetings should be held to discuss or resolve certain issues, authorisation to hold these meetings should come from the general assembly of Members. Such meetings should also be governed by rules to ensure transparency and fairness. The rules could include the following: (a) the authority wishing to convene a group meeting should announce in the plenary that he is convening such a meeting and indicate the purpose of the meeting, and it should be subject to plenary approval; (b) the authority should announce the list of invitees and also announce that any other delegation which feels that it has a strong interest in the subject matter is also entitled to attend the group meeting; (c) as early as possible after the meeting, the authority convening the meeting should report to the plenary the gist of proceedings/outcome of the meeting. (d) Such group meetings should be designed to facilitate consensus building rather than to take decisions behind the back of a large number of Members.

71. **Extension of the Conference and other process decisions.** Any proposal to extend the Ministerial meeting or to amend its agenda should be decided upon by all the Members in a general assembly or committee of the whole. Other decisions involving processes of the Conference should be decided in similar fashion.

72. **Neutrality of Secretariat should be observed.** During the Ministerial Conference, the Secretariat has an important role to play to ensure that the procedures and the decision-making system are fair, balanced and allow the developing countries to participate fully. It should itself take great pains to ensure that it is neutral and impartial during the Ministerial Conference, and is seen to be so.

AID/WATCH is a not-for-profit organisation monitoring and campaigning on Australian overseas aid and trade policies and programs. We receive no government or corporate funding and therefore operate completely independently.

AID/WATCH would like to recognise the Senate and the very important role it plays as a legislative check on the Australian Parliament and thank the Senate Committee into Foreign Affairs, Defence and Trade for undertaking this very important enquiry that has vast ramifications for Australia and the relationships we have with our regional neighbours.

AID/WATCH recognises that trade is an important contributor to the international and national economy and acknowledges the benefits that are to be obtained from engaging in this age-old practice. We support the call for a fair trading system that weighs the social, cultural and environmental impacts of development equally with the economic.

We are here today because we are concerned about the ramifications of the current GATS agreement and the proposed Aus/US FTA and indeed all the current trade negotiations that Australia is involved with in the WTO and bilaterally.

The implications these negotiations have on how Australia both views and is viewed by our region is far reaching and poses a number of vital questions for the future of this country.

What we aim to do here today is to firstly raise the issue of Australia's much discussed 'national interest' and broaden its definition beyond just the economic interest of Australia by pointing out the many facets that impinge upon what has become this Government's favourite catch call.

Secondly, we wish to raise the un-democratic nature of modern day trade negotiations. My colleague Marina will do this by referring to the current economic agenda of this Government and then go on to discuss the ever more interlinked security agenda.

Thirdly we wish to raise the issue of how entering into these negotiations sits inconsistently with other Governmental policy.

Fourthly we will be supporting many of the other submissions you have received and presentations you have heard which threaten the social fabric of this country in areas of health, media, investment and agriculture

We believe that current negotiations for a Free Trade Agreement with the US need to be seen within the context of Australia's broader economic, trade and foreign affairs agenda, and within the dynamics of international trade negotiations.

AID/WATCH considers the history of trade negotiations carried on through the World Trade Organisation (WTO), the recent history of other bilateral agreements negotiated by the United States in combination with the policy preferences of the current Australian

government, equates to a situation where the interests of the developing world and other disadvantaged peoples within the developed world will be sacrificed in the quest for trade liberalisation.

The Australian government, by currently undertaking GATS and the current FTA negotiations, is posing a significant risk to public services in Australia and to development and our relationships with developing countries.

National Interest

There has been considerable debate over whether the proposed FTA with the US will further Australia's 'national interest', the mantra of the current government. Little discussion has ensued in regard to what the 'national interest' actually entails. The Australian government and the current predominant ideology promotes economic objectives above all others. In this section we will outline broad issues which we will return to throughout our submission.

Firstly, "national interest" must be more broadly defined to include social factors, cultural concerns and environmental considerations. These matters are fundamentally important in gauging the long-term impact of the proposed agreement on Australian society.

Central to this issue, and of immense importance to this enquiry, is the relationship that Australia has with the Asia-Pacific region. Currently, sixty-one per cent of the total of Australia's trade is conducted with countries from the Western Pacific (Garnaut, 2002, p.7). These countries constitute our immediate geographic neighbours.

"The prosperity of the developing world is clearly in Australia's national interest – not only for regional stability but also for our own economic future. In an increasingly interdependent world, the people of the developing world are our future partners in business and trade."

While several detailed studies have failed to actually agree upon what the economic benefits will be (see Economic Impacts Section) of the proposed Aus/US FTA, there has been inadequate consideration of what the agreement will mean for our relationships with Asia.

The second point here refers to the undemocratic nature of the 'closed door' negotiations that are characteristic of contemporary trade negotiations. This is completely unacceptable and contravenes what is in the 'national interest' of the Australian public. All meetings whether negotiations on the Aus/US FTA, GATS or other WTO negotiations must be completely open, transparent and accountable, all minutes must be presented to the public for full and open discussion, and all positions adopted by our elected representatives must be openly publicised.

Following is an example which illustrates this very point. A recent article in the Australian Financial Review by ex-Chairman of the Industries Assistance Commission and CEO of the Tariff Board, Bill Carmicheal summarises the patronising nature of the bureaucracy who are negotiating this agreement (AFR, 16 July 2003).

On one hand the Prime Minister, Mr Howard, is quoted says "The dynamic supporting trade liberalisation in democracies will only succeed if communities in each country believe it is in their interests to do so" and calls for "informed public discussion of the economy wide effects of major trade initiatives".

On the other hand, Carmicheal quotes Ashton Calvert, Secretary of DFAT who suggests those expressing very real concerns that are raised in a number of the aforementioned studies and by other civil society groups and individuals have "frozen minds" and "out of date ideas".

Carmicheal goes on to list DFAT's failure to offer sound economic advice in the past and thus asks why we should settle for their 'we know better' bluster now. This attitude adopted by DFAT cannot be considered to be in the 'national interest'.

There is another example of this that further illustrates the diplomatic expedience of AusAID which is in amongst the documents we are tabling today and I can discuss that further if requested.

Another recent indication of the real concerns of DFAT was given at a public meeting held to discuss the implications of the Aus/US FTA in Armidale NSW. When asked about the implications of the proposed agreement, NSW Secretary of DFAT, Phillip Green, responded to the effect that agreement was a matter of 'administrative convenience' and would thus make the job easier for his employees in future trade arrangements (a matter highly contested by the leading critic of FTAs, Jagdish Bhagwati from Colombia University, who suggests the 'criss-crossing obligations and requirements under these agreements impose a major administrative burden' (AFR, Davis, 21 July 2003). Such a response raises the obvious questions: should such a deal be made to suit the convenience of Australia's bureaucrats and, in turn, how then can this decision be seen to be in the 'national interest' of all Australians?

The Question remains. Is a policy that has highly contentious economic advantages and that poses unknown threats to the relationships with our immediate neighbours really in Australia's national interest?

Aid Policy Implications and Policy Consistency

In total, the Asia-Pacific region will receive \$1.1 billion of the 2003-4 aid budget, accounting for 87 per cent of Australia's total direct bilateral foreign aid (AusAID Aid Budget Summary 2003-4, pp.1-3). The central aim of Australia's foreign aid program is the promotion of Australia's 'national interest'.

As the Committee will be aware AusAID is administered under the Department of Foreign Affairs and Trade. This in itself exposes the complex political nature of how our aid is delivered. Aid, in the Australian context, is therefore inherently linked with trade and does

not have the same philanthropic nature of which many people perceive aid should be about.

AID/WATCH has been critical of Australia's aid program and particularly the focus on promoting the interests of private Australian companies to conduct the contracts funded by Australian taxpayers and administered by AusAID. Our research has revealed Australia is giving a substantial amount of aid money that is not focussed on alleviating poverty or promoting sustainable development, as AusAID suggest are secondary objectives, but in furthering the very narrow view of what the Australian Government perceives as Australia's 'national interest'.

While this corporate welfare approach funded by our aid program is good for a handful of Australian businesses, it is having a drastic effect on the communities many of these projects are impacting upon.

The effectiveness of the aid program can be gauged by the ongoing problems in the Pacific with particular reference to the current situation in the Solomon's and the so-called 'arc of instability'. While this Committee, with its recent trip to Papua New Guinea, will be very familiar with the term 'Boomerang aid', it is also true that some of our aid money is delivering some significant outcomes. AID/WATCH believes these positive outcomes and the important relationships they promote will be undermined by an Aus/FTA and the implicit policy objectives that are associated with it.

This mixed message Australia is sending, is having a serious effect on how Australia is perceived by our aid recipients.

Our concern with the aid implications of the Aus/US FTA is that by compromising Australia's economic and security interests in the region, it will effectively negate the positive outcomes that AusAID suggest we are attempting to achieve through Australia's aid program. This has adverse ramifications for both the recipients of Australia's aid and Australia itself.

Through diverting Australian trade away from Asia and the Pacific, which Marina has discussed, the FTA will undermine the positive outcomes of Australia's aid program in attempting to foster sustainable economic growth and poverty alleviation in the region.

This in turn impacts negatively on Australia, whose national interest is best served by a robust regional economy. Thus, the proposed US FTA directly contradicts and compromises Australia's regional aid program.