

# WTO Negotiations: Trading away essential services

## Greater Corporate Rights

The Australian government is currently involved in negotiations about agreements with the 145 other member governments of the World Trade Organisation (WTO) which could profoundly affect our lives. They include decisions about the regulation and funding of essential services like health, education and water, whether governments should have the right to limit foreign investment in strategic industries like the media, Qantas and Telstra, and whether they can use government purchasing to assist local development. The negotiations are conducted in secret, and can be legally binding on all levels of government without legislation being passed in the Australian parliament.

The agreements could restrict governments' capacity to make laws to regulate global corporations and could instead give corporations increased powers to sue governments. They could also restrict the policy choices of current and future governments in many areas, by defining certain policies as "barriers to trade". These issues could profoundly affect democratic rights and living standards in Australia, and would be even more devastating for developing countries.

## The WTO from Doha, Qatar, 2001 to Cancun, Mexico, 2003

WTO member governments' Trade Ministers meet every two years, with negotiations held between these meetings. Developing countries have resisted the inclusion of essential public services in the Trade in Services (GATS) agreement, and have also resisted new WTO agreements on investment, competition policy and government procurement. They fear such agreements will reduce access to essential services and prevent policies for local development. At the last WTO Ministerial Conference held in Doha in 2001 they demanded changes to the Trade in Intellectual Property Rights Agreement (TRIPS) agreement to enable them to get access to affordable medicines, and other changes to address the special situation of developing countries. Access to medicines has still not been resolved, yet the US, Europe and other industrialised governments want to press ahead with new agreements. A decision about whether to negotiate new agreements will be made at the next WTO Ministerial Meeting in Cancun, Mexico, in September 2003.

## WTO GATS negotiations: trading away essential services

The Australian government and other member governments of the WTO signed the General Agreement on Trade in Services (GATS) in 1994. It applies to all services, from banking to transport and telecommunications, to health, education and water. GATS treats services as traded commercial goods, ignoring the social aspects of many services, which are so essential to peoples' lives. GATS aims to promote international trade in services, and to remove barriers to such trade.

Although some GATS rules apply to all services, many only apply to those services that each government agrees to list in the agreement. This is known as a "positive list" agreement. However, GATS commits governments to increase over time the range of services included in the agreement, without any review of its impacts. The negotiations are secret, with little public information until after the deal is done.

Like other WTO Agreements, GATS rules are legally binding on all levels of government, and can be enforced through the WTO dispute system. Governments can complain about the laws of other governments on the grounds that they are barriers to trade. The complaints are heard by a panel of trade law experts which meets behind closed doors and the winner can ban or tax the exports of the loser.

## GATS and privatisation of public services

GATS has some rules which recognise the right of government to regulate services and to provide and fund public services like health, education and water. However the definition of public services in the GATS is unclear: it defines public services as those not supplied on a commercial basis or in competition with other service providers. Since many public services have been exposed to private competition this means some



GATS rules could apply to some public services. The current agreement only fully covers public services if governments list them in the GATS agreement. Most governments have not so far listed these public services.

Global services corporations want governments to make further GATS commitments in essential services because they see these areas as huge profitable markets for private investment. Governments are also being asked to make changes to the rules of GATS which could reduce their right to regulate services, and to provide and fund public services. There is a proposal to reduce the right of governments to regulate services by applying a “least trade restrictive” rule to some regulation of services. This would allow these regulations to be challenged by other governments as a barrier to trade.

There has also been discussion about defining government funding of public services as “subsidies” to which corporations might have access through competitive tendering, a form of privatisation.

Community fears about the GATS negotiations were confirmed when European requests to Australia were leaked in February 2003. The requests revealed that the European Commission, representing 15 European countries, was asking for the inclusion of public water and postal services in the GATS. This would mean privatisation of water services, and of Australia Post, and the end of the 50c standard letter charge which enables people in rural and regional areas affordable access to postal services. The EU also wanted to remove limits on foreign shares in strategic industries like Telstra or Qantas. The US requested the removal of Australian content rules in film and television (audio-visual services). AFTINET believes that decisions about essential public services and public policies should be made democratically at national and local levels, not negotiated in trade agreements.

### **Government Publication of GATS Offers: A small victory, but still a long way to go**

AFTINET has led a strong community campaign for public information about the negotiations, and against any reductions in the right of governments to regulate services or to provide and fund public services. The government responded to this campaign on 1 April 2003, when it published for the first time the initial offer it had made in the GATS negotiations. This showed it had not made any new offers on health, education, water for human use, postal services or audio-visual services.

This is an important victory in our campaign. However, the initial offer can be changed at any time in the negotiations. There has been no publication of Australia's requests to other countries in the negotiations, including

requests to developing countries, which could have devastating impacts. We want a review of the existing GATS agreement, and publication of all relevant information and a parliamentary debate and vote before any changes to the agreement.

## **New WTO agreements on Investment, Government Procurement and Competition Policy: Greater Corporate Rights**

Governments will decide at the Mexico meeting in September 2003 whether to begin full-scale negotiations for new WTO agreements on these issues.

### **Investment**

The main thrust of investment agreements is to protect the interests of foreign investors by restricting the ability of governments to regulate foreign investment. Such agreements maximise the rights of foreign investors while reducing the ability of governments to promote national or local development.

The International Chamber of Commerce (ICC) is a highly influential world business organization which provided the initial blueprint for the notorious 1998 OECD failed attempt to get a Multilateral Investment Agreement (MAI). In March 2003 the ICC issued a policy statement for a WTO investment agreement, which included many aspects of the MAI:

- ◆ the term “investor” should be broadly defined, and the agreement should apply to all government laws and policies unless they are listed as exceptions. This is the dangerous “negative list” approach which was rejected in the MAI, but is now being used for the Australia-US Free Trade Agreement negotiations.
- ◆ there must be “national treatment” for foreign investors. This means there should be no laws which limit or regulate levels of foreign investment, or which place any obligations on investors to contribute to local development. This would mean that Australia could no longer limit foreign investment in the media, telecommunications or airlines, have Australian content rules for film and television, or require that foreign investors use local products or train local people.
- ◆ investors should have the right to directly challenge regulation that affects their interests, and to sue governments for damages. Panels of trade experts would decide the outcomes, which would be binding. This is the same model that operates in the North American Free Trade Agreement (NAFTA), under which US corporations have aggressively challenged

environmental and social regulations in Mexico and Canada (see box below). It is also being used for an Australia-US Free Trade Agreement, currently being negotiated.

Source: ICC's expectations regarding a WTO investment agreement International Chamber of Commerce, Commission on Trade and Investment Policy, Policy statement 7 March 2003

Available at:

[http://www.iccwbo.org/home/statements\\_rules/statements/2003/wto\\_investment\\_agreement.asp](http://www.iccwbo.org/home/statements_rules/statements/2003/wto_investment_agreement.asp)

Developing country governments are strongly opposed to such an Investment agreement, as they need to be able to regulate foreign investment to ensure that it contributes to local development. The group of Least Developed Countries have demanded that before such negotiations are considered the WTO should address the development promises made at Doha that remain unmet.

Sources:

Ambassador Toufik Ali of Bangladesh, on behalf of the group of Least Developed Countries, speaking at the WTO consultations of the Trade Negotiations Committee, reported in Hormeku, T (2003) 'Progress in WTO negotiations cannot be at our expense, say developing countries' in African Trade Agenda, No. 7, March 2003, Third World Network-Africa, available at <http://www.twnafrica.org/agenda/ata-en7.pdf?twID=303>

Oxfam International (2003) 'Briefing Paper 46 -The Emperor's New Clothes: Why rich countries want a WTO investment agreement', available at <http://www.oxfam.org.uk/policy/papers/46emperors/46emperors.html>

## Competition Policy

Competition policy is supposed to ensure that large suppliers do not dominate markets. Supporters of a WTO agreement on competition policy argue that it could be used to curb the power of transnational corporations where one or a few dominate the market in particular industries.

### Corporations sue governments under NAFTA rules

Under the North American Free Trade Agreement (NAFTA), US corporations have aggressively sued the Mexican and Canadian governments to challenge their laws and seek compensation for laws that affect their interests.

The US company United Parcel Service (UPS), the world's largest express carrier and package delivery company is suing the publicly owned Canada Post. UPS is arguing that Canada Post's monopoly on standard letter delivery is in violation of provisions on competition policy, monopolies and state-run enterprises. UPS is arguing, among other things, that Canada Post uses its public infrastructure to cross-subsidise its parcel and courier services. The public postal service enables all Canadians access to affordable postal services wherever they live. Australia Post provides a similar service and could also be challenged under a free trade agreement.

The US Metalclad Corporation was awarded US\$15.6 million, because it was refused permission by a Mexican local municipality to build a hazardous waste facility on land already so contaminated by toxic waste that local groundwater was compromised.

Ethyl Corporation, a US chemical company which produces a fuel additive called MMT containing manganese, a chemical hazardous to human health, successfully sued the Canadian government when it tried to ban MMT. In April 1997 the Canadian Parliament imposed a ban on the import of MMT, on grounds of public health as well as to reduce air pollution and greenhouse gas emissions. Ethyl Corporation successfully sued the Canadian Government, which was forced to settle the suit by reversing its ban on MMT and paying US\$13 million in legal fees and damages to Ethyl Corporation.

The US-based Sun Belt Water Inc. brought legal proceedings against Canada for US\$10.5 billion because the Canadian province of British Columbia interfered with its plans to export water to California. Even though Sun Belt has never actually exported water from Canada, it claims that the ban reduced its future profits. This case reinforces the concerns of many Canadians that NAFTA rules treat an essential service like water as a traded commodity.

Sources:

Shrybman, S. (2002) *Thirst For Control*, Council of Canadians, Toronto, <http://www.canadians.org>

Public Citizen (2001) *NAFTA Chapter 11 Investor-to-State Cases: Bankrupting Democracy: Lessons for Fast Track and the Free Trade Area of the Americas*, Public Citizen, Washington, <http://www.citizen.org>

Proposals for a WTO agreement on competition policy are still unclear. However the Australian experience with competition policy is that the anti-monopoly provisions are relatively weak and have rarely been used against private corporations. The strongest parts of the legislation are aimed at public enterprises and services, like electricity and water to create “competitive neutrality” between them and private companies. This means they may put commercial goals and profitability above service quality and access for low income consumers. This is particularly dangerous for developing countries. The commercialisation of public services also paves the way for them to be treated as traded goods under the GATS, as the GATS exclusion of public services applies only to those not provided on a commercial basis or in competition with other services.

Recent corporate failures and mergers have concentrated market power in the hands of a few global corporations in many industries. In developing countries, local firms have to compete against global corporations with vast resources. “National treatment” for global corporations is not a level playing field in this context. Competition policy must meet the specific needs of developing countries and should be developed initially at the local level.

While WTO agreements on investment and competition policy would be legally binding on governments, corporations are strongly opposed to having any legally binding or enforceable obligations on them to abide by United Nations agreements on human rights, labour rights or the environment.

Sources: Khor, M (2003) ‘Why there should not be negotiations in the WTO on a competition agreement: The clash of frameworks in the competition issue in the WTO’ (see below for full reference).

Vander Stichele, M (2003) ‘What is wrong with competition negotiations in the WTO? The problems of a competition policy agreement in the WTO’ (see below).

Both in *Investment and competition negotiations in the WTO – What’s wrong with it and what are the alternatives?*, Seattle to Brussels Network, available at <http://www.s2bnetwork.org>

## Government Procurement

Australian federal, state and local governments have some purchasing policies which favour local firms or which require foreign suppliers to develop relationships with local firms, to buy local products or employ local people. These policies support local industries, skills and employment, and are especially important in regional areas. A WTO government procurement agreement would require “national treatment” of foreign suppliers and would prevent any favouring of local industry or any requirements being placed on foreign suppliers.

The impact of such an agreement would be very serious in Australia, but would be even more devastating in developing countries, preventing them from building up their own industries and skill levels.

## What can you do about it?

AFTINET is a national network of 71 community organisations and many more individuals. We support fair regulation of trade consistent with human rights, labour rights and the environment. We undertake community education, political lobbying, media work and organise public events. We successfully lobbied for a Senate Inquiry into GATS which is holding public hearings in 2003.

Join AFTINET to get regular bulletins about the WTO and other campaigns. See our website [www.aftinet.org.au](http://www.aftinet.org.au) for publications, sample letters to politicians and other campaign materials. Use the sample letters to demand of our government:

- ◆ no WTO agreements on investment, competition policy or government procurement which would remove the right of governments to regulate foreign investment, enable corporations to sue governments and restrict local development policies;
- ◆ a review of the impact of the existing GATS agreement before any changes;
- ◆ publication of any proposed changes to the Australian government’s GATS offer in the course of the negotiations, and public parliamentary debate of such changes before they are submitted in the negotiations;
- ◆ publication of Australia’s GATS initial negotiating requests to other governments, and publication of any subsequent requests in the negotiations;
- ◆ no reduction in the ability of governments to regulate services through a “least trade restrictive test”;
- ◆ clear exclusion of public health, education, postal, water and other public services, and of audio-visual services from the GATS agreement;
- ◆ no definition of government funding of public services as “subsidies” which would reduce the right of governments to provide and fund public services; and
- ◆ GATS and other trade agreements to be ratified by parliament, not by Cabinet.

Letters and campaign materials are available on our website <http://www.aftinet.org.au>.

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