

**TACD
TRANSATLANTIC CONSUMER DIALOGUE**

OCTOBER 1999

**ON THE PROPOSAL TO LAUNCH A NEW ROUND OF TRADE NEGOTIATIONS
AT THE SEATTLE MINISTERIAL CONFERENCE**

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1. Introduction

1.1 In late November 1999, the governments of the world will meet in Seattle for the World Trade Organization's (WTO) Third Ministerial Conference. Among other matters, WTO Members will decide on the WTO's future work programme.

1.2 TACD members support establishment of enforceable international commercial rules to govern the flow of goods and services. Trade liberalisation can benefit consumers by providing increased choice and lower prices. However, it is essential that these potential benefits are not undermined by trade policies that have a negative impact on other important consumer rights, including:

- access to essential goods, such as food and medicines;
- access to services, such as utilities, transportation and health care;
- product, food and workplace safety;
- a healthy environment;
- information, such as thorough accurate labelling of goods' contents and characteristics and also regarding genetic modification, labour practices, humane treatment of animals and more;
- choice, such as for a diversity of competitively-priced goods;
- representation of consumer interests in decision-making and monitoring including regarding health, safety, and environmental policies, financial prudential measures, service regulation and other policies;
- and redress, including the ability to hold accountable and liable those undermining such core consumer rights.

A consumer assessment of trade policies takes account of all of these rights.

1.3 Whilst the Uruguay Round contained some significant liberalisation measures which should benefit consumers, it is our view that the package overall may have a negative impact because it may:

- increase global concentration and the market power of large trans-national corporations which, unless coupled with enforced competition laws and policy, has the potential to reduce competition, and hence choice and value-for-money for consumers;
- reduce access to some essential goods and services, such as medicines for some consumers, particularly poor consumers in developing countries;
- lead to policy decisions of importance to consumers being made in international organisations which have inadequate consultation and representation mechanisms and which are not accountable to those who will live with the implications of the decisions; and
- deprive consumers of the information they need to make informed choices.

1.4 Consumers are also concerned that the Uruguay Round agreements have led in demonstrable instances to downward pressure on health, safety, environmental and animal welfare standards, and undermined the achievement of sustainable development. During the nearly five years since the implementation of the Uruguay Round, formal trade challenges have resulted in WTO rulings against countries' food safety and environmental laws. As well, a number of governments have been threatened with such WTO challenges, both by other governments and by corporations. To avoid the expense and uncertainty of defending such threatened WTO challenges, some countries have pre-emptively lowered the threatened food safety, health and animal welfare standards. Finally, implementation of the Uruguay Round Agreements has undermined consumer rights in some instances:

- Bringing agriculture within WTO rules has benefited consumers in Europe, as it has resulted in some reform of the European Union's agricultural policies that has put downward pressure on food prices. But implementation of the WTO Agreements has included insufficient safeguards for poorer countries and insufficient compensation for net-food-importing developing countries as promised in the Agreement on Agriculture (AoA) Marrakesh Decision. Food security in some developing countries also has been weakened by the elimination of previous GATT rules against dumping of goods at below their cost of production.
- New patenting requirements under the Trade-Related Intellectual Property Agreement have limited poor consumers' access to pharmaceuticals.
- Elimination under the Trade Related Investment Measures (TRIMS) Agreement of policies used by developing countries to foster capital accumulation and economic development has undercut developing country governments' resources for basic domestic budgetary needs in infrastructure, sanitation, education and health.
- Legitimate consumer health and safety measures and environmental policies have been successfully challenged as illegal trade barriers under WTO rules, including bans on meat treated with artificial hormones and endangered sea turtle protections. Threats of WTO challenges have resulted in the weakening of national laws such as a UNICEF baby formula code in Guatemala, an EU ban on fur caught with cruel steel-jawed leghold traps, and South Korean laws on meat shelf life and produce inspection.

1.5 In the preamble of the Uruguay Round Agreements, the rationale for liberalization policies and the establishment of the WTO was stated to be enhancement of the creation of global wealth and prosperity and promotion of the well-being of all people in all Member states. UNCTAD has estimated that for the WTO to achieve its objectives of reducing unemployment and for incomes to grow, the world economy needs to grow by at least three per cent each year. Most developing countries need to grow at twice this rate if they are to overcome their trade, financial and technological disadvantages and close the income gap with the small group of rich industrial economies. However, in only one year of the 1990s was a three per cent growth rate achieved. And shares of trade and investment to the poorest countries are actually falling with income distribution within and among countries growing more polarized.

1.6 Of course trade policies on their own cannot guarantee an equitable distribution of income. Other international and national policies will always be needed. However, TACD members consider that the unbalanced distribution of the benefits of the Uruguay Round, the use of trade rules to undercut essential consumer rights, and the lack of transparency and accountability of the WTO must be reviewed and addressed prior to any new liberalization negotiations so as to ensure that future liberalisation works for the benefit of everyone.

2. TACD RECOMMENDATIONS

2.1. Members of the TACD believe that a new comprehensive round of trade liberalisation negotiations should NOT be contemplated unless and until:

- there has been a comprehensive review of the impact of the Uruguay Round Agreements;
- steps are taken to amend agreements and their implementation where negative impacts are found; and
- there has been international institutional reform to ensure transparency, consultation and accountability of process and personnel in the WTO and other relevant international institutions.

The Seattle Ministerial Declaration must uphold the principles of consumer rights in the following areas:

Objective Review of the Uruguay Round and Moratorium on Certain Trade Challenges

2.2 We call upon the governments to agree at the Seattle Ministerial to the launch of an objective review of the operations of the Uruguay Round Agreements, with a view towards identifying what aspects of the current agreements need to be amended to obtain the broad benefits promised in the Uruguay Round's preamble.

An objective review process would include an open process with access to documents and a meaningful opportunity for NGO and citizen input at the national and international levels into determining the scale and methodology of the review, as well as an on-going role in the conduct of the review. Such a review should address the WTO's impact on the fundamental consumers' rights:

- access to essential goods and services;
- choice;
- product, food and workplace safety;
- a healthy environment;
- information;
- representation and redress.

Specifically, reviews of the text, implementation and results of the Sanitary and Phytosanitary Agreement (SPS), Technical Barriers to Trade Agreement (TBT), Trade Related Intellectual

Property Agreement (TRIPs), Agriculture, Dispute Settlement Understanding, Services and Trade Related Investment Measures (TRIMs) agreements should be done with full consultation with consumer groups. Such reviews will provide an opportunity for society to develop a sustainable international system of trade and investment relations. Such changes are necessary to ensure public support for and confidence in international commercial rules.

2.3 Moreover, given the troubling pattern of WTO use as a tool *against* domestic food safety, health and other consumer concerns, we call for the Seattle Ministerial Declaration to announce a moratorium on new WTO challenges to *prima facie* non-discriminatory environmental, health and safety measures, such as EU labelling of genetically modified organisms, until a speedy and thorough review has been completed.

Consumers Access to Essential Goods and Services

2.4 FOOD

The basic human and consumer right to food security must be kept sovereign. The assessment of the Uruguay Round Agreement on Agriculture (AoA) must focus on the food security of the least developed countries and poor consumers in net food importing countries. In particular the impact of large agro-chemical and grain-trading trans-national corporations must be examined for their affects on the variety, quality and price of food to consumers, and the externalised costs of production systems.

- There should be no further agricultural liberalisation by developing countries until a full impact assessment has been carried out on the existing agreement's implementation in accordance with the Uruguay Round commitments, including the AoA Marrakesh Decision.
- Developed countries should go further in increasing market access to safe food imports from developing countries and continue to reform agricultural policies which raise internal food prices and foster anti-competitive market conditions that distort markets and disadvantage both consumers and producers.
- Aspects of the Trade Related Intellectual Property Agreement must be reviewed with a view towards changing provisions which can undermine food security, such as those permitting the patenting of seeds, including those initially developed by farmers and later patented by multinational corporations. Exemptions from patenting in Article 27.2 for public policy objectives must be entrenched in the TRIPS review and the TRIPS implementation.
- An objective review of the current WTO rules would also lead to future negotiations of a food security clause in the AoA allowing developing country governments to take measures they determine are necessary to protect food security from conflicting WTO obligations.

2.5 MEDICINES

We are concerned about aspects of the current Trade-Related Intellectual Property (TRIPs) Agreement provisions, such as those undermining affordable access to pharmaceuticals to poor consumers and those which can be misused to undermine legitimate public health and safety

policies. In the review of the WTO TRIPs Agreement, public health rather than commercial interests must have primacy, for instance as regards safeguards for consumer access to essential drugs.

- We seek clarification in the Seattle Ministerial Declaration that the flexibility allowed in the TRIPs Agreement will be respected to allow access to essential drugs. Thus, for instance, we call for explicit recognition of the WTO-legality of parallel importing and compulsory licensing policies. Such formal recognition will help counter the inappropriate use of trade pressures against developing countries over access to essential medicines if those countries have satisfied WTO TRIPs Agreement requirements for the protection of patents.
- We seek recognition in the Seattle Ministerial Declaration of a formal role for the World Health Organization (WHO) as the body of substantive expertise in WTO TRIPs issues relating to pharmaceuticals and to health.
- We oppose the proposals by some developed countries to use the Seattle Ministerial Declaration to push for the expansion of TRIPs rules and to eliminate current developing country phase-in periods as part of the TRIPs built-in review.
- We also seek inclusion of a statement supporting perpetual public access to community medicines and local plants and clarification for future dispute panels that such access is maintained and protected under existing Uruguay Round rules. Community medicines are an alternative for many poorer consumers world-wide. Technical expertise and financial assistance should be provided so that the rights of communities to protect their knowledge and resources are guaranteed so that they may benefit from the development and use of these medicines.

2.6 SERVICES

To start further liberalization of services, including "progressive" liberalization of service sectors now covered and expansion of General Agreement on Trade in Services (GATS) disciplines into new sectors, such as health care and education, is a key goal of many developed countries for the Seattle Ministerial.

- We oppose expansion of GATS coverage to health and education and any other expansion that does not safeguard consumers rights to safety and to universal access to essential basic services.
- Any future liberalisation of services must be conditioned on the imposition of meaningful measures to ensure consumer protection and to counter anti-competitive business practices that may result from international mergers and acquisitions.
- In the GATS, a provision must be added exempting domestic subsidies from the obligation of national treatment for developing countries. The bottom up approach (i.e. a negotiation of specific commitments rather than a negotiation of exceptions to very broad commitments) of the GATS should be retained to ensure that developing countries can liberalise sectors as appropriate for their development needs and objectives.
- A GATS review must consider modification to GATS Article XIV (General Exceptions) to take account of measures to protect the environment, and recommendations must be

developed on the relationship between services, trade, and the environment, including the issues of sustainable consumption.

Product, Food and Workplace Safety and a Healthy Environment

2.7 PRECAUTIONARY PRINCIPLE

We are concerned that the existing Sanitary and Phytosanitary Standards (SPS) Agreement and the Technical Barriers to Trade (TBT) Agreement may undercut the use of the Precautionary Principle in public health and safety and environmental policy-making. Whilst science is vital in informing the policy decisions underlying the design of health and safety policies, the WTO's SPS Agreement does not make sufficiently clear the fact that all safety decisions are based on both science and ethics, and that ethics, values and policy judgments must also play a role in determining the level of food-related risks to which consumers will be exposed. TACD remains concerned that the Technical Barriers to Trade (TBT) Agreement may be used by some WTO Members as an argument for weakening public health and safety and environmental standards and/or not enforcing new standards. The TBT Agreement, with very limited exceptions, discourages countries from taking a leadership role in safety regulation by stating that standards shall be based on existing international standards. Yet, inherently there are many gaps in scientific knowledge and evidence regarding the long-term human safety of numerous food additives, agro-chemicals, and other substances, and of the health and environmental implications of some production and processing methods. Consumers often demand their governments to take action regarding health, safety and environmental regulations ahead of scientific certainty of a risk to avoid exposure to avoidable, irreversible harm.

An element of such application of the Precautionary Principle which the WTO rules must support is the requirement by some governments for manufacturers to bear the burden of researching and informing government about a product's long-term human and environmental effects as a precondition for obtaining market approval. An example of the Precautionary Principle's success was the U.S. ban on the drug thalidomide until its manufacturer could prove it safe in the long term. In countries where the drug was approved, hundreds of babies were born with severe birth defects from in utero exposure to the substance.

- The Seattle Ministerial Declaration must clarify that existing WTO rules leave governments the capacity to establish and maintain non-discriminatory health, safety and environmental measures based on the Precautionary Principle, including pre-marketing approval.
- The Declaration should also agree to clarify and strengthen the WTO-legality of the use of the Precautionary Principle, particularly in that area of food safety and health, with a view to finding an agreed methodology for implementation of the principle.
- The Seattle Ministerial Declaration must commit countries to examine which existing Uruguay Round provisions could be interpreted to undermine governments' right to take measures under the Precautionary Principle, with a view towards negotiating whatever clarifying amendments are necessary to eliminate such interpretations.
- The Seattle Ministerial Declaration must include explicit commitments for technical assistance and financial support for implementation of all agreements by developing countries.

2.8 FOOD SAFETY AND FOOD LABELLING

We are concerned that the existing Sanitary and Phytosanitary Standards (SPS) Agreement undercuts governments' ability to establish and maintain legitimate, non-discriminatory food safety and food-related consumer information labelling policies. For instance, some provisions of the SPS agreement, relating to harmonization of standards and the terms under which a country may exceed internationally agreed standards on the level of food safety protection could be construed to place unacceptable burdens on governments seeking to establish high levels of food safety protection.

A mandatory review of the SPS Agreement that was required by the Uruguay Round Ministerial Declaration was undertaken without sufficient consumer input. Such a review was not satisfactory and a review must be undertaken now with active participation of consumer and health organizations.

- The Seattle Ministerial Declaration must commit WTO Members to an objective, open review of the SPS rules so as to ensure that governments retain the capacity to establish and maintain legitimate non-discriminatory food safety measures. Such a review must reconsider the rules related to burden of proof to demonstrate that a product is safe. Such a review should also clarify that recommendations and guidelines of the Codex Alimentarius Commission are merely recommended and non-binding under the SPS agreement. WTO Members should agree that as Members of the Codex Alimentarius Commission they would continue to adopt Codex standards by consensus.
- A definition for "equivalence" (see Article 4.1 of the SPS Agreement) should be added to the definitions annex that ensures that measures must provide a level of health and safety protection and have procedural and review mechanisms at least as strong as the other country's measure for them to be declared equivalent.
- The Seattle Ministerial Declaration must clarify that there is no inherent time limit on WTO Members' use of the **provisional** food safety **measures** (under Article 5.7) **when scientific evidence is not complete** as long as countries continue to seek further scientific evidence and the reason for the precaution remains. The WTO should clarify that if any WTO Member seeks a determination as to whether a review under Article 5.7 has not been conducted within a reasonable period of time, before a complaint may be filed under the Dispute Settlement Understanding, the SPS Committee must determine that a review is overdue.

2.9 NON-FOOD SAFETY

The 1994 Technical Barriers to Trade Agreement (TBT) states that countries shall base their national health, safety and environmental standards on international standards, where they exist or their completion is imminent. TACD is concerned that some WTO Member nations are using the stated preference for the use of international standards to challenge legitimate national health, safety and environmental standards that provide stronger safeguards than international norms. TACD would be gravely concerned if, for example, pending WTO challenges to public health measures based on such measures' providing greater health protection than international norms, such as the Canadian challenge to the French ban on asbestos, were to succeed in the WTO's Dispute Settlement Understanding process.

- A TBT review must consider the additional basis a country may have, beyond fundamental climactic, geographic and technological limitations, for WTO-permissible establishment and maintenance of non-discriminatory technical standards.
- Attention should be given to ensure that the International standardisation process is open and transparent to interested parties throughout civil society and that it yield results capable of meeting legitimate public policy objectives in pursuit of consumer health and safety

2.10 PROCESS AND PRODUCTION METHODS (PPMS)

Information is a prerequisite for consumer choice, and choice is the mechanism by which consumers exert influence in markets. Some countries view the SPS Agreement and/or the TBT Agreement as constraining governments from developing non-discriminatory food labelling systems transmitting information unrelated to health threats, such as those identifying genetically modified organisms or the use of artificial hormones, or those reflecting environmental or fair trade principles.

Increasingly consumers in developed countries are taking the characteristics of production processes into account in their purchasing decisions as the growth in demand for organic foods and the development of fair trading products demonstrates. It is unacceptable for trade agreements to be used to prevent consumer information vehicles that are non-discriminatory. By non-discriminatory we mean consistent with the national treatment and most favoured nation status defined in Articles I and III of the General Agreement on Tariffs and Trade.

- The Seattle Ministerial Declaration should recognise the growing importance of PPMs to consumers. It should undertake to examine the existing definition of "like products" in Art. III of the GATT and to review the application of the TBT Agreement with respect to labelling and other PPM distinctions.
- The Seattle Ministerial Declaration must clarify that measures to support informed choice by consumers are not inconsistent with WTO rules, for example, transparent GMO labelling measures that treat domestic and imported goods equally are permissible under WTO rules.

Consumer Choice and Competition Policy

2.11 ANTI-COMPETITIVE PRACTICES

Some developed countries have called for the launch at the Seattle Ministerial of negotiations on "Competition." Different countries calling for competition negotiations mean very different things when using the same term. However, few countries are calling for the sorts of measures that consumer groups seek: effective instruments to deal with restrictive business practices and to face the monopoly threat caused by the increasing market concentration resulting from rapidly growing international mergers and acquisitions.

The Seattle Ministerial Declaration should instruct the existing WTO Working Group on Competition Policy to present an array of concrete mechanisms:

- to control international anti-competitive and restrictive business practices of trans-national corporations such as classic price fixing, transfer pricing and other intra-firm practices;
- to review for anti-trust/market concentration and control the increasing number of cross-border mergers, acquisitions and alliances;
- to ensure transparency and procedural fairness.

As a first step, countries should be mandated to adopt positive comity principles in competition investigations with cross-border effects. In addition, countries should seek to establish national competition rules and agencies (where none exist) in cooperation with consumer organizations and appropriate international bodies.

Consumers suffer when competition rules are applied selectively or misapplied to the benefit of corporations. Special effort should be made to ensure that where competition rules exist, they are applied impartially and vigorously.

Representation and Redress

2.12 TRANSPARENCY AND ACCOUNTABILITY

To guarantee the smooth functioning of the international trading system and restore public confidence in multilateral trade rules, the transparency of the WTO and the participation of developing country representatives and international NGOs must be improved. Developing countries, together with civil society representatives, share a real lack of influence at the WTO. The Seattle Ministerial Declaration must include commitments to:

- adopt a presumption of openness in interpretation of both the Agreement Establishing the WTO and the Dispute Settlement Understanding (DSU) so that documents are not restricted unless they meet clear confidentiality criteria. All documents of the dispute resolution system, including all party briefs, experts' memos, WTO legal staff memos and rulings, should not be restricted and dispute resolution proceedings should be opened to the public;
- establish new DSU procedures for dispute settlement panels including recasting the panellists qualifications to allow a broader disciplinary array of panellists, conflict of interest rules for the non-appellate panellist, maintenance of a public file of potential panel members and guarantee that after the moratorium on environmental and health challenges is lifted, cases raising health, environmental or consumer protection issues shall include at least one panellist with relevant expertise;
- set up open panel hearings and a mechanism for submission of NGO amicus curiae briefs;
- set up an accessible, fair accreditation scheme for NGOs and develop guidelines for regional and national consultation mechanisms, including the establishment of national contact points, to facilitate the access and input of civil society organisations into WTO discussions; and to

- tackle the financial, human resource, and infrastructure constraints of developing country delegations to ensure that all countries can participate equally and effectively in negotiations and implementation of SPS and DSU.

2.13 ELECTRONIC COMMERCE: CONSUMER PROTECTION AND REDRESS

The WTO Work programme in its review of liberalisation of electronic commerce must take into account consumer protection measures and privacy issues. The guiding principle for consumer protection, wherever the electronic transaction is conducted, should be that the consumer cannot be deprived of the protection at least afforded by the law of his/her country of residence; and that he/she has the right to have any dispute settled in his/her country of residence.

2.14 CONSUMER INTEREST IN INVESTMENT RULES, CAPITAL FLOWS AND FINANCIAL STABILITY

Consumers have an interest in the stability of national economies, national currencies, and in the stability and predictability of investment markets such as stock and bond markets. The recent financial crisis affecting Asia, Russia and some Latin American countries has demonstrated the serious risks associated with rapid financial liberalization. The availability of food, health care and basic services for consumers in these developing countries struck by rapid currency devaluations and the collapse of domestic investment markets has deteriorated with the poorest in these countries suffering the most. Consumers in wealthier countries face the threat of lost pensions, medical annuities and other investment-related social safeguards when markets are unstable.

Whilst policies to deal with many of these problems lie outside the scope of international commercial agreements, investment rules are already included within the Uruguay Round in the GATS and Trade Related Investment Measures (TRIMs) and also in the December 12, 1997 Financial Services Agreement. Following the collapse of the Multilateral Agreement on Investment (MAI) at the OECD, some OECD governments and business groups want to see more extensive investment liberalisation under the WTO. The development of such policies is an area in which consumers must be represented.

- The consumer movement has long been opposed to any MAI-style agreement regardless of the venue in which it is pursued.
The Seattle Ministerial Declaration must commit WTO Member countries working in the context of UNCTAD to initiate a process for developing a binding code of rights and responsibilities in the conduct of international trade and investment. The code should incorporate the core standards of the UN Guidelines for Consumer Protection. Formal adoption of such an agreement and its recognition by the WTO as binding on WTO Members must be a precondition for reopening consideration of future multilateral investment deregulation talks in any fora.
- The review of the existing investment rules should include consideration of mechanisms not included or, in some instances, measures now forbidden in the WTO rules to ensure market stability, including measures to counter currency speculation and volatile short term investment, such as the Chilean-style capital controls now being praised by a growing number of international economists.

- The Seattle Ministerial Declaration must instruct the existing WTO Working Group on Trade and Investment to shift its focus to the examination of specific obligations, such as the promotion by foreign investors of the economic and social development of the host country and the protection of consumers and the environment, can be included in future investment rules.

2.15 CONCRETE COMMITMENTS TO DEVELOPMENT

The EU and U.S. have said repeatedly that they are committed to making a new Round of trade talks development focused. However, they have failed to live up to their existing commitments and have made few concrete proposals in this area.

- The TACD calls on the Seattle Ministerial Meeting to address the problem of tariff escalation. The imposition by developed country importers of ramped tariffs based on the degree of work carried out on the product is a clear discriminatory measures for developing countries. This unfair trade policy must be dismantled product by product, as soon as practicable. Dismantling ramped tariff structures would offer evidence that the WTO wants trade to be a viable part of its poorer Members' development strategy.