

TACD

TRANS ATLANTIC DIALOGUE TRANSATLANTIQUE
CONSUMER DIALOGUE DES CONSOMMATEURS

TACD Recommendations in Preparation for Qatar WTO Ministerial

Many members of TACD have found much in common between the goals of the transatlantic consumer movement and the stated purposes for which the World Trade Organization was founded, most notably: raising standards of living around the globe, increasing consumer choice, promoting sustainable development, and assisting developing countries.

Those objectives found widespread support among national governments and among citizens. This is not, however, how the multilateral global trading system has evolved since its goals were outlined. In the implementation of the Uruguay Round agreements, many of the anticipated benefits for consumers and developing countries have not materialized. Instead, we have seen:

- *incursions into the health and safety protections that national consumer organizations have achieved in their own countries
- *conflicts between global intellectual property rules and the health needs of consumers, especially in poor countries
- *an absence of the transparency, participation and accountability norms that mark decision making in our democratic societies
- *rules and decisions that place business interests above consumer interests when the interests conflict
- *and the increasing gaps between the incomes of rich and poor in many countries.

This is the face of globalization that has evoked strong expressions of opposition throughout the world. Without disputing that global trade can bring many benefits to consumers, we believe it cannot do so unless it is in a context of strong consumer protection measures, democratic rules and procedures, and respect for the social and economic interests of consumers, including poor and vulnerable consumers. In other words, the human and social values of our organizations and our respective governments must not be overruled by a superallegiance to the goal of enhanced corporate profits.

As TACD members, we have a particular concern with the trade policies of the EU and US. The EU and US should encourage, develop and support policies to ensure safe imports, to promote fair wages and worker safety and combat child labor. Many of these policies are unfairly biased against the interests of developing countries. We refer for example to many aspects of agricultural policy such as support (direct and indirect) for agricultural exports. We refer also to unjustified restrictions on textile imports, to tariff escalation, and to the uneven implementation of previous trade rounds. These benefit vested interests in rich countries, to the detriment of developing countries and

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consumers everywhere. We are especially opposed to the misuse of political and government power to further corporate agendas in world trade, for example in relation to GMOs or TRIPS. The United States and European Union are seeking to launch a new round of negotiations to pursue the interests of their clients through an intensification of the “Green Room”, in which most countries are excluded while the most powerful nations and a few selected others meet. This process made a significant contribution to the failure of the Seattle Ministerial.

The persistence of vocal opposition to the current trading system is not an aberration. It is, rather, a vigorous and growing rejection by citizens, of various countries and with a variety of organizational memberships, of a trading system that facilitates the global ascendance of business interests at the expense of the social and economic values of civil society. We believe that the recommendations on the following pages can help lead to a global trading system that balances fairly between the needs of producers and consumers, and that preserves the rights, protections and values that citizens in our respective countries have fought for and won over centuries. We believe that such a balance must be sought and achieved at the WTO Qatar Ministerial.

What follows are TACD recommendations in the many different sectors and issues affected by any WTO Ministerial Declaration:

1. Food Safety and Labeling
2. Precautionary Principle
3. Harmonization
4. Medicines
5. Agriculture and Food Security
6. Services
7. Competition
8. E-commerce
9. Transparency and Accountability

1. FOOD SAFETY AND LABELING

TACD is concerned that the existing WTO Sanitary and Phytosanitary Agreement (SPS agreement) undercuts governments' ability to establish and maintain legitimate, non-discriminatory food safety and food-related consumer information labeling 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.

The Qatar 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. The TACD believes that meetings of the WTO SPS Committee should be opened to non-governmental observers.

- ◆ Such a review should also clarify that standards and related texts of the Codex Alimentarius Commission are voluntary recommendations that are not binding on WTO members. The review should recommend that WTO Members that are also Members of the Codex Alimentarius Commission shall continue to adopt Codex standards by consensus.
- ◆ TACD rejects the notion of functional equivalence. The WTO notion of equivalence allows for imprecise, subjective comparisons that are not appropriate when dealing with issues as important as public health and safety. Therefore, we recommend that 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.

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 labeling systems transmitting information unrelated to health threats, such as those labels identifying genetically modified organisms or the use of artificial hormones, or those reflecting environmental or fair trade principles.

- ◆ The Qatar Ministerial Declaration should recognise the growing importance of Process and Production Methods (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 labeling and other PPM distinctions.

- ◆ The Qatar Ministerial Declaration must clarify that measures to support informed choice by consumers are not inconsistent with WTO rules. An example if such a measure would be transparent GMO labeling measures that treat domestic and imported goods equally are permissible under WTO rules.

2. PRECAUTIONARY PRINCIPLE

We are concerned that the existing SPS Agreement and the TBT Agreement may undercut the use of the Precautionary Principle in public health and safety and environmental policy-making.

- ◆ The Qatar 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 Qatar 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.
- ◆ The Qatar Ministerial Declaration must include explicit commitments for technical assistance and financial support for implementation of all agreements by developing countries.
- ◆ The WTO should defer to other international organizations such as the World Health Organization in matters involving food safety and international trade.

3. HARMONIZATION

International harmonization can occur at the lowest or highest level of public health, worker safety, or environmental protection. Unfortunately, the actual provisions of the WTO agreements requiring harmonization or providing incentives for harmonization generally promote the lowering of the best existing domestic public health, food safety, economic justice, natural resource conservation and product safety standards.

- ◆ TACD favors international standards being used as a floor rather than a ceiling. The harmonization mechanisms in the TBT and SPS Agreements encourage the challenge of higher domestic standards but not the challenge of lower standards.

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The current mechanism can only result in a ratcheting down of standards. At a minimum, the harmonization provisions of the SPS and TBT agreements need to be rewritten to ensure that the role of democratically-achieved international standards is not to discourage cutting-edge domestic innovations geared toward solving some of our most pressing problems.

- ◆ 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 standardization process is open and transparent to interested parties throughout civil society and that it yields results capable of meeting legitimate public policy objectives in pursuit of consumer health and safety.

4. 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 Qatar 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 Qatar 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 Qatar 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.

- ◆ Developed countries should not insist that countries adopt protections under Article 39.3 of the TRIPS that would be anti-competitive or undermine compulsory licensing.

5. AGRICULTURE AND FOOD SECURITY

The assessment of the Uruguay Round Agreement on Agriculture (AoA), in accord with the built agenda of Article 20 and the terms of the Marrakesh Decision, must focus on the food security of the least developed countries and poor consumers in net food importing countries. [If WTO are to discuss disciplines on State Trading Enterprises, they should do so in the context of reviewing the impact of large agro-chemical and grain-trading trans-national corporations receiving export credits and subsidies subject to WTO disciplines on impediments to food security objectives under Article 20, for their affects on the variety, quality and price of food to consumers, and the externalized costs of production systems.]

- ◆ There should be no further agricultural liberalization 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 TRIPS Agreement must be reviewed, *inter alia* under Article 27.3B, with a view towards changing provisions which can be used to 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.

6. SERVICES

TACD opposes 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 liberalization 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.

- ◆ The right of governments to provide and regulate basic services in the consumer interest should be broadly asserted in a new article included in the body of the agreement.
- ◆ The right of governments to provide access to basic services must be recognised in the agreement. The right of governments to assure the provision of critical services - health, education, telecommunications, water and energy utilities - should be protected by revising the governmental exemption in the agreement to make it self-defining. The rights of governments to provide universal access and affordability should be assured.
- ◆ The imposition through the GATS of "necessity tests" or requirements to only implement measures that are "the least trade restrictive" should be rejected. Existing WTO regulatory disciplines are sufficient. The EU principle of proportionality may not be appropriate in the WTO context.
- ◆ The GATS articles on market access and national treatment should be amended to clearly state that they do not apply to non-discriminatory domestic regulations.
- ◆ GATS negotiating documents should be made public. Consumer groups and other civil society groups need to be consulted on a regular basis on the GATS, particularly in regards to the negotiations on domestic regulation and professional standards.
- ◆ The "bottom up" architecture of the GATS should be maintained and the needs of developing countries should be given special consideration in the negotiations. For example, the US and EU should provide funding for capacity building.
- ◆ The US and EU governments should support a full, complete and independent assessment of the impacts of the current GATS regime and the implications of the proposed GATS 2000 rules on domestic social, environmental and economic laws, policies and programs by drawing on the expertise of citizens groups in member countries.
- ◆ 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. In the GATS, a provision must be added exempting domestic subsidies from the obligation of national treatment for developing countries.

7. COMPETITION

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 Qatar 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.

8. E-COMMERCE

TACD recognizes that the creation of the World Trade Organization (WTO), the rise of electronic commerce (e-commerce) and other aspects of the globalization of commerce require citizens to confront difficult problems associated with the development of global norms and enforcement mechanisms for the protection of consumers.

TACD also believes that the WTO's role in consumer protection measures is currently a negative one, eliminating regulatory measures that are judged to be barriers to trade. In contrast, the WTO lifts global standards for the protection of intellectual property.

- ◆ With reference to the WTO TRIPS Agreement, Article 13, TACD makes the following recommendation. Governments should ask the WTO to expand Article 13 of the TRIPS Agreement regarding exceptions to copyrights. The language is currently too narrow, and does not even include the language in Article 30 concerning patents, that permits governments to consider the legitimate interests of third parties.

9. 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 Qatar 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 panelists qualifications to allow a broader disciplinary array of panelists, conflict of interest rules for the non-appellate panelist, 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 panelist with relevant expertise;
- ◆ set up open panel hearings and a mechanism for submission of NGO *amicus curae* 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 organizations 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.