

**CATHOLIC COMMISSION FOR  
JUSTICE DEVELOPMENT AND  
PEACE (MELBOURNE)**

**Submission to the Senate Foreign Affairs,  
Defence and Trade Committee's Inquiry into  
the General Agreement on Trades in Services  
and  
the Australia/US Free Trade Agreement**

**APRIL 2003**

## Executive Summary

### General Criteria for Globalisation

1. The Catholic Commission for Justice, Development & Peace Melbourne (CCJDP) is in favour of globalization if pursued with high principles of the Universal Declaration of Human Rights, due competence and true commitment to equity. Globalisation must be a force which is in the genuine control of all nations and not one where certain countries have a greater influence over it than others.
2. Globalization tends to mean different things to different people and accordingly, it is appropriate to set out what the Melbourne CCJDP considers ought to be the criteria essential to the proper realization of its potential.
3. The Melbourne CCJDP holds that the development of globalization without high principles will lead to injustice, alienation, exploitation, and bitterness. These qualities must be avoided.
4. Globalisation needs those central to its growth to be competent in what they do; otherwise it will become too limited in what it can do for the people of the world.
5. True commitment to a globalization which is right and proper is essential to its function of making the international community one that serves all within it in a fair, industrious, fruitful and humanizing way.

### High Principle

6. The CCJDP holds that globalization ought to develop within the context of the high principles set out in the great conventions, covenants, and charters which have universal resonance in the world.
  - a) An example is the address by Franklin Delano Roosevelt to the 77<sup>th</sup> Congress on the 6<sup>th</sup> January, 1941 when he spoke of the four freedoms: *“The third is freedom from want, which, translated into world terms, means economic understanding which will secure to every nation a healthy peacetime life for its inhabitants -----everywhere in the world.”*
  - b) Another example is *the Universal Declaration of Human Rights* containing provisions such as those set out in articles 23, 24 and 26. It is to be kept in mind that Australians played a central role in having such provisions put into the Declaration.
  - c) *International Covenant on Economic, Social, and Cultural Rights* is yet another. Adopted by the United Nations on the 16<sup>th</sup> December 1966, it was ratified by Australia on the 10<sup>th</sup> December 1975, and came into force on the 3<sup>rd</sup> January 1976.
  - d) The International Labor Organisation has been establishing conventions since 1919, and Australia has ratified many of them.

7. The Catholic Church posits two broad principles of ethical discernment in matters of globalisation, and a range of ethical considerations fall under these:

- I. The inalienable value of the human person. The human being must always be an end and not a means, a subject and not an object, not a commodity of trade.
- II. The value of human cultures. Globalisation must not be a new version of colonialism. It must respect the diversity of cultures, which, within the universal harmony of peoples, are life's interpretative keys.

### **Too Little Weight Given to High Principles**

7. Because of the perceived need to pursue economic prosperity as the dominant purpose of international relations those advocating the present model of globalization give too little weight to the matters raised in conventions of the United Nations, in statements by the Church, and in similar documents.
8. Those advocating the present model of globalization argue that it be developed, in terms of the economy, discretely, and apart from the establishment of worldwide rules for other matters such as human rights, employment and the environment.
9. The CCJDP says economic consideration ought to be accorded their proper status but ought not to be promoted above that to the detriment of men, women and children who need the world community to act on other principles to bring them the well being to which they are entitled as global citizens.

### **Competency Needed for Globalisation of Quality**

People working within the machinery needed to have globalization run at its best must act competently. They should go about their task so as to increase the well being of all men, women and children. That should be their aim - not the operation of an economic model regardless of its overall effect in the world. The economy is for the people and not the people for the economy. The section on international development shows that globalization has been at the expense of poor countries so far.

### **11. Concerns about GATS**

- I. The national treatment obligation of GATS applies to Government grants and subsidies. If the Government basically confines government grants to public sector institutions in a particular service area which is listed for unqualified coverage by GATS, but also provides a grant to a domestic private provider, then theoretically the foreign service provider is entitled to the same grant or subsidy.
- II. Major players in the WTO have in their sights so-called barriers to free trade in services that Australians would regard as requiring government regulation, eg. the current stipulation that 55% of broadcast and TV programs be produced locally.
- III. The EU wishes to see reversed the Foreign Investment Policy guidelines and the Foreign Acquisitions and Takeovers Act 1975 which can reject foreign investment on the grounds of national interest and allow for discriminatory treatment of foreign-owned or controlled enterprises. Additionally, the EU wants increased access to, and control

of Australian telecommunications – requesting removal of the requirement of majority Australian ownership by abolishing foreign ownership caps on shares in Telstra, Optus and other future providers. Moreover the EU wants access to postal services – Australia Post services would be treated as goods and open to foreign competition, threatening subsidised services to rural areas, and public ownership. The EU wants control of water provision – to treat water services as purely traded goods, which appears to threaten most state government policies of public ownership and price regulation of water services that assure that they remain accessible and affordable to all Australians.

## **12. Concerns about a AUSFTA**

Specific matters of concern to the CCJDP about the proposed Australia/US Free Trade Agreement (AUSFTA) are;

- I. The possible abolition of the Foreign Investment Review Board and controls on foreign investment in the national interest.
- II. The possible abolition of the Pharmaceutical Benefits Scheme.
- III. Reductions in Quarantine Standards, which the US has argued, restrict trading in agricultural products. This exposes Australia to less rigorous protection of our crops and fragile island continent ecology.
- IV. Removal of Australian local content rules in broadcasting and film, and local preference in government purchasing.
- V. A critical concern is the possible modelling of aspects of the proposed FTA on the problematic North American Free Trade Agreement (NAFTA).
- VI.** NAFTA is the first trade treaty in the world to provide companies with the right to access supra-national tribunals for dispute resolution. They have access to a dispute resolution mechanism if they believe that a Government has violated their NAFTA investment obligations. The CCJDP is very concerned about an extraterritorial trade tribunal which can impinge upon the sovereignty of Australia by overriding local laws and policy.

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## ACRONYMS

<b>AFBF</b>	<b>ACFOA</b>	<i>Australian Council for Overseas Aid</i>
<b>AIDS</b>		<i>American Farm Bureau Federation</i>
		<i>Acquired Immune Deficiency Syndrome</i>
	<b>ALGA</b>	<i>Australian Local Government Association</i>
	<b>APEC</b>	<i>Asia Pacific Economic Cooperation</i>
	<b>AUSFTA</b>	<i>Australia/US Free Trade Agreement</i>
	<b>CAA/OXFAM</b>	<i>Community Aid Abroad/Oxford Famine relief</i>
	<b>CCJDP</b>	<i>Catholic Commission for Justice, Development &amp; Peace Melbourne</i>
	<b>EU</b>	<i>European Union</i>
<b>FTA</b>		<i>Free Trade Agreement</i>
<b>GATS</b>		<i>General Agreement on Services and Trade</i>
<b>GM</b>		<i>General Motors</i>
<b>GNP</b>		<i>Gross National Product</i>
<b>IMF</b>		<i>International Monetary Fund</i>
<b>IT</b>		<i>Information Technology</i>
<b>MFN</b>		<i>Most Favoured Nation</i>
<b>NAFTA</b>		<i>North American Free Trade Agreement</i>
<b>NCBA</b>		<i>National Cooperative Business Association</i>
<b>NGO</b>		<i>Non-government Organisation</i>
<b>NIC</b>		<i>Newly Industrialised Countries</i>
<b>OA</b>		<i>Official Aid</i>
<b>ODA</b>		<i>Overseas Development Aid</i>
<b>PM</b>		<i>Prime Minister</i>
<b>QUADS</b>		<i>The US, the EU, Japan and Canada</i>
<b>TRIPS</b>		<i>Trade Related Intellectual Property</i>
<b>TV</b>		<i>Television</i>
<b>UK</b>		<i>United Kingdom</i>
<b>UN</b>		<i>United Nations</i>
<b>UNCTAD</b>		<i>United Nations Conference on Trade and Development</i>
<b>UNHCR</b>		<i>United Nations High Commission for Refugees</i>
<b>US</b>		<i>United States of America</i>
<b>USTR</b>		<i>US Trade Representative</i>
<b>WTO</b>		<i>World Trade Organisation</i>

#### **ABOUT THE CCJDP**

*The Catholic Commission for Justice, Development and Peace, (Melbourne, CCJDP) seeks to give weight in Australia and throughout the world to principles based on the teachings of Jesus Christ as carried forward over the last two millennia by the Church. The Commission's Charter requires it to work*

***for justice in public, local and national structures. It seeks to achieve these ends through research, analysis, working with parish networks, public forums, in schools and in the media. It actively seeks to explore ways that social justice can be improved in society and in the performance of mechanisms that have a role in public life. The CCJDP is intent on ensuring the human rights of Australians and other people in a variety of fora including the UN, media, the lobbying of parliamentarians and producing documents.***

This Submission is broken into three sections:

Part A. An outline of the Catholic Church's perspective on globalisation which informs CCJDP's analysis of the WTO, GATS and the proposed free trade agreement between the US and Australia.

Part B. 'Concerns about Australia and Free Trade', which examines GATS and the negotiations with the US on a free trade agreement.

Part C. 'Debates about Globalisation' sets out more detailed concerns and evidence about neo-liberalism identifying the ideological nature of this aspect of globalisation, discussing the adverse effects of this ideology upon developing countries, and outlining NGO concerns about the WTO.

## **PART A. WHAT IS THE CATHOLIC CHURCH'S VIEW OF GLOBALISATION?**

'Neo-liberalism' is presently the dominant thinking and culture informing globalisation and the CCJDP has accordingly concentrated on this dimension of the development of the world community. Definitions of Globalisation are as varied as the proverbial blind men touching different ends of an elephant and giving their descriptions of what they feel it is – one touches the trunk and says that the elephant is long, thin and sinewy like a serpent; another, grasping the underbelly of the animal claims that it is large, rotund and curvaceous, and so on. Similarly the critics of globalisation have vastly different views from its proponents. Both protagonists tend to have harsh (and incomplete views) of each other's perceptions.

One definition, from Joseph Stiglitz, the former chief economist of the World Bank, is that Globalisation is " the closer integration of countries and peoples of the world which has been brought about by the enormous reduction of costs of transportation and communication, and the breaking down of the artificial barriers to the flows of goods, services, capital, knowledge, and (to a lesser extent) peoples across borders."<sup>1</sup> Juan Somariva, the director General of the International Labour Organisation, believes that globalisation is made up of a revolution in information technology in communications, while the "The bulk of what we call globalisation is made up of policies, trade, liberalisation....."<sup>2</sup> has replaced Keynesian economics as the dominant force and its free market ideology has gained strength throughout the 1980s and 1990s associated as it has been with the "Washington Consensus". This is, in the words of Stiglitz, "a consensus between the IMF, the World Bank, and the US treasury [and we might add many other governments], about the "right" policies..." for economic development.<sup>3</sup> It is discussed in detail in Section C. of this submission.

The church does not seek to define globalisation as such, but focuses on the ethical dimensions of the process and thinking occurring within it. Pope John Paul II suggests that globalisation is a phenomenon which is ambivalent, "...both a kind of potential good for humanity and yet also a possible social disaster of staggering proportions"<sup>4</sup>. In saying this, the Pope is stressing an issue addressed by Adam Smith, in his 'The

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<sup>1</sup> Joseph Stiglitz, Globalisation and its Discontents, Camberwell, 2002.p.9.

<sup>2</sup> Author's paraphrasing of discussion with NGO delegates to the 1999 UN Trade and Development Conference. Bangkok, 1999.

<sup>3</sup> Stiglitz, op. cit. p.16.

<sup>4</sup> Address of Pope John Paul II to the Members of the Foundation for "Ethics and Economics", 17 May 2001.

Theory of Moral Sentiments”, the companion to “The Wealth of Nations”, namely that economics divorced from ethics is *amoral* much like the laws of nature.

The Pope observes that while globalisation's "prime characteristic is the increasing elimination of barriers to the movement of people, capital and goods," he feels "It enshrines a kind of triumph of the market and its logic," and "many people, especially the disadvantaged, experience this as something that has been forced upon them."<sup>5</sup> It runs the risk of being, but "must not be a new version of colonialism", he warns.

A troubling aspect of globalisation is its propensity towards intolerant ideology. John Paul II warns that, "...not all forms of ethics are worthy of the name. We are seeing the emergence of patterns of ethical thinking that are byproducts of globalisation itself and which bear the stamp of utilitarianism. Ethics cannot be the justification or legitimisation of a system, but rather a safeguard of all that is human in any system. Ethics demands that systems be attuned to the needs of man, and not that man be sacrificed for the sake of the system."<sup>6</sup>

The Pope argues that globalisation needs to be analysed against ethical criteria: "Everything depends on certain basic decisions: whether 'globalisation' serves man, every individual, or exclusively benefits a development not governed by the principles of solidarity, participation or responsible subsidiarity."<sup>7</sup>

What are these principles – solidarity, subsidiarity identified by the Church?

The Catholic Church posits two broad principles of ethical discernment in matters of globalisation:

1. The inalienable value of the human person. The human being must always be an end and not a means, a subject and not an object, not a commodity of trade. For example, where “free” trade discriminates against people in poorer countries which produce commodities and in favour of those who possess most of the intellectual innovations regardless of hardship, there is disregard of human rights.
2. The value of human cultures. Globalisation must not be a new version of colonialism. It must respect the diversity of cultures, which, within the universal harmony of peoples, are life's interpretative keys. For example, as

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<sup>5</sup> Pope John Paul II, Meeting with the Pontifical Academy for Social Sciences, Rome, April 27, 2001.

<sup>6</sup> Ibid.

has been said again and again Australia should not be compelled to surrender? instruments which allow it to express and develop its own culture.

Additionally there are a number of criteria that the Church uses to test public policy (and these can be applied to mechanisms such as the WTO or the proposed US-Australian Free Trade negotiations or like instruments):

- Globalisation must ensure that all people have adequate food, clothing, shelter, education;
- International justice must be done in a spirit of common humanity to create a world community marked by genuine solidarity. In regards to Globalisation, the Pope calls for solidarity "that is attentive to the needs of the weakest."
- The social nature of human beings, created in the image of a loving God;
- The Gospel imperative to love one's neighbour, especially those in need;
- The end of all social arrangements is to enhance the human dignity of individuals;
- Each person has rights to share in and duties to contribute to the common good; and
- Each person must have the necessary resources to fulfil their social responsibilities;

#### *WHY HUMAN RIGHTS AND GLOBALISATION ARE CONNECTED*

The Pope asserts the need for economic globalisation to operate within the context of human rights:

*The ethical and juridical regulation of the market seems more difficult than ever, since the measures taken by individual States prove increasingly inadequate. It is therefore necessary to work for a culture of norms that not only concern the commercial aspects, but take responsibility for defending human rights all over the world. Indeed, to prevent the globalisation of the economy from producing the harmful results of an uncontrolled expansion of private or group interests, it is necessary that the progressive globalisation of*

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<sup>7</sup> Holy Father's Address to Business and Trade-Union Leaders on the Ethical Dimensions of the Global Economy," 2 May 2000.

*the economy be increasingly met with a "global" culture of solidarity attentive to the needs of the weakest.*<sup>8</sup>

The CCJDP monitors what happens to the economic and social human rights of Australians via the Australian Human Rights Register. The Register records matters raised by non-governmental organisations and the media about human rights. These are tested against relevant human rights instruments that the Australian Government has signed onto.

Given this, the CCCJDP supports the trade framework established by the United Nations High Commissioner for Human Rights, (which mirrors the concerns of the Church), arguing for a proper balance to be struck between economic interests and the demands of human rights which should be common to all the world's people. The High Commissioner argues for an approach that:

1. gives the promotion and protection of human rights and the objectives of trade liberalisation their proper balance;
2. examines the effects of trade liberalisation on individuals and seeks trade law and policy that takes into account the rights of all individuals, in particular, vulnerable citizens and groups.
3. emphasizes the responsibility of the State in the process of liberalisation – not only as the negotiator of trade law and the setter of trade policy, but also as implementer of human rights.
4. seeks consistency between progressive liberalisation of trade and the progressive realisation human rights.
5. requires a constant examination of the impact of trade liberalisation on the enjoyment of human rights; and
6. promotes international cooperation for the realisation of human rights and freedoms in the context of trade liberalisation.<sup>9</sup>

The CCJDP holds that globalization ought to develop within the context of the high principles set out in the great conventions, covenants, and charters which have universal resonance in the world.

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<sup>8</sup> Address to the Members of the Vatican Foundation "Centesimus Annus – Pro Pontific" 9 May 1998.

<sup>9</sup> United Nations – Economic and Social Council, "Economic, Social and Cultural Rights: Liberalisation of Trade in Services and Human Rights", Report of the High Commissioner, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Fifty Fourth Session E/CN.4/Sub.2/2002/9 25 June 2002.

An example is the address by Franklin Delano Roosevelt to the 77<sup>th</sup> Congress on the 6<sup>th</sup> January, 1941 when he spoke of the four freedoms:

*“The third is freedom from want, which, translated into world terms, means economic understanding which will secure to every nation a healthy peacetime life for its inhabitants -----everywhere in the world.”*

Another example is *the Universal Declaration of Human Rights* containing provisions such as those set out in articles 23, 24 and 26. It is to be kept in mind that Australians played a central role in having such provisions put into the Declaration. *The International Covenant on Economic, Social, and Cultural Rights* is yet another. Adopted by the United Nations on the 16<sup>th</sup> December 1966, it was ratified by Australia on the 10<sup>th</sup> December 1975, and came into force on the 3<sup>rd</sup> January 1976. The International Labor Organisation has been establishing conventions since 1919, and Australia has ratified many of them.

## **PART B. CONCERNS ABOUT AUSTRALIA & FREE TRADE**

### **Trade Disputes with Superpowers – A Cautionary Tale**

Dr Anne Capling's excellent study, Australia and the Global Trading System: From Havana to Seattle provides a number of examples of the risks to Australia that rules-based trading systems, which are dominated by powerful economies. The Howe Company case is a well-known example.<sup>10</sup> In 1996 the Melbourne based leather manufacturer won a contract to supply luxury automotive leather to General Motors (GM) in Detroit. Howe & Co. had been a beneficiary of two export development programs that had been put in place by the Hawke Government as part of restructuring plans for the textile, clothing and footwear industries and the passenger motor vehicle industries. Howe's contract with GM displaced two American tanneries which previously had dominated the American market, prompting them to file a complaint with acting US Trade Representative (USTR) Charlene Barshefsky, alleging that Australia's industry development plans gave Howe & Co. an unfair advantage in US markets.

Following a review of their petition, the USTR found substance in their complaints and initiated a section 301 investigation – the first ever against Australia. The USTR also invoked the first phase of the WTO dispute settlement mechanism, which provided for sixty days of informal consultations prior to any decision to convene a formal WTO panel to hear the case. The US tanneries' complaint coincided with the 1996 elections in the US when President Bill Clinton was trying to win a second term in office. Taking a stand against "unfair trade practices" by foreign countries was a sure vote winner.

Initially the US tried to settle the dispute informally but Australia rejected this. Trade Minister Tim Fischer's view was that Howe & Co.'s contract only amounted to 3% of the US market, Australia had a huge trade deficit with the US and many exports were hampered by US trade restrictions. The Howard Government wanted to show itself to the electorate as standing up to US bullying.

However as the US election passed, Australia realised that it stood on shaky ground with the WTO, as the subsidies to Howe violated rules that prohibit export subsidies.

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<sup>10</sup> Capling, op.cit, pp.173-7.

As this reality dawned, Australia became more interested in settling out of court. Barshefsky and Fischer announced a deal by which Australia would exclude automotive industries from its export facilitation schemes, and reorganise its assistance to Howe to make it comply with the WTO rules.

The Howard Government's subsequent decision to compensate Howe for the loss of the export subsidy with a combined loan and grant of \$30 million was met with howls of protest by US leather producers. The US declared that it would press ahead with formal action against Australia in the WTO.

The WTO panel reconvened on 21 January 2000, and determined that Australia had indeed failed to withdraw all its prohibited subsidies and in a highly controversial decision ordered Howe to repay the grant to the Federal Government. Never before had the WTO sought to punish a private company in a retrospective manner. In the end, Howe agreed to repay \$7.2 million of the original \$30 million loan over a 12-year period, and the Australian export facilitation scheme for cars was replaced with WTO-compliant measures.

### **AUSTRALIA'S APPROACH TO GATS**

The General Agreement on Trade in Services (GATS) was negotiated as part of the Uruguay Round of trade liberalisation in the early 1990s. The initial proposal by the US, backed by Australia, was for GATS rules to automatically cover all services in all WTO members, unless specific exemptions were named on a "negative list". The EU, Canada and developing countries defeated this proposal. Instead, the 1994 GATS was a "bottom up" agreement allowing countries to nominate which of their services would be covered by GATS provisions.

GATS permits a country to specify limitations on market access even in respect of those services nominated for inclusion. In February 2000 the WTO launched a round of full-scale negotiations to achieve "*progressively higher levels of liberalisation*".<sup>11</sup>

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<sup>11</sup> Australia has outlined the following approach to WTO GATS negotiations in a communiqué with New Zealand and Chile:

1. The Scope of the negotiations should be comprehensive, with no service sectors excluded as a matter of principle.
2. The negotiations should achieve higher levels of liberalisation in all service sectors, including air and maritime transport.
3. Key objectives include the expansion of market access and the removal of discriminatory barriers.
4. There should be more binding obligations to ensure that domestic government regulation, particularly with respect to technical standards, licensing and qualification requirements, facilitates expansion of market access.

WTO members have begun submitting their initial negotiating requests to other members on a bilateral basis and WTO members are expected to respond to these requests and initial offers by 31 March 2003.

### **What are the goals of GATS?**

1. To get access for one country's suppliers of services to the service markets of other countries.
2. To prevent governments from discriminating in favour of their domestic services suppliers and against foreign suppliers of services.
3. "Most Favoured Nation" treatment: to prevent governments from giving service suppliers from some foreign countries better treatment than those from other foreign countries. All players must be treated equally.
4. To prevent governments from structuring their service markets in ways that reduce access for foreign service suppliers.

### **What does it apply to?**

GATS applies to anything a government enacts which can be defined as a 'measure' – ie. policies, laws, regulations, administrative practices, subsidies and grants, licensing requirements, national interest tests, quality controls and standards. The reason for adopting these measures is irrelevant. If they breach the agreement they are not allowed. It applies to all levels of Government – local, state and federal.

Some of Australia's commitments so far include<sup>12</sup>:

- Private secondary education, tertiary education, and English language teaching.
- Health: podiatry and chiropody services.
- Finance services with exemptions.

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<sup>12</sup> Each government's schedule of its commitments can be found on the WTO website. They indicate which services are covered and whether the Government has retained any restrictions within those services on national treatment or market access. Australia's general reservations under the Uruguay round are on investment rules, programs for Aboriginal and Torres Strait Islander peoples, immigration rules and subsidies for research and development.

## ARE THERE PROBLEMS FOR AUSTRALIA WITH GATS?

Australia is a trading nation and may benefit (in the long term, in some areas) from rules-based trading mechanisms, if they operate with the theoretical transparency and non-discriminatory basis intended by the drafters. The realities of global power usually mean that such theoretical niceties are dispensed with, as the case of the Howe Leather Company cited above illustrates. One of the major problems with multilateral agreements of this nature is that it is difficult to predict the precise outcome and social impact of many of the changes.

A potential problem from the Australian Government point of view is the propensity of some countries, notably the US, to still assert their economic power on national interest grounds. For example, the US insisted on a Most Favoured Nation (MFN) derogation rule. Article II.1 of the GATS requires an unconditional MFN obligation on all members in all sectors, regardless of whether specific commitments on national treatment and market access are made. On the other hand, due to US intransigence, based on a reluctance to allow countries to have access to its service markets, GATS negotiators had to include Article II.2 that allows derogation from this rule. This is contradictory. Australia and other countries succeeded in placing a ten-year sunset clause on these exemptions and further ones must be negotiated and 'paid for' through compensation to countries affected by nations' MFN restrictions.<sup>13</sup> Sixty-three GATS members submitted MFN exemptions, on sensitive areas of financial investment, telecommunications, audio-visual services and transport. In fact many in civil society may have more sympathy with the derogation clause, than the Australian negotiators who fought against it.

What are the concerns of the CCJDP about possible implications for Australian economic sectors subject to GATS?

1. GATS covers all services unless the service is supplied "in exercise of government authority". This is defined restrictively "*to cover any service not provided on a commercial basis or in competition with other suppliers.*" Hence GATS potentially covers health, education, welfare, employment services, housing services etc, in fact any service provided by government, but either partially or wholly sub-contracted out. Thus it will become very difficult to argue

that social or essential services and their current attendant conditions of employment, should not be contracted out to foreign service providers. This is not objectionable *per se*, but becomes highly problematic when accompanied with other GATS provisions, which may ignore and overrule domestic regulation and employment conditions as they affect service provision. The Australian Local Government Association (ALGA) has expressed concerns that GATS negotiations will impact on local government authority over:

- Licensing the provision of services ( such as food outlets)
- The regulation of services ( such as waste disposal, building controls)
- The provision of planning permission/permits ( including discretionary powers)
- General discretionary powers (such as giving preference to local providers).<sup>14</sup>

2. The national treatment obligation of GATS applies to Government grants and subsidies. If the Government basically confines government grants to public sector institutions in a particular service area which is listed for unqualified coverage by GATS, but also provides a grant to a domestic private provider, then theoretically the foreign service provider is entitled to the same grant or subsidy, eg. public funding for Bond University, which might mean that foreign universities also can lay claim to public funding. Is this desirable and is this financially sustainable for the Government? Would it mean the further erosion of free public tertiary education and the rise of fee-paying courses?
3. Major players in the WTO have in their sights so-called barriers to free trade in services that Australians would regard as requiring government regulation, eg. the current stipulation that 55% of broadcast and TV programs be produced locally. In the mid 1990s Jack Valenti, the head of the Hollywood lobby, the Motion Picture Industry Association, campaigned vigorously for the removal of local content rules in advertising and broadcasting, and import quotas on film and TV shows. In 1991, Australia's position of wanting to protect its local content in a market where more than half of its film and TV products were foreign and 80% of those from the US, raised the ire of Valenti whose position, according to Capling,

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<sup>13</sup> Capling, *op. cit.* p.164.

<sup>14</sup> ALGA response to the Department of Foreign Affairs and Trade discussion paper on GATS. 26 February 2003.

"was clearly driven by ideological concerns rather than a genuine problem with market access."<sup>15</sup>

4. The EU wishes to see reversed the Foreign Investment Policy guidelines and the Foreign Acquisitions and Takeovers Act 1975 which can reject foreign investment on the grounds of national interest and allow for discriminatory treatment of foreign-owned or controlled enterprises.
5. The EU wants increased access to, and control of Australian telecommunications – requesting removal of the requirement of majority Australian ownership by abolishing foreign ownership caps on shares in Telstra, Optus and other future providers.
6. The EU wants access to postal services – Australia Post services would be treated as goods and open to foreign competition, threatening subsidised services to rural areas, and public ownership.
7. The EU wants control of water provision – to treat water services as purely traded goods, which appears to threaten most state government policies of public ownership and price regulation of water services that assure that they remain accessible and affordable to all Australians. Access to water is a human right and not a corporatised fief to be bestowed to selected customers. Newly corporatised electricity companies in Victoria in the middle 1990s disconnected impecunious people who hadn't paid bills. This should not occur with privatised water provision.
8. The bottom-up nature of GATS is not assured and may re-emerge as a bone of contention in future negotiations. Some countries want to convert GATS into a 'top down' agreement covering all services unless expressly excluded by way of an exemption.

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<sup>15</sup> Capling, *op.cit.* p.166.

## WHAT IS WRONG WITH AN AUSTRALIA/US FREE TRADE AGREEMENT?

### Trade for Troops?

Australia's negotiations on a free trade agreement (FTA) with the US commenced the same week in March 2003 as the "Coalition of the Willing" spurned UN weapons inspections and invaded Iraq<sup>16</sup>. Despite Australian government denials that a FTA was a payoff to Australia for services rendered to the US over Iraq, it is worth examining the evidence that counters the Government's claims.

In September 2002, the Australian ambassador to Washington, Michael Thawley, according to the US National Cattlemen's Beef Association, "raised issues ranging from broad two way investments and financial flows, to Australia's support for the US military in Iraq as reasons he felt that FTA negotiations would proceed with or without NCBA's opposition."<sup>17</sup> In the same month the American Farm Bureau Federation wrote to US Trade Representative Bob Zoellick to warn that they would oppose any FTA with Australia. By November 2002, however, Reuters reported that the AFBF wrote to Zoellick again saying that they would support the initiation of FTA negotiations, because, according to Reuters "industry sources told Reuters that free trade for Australia has become a top priority for the Bush administration, due partly to its eagerness to build a coalition of allies preparing to invade Iraq."

Also in November 2002, in the lead up to the negotiations USTR Zoellick said "Australia has fought with the United States in every war in the 20<sup>th</sup> Century. They've been strong supporters of ours, and to me that matters." In February 2003, the US Ambassador to Australia, Tom Schieffer linked Australian support for war on Iraq with the development of a "one of a kind" relationship with the US on free trade.<sup>18</sup>

While the Prime Minister asserts that there is no link between trade negotiations and war support, the former secretary of the Department of Foreign Affairs Defence and Trade, Richard Woolcott, gave a foreign policy analysis which explained that multiple objectives could not be neatly separated as the PM would have us believe. Wolcott, , speculated that: " US gratitude (for Australian support on a war on Iraq) may be

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<sup>16</sup> The Coalition consisted of only four countries who have committed forces: the US, the UK, Australia and Poland.

<sup>17</sup> Cited in The Australian, 18/3/03.

<sup>18</sup> The Bulletin 13, February 2003.

reflected in a positive approach to the negotiation of a free trade agreement...”<sup>19</sup>

Other experienced Canberra watchers concur, The Age’s Tim Colebatch judging, “let the record be set straight. US farm groups were told by officials from both countries that free trade negotiations, were in return for Australia’s soldiers fighting in Iraq.” Jack Waterford of the *Canberra Times* commenting:

*There are formidable obstacles to such a treaty. But if it is to be achieved, and if it is in Australia's interests, then Australia needs every brownie point it can get – starting with having the president remember our Prime Minister's name and that we stood by him at the evil hour.*<sup>20</sup>

The question then is not so much whether the Howard Government sought to secure a better negotiating position with the US than Australia would have otherwise had, by locking Australia into an illegal US invasion of Iraq. Troops for trade was part of the Government's strategy. But will this strategy be successful in concluding a FTA that benefits Australia and morally it was a questionable path to follow.

### **A Threat to our Community?**

An in-principle objection to the bilateral FTAs is that they send a signal to the region and the wider world that Australia no longer sees the multilateral path (problematic though it is) as a priority and raises the risk of other countries pursuing similar FTAs which may exclude Australia. Our third largest trading partner, China, has reportedly raised concerns about the bilateral path pursued by Australia.<sup>21</sup>

The PM has claimed that the a FTA will give Australia access to US markets, however the Rural Industries Research and Development Corporation, has reported that US farm subsidies and its desire to exclude agriculture from the proposed FTA may "lead to shrinkage of Australia in agriculture".

While the various trade-offs made in multilateral negotiations often disguise to the public what has been sacrificed, the trade-offs in a bilateral FTA are very apparent and the advantages gained by one industry, can be clearly seen against the disadvantages to another.<sup>22</sup>

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<sup>19</sup> The Australian 3/10/02.

<sup>20</sup> Jack Waterford, 'Howard the Gambler', *Eureka Street*, October 2002.

<sup>21</sup> The Australian, 18/3/03.

<sup>22</sup> Capling, *op.cit.*p.189.

Specific matters of concern to the CCJDP about the proposed Australia/US Free Trade Agreement (AUSFTA) are<sup>23</sup>:

1. The possible abolition of the Foreign Investment Review Board and controls on foreign investment in the national interest.
2. The possible abolition of the Pharmaceutical Benefits Scheme. An assurance from American negotiators that they would not be "coming after" government subsidised medicines in the public interest is not a guarantee. It remains to be seen how this stands up against US pharmaceutical company lobbying to end the Australian Government support for controls on pharmaceutical prices, arguing they are a 'disguised' trade barrier to their products.<sup>24</sup> Their position, if achieved in an AUSFTA, could further undermine the publicly funded Medicare system, result in higher medical costs which hit the poor hardest and erode access to universal free medical care.
3. Reductions in Quarantine Standards, which the US has argued, restrict trading in agricultural products. This exposes Australia to less rigorous protection of our crops and fragile island continent ecology.
4. Removal of Australian local content rules in broadcasting and film, and local preference in government purchasing. Part of the problem for Australia is its lack of negotiating coin. Australia has relatively little to offer by the way of bilateral market access for goods and services; therefore the US will naturally focus on the market restrictions in areas like cultural content in broadcasting. Our local content rules are destined to foster an Australian Film and Television production, rather than just protect an existing industry. The aim is to promote Australian identity, culture and values. The US enjoys an economy of scale that would swamp and dominate the Australian industry if local content rules were removed. The powerful US lobby, the Coalition of Service Industries, stated that a FTA should include, " Full market access and national treatment for radio and television services and transmission services."<sup>25</sup> Moreover the Coalition of

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<sup>23</sup> Letter from US Trade Representative, Robert Zoellick to US Senate., 13 November 2002.

<sup>24</sup> Baucus, 'Bipartisan Trade Promotion Authority Act of 2002' Calendar No 319, 107<sup>th</sup> Congress Report, Senate 2d Session, p.8. Also *The Australian*, 22-23 March, 2003.

<sup>25</sup> Statement of Linda Schmid, Vice President, Coalition of Service Industries on the Australia Free Trade Agreement before the International Trade Commission, February 6 2003.

Services want removal of ownership restrictions on news agency, printed media, publishing and advertising services and zero tariffs on videos.

5. A critical concern is the possible modelling of aspects of the proposed FTA on the problematic North American Free Trade Agreement (NAFTA). NAFTA's Article 1110 states "no party may directly or indirectly nationalise or expropriate an investment of an investor of another party in its territory." But it adds, "measures tantamount to expropriation", or "indirect" expropriation shall be considered. Measures *tantamount* or *indirect* may involve OHS legislation, environmental regulation and an industrial law that affects investment or property and may be construed a form of indirect expropriation. This raises the spectre of Australia having to pay compensation to a foreign investor for public interest legislation.<sup>26</sup> [For an elaboration of these concerns see the Submission of Liberty Victoria to this Inquiry].

NAFTA is the first trade treaty in the world to provide companies with the right to access supra-national tribunals for dispute resolution. They have access to a dispute resolution mechanism if they believe that a Government has violated their NAFTA investment obligations. The CCJDP is opposed to any similar model where an extraterritorial trade tribunal can impinge upon the sovereignty of Australia. Our reasons for this are:

- The NAFTA tribunal is not made up of tenured independent judges and is not insulated from conflicts of interests;
- Arbitrators do not have the background to judge competing interest between trade parties and environmental, labour or other public welfare concerns.
- Finally the tendency has been in such trade dispute mechanisms for the "precautionary principle" to operate – if in doubt, trade wins out.<sup>27</sup>

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<sup>26</sup> See Kevin Banks, 'NAFTA's Article 1110- Can regulation be Expropriation?' 5 NAFTA Law and Business Review, 1999, Pp. 499-515.

<sup>27</sup> Vicki Been and Joel Beauvais, 'The Global Fifth Amendment: NAFTA's Investment Protections and the Misguided Quest for and International "Regulatory Takings Doctrine, 2002 Working Paper No.CLB – 02-06, New York University Centre for Law and Business.

## SHOULD TACKLING GLOBAL POVERTY BE AS IMPORTANT AS NATIONAL INTERESTS?

For the forces of globalisation to be steered along ethical lines, there is a fundamental and urgent human problem to be faced which transcends national interests, sectional concerns and individual consumerist desires: global poverty. In the year 2000, about 1.3 billion human beings were living in poverty. The twenty poorest countries in the world have between 80 and 30 per cent of their populations below the international poverty line of less than one US dollar a day. Only a handful of nations (the so-called "developing countries"), such as Chile, Uruguay, Costa Rica, Malaysia and Thailand, have per capita incomes above US\$5000, and enjoy the luxury of having less than 20% of their population below the poverty line.

The Pope speaks of an "an innumerable multitude of people – children, adults and the elderly – in other words, real and unique human persons, who are suffering under the intolerable burden of poverty."<sup>28</sup> He warns that the world is entering:

*...a new millennium burdened by the contradictions of an economic, cultural and technological progress which offers immense possibilities to a fortunate few, while leaving millions of others not only on the margins of progress but in living conditions far below the minimum demanded by human dignity. How can it be that even today there are still people dying of hunger? Condemned to illiteracy? Lacking the most basic medical care? Without a roof over their heads?*<sup>29</sup>

Yet if we look at the growing wealth of transnational corporations, we can see that there is a gross imbalance in the distribution of global wealth. The 100 most powerful transnational corporations sell more than the exports of each one of the 120 so-called developing countries. The 23 most powerful transnationals sell more than the exports of the developing countries with the largest economies, such as India, Brazil, Mexico, Argentina and Indonesia.<sup>30</sup>

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<sup>28</sup> Encyclical Letter of the Supreme Pontiff John Paul II *Sollicitudo Rei Socialis* to the Bishops, Priests, Religious Families, Sons and Daughters of the Church and All People of Good Will for the Twentieth Anniversary of "Populorum Progressio". December 30, 1987.

<sup>29</sup> John Paul II, *Novo Millennio Ineunte*, 'At the Beginning of the New Millennium', Vatican City 2000.

<sup>30</sup> United Nations, UNCTAD, World Investment Report, 1995, pp.21-3.

The persistent and widening gap between the rich countries of the 'North' (including Australia) and those of the underdeveloped South is an urgent problem for humanity that eclipses 'national interest' preoccupations. The frontiers of wealth and poverty intersect within societies themselves and we now talk of an emerging 'underclass' within Australia similar to others in most, if not all developed countries. However it is in the South where the majority of the world's people live and the levels of extreme poverty are signs that "the unity of the world, that is, the unity of the human race, is seriously compromised."<sup>31</sup>

The Australian Government asserts that the neo-liberalist approach is the way forward for poor countries to develop. Foreign Minister Alexander Downer argues that:

*Globalisation will continue to provide opportunities for those developing countries that have an open approach to development, effective governance and efficient markets. With the right policy and regulatory environment, the revolution in information and communication technologies holds enormous potential to offer significant developmental gains.*<sup>32</sup>

Because of the thinking behind such rhetoric, Australian Aid has continued to decline. In many senses human development is failing, and while the rich countries are increasing their income and wealth, the poor of the world are getting poorer. Australia's Official Development Assistance as measured against internationally agreed benchmarks has been in decline for nearly 30 years. According to the Australian Council for Overseas Aid (ACFOA), since 1995/96.<sup>33</sup>

- Aid as a proportion of GNP has dropped from 0.32 to 0.25%
- The total aid budget has increased in real terms by 1.7%, however the AusAID managed aid program (excluding other government department costs such as Australian Defence Force and the Department of Immigration Multicultural and indigenous Affairs) has decreased by 6.3% in real terms.
- Aid to South Asia has been maintained at the same level in real terms.
- Aid to East Asia has declined by 12.2% in real terms.
- Aid to Africa has halved in real terms.

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<sup>31</sup> *Sollicitudo Rei Socialis*, op cit.

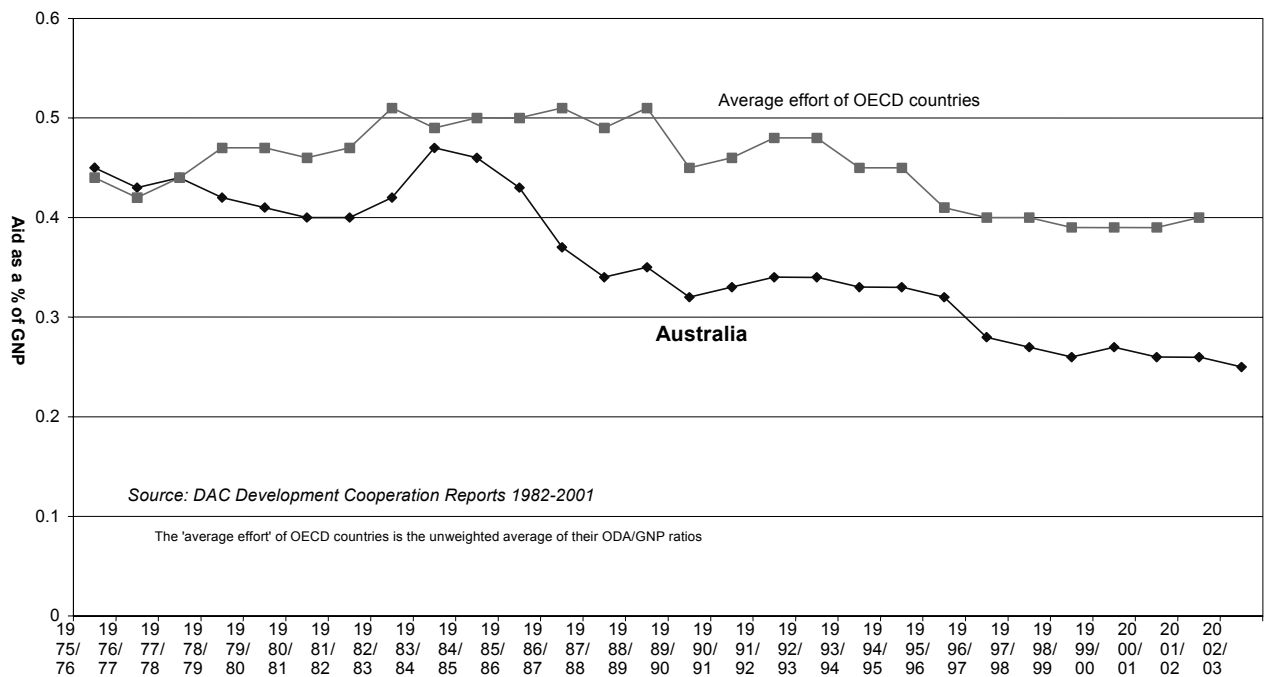
<sup>32</sup> Minister for Foreign Affairs, Hon. Alexander Downer MP, Australia's Overseas Aid Program, 2001- 2. Budget 2001.

- Funds to UN agencies have decreased by 42% in real terms
- Commitments to the UN Children’s Fund and Population Activities remain the same while funding to the World Food Program has decreased by \$3.7m and funding to the UN Development Program by \$0.5m comparing budgeted figures for this financial year with those for 2002-03

According to projections prepared by Australian Council for Overseas Aid (ACFOA), unless action is taken to reverse the trend Australia will fall from its current position of 14<sup>th</sup> out of 22 donors to near the bottom of the OECD aid donor list by 2006.

### Australia’s falling commitment to the world’s poor

**Table 1. Australia's falling commitment to the world's**  
Australian aid levels compared with the average effort of OECD countries



Australia has moved far below the goal of the UN Target (0.7% of GNP being allocated as a direct resource allocation from rich to poorer countries) enunciated in the Strategy for the Second Development Decade and adopted in 1970. In doing so, Australia mirrors other OECD countries where conventional bilateral aid flows are on a long-term downward trend.<sup>34</sup>

<sup>33</sup> All data comes from 2002-3 ACFOA Aid Budget Analysis.

<sup>34</sup> There are many reasons why Overseas Development Aid (ODA) has declined internationally. A series of new demands has emerged drawing long term ODA to short term ends:

- New countries in transition are now applicants for aid - 22 countries in Central and Eastern Europe

Moreover, it is an open question and matter for further research as to whether Australian agricultural exports actually undermine food security in poor countries. In some cases Australia competes with local producers in developing countries. According to CAA/OXFAM approximately 77% of Australia's exported dairy products go to Asian and African nations where many people depend on dairy cattle and production for livelihood.<sup>35</sup> Secondly it is assumed by the Australian Government, but unproven, that sharing membership of the Cairns Group of agricultural exporters with the governments of poor countries is the same thing as sharing a commonality of interest with the wider populace of these countries. There is a confusion between the interests of say relatively wealthy cash-crop producers in developing countries, whose interests are advanced by their Governments through mechanisms such as the Cairns Group, and the mass of peasants who simply need to survive and may not be engaged in the formal cash economy.

In 2000 a group of 11 poor countries presented a proposal to the WTO's Committee on Agriculture regarding Special and Differential Treatment, and proposed the establishment of a "Development Box". They wanted to:

- Protect and enhance developing countries' domestic food production capacity;
- Increase food security and food accessibility for the poorest nations;
- Provide for, or at least sustain, existing employment for the rural poor;
- Protect farmers from the onslaught of cheap imports;
- Provide supports to small farmers to increase competitiveness; and

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and the former USSR (population 395 million) whose receipts of ODA and Official Aid (OA) combined were US\$6.6 billion in 1993 and US\$5.5 in 1997, that is, 12.5 per cent of combined ODA and OA in 1993, and 10 per cent in 1997. Australia's commitment to East Timor is an example. Rebuilding of war-torn societies - Mozambique, Nicaragua or Cambodia, Bougainville and the Solomons closer to home - requires massive investment; financing UN peacekeeping operations has increased - Rwanda, East Timor, Bosnia. (1993, 43% of UN's peacekeeping was in arrears).

- Disaster relief has increased (in 1997, OECD bilateral emergency relief totaled US\$2.2 billion).
- Support for refugees is decreasing (UNHCR has suffered budget cuts);
- The increased cost of combating AIDS.
- An enlarged environmental agenda to tackle environmental degradation.
- A tight budgetary situation that many industrialized countries began experiencing in the early 1980s meant that governments reduced public expenditures and domestic taxes.
- A widespread perception that foreign assistance had yielded poor results and, in some instances, buttressed disreputable regimes in the developing countries while creating expensive aid bureaucracies in the donor countries.

<sup>35</sup> CAA/OXFAM, submission to Joint Standing Committee on Treaties, Inquiry into Australia's Relationship with the WTO, 2001.

- Stop dumping of cheap and subsidised imports on developing nations.<sup>36</sup>

It is unclear how relevant the Government's advocacy on trade matters, through the Cairns Group and the aid program, is to advancing these developing country goals. The Government seems more preoccupied by the opportunities for Australian companies in the provision of IT to the poor in running a "virtual Colombo plan" to "bridge the digital divide" as part of the World Bank's capacity building.<sup>37</sup> Given that the mass of the world's poor suffer food insecurity, and lack primary health care and basic literacy and access to potable water, it is debatable whether an "IT hub" in every village is a priority that Australia should be pursuing in its aid program.

The Government's 1997 White Paper drew the linkage between poverty and instability in the world and the effects this can have on regional stability and national security.<sup>38</sup> Mass movements of people are inextricably linked to poverty. While the status of refugees is associated with violations of their civil and political rights, the victims of violation of economic rights are dismissed with the pejorative term 'economic migrants'. And yet, is it not the case that someone who is struggling to live on \$1 a day, without potable water, lacking primary education and with a life expectancy of forty is experiencing violations of their economic and social human rights? Is it unsurprising that such a person would seek to escape the crushing reality of such poverty and migrate?

UNHCR is now discussing the concept of 'mixed flows' of humans: one-third being refugees under the Convention criteria; one-third migrants escaping poverty; and one-third, migrants who are eligible to claim asylum. We are faced with the global problem of refugees and migration. This pertains to globalisation. Solutions are going to have to be found in policies that respond to the wide range of relationships between mixed flows, poverty, the forces driving economic liberalisation, and as a consequence increasing the disparity in global wealth.

Sadly, the Australia Government, faced with the difficult problems of global poverty, persecution and movement of poor people, has shown mixed responses. In the 2001

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<sup>36</sup> The 11 countries were Cuba, Dominican Republic, Honduras, Pakistan, Haiti, Nicaragua, Kenya, Uganda, Zimbabwe, Sri Lanka and El Salvador. Cited in 'Proposal to the June 2000 Special Session of the Committee on Agriculture, available at <http://www.docsonline.wto.org> (Document Symbol: G/AG/NG/W/13).

<sup>37</sup> Minister for Foreign Affairs, Media Release 2 August 2001: Virtual Colombo Plan: Bridging the Digital Divide.

<sup>38</sup> Department of Foreign Affairs and Trade, White Paper on Foreign Policy, Canberra, 1997, p. 3.

election the Government opted for virulent anti-asylum seeker propaganda and inhumane policies of detaining children and women in the name of 'border control', and asserting somewhat hysterically, that asylum seekers posed a 'threat' to 'national sovereignty'. On a more positive note, Trade Minister Mark Vaile, urged on by the Australia Council for Overseas Aid and other NGOs, has recently championed access to pharmaceuticals for poor countries beset by endemic diseases. Despite Vaile's efforts, he admitted in March 2003 that a lack of international support in wealthy countries meant "we still haven't set up a framework to provide those drugs to those nations."<sup>39</sup>

## **IS THE SOLUTION "FREE" TRADE?**

### **The Doha "Development" Round**

The developmental success of a handful of countries in the world, several of them in our Asia-Pacific region, has been due to the advent of a "new international division of labour" ie. a massive shift of industries producing for the world market from the first generation of industrial economies which had previously monopolised them (and in which Australia was a colonial adjunct of the UK) to other parts of the world. This was partly due to the deliberate transfer by firms from the old industrial world of part or all of their production or supplies to the second or third worlds, eventually followed by some transfers of even very sophisticated high-tech industries, such as research and development.<sup>40</sup>

In our own region, for example, the increasing cost of production in Japan saw it shift finance capital and manufacturing operations to Malaysia and Thailand in the 1980s. A corollary of this process in the Newly Industrialised Countries (NICs) of Taiwan, South Korea, and older economic successes of Japan was the strong relationship between Government planning, import and export regulation and private capital cooperation with the state. These were strongly regulated economies in the Keynesian sense. As Stiglitz has observed:

*The most successful developing countries, those in East Asia, opened themselves to the outside world but did so slowly and in a sequenced way. These countries took advantage of globalisation to expand their exports and grew faster as a result. But they dropped protective barriers carefully and*

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<sup>39</sup> The Australian 27/03/03.

*systematically, phasing them out only when jobs were created. They ensured that there was capital available for new jobs and enterprise creation; and they even took an entrepreneurial role in promoting new enterprises. China is just dismantling its trade barriers, twenty years after its march to the market began...<sup>41</sup>*

It is a recipe that has worked, but which is the antithesis of neo-liberalism, which spurns Government management of this nature and urges rapid dismantling of subsidies and other minimal protections possessed by developing countries. Perhaps this ideological blindness is not surprising for as long ago as 1968, Nobel Prize winning economist, Gunnar Myrdal, observed that a major reason for the failure of development processes in poor countries was due to economic theories and policies designed for the specifics of wealthy industrialised countries, being forced upon poor countries with vastly different economic bases. Myrdal observed:

*Economic theorists more than any other social scientists, have long been disposed to arrive at general propositions and then postulate them as valid for every time, place and culture. There is a tendency in contemporary economic theory to follow this path to the extreme.<sup>42</sup>*

Proof of this can be found in the misdiagnosis by the IMF of the causes of the Asian financial crisis in Indonesia, Thailand and South Korea. In response the IMF, [an unelected body dominated by the US] prescribed its orthodox treatment as if the various Governments were overspending: severe public fiscal cuts, which compounded widespread social suffering, when the cause of the crisis was private sector recklessness and deregulated international capital markets which countries had opened up to as a result of IMF exhortation.<sup>43</sup> Similarly, the collapse of the Seattle WTO meeting in 1999 reminds us that this tendency of the rich and powerful to try and dictate economic policy to the poor had not changed.

In the wake of the collapse of the Seattle WTO talks in 1999, and the fierce criticisms from southern NGOs and southern Government's about its undemocratic process, the WTO launched the so-called 'Development Round' named after the meeting place – Doha, in the Gulf state of Qatar, where the last WTO meeting occurred in

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<sup>40</sup> Eric Hobsbawn, *Age of Extremes: The Short Twentieth Century 1914-1991*, London 2001. p.363.

<sup>41</sup> Stiglitz, *op cit*, p.60.

<sup>42</sup> Gunnar Myrdal, *Asian Drama: An Inquiry into the Poverty of Nations*, Ringwood, 1968. Vol.1, p.17.

2001.<sup>44</sup> WTO head Dr Supachai aimed to improve WTO technical cooperation to the 30 countries that didn't have trade representation at Geneva (yet 75% of the membership of the WTO is from developing countries).

Dr Supachai has given reassurance on the issue of WTO accountability, stating "We are looking at ways to make hearings for NGOs at WTO and... also looking at declassifying documents and making them available."<sup>45</sup> However UNCTAD Gen Sec. Ricupero saw limits to this: "it is difficult to include people (ie other than states) in contractual negotiations".

The 'Development Round', beside being good PR spin, indicates that there has been a dawning recognition from the 23 wealthy countries that they must listen to what the poor of the world are saying even if their interests (such as multi-billion dollar subsidies to US, EU and Japanese farm sectors) remain mutually irreconcilable with the needs of the poor countries. Despite the rhetoric, the 'Development Round' has so far been unable to deliver on even the most basic humanitarian support for developing countries, provision of low cost drugs for endemic diseases, and discussions remain stalled.<sup>46</sup> A senior Brazilian trade official stated in February, "Unfortunately, so far the Doha Development Agenda has been little more than an empty slogan."<sup>47</sup>

Despite this failure of neo-liberalism and its agents to deliver benefits to the poor of the world, Peruvian trade negotiator, Oswaldo Rivero argues that:

*there is a worldwide consensus to the effect that there is no alternative to these principles of economic policy. The majority of the leaders of the poor countries believe that severe adjustment and the violent shock of opening up their national markets are the necessary penitence that will enable them to absolve the sin of poverty...Other leaders, however are more sceptical, but think resignedly that these economic policies at least will keep their countries from becoming international pariahs.*<sup>48</sup>

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<sup>43</sup> Stiglitz, op cit. Chapter.4.

<sup>44</sup> Moreover, the misgivings and outright hostility of sections of western citizenry to the neo-liberal agenda, has made the QUADs skittish, hence the exotic, remote and deserted locations of Doha in Qatar to avoid negative publicity from articulate critics.

<sup>45</sup> Author's notes from UNCTAD, Bangkok, 1999.

<sup>46</sup> The Australian 27/3/03

<sup>47</sup> Washington Trade Daily, 5/2/03.

## WHAT ARE THE SOUTHERN CRITIQUES OF THE WTO?

There are some standard critiques of the WTO agenda from NGOs in developing countries:

- The WTO is anti-development: it results in the South signing away its interests to use trade policy, quotas and subsidies and other economic means to developed countries.
- The WTO has the wrong priority in agriculture: food security has been removed from the WTO agenda. People in developing countries need access to land, water and seeds first, before free trade.
- Southern NGOs dispute the intellectual validity of concepts like the 'free market', citing that: agriculture in the EU and the US receives state support to the tune of 30-40% of the cost of agriculture production, otherwise it would not be profitable for EU farmers and US. The level of subsidisation of agriculture by the OECD was US\$182 billion in 1995 and this has increased to US\$320 billion; "This is socialist agriculture!" mocked Professor Walden Bello, of the Bangkok-based NGO, Focus on the Global South.
- Trade Related Intellectual Property (TRIPS): Article 27.3 on Trade related intellectual property rights from the WTO, allows patenting of technology, seeds, plant products and genetic strains. This fuels gene piracy of indigenous seeds and strains and retards development of southern countries and further concentrates profits in the North's multinationals.
- The WTO is a non-accountable, non-transparent and undemocratic organisation. The system that evolved in GATT (and now in the WTO) was a consensus decision-making process. But it is consensus of an oligarchy, the so-called QUADS – the US, EU, Japan and Canada impose their views upon the majority. Hence the walkout by developing countries when they were excluded from decision making by QUADS who locked poor nations out of their meetings in the notorious 'Green Room' at Seattle in 1999. In response to critics of the WTO's lack of democracy, former chairman Mike Moore has

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<sup>48</sup> Rivero, op.cit. p.57.

stated that the consensus voting system was *not negotiable* but the WTO will improve transparency.

Southern NGOs have posed the question, Should we try to reform the WTO? Their answers are sceptical: "Do we need a monolithic organisation that tries to subjugate so many aspects of economic, social and environmental life under its control? It is a Jurassic institution. In an age of growing democracy we need a more pluralistic, equal and participatory framework," according to Filipino professor of politics, Walden Bello.<sup>49</sup>

According to Alejandro Bendana, of the International South Group Network, based in Nicaragua, liberalisation of economies of poor countries by donor governments and the IMF as well as the domination of the WTO by powerful wealthy countries, are a form of neo-colonialism (a warning made by Pope John Paul II cited above):

*The south is informed by its colonial experience. Some struggles are concrete and others are against a larger system. What holds the system together is a complex interaction of forces eg. colonialism: the rule of very few people, but who are able to penetrate the minds of the colonised using ideology which make people accept it as legitimate.*

Of course, in Australia we are too astute to see neo-liberalism as a legitimising ideology for powerful interests acting through mechanisms like the WTO. Yet it is interesting to consider the response of senior UN bureaucrat UNCTAD Gen Sec. Rueben Ricupero who gave a perspicacious and chilling comment on this matter: "*Never lose sight of the centrality of power; in negotiations in trade, on decisions of finance, what has sway is power; only political or economic power.*"<sup>50</sup>

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<sup>49</sup> Walden Bello. UNCTAD Preparatory Conference, Bangkok, 1999. Author's notes.

<sup>50</sup> Authors notes from 1999 UNTAD conference, Bangkok.

7 May 2003

The Chair and Committee  
**Senate Foreign Affairs Defence and  
Trade References Committee**  
**Parliament House**  
Canberra, ACT 2600

Dear Mr Chairman and Committee Members,

Re: Recommendations from the Catholic Commission for Justice Development and Peace (Melbourne) to the Inquiry into GATS and the Proposed US Free Trade Agreement

**The Catholic Commission for Justice Development and Peace Melbourne (CCJDP) would like to present this additional submission to the Committee, which makes recommendations pursuant to the CCJDP submission of April 2003 to the Inquiry. In addition we would like to table a number of documents relevant to our submission and which we believe will assist the Committee in its deliberations.**

1. Concerns about the lack of assessment of job losses in different sectors and regions as a result of free trade

**CCJDP tables an assessment of job losses in the US as an alleged result of NAFTA and WTO by:**

**Robert Scott, Economic Policy Institute, 'Fast Track to lost Jobs: trade Deficits and manufacturing decline are the legacies of NAFTA and the WTO'. October 2001.**

Recommendation 1.

*The Australian Government undertake a full and public social economic evaluation the impacts of trade liberalisation since the Uruguay Round in 1994 and a specific evaluation of job losses in different sectors allegedly as a result of GATT and WTO.*

## 2. Concerns Scope of GATS on Public Services

**CCJDP tables a helpful article ‘GATS and Public Service Systems: the GATS ‘Governmental authority’ exclusion’, discussion Paper, 02 April 2001, International Branch, Ministry of Employment and Investment, Government of British Columbia.<sup>51</sup>**

**Article 1:3(b), (c) states that the GATS are applicable to:**

**(b) – ‘Services’ includes any service except services supplied in the exercise of governmental authority;**

**(c) “ a service supplied in the exercise of governmental authority,” means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.**

**The scope of public services is not defined in the GATS. They could be general: services considered a “public good”, that is services which are supplied – education, transport etc. Secondly it could be a service provided to the general public, where there is a universal service obligation such as postal services. The focus is on whom and under what conditions the service is provided. Finally ‘public services’ can be focused on who is supplying the services, that is a governmental entity.**

**Generally the three overlap. The substantial scope of GATS depends on how the notion of “services supplied in the exercise of governmental authority” is understood. It must not be supplied on a commercial basis nor in competition with one or more service providers. However it is not completely clear what the term “commercial basis” exactly means as has been admitted by the WTO Service Director<sup>52</sup>.**

**The Secretariat has stated, whatever the definition, determining a service to be commercial would result in both private and public service entities being subject to GATS provisions. The Secretariat has stated, “If services were deemed to be supplied on a commercial basis, then, regardless of whether ownership was in public or private hands, the sector would be subject to the main GATS discipline and to the negotiations of commitments under Articles XVI and XVII.”<sup>53</sup>**

**If a broad definition of commercial basis and in competition is adopted, the notion of governmental authority is narrow and almost all services would be covered by GATS. In the absence of any clear, definitions about scope within GATS, the scope of the exclusion will not be determined by member governments but by dispute panels. Since no WTO panel has ruled on the “governmental authority” exclusion, it cannot be predicted what the outcome of such a ruling would be.**

**There have been cases involving a similar provision under the EC treaty, which Article 55 states, “ the provision shall not apply, so far as any Member State is concerned, to activities which in that State are connected, even occasionally, with the exercise of official authority. The European Community’s have**

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<sup>51</sup> Available at: [hyyp://members.iinet.net.au/~jenks/GATS\\_BC2001.html](http://members.iinet.net.au/~jenks/GATS_BC2001.html)

<sup>52</sup> See footnote 48. Ibid.

<sup>53</sup> Page 10, Ibid.

indicated that they view Article 55 as being similar to Article 1.3 (b) of GATS. However the European Court of Justice has taken a restrictive interpretation of Article 55. which are restricted to activities which in themselves are directly and specifically connected with the exercise of official authority". Thus the interpretations of the European "official authority" exclusion have been universally restrictive.

The WTO Secretariat's Background paper on health and social services reinforces concerns about the limited nature of "governmental authority" exclusions. It states that:

*The hospital sector in many countries, however, is made up of government – and privately – owned entities which both operate on a commercial basis, charging the patient or his insurance for the treatment provided. Supplementary subsidies may be granted for social, regional and similar policy purposes. It seems unrealistic in such cases to argue for continued application of Article 1.3 and/or maintain that no competitive relationship exists between two groups of suppliers or services.*<sup>54</sup>

Similarly, GATS can apply to public subsidies. A WTO background paper, states

*In scheduled sectors, this suggests that subsidies and nay similar economic benefits conferred on one group would be subject to the national treatment obligation under Article XVII.*<sup>55</sup>

It is critical that Australia obtains clarity over this crucial Article. The Government should seek an authoritative interpretation from the WTO Ministerial Conference. A desirable interpretation would be one which would specify an understanding that "services includes any service in any sector except services supplied in the exercise of governmental authority as determined by the national laws and regulations of each member." A similar authoritative interpretation could be reached on " a service supplied on commercial basis" means any service supplied in exchange for a market price (a price covering the actual costs of supplying the service) and " a service supplied in competition with one of more service suppliers" a service supplied under the same conditions, especially in fulfillment of universal supply obligations, as the competitors.

Recommendation 2.

*The Committee recommend that assessment are made of the impacts of GATS on public services at the Commonwealth, State and Local levels in the areas of education, health and social services, and clarification is made that no services are covered unintentionally in this or future rounds of negotiations.*

Recommendation 3.

*The Australian Government recommends to the WTO Ministerial Conference and the General Council, under Article IX: 2 (whereby the conference and*

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<sup>54</sup>Health and Services, Background Note by the Secretariat, Council for Trade in Services, 18 September 1998, S/C.W/50, pp10-11. Cited in "Gats and Public service systems," op cit. p.12.

<sup>55</sup> Health and Social Services, Background Note by the Secretariat, op cit.

*Council can adopt interpretations of any WTO agreement) to make an authoritative interpretation on the Article 1.3(b).*

### **3. Australia US Free Trade Agreement – support for core labour standards**

#### **CCJDP tables:**

1. Congressional Research Service Report for Congress, ‘NAFTA Labour Side Agreement: Lessons for the Worker Rights and Fast Track Debate. October 9, 2001
2. Chapter 18, & 19 ‘Labor’ & Environment, US Chile Free Trade Agreement

The US president has powers under the Comprehensive Trade Negotiating Authority Act of 2001; to promote enforcement of internationally recognized core labor standards. The act also requires US negotiators in pursuing this and other objectives to take into account legitimate US domestic objectives, including, but not limited to, the protection of health and safety, essential security, environmental, consumer and employment opportunity interests, and related laws and regulations. Under NAFTA an additional agreement the Northern American Agreement on Labour Cooperation (NAALC) was established.

The core labour standards to be protected are in three groups under NAALC: Group 1. NAALC principles are enforceable by discussion of the National Administrative offices, Secretariat, and Ministerial Council. They cover:

1. Freedom of association and protection of the right to organize
2. the right to bargain collectively; and
3. The right to strike

**Group 2. are enforceable by discussion as above plus evaluation of a Committee of experts. They are:**

1. **Prohibition of forced labour;**
2. **Minimum employment standards pertaining to overtime pay;**
3. **elimination of employment discrimination;**
4. **Equal pay for women and men;**
5. **compensation in cases of occupational injuries and illnesses; and**
6. **Protection of migrant workers**

**Group 3, are enforceable by discussion as with Group 1, evaluation as for Group 2, and sanctions determined by an Arbitral Panel. They are:**

1. **Labor protection for children and young persons;**
2. **Minimum employment standards pertaining to minimum wages; and Prevention of occupational injuries and illnesses.**

**The basis of the NAALC is it promotes worker right by creating a system of mutual obligation and mutual responsibility. All countries agree to promote and comply with tier on laws relating to the 11 eleven labor principles.**

**Australia has ratified 57 ILO Conventions, including the core labor standards mentioned above and many of these are reaffirmed in various human rights conventions we have ratified.**

Recommendation 4.

*The Government includes core labor and environmental standards in an Australia US free Trade Agreement either as parts of articles attached to the agreement (as in the US Chile FTA) or establish an Australia US Labour and Environment Agreement Council, along the lines of the NAALC.*

Marc Purcell  
Executive Officer  
7 May 2003