

## **Sectoral Analyses of the WTO Draft Ministerial Declaration, Seattle, December 1999**

When World Trade Organization (WTO) talks collapsed in Seattle last December, there was jubilation in the streets and relief within civil society everywhere. Seattle had been an educational and organizational triumph for civil society groups and a bust for trade liberalists. Thousands from around the world had gathered in Seattle to protest the harsh effects of free trade. They attended teach-ins, rallied in the streets, and withstood tear gas and rubber bullets. Among them were many Canadians – ordinary citizens young and old, workers, environmentalists, students, and human rights advocates.

What went on in the streets was in many ways paralleled in the backrooms of the Seattle convention centre, where ministers and negotiators gathered to try and set a new, expanded agenda for trade liberalization. Even before the official meeting in Seattle, however, differences between North and South, East and West had begun to make consensus seem unlikely.

The draft Ministerial Declaration finally obtained by civil society groups early on the final Friday in Seattle was not much changed from a draft proposed earlier in Geneva. And therein lay the problem: Ministers in Seattle were not able to reconcile their differences enough to move forward with a new agenda.

But the failure of ministers to sign an accord does not mean the end of negotiations. Far from it. And despite the protests in the streets and the backrooms, the draft Ministerial Declaration contains worrisome language and trends that could significantly impact Canadian sovereignty, culture, health care and education, as well as eco-systems and, by implication, human health. One of the more troubling aspects of the negotiations has been the broad consensus among member governments to expand liberalization in areas such as the General Agreement on Trade in Services (GATS).

The Council of Canadians has identified four areas of special concern in the draft Ministerial text and commissioned a sectoral analysis of each. The following analyses of the Declaration as it pertains to culture, the environment, agriculture, and the GATS have been written and reviewed by experts in their respective fields.

In analyzing the impacts of the Declaration on culture, author Garry Neil and reviewer Susan Crean draw out the contradictions between treating culture as both a good and a service under the WTO. The paper also analyses the commitment to cultural diversity and identity expressed in the preamble of the draft Declaration. Neil argues that the language contained in this section is very weak and interprets the reference to cultural identity contained in the preamble – especially in indigenous communities – as simply local economic interests.

Culture is also covered under the GATS, along with health care delivery, education and school systems. In the GATS paper, author Ellen Gould and reviewer Scott Sinclair

outline how the proposed changes to the scope and structure of the GATS will ensure that hitherto sacrosanct and sovereign areas of Canadian public policy (and cultural identity) – including our health care system – will be sacrificed on the alter of further trade liberalization.

Author Steven Shrybman and reviewer Elizabeth May examine how the draft text could impact on the environment. The Declaration, reports Shrybman, does nothing to protect the environment beyond reiterating “the same old tired commitments to promote ‘sustainable development and...make trade liberalization, economic development and environmental protection mutually supportive.’” Both protection of the environment and protection of human health have become flashpoints for citizens’ concerns about the WTO in recent years. Of the five environment-related challenges so far submitted to the WTO’s dispute settlement process, all have been decided in favour of trade and against environmental and health protections. The trend towards including environmental services (and the potential commodification of water) in the GATS is also highlighted.

The issue that finally led to the collapse of the Seattle talks was the inability of major governments – especially the EU, Canada and the U.S. – to agree on an agenda for agriculture. France especially had argued for key concepts like ‘multifunctionality’ (in which family farms are viewed as much more than rural economic units or factory food producers) to be included in the text. While Europe spends the vast majority of its annual income on farming subsidies, the U.S. and Canada have long argued for the elimination of such subsidies. Indeed, since the introduction of NAFTA, successive Canadian governments have all but eliminated domestic subsidies for Canadian farmers.

In the final paper, author Darrin Qualman and reviewer Brewster Knean provide a clause-by-clause analysis of the agriculture language in the draft Declaration. Qualman argues that the farming crisis in Canada and elsewhere in the world has little to do with government support and subsidies, and much to do with the concentration and market power of transnational agribusinesses. Qualman also provides insight into how specific export subsidies and corporate power hurt farmers and distort markets.

These four papers are not a definitive analysis of all the WTO issues affecting Canadians, but they do represent a sample of the most pressing trade and investment challenges facing the rights and freedoms of Canadians, Canadian identity and Canadian sovereignty.

Many thanks to Christine Elwell for coordinating the production of these papers and to all the writers and reviewers for their time and expertise.

– *Morag Simpson, Trade Campaigner*

## **The Agenda for Culture**

The failure of trade ministers to agree to a final text in Seattle does not bring an end to problems for Canada's cultural sector. Existing WTO agreements have been used to overturn Canadian policies and programs and Canadian policymakers already feel constrained by trade agreements as they consider new cultural policies. Furthermore, the WTO's "built-in" agenda from the Uruguay Round contemplates further liberalization of trade in Services. While the Ministerial Declaration was not finalized in Seattle, it is important to understand its potential consequences for Canada's cultural sector, since elements will no doubt influence developments over the next few years.

### **Definitions and Uncertainties**

Canada's cultural sector comprises thousands of individual artists who create works of all kinds; cultural producers who take certain works and transform them into films and television programs, books and magazines, sound recordings and CDs, new media productions or stage presentations; distributors who sell them to buyers everywhere; exhibitors who show them on television, in cinemas or on-line; and those who preserve them in museums, libraries and other institutions.

Government programs supporting the sector include content quotas; funding programs such as tax credits and subsidies; restrictions on the foreign ownership of Canadian businesses; and other regulations. Governments have established a number of cultural agencies including the CBC, CRTC, National Film Board, museums and libraries.

For purposes of the WTO agreements, there is uncertainty about where these activities fall. For example, while the debate about the audiovisual sector revolves around the application of the General Agreement on Trade in Services (GATS), the 1947 General Agreement on Tariffs and Trade (GATT) included an exemption for domestic cinema screen quotas, implicit recognition that a movie is a "good." While most artistic activity is a service, the end product may sometimes be considered a "good." In the decision of the WTO trade panel on the challenge by the United States against Canada's magazine policies, magazines were found to be a "good" and Canadian and U.S. magazines were found to be "like goods." This was a critical part of the panel's decision to strike down Canada's tariff measure which prohibited the importation of split-run magazines, the excise tax levied against advertising directed at the Canadian market placed in split-runs and the postal subsidy.

Technology also leads to uncertainty, as broadcasters and bookstores move to the Internet, telephone companies provide television services, and digitally-perfect music is downloaded. Thus, culture may be affected by developments in the telecommunications field, or agreements that relate to electronic commerce. The challenge becomes, how do you carve culture out of the trade agreements, when it is so fundamental a part of human society?

## Comprehensive Services Negotiations

In Seattle, there was no dispute about the parameters of new negotiations on Services. In Article 28, the Ministerial text states that broad negotiations would commence, and that “*no service sector or mode of supply shall be excluded a priori*” from these negotiations. The negotiations would proceed on a “*request-offer*” approach, meaning that any country would be free to seek commitments from other countries in the cultural field. Further, that approach would be supplemented by “*other negotiating modalities applied on a horizontal or sectoral basis.*”

These parameters create significant concern for those interested in preserving cultural sovereignty and promoting cultural diversity. There would be no exclusion of cultural services from the negotiations and, given the power of the global entertainment industry, led by large U.S. companies adamant about rolling back cultural measures, it would be extraordinarily difficult to negotiate specific exclusions during the negotiating process.

The agreement to consider a “horizontal” approach raises the spectre that negotiations could result in rules that apply across all services, regardless of exclusions or the refusal of a country to make an “offer” in a particular sector. This raises the possibility most feared by cultural advocates, that rules negotiated to regulate trade in traditional service sectors would be applied equally to the cultural sector.

## Preamble Pays Lip Service to Cultural Identity and Diversity

Given the broad scope of the Services section in the Ministerial text, it would be critical to have some language recognizing a cultural imperative. In the preparatory Geneva discussions, Canada worked hard to obtain language in the preamble. The result of this effort is the following statement in Article 5:

*“In a rapidly changing world, we owe it to all our citizens that the system should allow them to pursue their opportunities and realize their aspirations, including those pertaining to cultural identity and diversity, and to adapt to the challenges of globalization and new technologies.”*

This language is so weak negotiators from the EU considered it worthless and there was doubt about whether they would support it in the end. In its analysis, the Canadian Conference of the Arts stated the preamble language has “all the legal weight of a Hallmark greeting card.”

There is no doubt the language is weak, for a number of reasons:

- there is significantly no reference to the means by which citizens would be allowed to pursue their opportunities and realize their aspirations. The clause would have been more effective with the inclusion of language such as, “through public policy” or “through appropriate measures”;
- the same clause also includes a reference that indigenous communities “should benefit” from the trading system and acknowledges the “important role of small

- and medium-sized enterprises,” thus reducing the cultural dimension to a minority consideration;
- the clause is contained in the preamble, which is weaker than having it in the appropriate parts of the Articles of Agreement;
  - the text typically refers to “Members,” the 135 countries which constitute the WTO. In the cultural diversity language, there is no such reference and thus one interpretation is that Members would have no rights in this area, only their citizens. Since the entire battle on the cultural front is about retaining the right of nations to implement and maintain policies in the cultural realm, this absence is important.

In the final analysis, while this language is flawed, it is better than the alternative, which would have been a comprehensive approach to the negotiation of a new Services’ agreement, no exclusion for cultural services and no reference to cultural diversity and cultural identity.

At the very least, the preamble language provides a starting point to oppose pressure on cultural measures that will inevitably exist in the upcoming Services negotiations.

### **Other Issues**

The possibility that sectoral negotiating approaches can be continued also raises issues for the cultural sector. There has been discussion about possible negotiations in broadcasting, or further discussions on e-commerce. The first would have direct consequences for a range of policies and programs important to Canadian artists and cultural producers, the second could have significant consequences as technology enables the delivery of a full range of artistic works, including complex audiovisual ones. Potential negotiation on the Telecommunications Agreement could also be identified, since some argue that delivery of audiovisual works through the phone wire is merely a “value-added” service subject to the same disciplines as basic telecom services.

Given the confusion about whether cultural productions are goods or services, the review of nomenclature contemplated by Section 28(d) of the text may be significant. This could result in the capture of certain activities otherwise free from existing commitments, such as new media or the authorship of certain kinds of work.

The Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement has consequences for Canada’s cultural sector, and the WTO work plan includes ongoing discussions of this agreement.

Finally, procurement policies remain an area of potential concern, since this will affect all federal government agencies and could result, for example, in a challenge to the priority purchasing of local works by libraries or galleries.

### **New Cultural Instrument Nowhere in Sight**

The Canadian cultural community is united in supporting the negotiation and enactment of a new international instrument to promote cultural diversity, a position endorsed by the federal government in the run-up to Seattle. It is significant to note in conclusion that this matter was not on the Seattle agenda and was little discussed among the NGOs. Consequently, there was no progress toward this objective. It is clear that Canada's cultural sector has much work to do over the next few years to:

- maintain the pressure on the Canadian government to stand firm on preserving cultural sovereignty;
- further define the new instrument, including where it should be negotiated and its relationship to the WTO agreements; and
- work with NGOs in other countries to increase awareness of the problems of globalization and the need for a new instrument on cultural diversity.

## **GATS Attack on Public Services**

*"The GATS can and will speed up the process of liberalization and reform, and make it irreversible."*

David Hartridge, Director, WTO Trade in Services Division

Two key areas into which the WTO now seems likely to expand are domestic social policy and public services. The reason is simple: built directly into the WTO's agreement on services – the General Agreement on Trade in Services (GATS) – is a clause committing governments to negotiate an expansion of the deal this year. And despite nearly coming to blows on other issues, negotiators in Seattle had little trouble signing off on a far-reaching framework for the services negotiations.

In a revealing memo uncovered after one briefing in Seattle, WTO director David Hartridge urged the chairperson of the working group responsible for services to keep discussions to a minimum. Despite being "very much larger in economic importance and potential" than agriculture, the memo read, services are "the least controversial element of the Seattle agenda."

In fact, the privatization and deregulation of public services are very controversial in Canada. In the weeks leading up to the Seattle talks, International Trade Minister Pierre Pettigrew was forced repeatedly to address concerns over public health and education. At a November 15 news conference to unveil Canada's WTO negotiating position, he stated, "There is no way the government of Canada will...negotiate its right to regulate the sectors of health, of education or the environment." For this to be true, Canada would have to seek amendments to shrink, not expand, the reach of the GATS.

Pettigrew hastened to assure Canadians that Canada would not agree to include its own health or public education services, even though he would push other countries to open up their health and education systems to Canadian exporters! Not only is this position inconsistent and unprincipled, but agreeing to have the powerful national treatment provisions of the GATS apply to private education would accelerate the commercialization of Canada's entire education system and make it practically irreversible.

Pettigrew claimed that Canada did not even need to seek exemptions for the country's public health and education sectors because the GATS is a "bottom-up" agreement (i.e., only those sectors that a country agrees to list are covered). In fact, some GATS rules already apply to all sectors, including health and education. Since, for example, the most-favoured nation rule of the GATS already applies "horizontally," if a U.S. for-profit hospital were to set up shop in Alberta under that province's new proposed health care legislation, then foreign for-profit service providers from any WTO member country would be entitled "immediately and unconditionally" to "no less favourable" treatment.

What's more, since at least 1998, Canadian officials have backed a change in the GATS negotiations to speed up and expand this horizontal coverage. The WTO attack on public services is evident not only in the draft Declaration, but in submissions from the U.S., Japan and the EU, as well as the WTO staff's own fiercely neo-liberal papers.

The draft Declaration states that no service sector should be excluded from the negotiations *a priori*. In other words, all services should be up for grabs and nothing should receive special protection. The draft also endorses "horizontal negotiating modalities," meaning that any agreed rules must apply to all services, including public ones. In the WTO's own sectoral paper on health care, for example, the authors write that negotiations should ensure changes to health programs are "market-based."

Transforming the GATS into an effective legal weapon against domestic policy and regulation is also part of the strategy. Although the GATS already contains a section titled "Domestic Regulations," it has been little used because the legal wording needed to make key sections enforceable remains unnegotiated. Now that agreement has been reached on rules governing the accountancy sector, however, the plan is to make the same provisions apply in a "horizontal," or "across-the-board" way to all services.

One particularly nasty outcome of this approach would be to give WTO panels judicial power over the standards and licensing of all services in WTO member countries, whether or not those countries have agreed to open up a particular sector. The dispute panels, made up of trade lawyers, could decide whether a regulation is legitimate or, in their view, just a barrier to trade. Even if members of the panel become convinced the underlying goals of a regulation are legitimate, they may still rule that governments find a way to meet those goals without impeding trade. For example, rather than encouraging Canadian film production to promote Canadian identity, Canada used to pay Hollywood to insert Canadian content into its films – often with unintentional and hilarious results. It is precisely this kind of "non-discriminatory," "market-based" solution that would be viewed favourably within WTO circles.

Another tactic is to obtain new "sectoral" agreements, like the one already negotiated for telecommunications. This model, if applied to services such as water, would see governments guarantee corporations access to basic infrastructure and attempt to regulate public policy objectives after public control has been surrendered.

## Good News for Planet Earth

For far too long, international trade negotiations have been the exclusive preserve of trade bureaucrats who made little effort to consult with their colleagues within government, even as the trade agenda expanded to include virtually all spheres of domestic policy and law including the environment, culture and health. Equally disturbing has been the failure of government itself to seek input from environmental, labour and social justice groups who might have helped it shape a trade agenda that reflected more than the parochial ambitions of large trading corporations.

But public opposition to the secrecy that has shrouded trade negotiations, and in many cases to the rules of trade themselves, has been galvanized by a number of high-profile trade disputes that have illustrated how destructive free trade policies can be for other societal goals. Casualties of WTO rulings now include U.S. clean air regulations (gasoline formulation rules), marine mammal conservation laws (sea turtle protection), and even food safety regulations (a European ban on the importation of beef produced with growth hormones).

Moreover, the environment has emerged as the most often cited example of the fundamental conflicts that exist between current trade policies and those needed to meet the broader goals of our societies. The potential for environmental issues to bring diverse groups together was wonderfully illustrated by the image of environmentalists (dressed as sea turtles), walking arm-in-arm with teamsters, chanting "Teamsters love sea-turtles."

The good news is that Seattle clearly represented a turning point in terms of opening doors to the backrooms of WTO, NAFTA and other international trade and investment meetings. In the language of international diplomacy, this is an issue of transparency. Whether it was the protest on the streets, or the determined advocacy of groups within the meeting rooms, it seems clear that the genie of international trade policy is out of the bottle for all to see.

In terms of responding to this challenge, at least on the substantive agenda, the Seattle talks were a bust. The draft Ministerial Declaration that emerged from the Seattle meeting offered nothing beyond the same old tired commitments to promote "sustainable development and aim to make trade liberalization, economic development and environmental protection mutually supportive." And when the draft text does deign to mention the environment, it is clear that the parties couldn't be farther apart on such fundamental questions as whether or not environmental protection should include natural resources management!

In fact, the aim to make "trade liberalization, economic development and sustainable development mutually supportive" is simply trade-speak for the de-regulation of international and domestic commerce – an agenda that is fundamentally incompatible with the need for strong and effective environmental regulation. It is clear that the WTO still believes it can stonewall environmental critics. But the events surrounding the Seattle Ministerial made it equally clear that environmentalists, social justice advocates and workers will no longer be fobbed off with such obvious double-speak.

While the authors of the free trade agenda were unable to make any progress in Seattle, the status quo under the WTO will surely continue to hasten our pace along an unsustainable path. The built-in agenda to open agriculture and services to market forces has profound environmental implications. For example, the services negotiations could open environmental services such as water development, delivery and waste treatment to the private sector, allowing multinational and domestic corporations to bid for the water supply and its treatment in local communities, with little at stake except profits. Efforts to protect water or to ensure affordable supplies for low-income earners are public interests – viewed as barriers to both trade and compensatable expropriation.

The challenge now is to build a movement – both in Canada and internationally – that will force an urgently-needed transformation of trade policies.

In the few years since the WTO was created, the enormous power of this new global economic institution has been revealed by its assault on a diverse array of public policies and laws that have perished in the cross-fire of trade dispute resolution. It is not that trade is bad, nor are trade rules. Indeed, it will be impossible for us to achieve the goals of ecological, economic and food security for all people without them. In fact, we should be inspired by the audacity of the architects of the WTO's corporate agenda to fundamentally rewrite international trade policy and law so that it fosters environmental and social imperatives rather than undermining them.

## **Selling Out the Family Farm**

“Markets work”: this tenet is at the heart of both the WTO and its Agreement on Agriculture (AoA). Thus, when faced with a worldwide crisis in family farming, the corporate and political leaders driving the WTO process cannot admit that, perhaps, markets do not work. Instead, they blame “market distortions” – tariffs, subsidies, and “trade barriers.” Remove the distortions, they claim, and the markets will deliver prosperity to all.

Sections 23 through 27 of the draft Declaration cover agricultural trade.

Section 23 presents the long-term objective of WTO agricultural negotiations. It begins:

[WTO] negotiations shall continue the process of fundamental reform of trade in agriculture, through substantial progressive reductions in agricultural support and protection sustained over an agreed period of time, resulting in *correcting and preventing restrictions and distortions in world agricultural markets*.... [emphasis added]

Section 25, subsections i through iv, delineate the areas of negotiation in upcoming talks.

### **Market Access**

Most countries use tariffs to restrict market access for foreign agricultural goods. Most tariffs are subject to WTO reduction schedules. Further tariff reduction is a central objective of upcoming AoA negotiations.

Food security and an end to hunger require that all the world’s people have secure access to adequate, nutritious food. In the WTO context, however, “market access” isn’t about ensuring that people have *access to food*; it’s about ensuring that exporting nations and corporations have *access to markets*. Those without either money or land (by definition, not markets) are left out of the WTO’s calculations. The WTO’s market access provisions enhance the ability of large grain and food companies to sell their products worldwide, regardless of the destabilizing effects such access may have on domestic producers and local food systems.

Governments claim that more access leads to more exports and, in turn, increased net farm incomes. In fact, while Canadian agri-food exports have quadrupled since 1978, net farm incomes have actually declined.

What’s more, the continued drive for unrestricted market access threatens to sweep away our own marketing systems. Programs such as Canada’s supply-managed milk marketing system are protected by access-limiting tariffs. Supply management ensures not only that dairy farmers receive fair and adequate returns, but that consumers and processors enjoy stable, competitive prices.

## **Export Competition**

Export subsidies drive down prices, hurting farmers. While export subsidies should be eliminated, they are a small and diminishing factor in the world food trade system. The WTO's success in reducing export subsidies has been significant and beneficial.

## **Domestic Support**

The farm crisis has politicians in Canada and around the world scrambling for an explanation. Many claim that the crisis is caused by agricultural subsidies, primarily European. There is little evidence, however, that ending such domestic support would lead to increased agricultural prices.

Canada has all but eliminated domestic support. The end of the Crow Benefit was the most dramatic example of this. The result has been widespread bankruptcy and decimated rural communities. Given the overwhelming size and market power of transnational agri-businesses, it is unlikely that the market alone will return fair and adequate incomes to farm families. Domestic subsidies may not be the cause of the worldwide farm income crisis: in fact, they may prove to be a prudent reaction to chronic market failure caused by power imbalances and agri-business profiteering.

## **Rules and Disciplines**

Subsection iv is brief and ambiguous, referring to "improvements in the rules and disciplines consistent with the objective of fundamental reform."

While subsections i, ii, and iii cover "scheduled" areas (for which numerical schedules of reduction commitments exist), subsection iv places other aspects of the current WTO agreement on the table. Under this subsection, for example, countries can discuss the definition of the "green box," rules on food aid, and rules for "state trading enterprises."

Section 26 states that negotiations "shall take into account"<sup>1</sup> non-trade concerns such as food security and environmental protection. For example, under the current AoA, countries can make non-distorting "WTO green" payments to farmers for environmental programs.

Section 24 also provides for limited "special and differential treatment for developing countries."

In the end, the draft Ministerial Declaration indicates that negotiators at upcoming AoA talks will attempt to curb or eliminate only selected (and so-called) market-distorting factors. Their chosen targets include: the Canadian Wheat Board, Canada's dairy marketing board, and subsidies to help farm families cope with chronic market failure. The negotiators will leave untouched, or exacerbate, other market-distorting factors. The merged Cargill/Continental grain company will control 50% of U.S. grain exports. Philip Morris Inc., which owns Post, Kraft, Oscar Mayer, Kool-Aid, Jello, Marlboro, and Miller

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<sup>1</sup> Note that the previous section delineates what the negotiations "shall cover".

brands, recorded 1998 revenues of \$113 billion – four times the combined sales of Canadian farmers. If negotiators are serious about removing “distortions in world agricultural markets” and getting to the roots of the current farm income crisis, they could do worse than to start with market-distorting corporate giants.