Submission of Oxfam New Zealand
to Ministry of Foreign Affairs
on the WTO accession negotiations of Samoa

General

Oxfam New Zealand welcomes the opportunity to make a submission on the WTO accession negotiations of Samoa and appreciates the willingness of the Ministry to consult with the NGO community in New Zealand and other relevant stakeholders.

Key Points

- **Development relationship paramount**: Samoa is a development partner of New Zealand, enjoying an exceptionally close relationship under the Treaty of Friendship. In recognition of this, and in the interests of policy coherence, New Zealand should approach Samoa’s application to join the WTO as an opportunity to assist Samoa to obtain the best possible development outcome for itself in the negotiations, rather than as an opportunity to maximise commercial opportunities for New Zealand exporters.

- **A Ministerial direction to effect a major change of practice is required**: Established practice within the Ministry is to follow the usual practice of many other developed WTO members, namely to join the Working Party of acceding countries and drive a hard bargain with all applicants for accession, including LDCs (which consequently get worse deals than much richer countries because they cannot defend themselves). The experiences of Vanuatu and Tonga indicate that no exception has been made in the past for New Zealand’s development partners in the Pacific. Ministerial direction to New Zealand officials dealing with Samoa’s negotiations is required to ensure that these negotiations with Samoa are conducted in quite a different spirit.

- **NZAID should take the lead in the negotiating process**: The Ministry has world-class trade negotiators, who are well-equipped to defend New
Zealand’s interests in the international arena against the EU, the US and other major players. However, they are not expert in the development needs of LDCs and Small Island States. If Samoa is to achieve a development-friendly outcome from its bi-lateral negotiations with New Zealand and from the wider accession negotiations, the process should be led for New Zealand by a senior official from NZAID, mandated to approach the process from the perspective of Samoa’s development needs.

• **New Zealand should lead the way in ensuring Samoa gets the favourable treatment it is entitled to from all WTO members:** Samoa is both a Least Developed County and a small island developing state. It is entitled to the benefit of the recent WTO declaration on LDC accessions. This declaration effectively calls for a significant softening of the unduly harsh treatment received by LDC applicants for accession in the past. New Zealand’s statement that it will apply the declaration is welcome, and it should implement this by fully honouring the intent of the declaration. This would include not demanding from Samoa a greater level of commitment than that of similar LDCs which are current members.

• **Samoa should not be required to improve its initial offer on goods:** The Ministry has made it clear that its current intention is to seek further concessions, well beyond the initial offer made by Samoa. That offer was very generous when compared with the commitments of existing LDC members and even with the commitments of recently-acceded LDCs such as Nepal. If forced into further concessions, Samoa’s revenue base is likely to suffer and it will lose vital policy space for future development planning. The initial offer should be accepted by New Zealand without further negotiation.

• **Samoa should not be required to improve its initial offer on services:** Most developing country and LDC founding members of the WTO have very few commitments in relation to services. Fiji, for example, which is a much larger and more developed economy, has commitments in a single subsector. Samoa should not be required to improve its offer on services.

• **Increased transparency is required:** There is virtually no information in the public domain on the negotiations or New Zealand’s demands of Samoa and
other acceding countries. At a time when there is more information is becoming available on multilateral negotiations in the WTO, the almost complete lack of information on accession negotiations is striking. In order to be accountable for negotiating practices towards developing countries, the New Zealand government should publish its policy objectives and its demands of acceding countries. The government should also support fundamental reforms to the accession process to prevent the abuse of power in bilateral negotiations, with the aim of promoting equity and multilateralism.
The Development Partnership between Samoa and New Zealand

The relationship between New Zealand and Samoa is unusually close, due largely to the history shared by the two nations. A history of colonialism has been succeeded in recent decades by a relationship that is for the most part mutually beneficial. New Zealand provides substantial development assistance to Samoa on an ongoing basis and there have been allowances for many Samoan people wishing to emigrate to New Zealand to do so.

Around 120,000 people of Samoan descent now live in New Zealand, and the remittances they send back to family members provide an essential source of revenue for Samoa, where up to 20% of GDP is in the form of such remittances from Samoan immigrants worldwide. New Zealand benefits from the inflow of workers and on the trade front, New Zealand exports over $80m of goods to Samoa per annum, far more than total imports of less than $2m.

New Zealand’s commitment to being a good friend to Samoa is clear when it comes to official development assistance, as well as in most other respects. As a matter of ensuring policy coherence and good practice, that commitment should extend across the full spectrum of the relationship. Oxfam urges the Government to ensure that this happens in the conduct of New Zealand’s negotiations with Samoa in relation to its application for WTO membership.

Significant change in trade negotiations practice required

In order for this to happen, a major change in practice is required. New Zealand’s practice in relation to past and current applications for WTO membership has been to assume that applicants can and should hold their own in a tough negotiation, and to seek maximum commercial advantage for New Zealand exporters as the principal outcome of the negotiations.

Applying the usual practice in the case of Samoa would entail a real risk of New Zealand taking away with one hand what we give with the other, damaging the close relationship and also prejudicing the development interests of Samoa.

Accession negotiations - particularly the bi-lateral discussions - are conducted confidentially. One justification of this from the point of view of the applicant is to
ensure that none of the other Working Party members find out what has already been offered by the applicant, in case they use this as a stepping-stone to even higher demands.

However, the secrecy deprives civil society in the Working Party member country from making fully informed comment on the demands being made by its government. In this submission, there is accordingly a necessary element of speculation as to what New Zealand might be demanding from Samoa.

It is clear that New Zealand’s negotiators have rejected Samoa’s initial offer as being insufficient and are currently considering what demands to make on Samoa in relation to goods, services and possibly other sectors. Submissions from civil society are being considered in this context alongside submissions from commercial entities with commercial interests to pursue in Samoa.

Samoa’s initial offer was very generous compared with the commitments of existing LDC members, and also compares favourably in many respects with the terms upon which two much larger LDCs (Nepal and Cambodia) acceded in 2003. New Zealand’s rejection of this offer is accordingly enough of itself to give rise to a concern that the next stage in this negotiation may be approached without due consideration to Samoa’s LDC status, its special relationship with New Zealand or its development needs.

This is not intended as a criticism of the Trade Negotiations Division (TND) officials who currently have conduct of the detailed negotiations, nor of the other Ministry officials involved in the negotiation. The training and experience of TND officials largely relates to the main WTO negotiations, where a small trading nation such as New Zealand must field tough-minded, world class negotiators against the line-up of experts from the EU, the US and other major players. Their mandate in that context is to drive as hard a bargain as possible to preserve New Zealand’s interests in the international arena.

It would not be realistic to expect officials operating in that environment to display expertise in the development needs of LDCs, or Small Island Developing States. Nor should they be expected to be able to shift back and forth between their style in the WTO negotiations and the completely different approach that is called for in dealing with New Zealand’s Pacific development partners.
Oxfam recommends that two steps be taken to address the needs of the situation. The first step would be for a clear instruction to be given by the relevant Ministers (Foreign Affairs, Trade Negotiations and Official Development Assistance) to prioritise the special relationship and Samoa’s development needs, and to accord Samoa the benefit of the LDC declaration (which is discussed further below). Oxfam recommends that such a direction be given before the negotiations are taken any further.

The second recommendation is that NZAID personnel be placed in charge of the negotiation, calling on TND and other Ministry personnel as required for technical advice. New Zealand’s policy on trade negotiations with developing countries, as set out in the policy statement issued by NZAID entitled “Harnessing International Trade for Development”¹ should be applied to the negotiations with Samoa. The officials best placed to lead the process of ensuring that this is done effectively are those working within NZAID, as their expertise enables them to ensure that the development considerations are fully taken into account.

Oxfam recognises that additional capacity will be required within NZAID to undertake this role, and we support the recommendation the OECD Peer Review of NZAID earlier this year that NZAID should play a proactive role on trade and other policies that require coherence across the government.

**Accession negotiations and the LDC declaration – why Samoa needs friends in the process**

It is useful to put into perspective the demands that are placed on Samoa by the accession process itself. Samoa has a total population of around 180,000 – around half the population of the Waikato.² In 2004, Samoa’s GDP per capita was approximately NZ$2,800,³ less than one tenth of that for New Zealand in the same year.⁴ About a third of the population lives under the basic needs poverty line.⁵

Samoa has an enormous balance of trade deficit, a narrow export base, very high levels of unemployment and poverty of opportunity for youth. Two thirds of the population remains dependent on subsistence agriculture. The island nation is
also vulnerable to external shocks, particularly cyclones, which appear to be increasing in severity as sea temperatures rise due to global warming.\footnote{6}

The accession process is notoriously burdensome, especially for smaller countries and LDCs. Samoa is both, and the history of its accession process to date suggests that it has been no exception to the rule that even the smallest and most underdeveloped applicants for accession face a very long, arduous process, during which they are pressured to make concessions which are far more burdensome than those made by existing members at a similar level of development. In many cases, the demands in fact exceed the commitments of the richest member states.\footnote{7}

Samoa’s accession process began in 1998. In the intervening seven years, it has:

- prepared a lengthy memorandum on its foreign trading regime;
- submitted initial offers on goods and services;
- answered 4 sets of formal questions from Working Party Members;
- met with the working party as a whole, and had numerous bi-lateral meetings with individual members of the Working Party (including one with New Zealand).

Still to come is a second round of bi-lateral meetings, at which Working Party member countries will make further demands, based on the interests of domestic commercial lobby groups.

This bare recital of the process alone should serve to illustrate why Samoa needs New Zealand to act as its friend in the process, rather than as one of the developed countries lining up to pressure Samoa into further concessions.

It should be borne in mind that, in preparing the original memorandum on the foreign trade regime, Samoa was probably advised to be very careful to present a “realistic” foreign trade regime to the WTO, in order to satisfy existing members of its willingness to pay an acceptable price for WTO membership. Applicants typically undertake unilateral changes to their trade regimes before the negotiations even start, often acting on advice from the WTO Secretariat or the International Monetary Fund or other external agencies as to what Working Party members will expect.
Samoa’s Memorandum reveals that unilateral liberalisation has already been undertaken: “Under its reform programme, [Samoa] has taken steps to liberalize all sectors of the economy and agriculture is no exception. It has eliminated all price support policies for agricultural products.”

A similarly process occurs with initial offers on goods and services – applicants are advised to put in “realistic” offers, rather than offers that reflect their level of development. This was the case for Vanuatu, which received express advice from the Asian Development Bank that it needed to make substantial changes to its tax regime by unilaterally lowering import tariffs and replacing them with a goods and services tax. This advice was made compulsory by being embodied in a loan conditionality in 1996. The implementation of the changes to the tax regime, (coupled with a simultaneous requirement to downsize the Customs department) caused Vanuatu’s tax base to suffer a major shock, from which it is only just recovering a decade later.

Samoa unilaterally decreased its applied tariffs in 1998, the year it applied for WTO accession. The decrease fueled a significant increase in imports, particularly of food and beverages, adding to Samoa’s trade deficit. Samoa’s applied tariffs are in many cases very low, lower than the 50% which has been offered by Samoa as its tariff binding for most goods.

Even though the initial offer may represent a set of significant concessions, partially or substantially implemented unilaterally, it appears that the initial offer is never accepted by the working party. Various members invariably make demands for significant further concessions. These concessions often reflect the wider WTO agenda of the working party member, such as the EU’s desire to see the “Singapore issues” added to the main negotiations. It is evident from the draft Working Party report that Samoa has come under pressure to sign up to obligations in relation to its government procurement practices, which is one of the Singapore Issues.

The unfairness of the accession process for LDCs had become so notorious by 2002 that the General Assembly of the WTO agreed by consensus on a “Decision on the Accession of Least-Developed Countries” in December of that year. The decision is clearly intended to bring about a fundamental change in the process, as these extracts demonstrate:
“Negotiations for the accession of LDCs to the WTO be facilitated and accelerated through simplified and streamlined accession procedures, with a view to concluding these negotiations as quickly as possible, in accordance with the guidelines set out hereunder:

… WTO members shall exercise restraint in seeking concessions and commitments on trade in goods and services from acceding LDCs, taking into account the levels of concessions and commitments undertaken by existing WTO LDC Members.”

…Special and Differential Treatment… shall be applicable to all acceding LDCs…

…transitional periods/transitional arrangements foreseen under specific WTO Agreements, to enable LDCs to effectively implement commitments and obligations, shall be granted in accession negotiations taking into account individual development, financial and trade needs…”

The Government’s stated intention to allow Samoa to benefit fully from this Declaration is welcomed. What full implementation of the decision might mean could however be subject to various interpretations. For example, it might be argued that, despite the wording of the declaration, the LDC must still prove that it needs the benefit of any given concession in order to become entitled to it.

This interpretation would largely defeat the purpose of the Declaration, since such a burden of positive proof is often difficult or even impossible to discharge. One of the main causes of the unfairness of the system which led to the Declaration was precisely this issue – Working Party members would assert that the LDC had no need of a concession, forcing the LDC into inappropriate commitments simply because it does not have the expertise to prove (or the prescience to foresee) what damage might be done by liberalisation of any given sector.

The nascent dairy sector in Samoa provides an excellent illustration of this. Dairy farming on any scale has existed in Samoa for less than a decade, fostered by development and technical assistance from the FAO and France. It has the potential to become a great success story – on a small scale it is already providing desperately-needed rural employment opportunities and sound nutritional input for rural populations, while decreasing the balance of trade deficit and saving foreign exchange by replacing some UHT milk imports.
At present, this sector occupies a tiny niche in Samoa’s economy, but has the potential to grow to supply a significant portion of Samoa’s dairy needs. It is unlikely to be able to grow beyond its current niche however if it is forced to compete without sufficient tariff protection with imports from the much larger scale, super-efficient dairy production of New Zealand or Australia.

It might make very good sense from a development perspective for the Samoan government to raise applied tariffs on dairy products once it is necessary to do so to foster further growth of the industry. Samoa’s initial tariff offer of 50% would give it some scope to do this. Any demand that Samoa bind its tariffs on dairy products at current applied levels would deprive Samoa of the policy space it needs to make this possible.

**Tariffs**

Samoa’s initial offer was to bind tariffs at a flat 50% on virtually all goods. This is a very low bound rate compared with the average commitment of existing LDC members (which is a simple average bound tariff of 79% and a tariff peak of 130%). Even when compared with the very poor deal obtained by Cambodia on its recent accession, Samoa’s offer is generous - Cambodia’s highest agricultural tariff binding is 60%. The agricultural tariff peaks of the USA (121%) and the EU (252%) are, of course, in a different league altogether.

Despite its generosity, Samoa’s offer does not appear to have found favour with working party members, including New Zealand, who seem likely to demand further concessions. It appears that there is a possibility that Samoa will be asked to bind its tariffs at their current very low applied levels, or even asked to bind at levels below the applied tariffs. If this occurs, it could have major implications for Samoa’s revenue base. It would also contravene the LDC Declaration, and disregard Samoa’s need to retain flexibility to make its own decisions on the pace and extent of liberalisation.

A justification that is often given for negotiators driving a hard bargain with an applicant for accession is that the liberalisation sought on behalf of the commercial interests of a working party member will also inevitably be of benefit to the acceding country, by forcing it to become more efficient and abandon areas of its economy that are not internationally competitive. This argument may have considerable validity when applied to a fully developed economy which
seems willing to prop up an inappropriate industry indefinitely, like beet sugar production in Europe.

However, it is flawed when applied to developing countries seeking ways to enhance their own development. It has been demonstrated convincingly that every successfully industrialised economy in the world has achieved its success by protecting and fostering its infant industries until they are able to withstand full competition. The precise form of protection has varied considerably from one country to another (and the Asian Tiger economies provide a fascinating variety of creative ways to achieve the same ends), but there are no examples of a country which has liberalised first and successfully industrialised later.\textsuperscript{14}

The argument also has an air of unreality when applied to tiny, geographically isolated LDCs such as Samoa, which may struggle to find any export goods sector where they have a global competitive advantage.\textsuperscript{15}

In this context, it is particularly important that the LDC is not placed in the position of having to prove that harm will flow from excessive commitments. The general case for ‘policy space’ to allow developing countries the opportunity to develop has been made strongly by a number of international agencies, including UNCTAD, UNDP and UNIDO, as well as respected academics\textsuperscript{16}. The burden of proof should be on the countries calling for more liberalisation in countries such as Samoa to demonstrate that it is to the advantage of the acceding country.

The infant dairy industry discussed above is one example of where Samoa is entitled to preserve its policy space. In the absence of positive proof to a high standard that Samoa could never benefit from using tariffs to foster the development of this industry in the future, its right to keep a gap between its applied tariff and its bound tariff must be respected.

A further example of the need to preserve policy space in relation to tariffs is provided by waste meat exports to Samoa. Samoa has the highest rate of type 2 diabetes in the world. There is a clear link between the growing prevalence of this disease in the Pacific and the radical change in diet that has occurred, with fatty waste meat products becoming readily available, at prices which make them much cheaper than traditional foods such as taro and fish, and thus attractive to the urban poor.\textsuperscript{17} Imports of mutton flaps from New Zealand and Australia and
turkey tails from the United States are implicated in this trend. If a future government of Samoa wishes to restrict imports of this kind, it will need recourse to high tariffs to do so. In theory, it could attempt to make a case for a ban on public health grounds, but the expense, complexity and uncertainty of this would be a strong disincentive to do so.

What Samoa needs from New Zealand in relation to its tariffs is assistance to resist any demands from other Working Party members that their offer be improved. Such resistance is fully justified by comparison with the commitments of both founding LDC members of the WTO and with the packages of recently acceded members.

**Other aspects of the accession negotiations**

**Services:** Most LDCs that were founding members of the WTO have few commitments in services. This is entirely appropriate, given that services is the most complex area of the negotiations and one where even countries with huge resources struggle to ensure that they are adequately advised on the appropriate level and form of their commitments.

Lack of regulation is a key indicator of risk in the services sector, particularly for Small Island Developing States, which have frequently been subjected to unscrupulous behaviour by foreign investors. In the absence of an effective regulatory regime, service provision by a dominant supplier in a small market is likely to result in poor-quality, high-cost services. As Samoa pointed out in its initial offer on services, its services sector is largely unregulated, or regulated by legislation that is out of date.

There is accordingly no justification for asking Samoa to improve its offer on services. If comparisons are needed, Fiji serves as a good example. It is not an LDC, yet its commitments are limited to a single subsector.

**TRIPS and SPS:** The draft Working Party report reveals that Samoa has been asked to commit substantial resources to the implementation of commitments in relation to intellectual property (TRIPS) and its quarantine regime (SPS) that are
of no immediate benefit to its economy. The level of these commitments is of concern and forms an important part of the context for the further negotiations.

**Conclusion**

Samoa has embarked on the process of WTO accession no doubt hoping to gain some benefits from membership. It is entitled to hope that New Zealand will assist it to do so, rather than being party to negotiations that lock Samoa into inappropriate, costly and restrictive policies that will undermine their development prospects.

Oxfam New Zealand is calling on the New Zealand government to make major changes to the way it approaching this and other accession negotiations.

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3 NZS29,500, calculated by taking NZ GDP for 2004, divided by the population of 4 million: http://www2.stats.govt.nz/domino/external/pasfull/pasfull.nsf/0/4c2567ef00247c6acc257029001021a6/$FILE/alltabs.xls
4 NZ$29,500, calculated by taking NZ GDP for 2004, divided by the population of 4 million:
6 The last severe cyclone was Cyclone Heta in 2004. For an academic analysis of increased severity of tropical cyclones, see MIT climatologist Kerry Emmanuel’s recent paper in Nature:
8 To take just one example, on its recent accession, Cambodia was required to provide less protection to its sensitive agricultural sectors (60% maximum tariff) than the EU, US and Canada. Charveriat, C. and M. Kirkbride (2003) ‘Cambodia’s accession to the WTO: How the law of the jungle is applied to one of the world’s poorest countries’, p1: www.oxfamgb.org/eastasia/documents/Cambodia%20accession%20facts%20final%20Aug21.doc
11 The EU’s attempts to add these issues to the agenda are widely acknowledged to be at least partially responsible for the collapse of the Cancun Ministerial in 2003.
12 WT/L/508
14 Chang, Ha-Joon: “Kicking Away the Ladder—Development Strategy in Historical Perspective” (Anthem Press, 2002). See also article by Dr Chang available online: Kicking away the ladder: an unofficial history of capitalism, especially in Britain and the United States http://www.findarticles.com/p/articles/mi_m1093/is_5_45/ai_91659836
15 Even when they do find a unique export crop like kava, they often face unfair trade barriers which they have no practical means of overcoming, whether or not they are WTO members with theoretical access to the Disputes Settlement Mechanism. Fiji, like Samoa and Vanuatu, is suffering from restrictions on kava sales in Europe and elsewhere which are widely regarded as unjustified on medical grounds, yet it has not taken a case using the DSM.
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18 For a discussion of this in the context of Tonga, see http://www.who.int/docstore/bulletin/pdf/2001/issue9/bu1327.pdf
19 A recent thorough review of electricity and telecommunications sectors in Vanuatu bears this out: Castalia Strategic Advisors and Network Strategies (2005) ‘Infrastructure Regulatory Review for Government of Vanuatu’, Draft copy or report financed by the Public Private Infrastructure Advisory Facility (PPIAF) and supported by the World Bank.