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President Gerardine (Ged) Kearney
Secretary Dave Oliver

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Foreign Affairs, Defence and Trade Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Senators

Re: Fair Trade (Workers' Rights) Bill 2013

The Australian Council of Trade Unions – the peak council for organised labour in Australia – welcomes the opportunity to make this submission to the Foreign Affairs, Defence and Trade Committee on the *Fair Trade (Workers' Rights) Bill 2013*. Our position reflects our membership which consists of unions covering all sectors of the economy, across all states and territories, representing almost 2 million workers. Our comments draw on our experience supporting workers to attain safe, secure and rewarding employment in Australia and internationally.

Fair Trade

We strongly believe the primary objective of all trade negotiations should be to raise living standards and make a positive difference in the lives of working people in accordance with principles of sustainable development. Reducing barriers to trade and investment, and increasing economic cooperation and integration, are possible *means* of achieving this.

History demonstrates that trade liberalisation has the potential to contribute to economic growth but this does not guarantee that the benefits of increased trade will result in tangible benefits for workers or that these benefits will be evenly distributed. This is because trade agreements do not consider the (re)distribution of economic growth.

Given this experience, and if we recognise and accept that the objective underpinning trade agreements is not only to liberalise economies but to promote sustainable economies with decent and secure jobs, this has implications for how and what is negotiated.

A Comprehensive Labour Chapter

Enforceable commitments to protect and promote labour rights should be included in all trade agreements negotiated by the Australian Government. Respect for labour rights will assist in the distribution of the benefits of increased trade by promoting the creation of jobs that are decent jobs.

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The International Labour Organisation's eight core standards should provide the rights-based framework for protecting and promoting decent work in Australia's trade relations. Freedom of association and the effective recognition of the right to collectively bargain, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation are encapsulated in the 1998 *ILO Declaration on Fundamental Principles and Rights at Work*. The Declaration obliges all member states – arising from the very fact of ILO membership – to respect, promote and realise these fundamental rights.

By respecting freedom of association and the right to bargain collectively, workers are empowered to negotiate with employers for a decent wage. By eliminating discrimination in the workplace, women, the disabled and the marginalised have equal access to employment opportunities; thus benefiting from economic growth but also ensuring all working age people can contribute to economic growth. By banning forced and child labour there are workers receiving a wage rather than being subject to modern day slavery as well as children with the opportunity to gain an education, providing them with skills to seek employment and gain a decent wage as an adult.

Furthermore, adherence to international labour rights by trading partners reduces the risk of a race to the bottom on labour rights as countries lower (or fail to increase) labour rights in order to attract foreign investment and promote exports. However, the inclusion of a labour chapter is also important for developed countries including Australia, with research demonstrating that there is a risk of reduced labour standards in developed countries resulting from liberalisation.

Economic and technical cooperation

For many trading partners, the inclusion of capacity building support in the trade agreement's labour chapter will be important to strengthen industrial relations regimes where resource constraints, not political will, are the challenge to meeting international standards.

This recommendation draws on the experience of the US with respect to enhancing labour standards through trade agreements. The four year review of the NAALC – the first labour clause to be included in a trade agreement, NAFTA – made a number of recommendations on how to strengthen cooperative activities. This included a recommendation on the allocation of greater resources to cooperation efforts.

More recently, the US Government Accountability Office (GAO) assessed the role of the capacity building mechanism of four US trade agreements – Jordan, Chile, Singapore and Morocco – in improving labour standards. It found that each agreement spurred some labour law reform but there have been difficulties ensuring respect and enforcement of core labour rights. The research also found that capacity building opportunities were missed due to a lack of financial resources.

Relationship between the Labour and Investment Chapters of a Trade Agreement

It is essential that governments maintain the public policy space to introduce policy and legislation in the interest of working people. Therefore it is essential that investment chapters negotiated by Australia do not include investor-state dispute settlement (ISDS) provisions. ISDS provides foreign investors with a mechanism to seek redress and seek claims for compensation against countries party to the agreement in response to legislative and policy developments if believed to have been

treated unfairly. This results in an unacceptable expansion of the rights of corporate investors at the expense of democratic governments as ISDS can be used to frustrate or block the democratic right of governments to develop laws and policies across all government portfolios, including labour rights legislation and policy.

Principles for labour chapters in trade agreements

There is a strong precedent for including labour chapters in trade agreements, with models promoted by the United States, Canada, and the European Union. The final agreement negotiated between Australia and the United States included a labour chapter. The ACTU, however, sees little practical value in the inclusion of clauses which do not oblige the parties to respect the fundamental rights of workers as established by the ILO or the absence of enforceable provisions preventing countries from waiving or weakening existing labour laws in order to increase trade.

Attached to this letter are the ACTU's principles for negotiating a comprehensive labour chapter.

Sincerely

Ged Kearney
President

ATTACHMENT

Principles for labour chapters in trade agreements

The following principles should be included, as a minimum, in labour chapters in all free trade agreements negotiated by Australia.

Commitments

1. Parties commit to adopt and maintain in their national laws and regulations, including those issued by sub-national structures, the following fundamental labour rights conventions developed by the International Labour Organisation:
 - No. 87, on Freedom of Association and Protection of the Right to Organise
 - No. 98, on the Right to Organise and Collective Bargaining
 - No. 100, on Equal Remuneration
 - No. 111, on Discrimination (Employment and Occupation)
 - No. 138, the Minimum Age Convention
 - No. 182, on the Worst Forms of Child Labour
 - No. 29, the Forced Labour Convention
 - No. 105, the Abolition of Forced Labour
2. In order to effectively maintain and guarantee fundamental labour rights parties commit to maintain in their national laws and regulations, including those issued by sub-national structures, adherence with the following governance conventions developed by the International Labour Organisation:
 - No. 81 Labour Inspection Convention
 - No. 122 Employment Policy Convention
 - No. 129 Labour Inspection (Agriculture) Convention
 - No 144 Tripartite Consultation (International Labour Standards) Convention
3. Parties commit to acceptable conditions of work with respect to wages (including minimum wages, overtime, and legally or contractually required bonuses), hours of work, occupational safety and health, workers representatives, termination of employment, compensation in cases of occupational injuries and illnesses, and social security and retirement. Commitments on acceptable conditions of work have regard to ILO Conventions and Recommendations.
4. The chapter includes non-derogation provisions which prevent parties from weakening or waiving from core labour standards and acceptable conditions of work in labour laws.
5. The chapter establishes a system of identifying and preventing the importation of products made with forced labour and child labour in its worst forms.

Labour Dispute Settlement

6. Labour disputes are pursued through the agreement's general dispute settlement mechanism, taking into account the following principles:
 - Clearly defined stages of procedure including timeframes

- A submission process open to any person of any party to the agreement, including foreign governments, against a government or sub-national entities that violates the labour standards outlined in the agreement
 - Established review and investigation procedures with the participation of trade unions that include public hearings and fact finding missions
 - Cooperative consultations to develop action plans to address violations but in case of failure, arbitration with binding decisions
 - Suspension of benefits not monetary assessments
7. Sanctions must cause an effective suspension of trade benefits in the form of countervailing duties. In addition to sanctions, a decision may require an action plan that could include legislative and/or regulatory reform:
- Sanctions sufficiently stringent and commensurate to those duties prescribed for commercial abuses
 - Factors of aggravation (non-exhaustive) to be considered should include:
 - the *nature and extent of the conduct* which led to the breaches
 - the *nature and extent of loss* or damage sustained as a result of the breaches
 - whether the *breaches were deliberate*
 - whether the *breaches formed part of a sustained or recurring course of action or inaction* on the part of the State
 - any *measures undertaken* by the non-compliant party to address the violation
 - Benefits suspension should first be targeted at the tariffs lines corresponding to the sector in which the violation(s) occurred, if in the case that the initial sanctions against the relevant tariff lines are not effective, sanctions should be broadened to include the tariff lines of related sectors. In case sanctions against related sectors are still not dissuasive (e.g. due to small trade volume or for violations in the public sector), sanctions should target other sectors of the economy in addition to the sector where the violation occurred
 - The violating party must refrain from all industrial subsidies and other measures aiming at nullifying the countermeasures
 - The sanction should increase by 50% for every year of non-compliance
8. Labour violations are actionable down the supply chain.

Institutions for Cooperation on Labour

9. The chapter includes institutions that guarantee government cooperation and that continuous to improve labour standards, including:
- A Labour Affairs Council consisting of cabinet-level officials from each country that meets regularly to oversee the implementation of the chapter and discuss regional labour issues
 - A forum for the social partners that produces research and regular, independent reports on compliance with labour standards and identifies patterns of labour violations and recommendations for priority areas of cooperation

- Transnational Labour Councils where employers and workers of the same enterprise with a supply chain across trading parties address labour relations
- Labour Cooperation and Capacity Building framework that identifies and supports the implementation of technical assistance programs, officials' meetings, exchange of information on standards and regulations, joint development of research, joint conferences, exchanges on technology issues on – among others - fundamental rights at work and their effective application, labour administration and inspectorates, occupational safety and health
- In identifying areas for labour cooperation and capacity building and in carrying out cooperative activities, each Party shall consider the views of its worker and employer representatives, as well as the views of other members of the public

10. In general the labour institutions should:

- Be appropriately resourced with regard to international benchmarks
- Include genuine tripartite governance and consultation structures
- Coordinate, where appropriate, with the ILO