

Business  
Council of  
Australia



submission

Submission to the Senate Foreign  
Affairs, Defence and Trade Standing  
Committee in relation to the Fair  
Trade (Workers' Rights) Bill 2013

*Working to achieve  
economic, social  
and environmental  
goals that will benefit  
Australians now and  
into the future*

The Business Council of Australia (BCA) brings together the chief executives of more than 100 of Australia's leading companies, whose vision is for Australia to be the best place in the world in which to live, learn, work and do business.

## About this submission

The BCA has been invited to make a submission to the Senate Foreign Affairs, Defence and Trade Standing Committee on the Fair Trade (Workers' Rights) Bill 2013. This Bill proposes that trade agreements with another country include a binding agreement for minimum standards about workers' rights in the other country's domestic law.

Members of the BCA are committed to policies that support trade and investment liberalisation, recognising the benefits to Australia from increased access to new markets for our goods, services and capital, and from greater access to global supply chains.

The BCA also recognises the importance of regulations which protect workers' basic rights.

The BCA's *Action Plan for Enduring Prosperity*, released in late July 2013, outlined the linkage between deeper levels of global engagement and increased prosperity and living standards.

## Key points

The BCA does not support the proposed changes in the Bill, given the lack of identified shortcomings in Australia's current approach to considering workers' rights in trade agreements; the efficacy and flexibility of Australia's current policy; the potential for the proposed provisions to be a disguised form of protectionism; and the lack of evidence supporting the effectiveness of the proposed provisions in enhancing minimum standards for workers' rights in other countries.

We believe a case-by-case approach to labour standards in trade agreements should be adopted.

Free trade agreements are entered into in order to improve living standards in the countries which are parties to the agreement, for example by providing a liberal and rules-based trading environment. An important element of reaching this goal is to allow developing countries to use their comparative advantage of lower labour costs, while ensuring this is not done by deliberately neglecting fundamental labour principles (such as those outlined in the International Labour Organization's (ILO) 1998 Declaration of Fundamental Principles and Rights at Work).

The Productivity Commission considered labour provisions in free trade agreements in its 2010 *Review of Bilateral and Regional Trade Agreements*, which noted that since the ILO's formation in 1919, there had been numerous attempts to link labour standards to trade agreements.

The BCA supports the Productivity Commission's recommendation that the government should adopt a cautious approach to referencing core labour standards in trade agreements, and should not include matters in bilateral and regional trade agreements that would serve to increase barriers to trade, raise costs or affect established social policies without a transparent review of the implications and other options for change.

There are four key reasons why the BCA does not support the elements of this Bill.

### Lack of an identified case for change

The BCA outlined in its *Action Plan for Enduring Prosperity* the need for government to rethink its approach to regulation and governance, as increasingly governments were not taking full account of the costs of new regulations being introduced.

There is no evidence of a policy failure with regard to Australia's current approach to considering workers' rights in trade agreements.

Australia has seven free trade agreements currently in force, collectively covering 13 countries. All are members of the ILO, the United Nations body responsible for international labour standards, which is structured to give an equal voice to workers, employers and governments. Australia is also

currently negotiating nine free trade agreements, covering a further 25 countries; all but three are members of the ILO (the Federated States of Micronesia, Nauru and Tonga, which are parties to the PACER Plus negotiations).

### **Efficacy of current policy**

Australia's existing policy for considering labour provisions in free trade agreements provides the flexibility to demonstrate the Australian people's concerns about the rights of all workers, both in Australia and around the world, while promoting trade and investment liberalisation goals.

Australia has, to date, entered into three trade agreements containing labour provisions, with the United States, Chile and Malaysia. In the most recent of these, Australia included labour provisions in the agreement with Malaysia through a side letter, affirming the parties' commitments as members of the ILO and under the 1998 Declaration on Fundamental Principles and Rights at Work. The parties also recognised each other's responsibility to adopt, administer and enforce their own labour laws, regulations and practices, and noted both were committed to ensuring that such labour laws, regulations and practices were not used for trade protectionist purposes or to weaken labour standards to gain a trade advantage.

Accordingly, Australia's current policy settings already allow provisions on labour standards to be included in free trade agreements where there is a recognised need.

### **Potential for protectionist measures**

As a country that has historically relied on strong trade and investment flows to drive economic growth, Australia is a robust advocate of resisting protectionist trade and investment measures. In September 2013, Australia joined other G20 members at the G20 Summit in St Petersburg in warning of the dangers of retreating into protectionism. Trade is a strong engine of employment, with approximately one in five Australian jobs related to trade. And trade as a percentage of GDP has grown from around 25 per cent in the mid-1970s to around 40 per cent now.

A legislative requirement for minimum workers' rights should not be used for protectionist agendas. If this were the case, the restrictions such provisions place on developing countries' ability to export their goods and services could result in the most vulnerable societies paying a heavy price.

### **Ineffective for enhancing labour practices in developing countries**

There is a lack of evidence supporting the effectiveness of requiring minimum standards on workers' rights in trade agreements. Labour practices and standards may be more effectively promoted through using market-based economic policies, such as liberalising trade and investment, and by working directly with interest groups in developing countries.

The Productivity Commission's review found that attempts to enforce compliance with labour standards through trade agreements "have limited prospects of affecting the wellbeing of the workforce in developing countries, not least because the vast bulk of workers operate in the informal and domestic sectors of developing economies."

The commission considered efforts should focus on mechanisms that were likely to be effective in enhancing living standards in developing countries, and noted the recent emergence of alternative mechanisms for encouraging compliance with core labour standards, such as World Bank loans being contingent on the recipient country observing core standards.

Numerous studies, including by the OECD<sup>1</sup>, have shown that trade improves employment and wages through growth; trade can improve working conditions; and trade contributes to creating better jobs. Other studies<sup>2</sup> have found that open economies have significantly better working conditions than more closed economies, including fewer accidents at work, fewer hours of work, and greater freedom of association.

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1. See for example, OECD, 2012, *Policy Priorities for International Trade and Jobs*, (ed.), D. Lippoldt, e-publication, available at: [www.oecd.org/trade/icite](http://www.oecd.org/trade/icite).

2. See for example, Flanagan, R. J. 2006, *Globalization and Labor Conditions: Working Conditions and Worker Rights in a Global Economy*, Oxford University Press.

Accordingly, a more effective way of assisting developing countries to improve workers' rights may be through higher, rather than lower, trade and investment flows.

## **Key recommendations**

The BCA recommends that the committee does not support the Bill until the government:

- provides clear evidence of problems with the existing framework
- demonstrates the proposed provisions are not a disguised form of protectionism
- demonstrates that the proposed provisions would be effective in achieving the aim of the Bill.

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