

## Agreement establishing the Advisory Centre on WTO Law

### Introduction

- 11.1 It is proposed that Australia become a member of the Advisory Centre on WTO [World Trade Organisation] Law by acceding to the *Agreement establishing the Advisory Centre on WTO Law*, which entered into force in 2001.<sup>1</sup>
- 11.2 The Advisory Centre on WTO Law (ACWL) is a Geneva-based intergovernmental organisation that is independent of the World Trade Organisation (WTO).<sup>2</sup> The purpose of the ACWL is to assist developing countries to build trade policy expertise and capacity in the WTO system, with a view to realising their WTO rights, respecting their WTO obligations and participating fully in trade negotiations.<sup>3</sup>
- 11.3 The ACWL provides developing countries with subsidised legal advice, and training and support in WTO law and dispute settlement proceedings.<sup>4</sup> Since its establishment, it has delivered over 700 legal

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1 *National Interest Analysis* (NIA) [2010] ATNIA 24, Accession to the Agreement establishing the Advisory Centre on WTO Law, done at Seattle on 30 November 1999 [2010] ATNIF 20, paras 1 and 2.

2 NIA, para. 4.

3 Ms Elizabeth Ward, Department of Foreign Affairs and Trade, *Transcript of Evidence*, 22 November 2010, p. 23.

4 NIA, para. 4.

opinions, assisted members and least-developed countries in 32 WTO dispute settlement proceedings and offered annual courses in WTO law.<sup>5</sup>

## Reasons to take treaty action

- 11.4 The Australian Government is committed to the WTO and an open and transparent multilateral trade system.<sup>6</sup>
- 11.5 Participation in the ACWL will allow Australia to raise its trade and development assistance profile and demonstrate its commitment to assisting developing countries to engage in the multilateral trading system.<sup>7</sup> Improvements in the Asia-Pacific region in particular are expected to benefit Australia by providing larger and more reliable export markets and more sources for imports.<sup>8</sup>
- 11.6 Australia has demonstrated longstanding support for developing countries interests in the multilateral trading system, including efforts to reform global agricultural trade as Chair of the Cairns Group and a wide range of 'Aid for Trade' programs in the Asia Pacific.<sup>9</sup>
- 11.7 As a member of the ACWL, Australia will also be able to promote its foreign and trade policy interests and be involved in decision making by the ACWL's General Assembly, including decisions concerning the general direction of the ACWL, future funding arrangements, and programs that should be supported.<sup>10</sup>

## ACWL services and funding

- 11.8 The ACWL is considered to have made a significant contribution to the development of the WTO dispute settlement system.<sup>11</sup>

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5 Ms Elizabeth Ward, Department of Foreign Affairs and Trade, *Transcript of Evidence*, 22 November 2010, p. 23.

6 Ms Ward, Department of Foreign Affairs and Trade, *Transcript of Evidence*, 22 November 2010, p. 24.

7 NIA, para. 4.

8 NIA, para. 5.

9 NIA, para. 7.

10 NIA, para. 10; Ms Ward, Department of Foreign Affairs and Trade, *Transcript of Evidence*, 22 November 2010, p. 26.

11 NIA, para. 8.

- 11.9 The ACWL's services are available to 74 developing and least-developed countries.<sup>12</sup> The fee for advice provided to members is determined according to a country's level of development, with the least developed countries receiving the cheapest advice.<sup>13</sup>
- 11.10 Ten developed countries are members of the ACWL and have made a financial contribution – Canada, Denmark, Finland, Ireland, Italy, the Netherlands, Norway, Sweden, Switzerland and the United Kingdom.<sup>14</sup>
- 11.11 Thirty developing countries are members of the ACWL.<sup>15</sup> Contributions are also made by developing countries, with the amount of the contribution varying according to their size.<sup>16</sup>
- 11.12 The Department of Foreign Affairs and Trade provided the Committee with details of the ACWL's funding sources, which include:
- a contribution of at least US\$1 million from each developed country member to either the Endowment Fund or ACWL's annual budget, or both;
  - fees for legal support in WTO dispute settlement proceedings as set out in the Schedule of Fees appended to the agreement, which range from 40 Swiss Franc per hour for least developed countries to 324 Swiss Franc per hour for Category A members;<sup>17</sup> and
  - contributions from other government and non-governmental sources for specific purposes such as training and traineeship programs.<sup>18</sup>

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12 Ms Ward, Department of Foreign Affairs and Trade, *Transcript of Evidence*, 22 November 2010, p. 23.

13 NIA, para. 9. The 44 least developed countries that are members of the WTO or in the process of acceding are entitled to free legal advice on WTO law and a significant discount in dispute settlement proceedings without having to become a member of ACWL. Thirty developing countries are entitled to free advice and discounted dispute settlement support by virtue of ACWL membership.

14 Ms Ward, Department of Foreign Affairs and Trade, *Transcript of Evidence*, 22 November 2010, p. 26.

15 Department of Foreign Affairs and Trade, *Submission 5*, p. 4.

16 Ms Ward, Department of Foreign Affairs and Trade, *Transcript of Evidence*, 22 November 2010, p. 26.

17 Developing countries that are not ACWL Members may also use the ACWL's services, with fees ranging from 405 Swiss Franc to 567 Swiss Franc per hour depending on the country's share of world trade and per capita income. Department of Foreign Affairs and Trade, *Submission 5*, p. 4.

18 Department of Foreign Affairs and Trade, *Submission 5*, p. 4.

- 11.13 The Committee notes that a large percentage of the legal advice offered by the ACWL concerns developing countries' own compliance with their WTO obligations.<sup>19</sup>
- 11.14 The Committee sought information from departmental representatives about the potential benefits of a 'small claims' procedure for addressing disputes. The Department indicated that Australia is interested in all options for improving dispute resolution, including a small claims procedure. However, as any review would take some time, the Australian Government considers the procedures under the WTO Dispute Settlement Understanding provide the best way for developing countries to realise their WTO rights.<sup>20</sup>
- 11.15 The WTO Dispute Settlement Understanding includes options such as the good offices of WTO Director-General, conciliation, mediation and arbitration to resolve disputes amicably.<sup>21</sup> The services provided by the ACWL can assist countries with these processes.<sup>22</sup>

## Implementation and costs

- 11.16 No legislative action is required to give effect to the agreement.<sup>23</sup>
- 11.17 New members of the ACWL are obliged by Article 6(2) of the agreement to pay a one-time contribution to the ACWL. The Committee notes that Australia has already satisfied this commitment, with a payment A\$3 million announced on 12 November 2009 and made on 17 June 2010.<sup>24</sup>
- 11.18 Representatives of the Department of Foreign Affairs and Trade emphasised to the Committee that the decision to make a contribution of A\$3 million to the ACWL was taken independently of any decision about membership:

...I would stress that, at the time when the contribution was announced, it was not announced with a view at that point to accession. It was announced as a contribution. Subsequent to the contribution being made, thought was then given to the idea that

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19 Department of Foreign Affairs and Trade, *Submission 5*, p. 2.

20 Department of Foreign Affairs and Trade, *Submission 5*, p. 2.

21 Department of Foreign Affairs and Trade, *Submission 5*, p. 1.

22 Department of Foreign Affairs and Trade, *Submission 5*, p. 2.

23 NIA, para. 15.

24 NIA, para. 13; Department of Foreign Affairs and Trade, *Submission 5*, p. 4.

maybe there would be value in acceding, so that we could actually assist in directing the work of the organisation.<sup>25</sup>

- 11.19 The Committee was informed that the original contribution arose in response to a review of multilateral trade funding undertaken by Mr Andrew Stoler in 2008, which led to consideration of other opportunities to progress Australia's objectives for its trade development programs.<sup>26</sup> The decision to support the ACWL was then based on:

...development considerations, the ACWL's financial needs and the merits of supporting the organisation's important work.<sup>27</sup>

- 11.20 The Government's decision to pursue accession to the agreement arose following an invitation from the Executive Director of the ACWL Mr Frieder Roesler after Australia announced its intention to contribute to the ACWL.<sup>28</sup>

## Conclusion

- 11.21 The Committee supports the intent of the ACWL to assist developing and least developed countries to participate more fully in the WTO system.
- 11.22 The Committee notes that membership of the ACWL will provide Australia with a mechanism to promote its foreign and trade policy interests and raise its trade development assistance profile. As a member of the ACWL, Australia will be involved in decision making by the ACWL General Assembly.
- 11.23 The Committee notes that the decision to contribute to the ACWL was taken independently of any decision about membership. However, given the sizeable contribution that the Australian Government has already made, the Committee considers that it would be advantageous for Australia to be a member of the ACWL, and therefore have a more active role in the use of that contribution. The Committee therefore supports binding treaty action being taken.

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25 Ms Ward, *Transcript of Evidence*, 22 November 2010, p. 29.

26 Ms Ward, Department of Foreign Affairs and Trade, *Transcript of Evidence*, 22 November 2010, pp. 26-27.

27 Department of Foreign Affairs and Trade, *Submission 5*, p. 5.

28 Department of Foreign Affairs and Trade, *Submission 5*, p. 5.

**Recommendation 13**

**The Committee supports accession to the *Agreement Establishing the Advisory Centre on WTO Law* and recommends that binding treaty action be taken.**