
amnesty international australia



Submission by Amnesty International to the Joint Standing Committee on Treaties in its inquiry into Australia's relationship with the World Trade Organisation

Introduction: Amnesty International's work on economic relations

Amnesty International's work in the area of economic relations can be described in terms of the organisation's desire to contribute to the worldwide observance of human rights as set out in the Universal Declaration of Human Rights and other internationally recognised standards. Amnesty International takes no position on trade liberalisation – whether it is a positive or negative phenomenon. However, Amnesty International does take a position on policies which result in human rights abuses, whether by state and non-state actors.

This submission has been prepared by Amnesty International Australia's Business Group (AIBG), comprised of Amnesty International members from the Australian corporate community, with expertise in areas including international investment, agriculture, competition policy and intellectual property. The AIBG is dedicated to developing a constructive dialogue with business and government on human rights issues. A key element of this dialogue is contributing to debates on human rights issues as they pertain to trade, investment and business issues.

As stated, Amnesty International takes no position on trade liberalisation. The organisation recognises that at present trade liberalisation policies represent an important element of foreign policy for Australia. In recognising this fact, Amnesty International urges the Australian government to ensure that any proposals relating to trade issues (including all initiatives relating to the World Trade Organisation (WTO), take due account of the effects of these proposals on the protection and promotion of human rights. Accordingly, Amnesty International would urge that all existing and future trade agreements explicitly address human rights issues. Amnesty International is firmly of the view that in any inconsistency or dispute between trade and human rights issues, the protection of human rights should take precedence.

Amnesty International has considerable concerns regarding the absence of human rights issues in the formulation of trade resolution bodies such as the WTO, including the lack of any human rights audit in dispute resolution processes. This submission will address primarily the following issues:

- The transparency and accountability of WTO operations and decision making;

- The effectiveness of the WTOs dispute settlement procedures and the ease of access to these procedures;
- The absence of civil society and non-governmental organisations (NGOs) from WTO dispute resolution mechanisms; and
- The relationship between WTO agreements and other multilateral agreements, specifically those on human rights and labour standards.

1. THE TRANSPARENCY AND ACCOUNTABILITY OF WTO OPERATIONS AND DECISION-MAKING

Amnesty International is of the view that the WTO needs to increase its transparency. Specifically, this would require that:

- Briefing papers and research papers produced by the WTO be made available to all governments and NGOs well in advance of WTO negotiating sessions;
- The involvement of civil society through NGOs in dispute resolution be actively facilitated and encouraged by the WTO (see Item 3 below);
- Dispute resolution processes be made more transparent (see further Items 2 and 3 below);
- A formal human rights impact assessment process be established (see Item 4 below);
- Formal consultation be completed prior to a formal agreement being obtained between the WTO and related governments;
- Australian government negotiating positions on specific issues be notified and communicated well in advance of WTO negotiating sessions;

Amnesty International considers that significant benefits may attach to the inclusion of civil society, through NGOs, in the processes of the WTO. Several of these benefits will be outlined under Item 4, however the basic point is that NGOs represent the views of the community and civil society and accordingly should be seen as a key interlocutor with government as well as an asset for the improvement of government policy formulation. At the same time, Amnesty International would urge the government for its part, to commit to not only notifying negotiating positions in advance of WTO meetings but also notifying changes in negotiating positions as meetings progress, including the reasons for changes in negotiating positions. Prior to final agreements being signed, the government should commit to formal review and consultation processes within Australia where all the implications of such agreements are canvassed (not only trade and economic issues but also issues associated with human rights, labour rights and the roles and responsibilities of government and corporate entities). In the absence of such commitments by the WTO itself and by the government, Amnesty International considers that the fundamental issues of transparency and community input will remain overlooked and that WTO processes and by implication, trade liberalisation policies generally, will allow themselves to come under sustained attack on transparency grounds and through perceptions of exclusion.

We would make the point that the recent controversy surrounding the Multilateral Agreement on Investment served to highlight the importance of open and transparent negotiations on trade liberalisation. Similar concerns have been expressed regarding the negotiation and dispute resolution processes of the WTO. Amnesty International considers it imperative that these processes be reformed to be fully transparent and open and that they facilitate the input of NGOs and other interested parties.

In the domestic context, we refer to the strong recommendations of the Joint Standing Committee on Treaties Report into the Multilateral Agreement on Investment (MAI) regarding the lack of transparency in the consultation process on the MAI and the importance of open and transparent

consultation processes underpinning future international discussions. Accordingly, we would respectively suggest that it is important that the government and The Treasury in particular commit to:

- Open and transparent consultations at all stages of discussions regarding WTO negotiations;
- Informing NGOs prior to decision-making/negotiations as to the position of the government on various issues. This could be effected through the issue of draft position papers prior to such negotiations, giving NGOs an opportunity to review and comment on the government's position - this could be through periodic consultations with NGOs, as occurs with government departments including Foreign Affairs, Immigration and Attorney General's prior to United Nations meetings;
- Responding to NGO issues and concerns. Specifically, where issues have been raised by NGOs, there should be a commitment to explicitly responding to these concerns and, if the concerns are not to be addressed, providing reasons why this will not be the case. It is important that this type of advice be provided in a timely manner.

2. THE EFFECTIVENESS OF THE WTO'S DISPUTE SETTLEMENT PROCEDURES AND THE EASE OF ACCESS TO THESE PROCEDURES

Amnesty International is concerned current dispute settlement procedures utilised within the WTO lack efficiency and effectiveness on various fronts. To date, settlement procedures have lacked sufficient transparency resulting in confusion and frustration. Amnesty International is of the view that the effectiveness of dispute settlement procedures will only result if:

- An increased level of transparency regarding the organisation's operations and decision making processes and results;
- NGO involvement in the dispute resolution and settlement process are established and maintained, including providing the forum for NGOs to be recognised as expert witnesses (see Item 3 below); and
- All governments, including Australia, promote the use and education of human rights in WTO processes. Amnesty International takes no position on any advocacy for economic pressure techniques against countries which perpetrate human rights abuses against their citizens, nor against non-state actors, including national and transnational corporations implicated in such abuses, including arguments that processes such as the WTO consider the power to bar or discriminate against goods, services or investments from countries or specific organisation where that country or organisation has failed to comply with basic norms of human rights. However, Amnesty International does consider that the international community and by implication this extends from states to inter-state institutions and non-state institutions is responsible for ensuring that such abuses do not occur and that the international community must actively satisfy itself that international mechanisms for trade dispute resolution adequately address this imperative. That is, any dispute resolution process, including those of the WTO, must recognise the primacy of international human rights law over international trade law.

3. THE INVOLVEMENT OF NGOs, PEAK BODIES, INDUSTRY GROUPS AND OTHER EXPERTS IN WTO DISPUTE RESOLUTION

NGOs such as Amnesty International have played a leading role in the development of international and domestic standards relating to human rights. In addition, NGOs are able to bring a significant degree of information and knowledge to debates about trade and investment issues, enabling the broader implications of decisions to be identified and, thereby, facilitating better decision-making.

The WTO has, to date, been characterised by a focus on narrowly defined trade issues rather than a broader consideration of the human rights, social, labour and environmental consequences of trade liberalisation. In part, this has been due to the difficulties that NGOs (other than those representing business interests) have had in being involved in WTO discussions, debates and dispute resolutions. Amnesty International recognises that the primary expertise of the WTO is on trade issues and is not calling for the WTO to become 'expert' in human rights issues. However, in disputes where there are human rights issues or implications, it is critical that the WTO utilises the expertise of United Nations agencies, including the Office of the United Nations High Commissioner for Human Rights, in addition to human rights NGOs, in dispute resolution matters.

Amnesty International would suggest that consideration be given to ensuring that human rights NGOs should be granted formal standing at the WTO, similar to the situation which currently prevails at the United Nations. This would require that:

- Human rights NGOs are allowed to contribute to debates at the WTO on trade issues and implications for human rights;
- In disputes with a human rights dimension, that relevant NGOs are allowed to participate in these disputes as an expert witness;
- In situations where human rights violations have occurred or are likely to occur, that the WTO recognises that these issues are of greater importance than trade liberalisation and that governments or – where governments are unable or unwilling to act – the international community is entitled to act to prevent these violations continuing or recurring.

Amnesty International urges the international community to ensure that existing trade agreements - including WTO processes - contain sufficient human rights audits so that there can be no perception of a link between a trade practice, policy or ruling and a consequent imprimatur for a human rights violation by a state or non-state actor. At the same time, we would argue that further trade agreements should not be signed unless human rights are explicitly included and provided a critical level of protection and promotion.

4. THE RELATIONSHIP BETWEEN WTO AGREEMENTS AND OTHER MULTILATERAL AGREEMENTS

Recent criticism of the WTO has focused on the organisation's inability to consider the impacts of trade policies and agreements on societal and community issues, including those of environmental protection, human rights, labour standards and the extent to which social, cultural and environmental considerations influence WTO priorities and decision-making.

Amnesty International is concerned that the present focus of the WTO on trade issues has resulted in broader issues associated with human rights protection being ignored or, in a number of cases, such protection being weakened or compromised. Specifically, we are concerned that international trade law is:

- Leading to a 'downward' harmonisation of human rights protection;
- Comprising democratic processes, including input of civil society and national sovereignty generally, insofar as current processes render it extremely difficult for governments to act to protect the well being of its citizens;

- Conflicting with existing law relating to the protection of human rights. We recommend that international human rights law must, in all cases take primacy over trade law.

Accordingly, Amnesty International recommends that the WTO be explicitly required to consider the human rights implications of trade liberalisation in negotiations and in dispute resolution processes. This can be considered in two parts. The first is a detailed review - in the form of a human rights audit - of the implication of trade liberalisation measures that have been adopted to date (including the measures under the Uruguay Round). The second is that a formal Human Rights Impact Assessment process be established as part of the process of developing further trade rules. Each of these is discussed briefly below.

In considering the trade rules which have been adopted to date, we would ask that the WTO be required to evaluate the impacts on Australia's and other countries' economies, human rights standards and protection, labour standards, levels of social and economic equality and environmental protection. It appears to be an article of faith amongst WTO negotiators that increased trade will lead directly to improved human rights. However, our research indicates that this argument is far from proven, with many countries displaying increased wealth disparities, increased social tensions and poorer protection of basic human rights, following periods of economic expansion. In our 1998 Annual Report, Amnesty International noted that most human rights violations in the world now occur in the context of extreme poverty. While the organisation recognises the potential for trade to provide broader social as well as narrower economic (as measured by conventional indices such as GDP, GNP, income per capita) benefits, the reality has been that much economic development has actually led to great social difficulties and a worsening of human rights protection.

Before considering new trade rules or new areas for negotiation, Amnesty International recommends to the international community that first a detailed review of the human rights implications of existing measures be undertaken and second, that any proposals for future changes be subject to a detailed social and human rights impact assessment process. Both processes should identify the positive and negative, likely and potential implications of changes in the international trade regime. The issues to be covered should include democracy and sovereignty impacts, worker rights impacts, human rights impacts and broader social and cultural impacts.

To ensure the credibility of the WTO in the eyes of an increasingly sceptical public, it is imperative that both these review processes be completely transparent and open. This transparency and openness should apply to all stages including scoping processes, issue identification, issues assessment and development of conclusions and recommendations. In particular, there should be formal processes for the issue of draft impact assessment documents, the provision of suitable review processes, the issue of draft and final assessment reports, addressing all of the issues raised from the draft impact assessment documents. The WTO should be required to explicitly incorporate these reports and to reflect their findings in its decision-making processes. Specifically, in situations where a trade measure is likely to lead to a human rights violation, suitable safeguards must be adopted to ensure that human rights are not compromised.

Conclusions

As stated, Amnesty International takes no position on trade liberalisation policies generally, however the organisation is increasingly concerned at the absence of human rights values, principles and policies in WTO processes. In an increasingly interdependent world, WTO processes must not result in human rights violations – whether by government, opposition group or corporate practice. It is incumbent on decision makers to ensure that human rights protection and promotion is placed at the forefront of continuing discussion on these issues.

Submission by Amnesty International to JSCT in its inquiry into Australia's relationship with the WTO

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