

THE FUTURE OF THE WTO

The WTO is central to the international trade architecture and as such has become the target of serious criticism by communities in both developed and developing countries.¹

- 3.1 After five years of operation, the WTO is facing a number of future challenges. The next Ministerial meeting is scheduled for November 2001, in Doha, Qatar. The world will be watching the outcomes very closely. If a new round of multilateral negotiations is not launched at this meeting, serious doubts will be raised about the future of a rules based forum to facilitate trade between nations.
- 3.2 Many of the submissions to the inquiry called for reforms to the WTO. Some called for Australia to sever all ties with the WTO. While respecting the views of all submitters, we believe that those submissions calling for the dismantling of the WTO illustrate a serious need for further education and awareness for all Australians about trade liberalisation, its benefits and costs, and about the role and limitations of the WTO.
- 3.3 This chapter considers some of the key criticisms of the WTO, including:
- perceived lack of transparency and accountability, including non-government organisations' involvement with the WTO;
 - how the WTO Agreements co-exist with other multilateral and regional agreements;
 - the need to broaden the WTO's agenda and operations to be more inclusive for developing countries; and
 - arguments for inclusion of labour and human rights clauses in WTO Agreements.

1 Australian Council for Overseas Aid (ACFOA), submission no. 304, p. 1.

3.1 TRANSPARENCY AND ACCOUNTABILITY

3.4 There have been increased calls in the international arena for the WTO to improve its transparency and accountability mechanisms. Although the WTO is a strictly Government-to-Government organisation, the appropriate role for non-state entities continues to be debated.

3.5 Dr Sylvia Ostry, a trade academic at the University of Toronto and participant in the Uruguay Round negotiations to establish the WTO, comments:

The premise of increasing substantive complexity, on which the WTO agreement was based, was seriously underestimated. The agenda of deeper integration is profoundly different in scope, complexity, and contentiousness from the trade policy agenda of the postwar world.

This greater power inevitably shines a spotlight not just on the WTO decisions, but also on the process of decisionmaking. There are increasingly frequent demands for more 'transparency' and 'democratisation'.²

3.6 Transparency was also a recurring theme in submissions and evidence to our inquiry. The transparency of the Australian government's processes in developing trade policy are discussed in Chapter 2.

Participation for non-government organisations

3.7 The 1994 Marrakesh Agreement which established the WTO called for the organisation to 'make appropriate arrangements for consultation and cooperation with non-governmental organisations concerned with matters related to those of the WTO'. Further guidelines were issued by the WTO's General Council to the WTO secretariat in 1996, calling for the secretariat to increase efforts at direct interaction with NGOs through hosting ad-hoc seminars, receiving information from NGOs, and responding to requests for information and discussion.³

2 Sylvia Ostry, *Reinforcing the WTO*, Group of Thirty Occasional Paper 56, Washington DC, 1998.

3 Article V.2 of the Marrakesh Agreement establishing the WTO; and Paragraph 4 of the WTO's *Guidelines for Arrangements with Non-Governmental Organisations*, available on the WTO internet site (the legal texts: Agreements): http://www.wto.org/english/docs_e/legal_e/legal_e.htm, accessed 14 May 2001.

3.8 The WTO internet site states:

Although NGOs have been interested in the GATT since its inception in 1947, the period since the creation of the WTO has vividly demonstrated that the multilateral trading system is being scrutinised by public opinion like never before.⁴

What is an NGO?

3.9 The term 'civil society' has gained currency in over the last five to ten years when describing non-government organisations (NGOs) and their claims to be consulted by governments and international organisations such as the WTO in their decision-making.

3.10 While there is no one agreed definition of 'civil society', commentators appear to agree on broad terms which describe civil society as 'the realm of private voluntary organisations, from neighbourhood committees to interest groups, to philanthropic enterprises of all sorts'.⁵ A Civil Society statement on the internet claims that 'civil society is a third sector of society alongside the state and the market...a vigorous civil society is an important balance to government and business'.⁶

3.11 There were mixed definitions of civil society in submissions to the inquiry. Carmichael and Duncan defined civil society as 'those not represented by peak industry, business or professional organisations'.⁷

3.12 The Australian Manufacturers Workers Union (AMWU) and United Nations Youth Association (UNYA) interpreted the hallmarks of civil society as:

- respect for human rights;
- respect for the rights of workers embodied in International Labour Organisation Conventions; and
- a determination to ensure that the drive for further expansion of world trade and economic growth do no further harm to the environment.⁸

3.13 APHEDA Union Aid Abroad submitted that:

4 WTO internet site (NGOs section):

http://www.wto.org/english/forums_e/ngo_e/intro_e.htm, accessed 15 June 2001.

5 Foley, M and Edwards, B; 'The Paradox of Civil Society' in *Journal of Democracy*, 7(3), 1996.

6 Civil Society Statement, at http://www.cpsr.org/internetdemocracy/Statement_July-13.html, accessed 21 May 2001. Thanks to the Department of the Parliamentary Library for research on definitions of Civil Society.

7 W. Carmichael and R. Duncan, Submission no. 306, p. 5.

8 AMWU, submission no. 160; UNYA, submission no. 248.

Civil society includes all participatory organisations which aim to enhance the lives or wellbeing of their members or wider society and include trade unions, churches, human rights organisations, groups assisting the most marginalised and other community organisations.

Respect for all the basic rights which underpin a civil society are important. This includes an independent judiciary, a free media, a democratic voice, the right to an education and the other fundamental rights of people such as the right to assembly, freedom of expression and the right of workers to organise and to bargain collectively.⁹

- 3.14 The need to give NGOs a voice in Government and international decision-making was emphasised by many organisations. For example, the United Nations Association of Australia (Victorian branch) stated that

...a vibrant civil society is central to processes of democratisation and empowerment and the emergence of interest groups reflects the trend towards the overall development of civil society and the quest for a more democratic, transparent, accountable and enabling governance.

International political space is filled not simply by sovereign states but increasingly by social forces below and above the state level which are necessitating a reassessment of the dominant notion of political community.¹⁰

- 3.15 The increasing profile of NGOs in recent years, particularly in the international arena, has attracted greater scrutiny of their structures, organisation and accountability. Professor David Robertson writes:

Although some NGOs are nationally based, they usually have international links and act internationally. They therefore lack the traditional obligations of citizenship and the legal status associated with 'civil society'.

Moreover, most NGOs are run centrally by small powerful elites and are unaccountable to their societies. They have failed to gain representation in parliament.¹¹

9 APHEDA Union Aid Abroad, submission no. 116, p. 3.

10 United National Association of Australia – Victorian Division, submission no. 95, p. 2.

11 Professor David Robertson, 'Setting the Record Straight – Free Trade and the WTO', in *Centre for Independent Studies Issue Analysis No. 15*, 4 September 2000.

3.16 Mike Edwards, of London's Foreign Policy Centre, takes a more pragmatic view, but urges NGOs to undertake accountability reforms in three key areas:

First, transparency and accountability. Unlike governments (which must face elections) and businesses (which must face their shareholders), NGOs report to boards of trustees that exercise only a light form of oversight. This makes it difficult to publicly test the accuracy and validity of their claims.

Second, global NGO networks are dominated by voices from the rich world, a weakness that makes them easy targets for attack. Powerful NGOs like Oxfam and Greenpeace must make some sacrifices to ensure that Southern NGOs are not excluded from debates by their wealthier counterparts from Europe and North America.

Third, NGO campaigns are sometimes driven by fashion and sensation rather than loyalty to the facts. The absence of more thoughtful critiques can give unwitting support to reactionary forces that care little about the welfare of the poor: it is no coincidence that protectionism is on the rise in the USA at a time when attacks against the World Bank and the IMF are in full swing. NGOs don't need to be think tanks or universities, but they do need to put more resources into rigorous research and the building of credible policy alternatives.¹²

Current NGO involvement in WTO activities

Attendance at WTO Ministerial meetings

3.17 NGOs may attend WTO Ministerial Meetings and sit in on Plenary Sessions of the meetings. Those groups wishing to attend must show that their activities are 'concerned with matters related to those of the WTO'. NGO groups are also asked to provide information about their membership, staff, and financial status. The number of NGOs attending Ministerial Meetings has increased dramatically:

- 108 NGOs at the 1996 Singapore meeting;
- 128 NGOs at the 1998 Geneva meeting; and

12 Mike Edwards, Foreign Policy Centre, 'Time to put the NGO House in Order', in the *Financial Times*, 6 June 2000, available at: <http://www.fpc.org.uk/hotnews/>, accessed 15 August 2001.

- over 700 NGOs at the 1999 Seattle meeting (in this instance the term 'NGO' was used by the WTO to describe all groups – for example, industry groups such as the Australian Dairy Corporation were included in this number).¹³

3.18 The expected numbers for the Doha Ministerial meeting in November 2001 are not yet clear. However, it is safe to say that interest in the activities of the WTO has heightened since the Seattle meeting. As well as the ability for NGOs to witness the WTO's Plenary Sessions, there are a wide range of activities for NGOs leading up to, and during the meeting. The program as it evolves is available on the WTO internet site.¹⁴

Symposia and briefings

3.19 The WTO secretariat organises regular symposia on major trade issues of interest to NGOs, for example, trade and environment, trade and development and trade facilitation issues. The symposia generally involve NGOs, representatives of WTO member governments, and secretariat staff. This gives NGOs an opportunity for direct dialogue with WTO Members.

3.20 Since 1998 the secretariat has also given regular briefings for NGOs (in Geneva) on current issues under consideration by WTO Member governments. For example, in the first half of 2001 the briefings covered the work of:

- the Special Session of the Council for Trade in Services;
- the latest meetings of the Committee on Trade and Development;
- Special Session of the Committee on Agriculture; and
- the latest meetings of the Committee on Trade and Environment.¹⁵

NGO position papers, other publications

3.21 All information relevant to NGOs, such as registration requirements for the Doha meeting, upcoming meetings, and WTO publications, are available on the WTO internet site.¹⁶

13 WTO internet site (NGO section):
http://www.wto.org/english/forums_e/ngo_e/intro_e.htm, accessed 15 June 2001.

14 WTO internet site (NGOs at Doha):
http://www.wto.org/english/thewto_e/minist_e/min01_e/min01_ngo_activ_e.htm, accessed 14 May 2001.

15 WTO internet site (NGO briefing sessions):
http://www.wto.org/english/forums_e/ngo_e/briefs_e.htm, accessed 14 May 2001.

- 3.22 The secretariat accepts position papers from NGOs on matters relevant to the work of the WTO. Each month the secretariat compiles a list of all position papers received, for circulation to member states. Member states may then request a copy of any NGO paper on the list. The list is also published on the WTO internet site, with some papers available to download.
- 3.23 The WTO secretariat also prepares a monthly bulletin for NGOs on the latest issues under consideration by the WTO.¹⁷

NGO participation based on the UN model

- 3.24 Some non-government organisations (especially those representing community and non-business organisations), called for direct NGO participation in WTO negotiations and decisions. The United Nations model of non-government participation was often highlighted as a suitable mechanism for NGO participation in the WTO.

- 3.25 UnitingCare submitted:

The situation at WTO negotiations is unacceptable in terms of democratic values, accountability and transparency. The processes stand in sharp contrast to the processes of the United Nations, where non-government organisations have a role. Yet most UN agreements have only moral force, and are not subject to the sanctions and disciplines that apply in WTO agreements.

Only when the processes are transparent can either the Australian government or the WTO expect to have credibility as acting in the interests of all Australians, rather than simply the international corporations.¹⁸

- 3.26 The ACTU told us:

There needs to be a right of involvement of the representatives of broader civil society in the process of decision making within the WTO.¹⁹

16 WTO internet site (documents for NGOs):

http://www.wto.org/english/forums_e/ngo_e/wtdocs_e.htm, accessed 15 May 2001.

17 WTO internet site (NGO position papers):

http://www.wto.org/english/forums_e/ngo_e/pospap_e.htm, accessed 18 June 2001.

WTO internet site (monthly bulletin for NGOs):

http://www.wto.org/english/forums_e/ngo_e/ngobuletin_e.htm, accessed 18 June 2001.

18 UnitingCare, submission no. 75, p. 5.

19 Bill Mansfield, ACTU, Transcript of Evidence 27 April 2001, p. TR451.

3.27 According to the United Nations Association, the exclusion of NGO groups damages the WTO:

The lack of transparent proceedings can perpetuate a secretive image of the WTO and diminish public confidence in, and support for, its work.

Empirical evidence suggests that greater transparency and participation do not endanger the effectiveness of an institution. If you look at that overall concept, you constantly see it at the local level right up to the international level.²⁰

3.28 Amnesty International called for the WTO to interact with UN agencies with expertise in non-trade issues, such as the UN High Commissioner for Human Rights (UNHCR), where appropriate. Amnesty also called for NGOs to have formal standing in WTO debates and disputes:

...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 expert witnesses;
- in situations where human rights violations have occurred or are likely to occur...the international community is entitled to act to prevent these violations continuing or recurring.²¹

3.29 Similarly, The Australian Fair Trade and Investment Network (AFTINET) called for the WTO to be structured more along the lines of the United Nations:

...although the UN has many critics, it does have public debates, it has majority voting, there are non-government observers and its agreements are largely implemented through domestic legislation. In the WTO, the meetings are held behind closed doors – there is no public debate, there is no majority voting and there is a so-called consensus process. It is actually dominated by the most economically powerful governments; that is, the US, Canada, Europe and Japan.²²

20 Karen Medica, United Nations Association, Transcript of Evidence 27 April 2001, p. TR456.

21 Amnesty International Australia, submission no. 86, p. 4.

22 Pat Ranald, AFTINET, Transcript of Evidence 12 February 2001, p. TR139.

- 3.30 The United Nations Youth Association argued that allowing NGO participation would help to de-mystify many of the WTO's actions:

Not only would this increase transparency and accountability, but it would also serve to create a dialogue between the WTO and some of its critics, allowing a much more informed and constructive debate around issues that have up to this point polarised these groups.²³

NGOs at the United Nations

- 3.31 At the United Nations NGOs may apply to be accredited to formal consultative status at the UN's Economic and Social Council (ECOSOC). The ECOSOC is the principal forum in which the UN discusses economic and social issues, and formulates reports, recommendations and draft conventions to be presented to the UN General Assembly.
- 3.32 There are currently over 2000 NGOs with consultative status at ECOSOC, and a further 400 accredited to the Commission on Sustainable Development, a sub-committee of ECOSOC.
- 3.33 NGOs with consultative status may serve as technical experts, advisers and consultants to governments and the UN secretariat, and may attend meetings, make oral and written submissions, and propose agenda items for consideration by the ECOSOC.²⁴ They may also attend UN international conferences and UN General Assembly special sessions. Many of the UN specialised agencies also have accreditation systems for NGO involvement.²⁵
- 3.34 A paper by two WTO secretariat staff members (Marceau and Pedersen) states that in 1948, the ECOSOC model for involving NGOs was considered when drawing up plans for the International Trade Organisation (which eventually was not ratified, and was superseded by the GATT). The ECOSOC model was rejected because it was seen as too rigid – NGOs were classed into specific categories, which would have eliminated the benefits of ad-hoc consultations across issues. Drafters were

23 United Nations Youth Association, submission no. 248, pp. 2-3.

24 United Nations Internet site: *NGO Frequently asked questions*, at: <http://www.un.org/esa/coordination/ngo/faq.htm#status>, accessed 24 May 2001.

25 UN Specialised Agencies with NGO involvement include: International Labour Organisation (ILO); Food and Agriculture Organisation (FAO); United Nations Educational, Scientific and Cultural Organisation (UNESCO); the World Health Organisation (WHO); International Telecommunications Union (ITU); International Maritime Organisation (IMO); World Intellectual Property Organisation (WIPO); the United Nations Industrial Development Organisation (UNIDO); and the United Nations Conference on Trade and Development (UNCTAD).

also worried that the creation of 'classifications' of NGOs would have generated questions of prestige and rank of the various organisations.²⁶

- 3.35 The GATT did not adopt the ECOSOC model, and Marceau and Pedersen note that while GATT had some scope for NGO consultation, processes have improved markedly under the WTO.

Arguments against NGO involvement

- 3.36 In evidence to the inquiry, the concept of NGOs participating in WTO proceedings was opposed by all industry groups, and some NGOs. DFAT argued that most WTO Members oppose direct NGO participation:

...there is a strong view among Members that as an intergovernmental organisation the primary responsibility for consultation with civil society on WTO issues rests with Member governments.²⁷

- 3.37 Professor David Robertson, then head of the Centre for the Practice of International Trade (University of Melbourne) argued that experience shows that opening negotiations to the public would result in the 'real' negotiations taking place outside formal meetings.²⁸

- 3.38 Similarly, the AFGC submitted:

Some of the processes of the WTO require negotiation of matters of great national importance. No negotiation on any important subject can be an unequivocally open process if it is to succeed. Community groups whose interests are affected have a right to put their interests to Government at critical moments in the process. These include when negotiating positions are being established and before the final deals are signed off.²⁹

- 3.39 Trade consultant Alan Oxley argued that to allow NGO participation would be in contradiction to the WTO's establishing principles:

The proposals to give rights to non-state parties to participate in the proceedings of the WTO, particularly its disputes procedures, overlooks a fundamental feature of how the WTO is constituted. It is unique among international organisations in that its primary purpose is the regulation of measures that governments impose.

26 Gabrielle Marceau and Peter N. Pedersen, 'Is the WTO Open and Transparent?' in *Journal of World Trade*, vol. 33(1), 1999.

27 DFAT, submission no. 222, p. 36.

28 Centre for the Practice of International Trade, submission no. 117, p. 3.

29 Australian Food and Grocery Council, submission no. 302, p. 14.

The disputes settlement [system] monitors compliance to commitments governments make to each other to follow the rules. The WTO is accordingly the business of governments. There is no scope or logic to giving non-state parties a role in a process which tests commitments among state parties. The natural place for non-state interests to make input into developments in the WTO is in national capitals where governments develop positions.³⁰

NGOs and dispute cases

3.40 Only Members may invoke the WTO's dispute settlement procedures and only Members may directly participate in a dispute. However, non-Members, including NGOs, have the capacity to participate in three ways:

- panels have a broad discretion to seek information and technical advice from an individual or body or from any relevant source that would assist it to make an objective assessment;
- a Member who is a party to a dispute can attach an NGO submission to its submission; and
- a non-Member can make an amicus curae ('friend of the court') submission.

3.41 There is some support for NGOs being allowed to partly participate in WTO dispute cases, through lodging 'amicus briefs' at hearings. The term 'amicus brief' or 'amicus curiae' refers to a 'friend of the court' presenting evidence on the case in question. There is some precedence for this to occur in WTO proceedings.

3.42 The Institute for Comparative and International Law called for amicus briefs to be submitted to dispute and appellate panels, and for the DSU to be altered so that each panel must take account of amicus briefs and provide reasons why it accepts or rejects the evidence contained in such briefs.

This would go some way to avoiding the criticism of the Shrimp/Turtle dispute decision that the dispute settlement process is unduly insulated, short sighted and ill equipped to deal with environmentally related trade disputes.³¹

3.43 However Effem Foods argued that dispute panels should hear from WTO member governments only:

30 Alan Oxley, International Trade Strategies Pty Ltd, submission no. 124.1, Attachment A, p. 7.

31 Institute for Comparative and International Law, submission no. 249, p. 14.

It is difficult to see how parties without legal standing in a dispute could have rights to participate directly in the disputes proceedings.³²

- 3.44 We had the opportunity to hear from Paul O'Connor, an Australian who has participated on a number of WTO dispute panels regarding subsidies and counter-vailing measures. Mr O'Connor was concerned that an automatic right of NGOs to lodge amicus briefs could slow down the dispute settlement process, as well as vastly increasing the workload of panel members:

The difficulty that throws up is that outside groups have a limited understanding of the role of dispute settlement and the constraints that operate on panels—namely, that the panel is limited to the terms of the agreement. NGOs and interest groups tend to put information in at a fairly general non-specific level in pleading particular provisions within the agreement.

For example, there will be general statements about environmental issues without linking those statements to particular provisions within the agreement. As a panellist, I would find that incredibly burdensome, purely from the point of view of the amount of documentation that I would have to consider.³³

- 3.45 However, Mr O'Connor conceded that allowing NGOs to at least observe the dispute panel proceedings could go a long way to resolving issues of transparency. He highlighted the North American Free Trade Agreement (NAFTA) hearings, which allow NGO observers, as an example of how this might be done:

In my view, I think there will need to be some accommodation made. With NAFTA...the proceedings are open to the extent that you can have interest groups and their legal advisers in the auditorium observing what is going on, without a right of participation. That does lend some greater transparency to the process, but even under NAFTA they have not gone to the extent of allowing interventions from nonmembers of delegations.³⁴

- 3.46 Dr Ann Capling (Australian National University) noted the reality that the WTO and non-business NGOs tend to operate within fundamentally different value systems and worldviews. Dr Capling argued that if governments wish to prevent NGOs from participating in WTO

32 Effem Foods Pty Ltd, submission no. 256. p. 7.

33 Paul O'Connor, Transcript of Evidence 20 April 2001, p. TR341.

34 Paul O'Connor, Transcript of Evidence 20 April 2001, p. TR342.

discussions and panels, they must take on more responsibility themselves to listen to civil society views:

The WTO's legitimacy as an institution of global governance will depend on the willingness and ability of its members to confront these issues head on. That will necessarily involve greater engagement between governments and civil society on the development of trade policy.³⁵

- 3.47 It must be said that the issue of non-party participation and amicus submissions is still highly contentious. Clearly there needs to be careful consideration as to the procedures for handling amicus submissions. There are serious issues that impact on the parties to the dispute. Due process must be observed and clearer guidelines are required. Although the Appellate Body has recently drafted new procedures there was strong disagreement amongst Members and no indication that another attempt to clarify to the guidelines for amicus submissions would meet with greater acceptance. Clearly it is a matter which needs to be kept on the agenda for reform of the DSU.

Transparency in the dispute process

Composition of dispute panels

- 3.48 We heard some argument that the composition of WTO dispute panels is too restrictive – that experts in areas such as environment, human rights, and other issues should be utilised by the WTO in forming panels.

Appointment of panels and Appellate Body

- 3.49 Article 8 of the WTO's Understanding on Rules and Procedures Governing the Settlement of Disputes sets out the framework for appointment of dispute panel membership. Panels must include well-qualified governmental and/or non-governmental individuals, who have either:
- served on or presented a case to a previous panel;
 - served as a representative of a Member country at WTO Council meetings or Committee meetings, or at GATT meetings;
 - served as a member of the WTO or GATT secretariat;

35 Dr Ann Capling, submission no. 284, p. 21.

- taught or published on international trade law or policy; or
 - served as a senior trade policy official of a Member country.
- 3.50 The DSU states that panel members should be selected with a view to ensuring the independence of the members, a sufficiently diverse background and a wide spectrum of experience. Individuals from the country of either party to the dispute should not serve on that panel, unless both parties agree.³⁶
- 3.51 The WTO secretariat maintains a list of suitably qualified people to serve on panels. DFAT indicated that it has supplied a list of around 20 Australians who could serve on panels.³⁷
- 3.52 The WTO secretariat nominates three people to serve as panellists on each dispute. The parties to the dispute may oppose the nomination only for 'compelling reasons'. Any objections about panel membership must be resolved within 20 days, after which the WTO Director-General will appoint the panel in consultation with the full DSB. Objections about panel membership is an increasing phenomenon – in 1999 the Director-General appointed 16 of the 45 panels convened in the first half of that year.³⁸
- 3.53 If a party to a dispute appeals against a panel's report, the Appellate Body hears the case. Appeals are regarding matters of law only, and legal interpretations developed by the dispute panel. Membership of the Appellate Body is determined in a different manner to dispute panels. The Appellate Body is a standing body of seven persons, appointed for four-year terms. Appellate Body members must be recognised authorities in law, international trade, and the general terms of the WTO Agreements. Three members of the Appellate Body serve on any one case.³⁹

36 WTO Understanding on Rules and Procedures Governing the Settlement of Disputes, available at: http://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm, accessed 13 June 2001.

37 Thus far, nine Australians have served on WTO panels. A further four Australians have advised WTO panels as experts in their fields. DFAT internet site: http://www.dfat.gov.au/trade/negotiations/aus_wto_panel.html, accessed 19 June 2001.

38 Drs Sali Bache and Marcus Haward, submission no. 46, p. 3.

39 Article 17 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes, available at: http://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm, accessed 13 June 2001.

Calls for expanding panel membership

- 3.54 The Catholic Social Justice Council (Western Australia) argued that as WTO dispute panels are comprised of 'trade specialists and bureaucrats', they do not adequately represent a broad cross-section of views:

We would suggest the need for a broader composition of members of these bodies. Limiting the panel to those who are experienced in trade law or policy is too restrictive, as panel decisions can have implications for issues other than international trade, such as environmental sustainability, labour standards and sustainable development.⁴⁰

- 3.55 Drs Sali Bache and Marcus Haward also had concern that expertise in areas such as environment issues is excluded. Bache and Haward stated that to date, most panel positions have been filled by government officials, with a ratio of government; WTO secretariat; and academic panellists being 114:8:29. Bache and Haward argued:

While panels may request independent scientific or legal expertise to assist them in adjudicating disputes that raise non-trade issues, there is no obligation that they do so. Thus sensitive issues involving the relationship between trade and environment may be resolved by trade experts with little understanding of environmental science, policy or law.⁴¹

- 3.56 The Institute for Comparative and International Law told us that expanding panel membership would help to ease transparency and accountability concerns of civil society:

We think an alteration to the composition of panels...would go some way towards balancing the demands of free trade and legitimate social measures which a nation state might enter into because its citizenry, in particular, has urged it to enter into.⁴²

- 3.57 Bache and Haward suggested the creation of a pool of permanent panellists, from which independent panels would be drawn. This would have the advantage of building a body of knowledge on trade and other issues, establishing of working relationships between panellists, and ensuring consistency of rules and approaches.

40 Kerry MacFarlane, WA Catholic Social Justice Council, Transcript of Evidence 20 April 2001, p. TR348.

41 Drs Sali Bache and Marcus Haward, submission no. 46, p. 6.

42 Sundya Pahuja, Institute for Comparative and International Law, Transcript of Evidence 27 April 2001, p. TR418.

- 3.58 Bache and Haward's suggestion is modelled on the system used for the WTO's Appellate Body, which consists of seven people appointed for four-year terms.

Publication of information

- 3.59 We also heard argument that the WTO should publish more information on its activities, particularly disputes. DFAT noted that WTO Member countries are engaged in continuing discussions about improving the release of information, particularly for dispute settlement.⁴³
- 3.60 The legal texts of all WTO Agreements, and other documents such as dispute panel and Appellate Body reports and papers by the WTO's councils, committees and working groups, are currently available on the WTO's internet site.⁴⁴
- 3.61 In 1996 the WTO's General Council adopted procedures for the circulation and de-restriction of WTO documents. The general rule is now that all WTO documents created since the organisation's inception are to be publicly available, except for some working drafts and other sensitive documents.⁴⁵ Restrictions on documents are reconsidered six months after the documents were initially circulated, and most documents are released at this stage.
- 3.62 Submissions to dispute panels are regarded as confidential, under the Dispute Settlement Understanding. However, a WTO Member may freely publish its own submissions if it so wishes (many countries, including Australia, now do this).⁴⁶

Trade Policy Reviews

- 3.63 The WTO secretariat carries out a regular series of Trade Policy Reviews, which were agreed to at the Uruguay Round under the Trade Policy Review Mechanism.
- 3.64 The Trade Policy Reviews are regarded by the WTO as a major tool of transparency. According to the WTO internet site:

43 DFAT, submission no. 222, p. 35.

44 WTO internet site (Documents Online): http://www.wto.org/english/docs_e/docs_e.htm.

45 WTO internet site, *Procedures for the circulation and derestriction of WTO documents*, at: http://docsonline.wto.org/gen_home.asp?language=1&_ =1, accessed 20 June 2001.

46 Article 18 of the Understanding on Rules and Procedures Governing the Settlement of Disputes, at: http://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm, accessed 19 June 2001.

These 'peer reviews' by other WTO members encourage governments to follow more closely the WTO rules and disciplines and to fulfil their commitments. In practice the reviews have two broad results: they enable outsiders to understand a country's policies and circumstances, and they provide feedback to the reviewed country on its performance in the system.⁴⁷

- 3.65 The objectives of the Trade Policy Review Mechanism are to:
- increase the transparency and understanding of countries' trade policies and practices;
 - improve the quality of public and intergovernmental debate on trade issues; and
 - enable a multilateral assessment of the effects of countries' trade policies on the world trading system.⁴⁸
- 3.66 The four biggest traders – the EU, US, Japan and Canada, are reviewed once every two years. The next 16 countries (in terms of share of world trade) are reviewed each four years. This group includes Australia, which has been reviewed in 1989, 1994 and 1998. The remaining WTO countries are reviewed every six years, or even longer for some developing countries.

Capacity of WTO secretariat

- 3.67 The WTO secretariat and budget is relatively small compared with other international institutions. Based in Geneva, the secretariat includes around 500 staff with a budget of Swiss-Francs (SF) \$134, 083,610 for 2001 (around AUD \$140 million).⁴⁹
- 3.68 The budget is derived almost solely from Member country contributions, through a formula which determines contributions based on each country's share of international trade. In 2000, Australia contributed

47 WTO Trade Policy Review Mechanism, at: http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm10_e.htm, accessed 20 June 2001.

48 WTO internet site: *Trade policy reviews: ensuring transparency*, at: http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm10_e.htm, accessed 18 May 2001.

49 WTO internet site (Secretariat and Budget): http://www.wto.org/english/thewto_e/secre_e/budget_e.htm, accessed 15 June 2001. Currency conversion based on June 2001 exchange rates.

AUD \$1.5 million, which was 1.302 per cent of the total WTO budget.⁵⁰ A small amount of WTO income is earned from sale of electronic and hard copy publications.

- 3.69 The secretariat also manages a number of trust funds, established from Member contributions, for specific work such as technical assistance and programs to enable least-developed countries to engage with the WTO system.
- 3.70 As a comparison, general figures on the staff and budgets of the WTO other international organisations are outlined below:

ORGANISATION	BUDGET 2000	STAFF 2000
	<i>(converted to \$ US)</i>	
World Trade Organisation (WTO)	US \$73 million	550
Organisation for Economic Cooperation and Development (OECD)	US \$159 million	2000
United Nations World Health Organisation (WHO)	US \$421 million	3,500
International Monetary Fund (IMF)	US \$583 million	2,275
World Bank	US \$1.46 billion (administrative budget, loans budget separate).	figures not available

Source *WTO internet site; OECD Annual Report 2001; WHO Statement Showing the Status of Collection of Annual Budget Contributions; IMF Annual Report 2000; World Bank Annual Report 2000.*⁵¹

- 3.71 Dr Ann Capling highlighted the resource constraints on the WTO secretariat, which limit its work to some extent:

One obstacle to meaningful dialogue between the WTO and civil society is the problem of resource constraints. Like the GATT before it, the WTO is a very lean operation with a relatively small budget compared to other international economic organisations.

A major benefit of this is that the WTO is very much a member-driven institution, without many of the pathologies associated with the United Nations agencies and their bloated bureaucracies. But it also means that the WTO has relatively few resources to devote to the fostering relations with civil society organisations,

50 DFAT, submission no. 222.1 (supplementary submission), p. 2.

51 IMF Annual Report 2000: <http://www.imf.org/external/pubs/ft/ar/2000/eng/pdf/file4.pdf>; World Bank Annual Report 2000: http://www.worldbank.org/html/extpb/annrep/pdf/appndx/wb_a5.pdf; RECD Annual Report 2001: <http://www.oecd.org/publications/e-book/0101011e.pdf>.

and so far, member states have shown little interest in boosting their financial contributions to the organisation.⁵²

- 3.72 Mr Andrew Farran, a former trade diplomat and academic, also highlighted the resource constraints on the secretariat:

This is something that has to borne in mind: the WTO secretariat is one of the smallest of all the international organisations. Its task is possibly the biggest and most complex in terms of ramifications, the countries and the issues it is enormous. But it has a relatively small secretariat, which is underfunded and stretched. To say that it is masterminding the future of the world is a slight exaggeration.⁵³

- 3.73 The NFF highlighted the limited budget of the secretariat and asked that Australia fund research work that the WTO cannot afford to undertake:

If Australia doesn't do this work, no one else will. The WTO Secretariat is vastly under resourced and has no capacity for funding this type of research. The OECD estimates that the cost of protection for farmers in OECD countries was US\$362 billion in 1998. Yet the members of the WTO only provide enough resources for the WTO Secretariat to have eight staff working on agriculture.⁵⁴

52 Dr Ann Capling, submission no. 284, p. 15.

53 Mr Andrew Farran, Transcript of Evidence 27 April 2001, p. TR440.

54 National Farmers' Federation, submission no. 223, p. 4.

3.2 MULTILATERAL AND REGIONAL AGREEMENTS

Multilateral Environment Agreements

3.74 Environment issues emerged during the 1999 Seattle meeting, with some countries - particularly the US and EC, calling for the inclusion of environment on the agenda for a new round of WTO negotiations. Most developing countries strongly opposed the proposal.⁵⁵ The AFGC commented:

The United States interventions on trade and labour and the environment were regarded at the Seattle Ministerial meeting as poorly disguised attempts...to impose extraordinary costs on those countries in attempting to comply with environmental standards of developed economies.⁵⁶

3.75 Multilateral Environment Agreements (MEAs) are international agreements, made through the United Nations or similar fora, which aim to protect the environment through mutually agreed frameworks.

3.76 Australia is a party to a number of MEAs. DFAT lists the following MEAs as key agreements to which Australia is either a party or a signatory:

- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, 1989;
- Convention on Biological Diversity, 1992;
- Convention on International Trade in Endangered Species of Wild Fauna and Flora, 1973;
- Convention on the Conservation of Migratory Species of Wild Animals, 1979;
- Montreal Protocol on Substances that Deplete the Ozone Layer, 1987;
- Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, 1998;

55 DFAT, submission no. 222, p. 65.

56 Australian Food and Grocery Council, submission no. 302, p. 10.

- United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, 1994;
- United Nations Framework Convention on Climate Change, 1992 – including the Kyoto Protocol signed by the Australian government in 1997, but not yet ratified; and
- United Nations Convention on the Law of the Sea, 1982.⁵⁷

WTO and the environment

- 3.77 There is increasing debate at the international level about how MEAs fit in with the WTO trade rules – particularly those MEAs which include trade sanctions. There are also concerns that increased trade results in greater pressure on the natural environment. International concern about environmental protection is reflected in many of the Agreements which underpin the WTO.
- 3.78 The preamble to the Marrakesh Agreement Establishing the World Trade Organisation includes reference to sustainable development and protection of the environment. The preamble states that parties:
- ...recognising that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development...
[our emphasis]
- 3.79 The environment is also mentioned specifically in a number of WTO Agreements – including the GATT, GATS, TBT Agreement, SPS Agreement Agreement on Agriculture, TRIPS Agreements.⁵⁸
- 3.80 The Dispute Settlement Understanding allows for expert witnesses to be brought in by panels where they require expert or technical information.

57 DFAT internet site: <http://www.dfat.gov.au/environment/index.html>, accessed 5 June 2001.

58 WTO internet site, *Legal texts: the WTO Agreements*, at: http://www.wto.org/english/docs_e/legal_e/legal_e.htm, accessed 22 June 2001.

Under this provision, environmental experts may be called upon to contribute to panel deliberations.⁵⁹

- 3.81 The Marrakesh Agreements in 1994 included a Decision on Trade and the Environment. The Decision reads, in part:

Trade Ministers noted that it should not be contradictory to safeguard the multilateral trading system on the one hand, and act for the protection of the environment and the promotion of sustainable development on the other hand. Ministers further noted their desire to coordinate policies in the field of trade and environment, but without exceeding the competence of the multilateral trading system, which is limited to trade policies and those trade-related aspects of environmental policies which may result in significant trade effects.⁶⁰

Trade sanctions in MEAs

- 3.82 Most MEAs contain voluntary, rather than binding provisions. However, they can have a dramatic effect on domestic policy – this was illustrated in Australia by the Franklin Dam case in 1983.⁶¹ MEAs do not usually include trade sanctions, but several do. It is the relationship between WTO rules and the trade-related provisions of MEAs which has come under most international scrutiny in recent years.

- 3.83 The Basel Convention, CITES Agreement and Montreal Protocol all include trade-restrictive measures:

- The Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal (1992) bans the export of hazardous waste to other countries without their permission.
- CITES – the Convention on International Trade in Endangered Species of Wild Fauna and Flora (1975) bans trade in a list of endangered species. The Convention allows restrictive trade measures such as quotas where a species may become endangered.

59 WTO: *Understanding on the Rules and Procedures Governing the Settlement of Disputes*, Article 13 – Right to Seek Information, at: http://www.wto.org/english/docs_e/legal_e/legal_e.htm, accessed 1 August 2001.

60 WTO Decision on Trade and Environment (1994), available at: http://www.wto.org/english/tratop_e/envir_e/issu5_e.htm, accessed 1 August 2001.

61 The Commonwealth Government halted the Tasmanian Government's damming of the Franklin River, using the Constitution's External Affairs power (section 51xxix). The High Court ruled that under the Constitution, the Commonwealth had the power to make this decision because the Franklin area is classified as World Heritage Area in the World Heritage Convention (an MEA).

- The Montreal Protocol to the Vienna Convention on Substances that Deplete the Ozone Layer (1989) bans all trade in ozone-depleting substances. The Protocol also allows import bans on products made with, but not containing, ozone-depleting substances.⁶²

The Cartagena Protocol

- 3.84 Another MEA with a high profile within Australia and internationally is the Cartagena Protocol on Biosafety, a proposed Protocol to the 1993 Convention on Biological Diversity. The Cartagena Protocol, opened for signature in 2000, is the first international instrument dedicated to addressing environmental issues related to trade in living modified organisms (LMOs).
- 3.85 Under the Cartagena Protocol, prospective exporters of LMOs are required to notify the government of the destination country of their intention to export LMO products. The government must then make a decision on whether to permit the import. There are different levels of notification and information required, dependent on the class of LMO (for direct release into the environment, or for input into processing). Pharmaceutical LMOs are not covered by the Protocol.⁶³
- 3.86 The Cartagena Protocol contains a clause referring to the 'precautionary approach' contained in Article 15 of the 1992 Rio Declaration. The Rio Declaration states:
- In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.⁶⁴
- 3.87 Concerns have been raised that the Cartagena Protocol's reference to the precautionary approach (also known as the precautionary principle) will be used as a protectionist measure by some countries. In Australia, agricultural groups are widely opposed to the Protocol. The NFF told us:

62 All three treaties have been ratified by Australia – the Basel Convention in 1992, CITES in 1976, and the Montreal Protocol in 1989. The texts of the treaties are available on the AUSTLII Treaties Library database, at: <http://www.austlii.edu.au/au/other/dfat/treaties>.

63 The full text of the Cartagena Protocol on Biosafety is available at: <http://www.biodiv.org/biosafety>, accessed 16 August 2001.

64 The Rio Declaration to the United Nations Conference on Environment and Development, 1992, available at: <http://www.unep.org>, accessed 16 August 2001. This document is a declaration only, not an international treaty which countries have signed and ratified. It has no legal status as such.

The biosafety protocol is the first multilateral environmental agreement with the precautionary principles in its operative text. If Australia becomes a party to the protocol, we would be handing the European Union an instrument that could potentially be used against us. It is tough enough out there for Australian farmers without our own government giving the protectionist agricultural countries a free kick.

The precautionary principle appeals to the commonsense idea that it is better to be safe than sorry. In practice, it biases against new technology and it asks the impossible question that a technology be demonstrated to be without risk.⁶⁵

3.88 Trade consultant Alan Oxley commented along the same lines:

The controls on trade which are permitted under the Cartagena Protocol undermine the regime of quarantine controls on trade which have been set up under the WTO. These controls are based on science and risk assessment.

This Protocol is also a poor piece of environmental public policy. The public policy problem with genetically modified organisms is trade in them, it is the terms under which they are released into the public domain. The Protocol is unlikely to have any impact on that issue. It will simply give those who have always wanted to restrict agricultural imports yet another ground for doing so. In the process it risks undermining a set of rules managed by the WTO which are vital to sustaining public confidence in the safety of traded food.⁶⁶

3.89 There are also concerns that the Cartagena Protocol may override WTO Agreements, despite statements in the preamble to the Protocol about recognising that trade and environment agreements should be mutually supportive. DFAT's analysis is that the Cartagena Protocol and WTO Agreements can work together. A DFAT discussion paper (October 2000) stated:

...they should be read as overlapping treaty regimes which are intended to co-exist, and that one does not override the other. Therefore, they should be seen as complementary, and not competing regimes for the management of trade in LMOs...there

⁶⁵ Background briefing for the Joint Standing Committee on Treaties on the Cartagena Protocol – Lyall Howard, National Farmers' Federation, Transcript of Evidence 4 December 2000, p. TR5.

⁶⁶ Alan Oxley, submission no. 124.1 (supplementary submission), p. .

is nothing in either the Protocol or the WTO agreements which would appear to conflict with the other.⁶⁷

3.90 While Australia was an active participant in the Protocol's negotiation, the Government has not yet signed the Protocol nor indicated when (or if) it intends to proceed to ratification.

3.91 Even if Australia does not ratify the Cartagena Protocol, the requirements it will place on LMO exporters will affect Australian industries – such as current or future LMO products in cotton, carnations, canola, wheat, and other agricultural products.

3.92 The Government recognises the concerns surrounding the Protocol. The DFAT discussion paper stated:

We are concerned that some countries may seek to misuse or abuse the Protocol to restrict trade. It will be important to monitor countries' implementation of the Protocol closely and to take opportunities to reiterate the need for them to comply with their obligations under both sets of agreements.⁶⁸

Resolving the conflict between MEAs and WTO

3.93 The issue of how to resolve potential conflicts between trade-related MEAs and WTO Agreements has not yet been resolved. Bache and Haward argued that while most MEAs focus on consent and participation to achieve environmental goals, where these fail, trade is one of the most effective ways of encouraging a country to meet its treaty obligations.⁶⁹

3.94 The ANU's Australian Centre for Environmental Law (ACEL) said:

Unfortunately the CTE [Committee for Trade and Environment] has not been able to significantly progress the issue beyond the bland assertion that that the preferred approach for governments to take in tackling trans-boundary or global environmental problems is cooperative, multilateral action under an MEA and that unilateral actions in this context should be avoided.⁷⁰

67 DFAT, AFFA and Environment Australia, *Preparations for the First Meeting of the Intergovernmental Committee on the Cartagena Protocol on Biosafety – Discussion Paper* (October 2000), Commonwealth of Australia, 2000, available at: http://www.dfat.gov.au/environment/bsp/bio_sub/discussion_paper.pdf.

68 DFAT, AFFA and Environment Australia, *Preparations for the First Meeting of the Intergovernmental Committee on the Cartagena Protocol on Biosafety – Discussion Paper* (October 2000), Commonwealth of Australia, 2000, available at: http://www.dfat.gov.au/environment/bsp/bio_sub/discussion_paper.pdf.

69 Dr Sali Bache and Dr Marcus Haward, submission no. 46, p. 11.

70 Australian Centre for Environmental Law, submission no. 220, p. 2.

3.95 DFAT's Deputy Secretary, David Spencer, told us:

...if you have two agreements simultaneously one such as climate change or biosafety, or some other agreement on environment and you have the WTO, nothing that is said, no agreement that has been negotiated now, says that a member here can unilaterally absolve itself from the rights and obligations that it has negotiated here. So when, for example, countries go off and do multilateral environment agreements, there is nothing in those agreements that absolves that country from living up to its obligations in the WTO.⁷¹

3.96 Ted Murphy, from the Australian Education Union, argued that international organisations must have the right to comment on environmental issues when they arise in WTO hearings:

...if you have, as we have in many of these treaties, clauses that say you can regulate to protect public health, safety and welfare and to ensure environment protection provided it does not constitute a disguised trade barrier, then you must concede the right of an international environment organisation to intervene, if for example there is a case brought by a country that says this environmental regulation is actually a disguised trade barrier, to say that they actually think it is a legitimate environmental regulation.⁷²

3.97 Alan Oxley argued against the use of trade sanctions as a means of enforcing environmental standards. Mr Oxley commented:

The case for not using trade measures for environmental, or for that matter any other non-trade interest, is widely accepted among economists. Indirect instruments are poor instruments for environmental management.

How effective is it for a country that might import five percent of the total production of another nation's dairy industry to elect to restrict imports of milk powder because the industry in the exporter is not controlling its effluent from its dairy plants and is damaging the environment in order to protect that environment? Not very. The only effective means to protect that environment is for environmental standards to be set as a national policy on the

71 David Spencer, DFAT, Transcript of Evidence 27 November 2001, p. TR46.

72 Ted Murphy, Australian Education Union, Transcript of Evidence 27 April 2001, p. TR461.

production of skim milk powder by the national authority in the exporting country.⁷³

- 3.98 Similarly, the NFF argued that trade instruments should not be used to solve environmental problems:

A standing rule of good public policy is 'the policy instrument should directly address the policy objective'. Trade measures are rarely the most efficient policy instruments for addressing 'non-trade' policy objectives. Trade policy should not be used to achieve environmental objectives for example. This is not to say that a clean environment isn't important. Of course it is, but it's not the WTO's job. If the world wishes to establish a World Environment Organisation, then this idea should be considered.⁷⁴

- 3.99 Deputy-Director of the WTO, Andy Stoler, told us that the WTO secretariat believes that in most cases, inconsistencies between provisions of the WTO Agreements and those of MEAs should be avoided through an interpretation of the WTO Agreements consistent with the relevant rules and principles of international law. In particular, WTO rules should be interpreted through customary international law such as the Vienna Convention.

However, this does not mean that the rights and provisions provided in other treaties can be enforced through the WTO. The DSU panels and Appellate bodies have limited jurisdiction and can only respond to the claims of a WTO member country, about alleged breaches of the WTO Agreements.⁷⁵

Proposed agreement between the WTO and MEAs

- 3.100 There are some calls for an international agreement outlining how the WTO and MEAs are to operate together. The WA Government suggested:

There is a need for urgent international agreement on the WTO and the MEAs, which would focus on their primary competence and the principle of deference. Such an agreement would also include objective criteria to determine the MEAs to which the WTO should defer competence rather than leave clarification to the WTO dispute settlement system.⁷⁶

73 Alan Oxley, International Trade Strategies Pty Ltd, submission no. 124.1, Attachment A.

74 National Farmers' Federation, submission no. 223, p. 6.

75 Andy Stoler, Deputy-Director of the World Trade Organisation, Transcript of Evidence 12 September 2000 (private briefing), p. TR7.

76 Western Australian Government, submission no. 242, p. 5.

3.101 The ANU's Centre for Environmental Law (ACEL) asked for a set of 'interpretive rules' to be adopted by the international community, to ensure that the environmental protection given by MEAs is not eroded by the 'draconian application of trade rules'. ACEL argued that while there has not yet been a dispute involving a conflict between the WTO rules and an MEA, environmental protection is being eroded by WTO decisions:

...the goal of environmental protection of individual states has suffered roundly by the decisions taken by trade dispute panels. This history of the primacy of trade rules over environmental protection in these decisions clearly shows that the present wording of limited environmental exceptions in the GATT is inadequate. The decisions by these panels have increasingly curtailed the options that policy-makers have to use trade measures for environmental or animal protection purposes.⁷⁷

3.102 Taking the argument further, Professor David Shearman (University of Adelaide) argued that economic decisions cannot be separated from environment and social issues, and that WTO Agreements do not recognise the true cost of free trade:

To put it simply, the true cost of bringing cheap bananas into Australia will have to include the transport costs transferred to environmental debt. Ultimately therefore, WTO will have to take into account proper accounting that would include environmental and indeed social costs when making its decisions. It will have to develop a truly level playing field.⁷⁸

3.103 ACFOA called for a review of all WTO Agreements to assess their effect on MEAs, and stated that MEAs (and other international agreements such as those regarding human rights) should set the standard against which WTO Agreements are measured.⁷⁹

WTO Committee on Trade and Environment

3.104 The WTO has a Committee on Trade and Environment (CTE), which aims to conduct dialogue on the relationship between trade measures and environmental measures to promote sustainable development, and to make recommendations, as appropriate, about how the multilateral trade system should be modified to take further account of environmental interests. Limiting the work of the CTE are the following parameters:

77 Australian Centre for Environmental Law (ANU), submission no. 220, p. 2.

78 Professor David Shearman, submission no. 258, p. 2.

79 Australian Council for Overseas Aid (ACFOA), submission no. 304, p. 36.

- the WTO is not an environmental protection agency – its mandate is limited to trade matters;
- the GATT/WTO Agreements already provide significant scope for countries to pursue environmental policies;
- increased domestic and international coordination is needed to address environmental interests; and
- a multilateral trading system is a key element in helping developing countries work towards sustainable development.⁸⁰

3.105 The CTE has worked to ensure that the trade rules do not limit inappropriately the scope for domestic or international actions necessary to protect the environment. The CTE is comprised of all WTO Member states, and some observers from inter-governmental organisations. The Committee submits reports to the WTO's General Council, holds regular meetings, and has hosted a number of forums and symposia on trade and environment issues.

3.106 Some submissions were critical of the work of the CTE. For example, the United Nations Youth Association argued:

...most proposals of substance that have been developed by the Committee have failed to progress past the discussion phase, which raises questions about the real commitment of the WTO to addressing environmental issues. Moreover, the Committee has not gone far enough in addressing some of the major problems that exist in terms of the jurisprudence that surrounds trade and environment decisions by GATT Panels and the WTO.⁸¹

3.107 There have not yet been any cases before the WTO dispute system which raise a conflict between WTO Agreements and MEAs. The WTO internet site states:

the WTO's committee [on Trade and Environment] says the basic WTO principles of non-discrimination and transparency do not conflict with trade measures needed to protect the environment, including actions taken under the environmental agreements. It also notes that clauses in the agreements on goods, services and

80 WTO internet site: *The WTO and its Committee on Trade and the Environment*, at: http://www.wto.org/english/tratop_e/envir_e/issu1_e.htm, accessed 12 June 2001.

81 United Nations Youth Association, submission no. 248, p. 6.

intellectual property allow governments to give priority to their domestic environmental policies.⁸²

- 3.108 In conjunction with the United Nations Environment Program (UNEP), the WTO's CTE holds regular Information Sessions on MEAs, aimed at increasing the international dialogue on WTO/MEA relationships.⁸³ The Australian Government is an active participant in CTE activities, including the MEA Information Sessions. The DFAT submission stated:

Australia has supported the framework approach, regular dialogue between the WTO and MEA secretariats and improved policy coordination efforts to ensure cooperative multilateral approaches to trade and the environment. In discussions with other governments, Australia has promoted the importance of national and international policy coordination to help prevent any conflict between the obligations assumed by countries under different multilateral agreements.⁸⁴

- 3.109 There has, however, been little evidence that the CTE has yet found a means to successfully resolve the potential conflict between WTO Agreements and MEAs. The Australian Government should take a proactive role in seeking to resolve this issue.

Recommendation 17

TRADE, ENVIRONMENT AND MULTILATERAL ENVIRONMENT AGREEMENTS

- 3.110 **The Committee recommends that the Commonwealth Government use its position on the WTO Committee on Trade and Environment (CTE) to urge the CTE to bring forward clear proposals for resolution of the issue of potential conflicts in obligations under different multilateral agreements.**

82 WTO internet site: *The Environment – a new high profile*, at: http://www.wto.org/english/thewto_e/whatis_e/tif_e/bey4_e.htm#MEAs, accessed 22 June 2001.

83 Mike Moore, Director-General of the WTO, *Statement to the MEA Information Session*, Committee on Trade and Environment, 28 November 2000; WTO document symbol WT/CTE/W/178.

84 DFAT, submission no. 222, p. 66.

Regional and Bilateral Trade Agreements

- 3.111 Regional and bilateral trade agreements are those involving a small group of countries – such as the North American Free Trade Agreement (NAFTA); or an agreement between two countries – such as the Australia and New Zealand Closer Economic Relations (CER) Agreement.
- 3.112 The WTO rules require that all Members notify the WTO of any Regional Trade Agreement (RTA) entered into. To date, 220 RTAs have been notified to the WTO (or GATT preceding it). The WTO secretariat notes that the vast majority of WTO Members are party to at least one RTA – the average per Member is five. Nearly 60 per cent of these RTAs are between European countries.⁸⁵
- 3.113 The growing use of RTAs departs from one of the founding principles of the WTO – that if one country relaxes trade restrictions for another country it must apply the same standards to all countries. In other words, RTAs abandon the WTO's 'most favoured nation' arrangements. However, the WTO Agreements allow RTAs in specific circumstances, set out in Article XXIV of the GATT (1994) and Article V of the GATS:
- GATT allows for RTAs for trade in goods, provided the purpose of the agreement is to increase trade between the participating nations, not to raise trade barriers to outsiders. The terms of all new RTAs must be notified to all WTO Members, who may scrutinise the agreement to ensure it does not increase trade barriers through higher duties, or other means.⁸⁶
 - GATS allows RTAs for trade in services provided the agreements have 'substantial sectoral coverage', and the agreement results in the elimination of existing discriminatory trade measures, and/or prohibition of new or more discriminatory measures.⁸⁷

85 WTO Committee on Regional Trade Agreements, *Synopsis of systemic issues related to Regional Trade Agreements – Note by Secretariat*, at:

http://www.wto.org/english/tratop_e/region_e/wtregw37_e.doc, accessed 26 June 2001.

WTO internet site, *Regionalism gateway*, at:

http://www.wto.org/english/tratop_e/region_e/region_e.htm, accessed 25 June 2001.

86 WTO internet site, *Regionalism: the basic rules for goods*, at:

http://www.wto.org/english/tratop_e/region_e/regatt_e.htm, accessed 25 June 2001.

87 WTO internet site, *Regionalism: the services rules*, at:

http://www.wto.org/english/tratop_e/region_e/regats_e.htm, accessed 25 June 2001.

- 3.114 There is also an 'Enabling Clause', agreed to under the GATT in 1979 and continued in the WTO, which allows preferential trading conditions between developing countries.⁸⁸
- 3.115 Despite concerns amongst WTO Members that a proliferation of RTAs may undermine the goals of the WTO, a 1995 secretariat study concluded that 'regional and multilateral integration are complements rather than alternatives in the pursuit of open trade.'⁸⁹
- 3.116 The WTO has a Committee on Regional Trade Agreements (CRTA), with responsibility for monitoring existing RTAs and considering the systemic implications of RTAs for the multilateral trading system.⁹⁰ The CRTA's reviews of individual RTAs are intended to provide transparency on the agreements, and to allow other WTO members to evaluate the agreement's consistency with WTO rules.

Australian views on regional/bilateral agreements

- 3.117 Australia is party to only one reciprocal RTA – the CER between Australia and New Zealand. The CER is regarded as a great success, both locally – total trade in goods between the countries has increased fivefold since 1983 – and internationally, as it is (according to DFAT) considered the world's most comprehensive, effective and WTO-compatible RTA.⁹¹
- 3.118 Australia is also party to two non-reciprocal trade agreements –with Papua New Guinea and the South Pacific countries. Under these agreements we offer free access to Australia for exports from these nations, with no preferential trade rights in return.⁹²
- 3.119 DFAT's submission outlined the Australian Government's views on RTAs:
- RTAs can be an effective means for dealing with some of the challenges of globalisation, as they offer a vehicle for promoting closer regional ties and greater trade liberalisation, which can then result in increased economic welfare for the parties.

88 GATT Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, at: http://www.wto.org/english/tratop_e/region_e/regatt_e.htm, accessed 25 June 2001.

89 WTO Secretariat, 1995, *Regionalism and the World Trading System*, WTO press release 18/4/1995, document no: Press/10/WT/95-0951.

90 WTO internet site, *Work of the Committee on Regional Trade Agreements*, at: http://www.wto.org/english/tratop_e/region_e/regcom_e.htm, accessed 26 June 2001.

91 DFAT, submission no. 222, p. 62.

92 PATCRA and SPARTECA Agreements – see DFAT's internet site: <http://www.dfat.gov.au>.

- 3.120 However, DFAT emphasised that Australia (and the rest of the world) should concentrate on multilateral trade negotiations:

...the department believes that Australia should continue to press for progress in regional trade liberalisation to be multilateralised as soon as possible through WTO negotiations. This will help to minimise the discrimination non-parties, including Australia, may suffer from not being in particular regional agreements.⁹³

- 3.121 The National Civic Council (Qld Branch) argued that Australia should concentrate on RTAs, as the multilateral system is no longer effective. According to the National Civic Council, the US, EU and Japan will continue to resist agricultural trade reform, arguing that it is part of their social and cultural systems (the multifunctionality argument). Therefore Australia should not waste resources trying to achieve wide-ranging multilateral reform, but instead concentrate on regional and bilateral trade agreements with other nations.⁹⁴

- 3.122 However, submissions from industry groups supported the Australian Government's pursuit of RTAs, on the condition that multilateral trade reform remains the top priority. Effem Foods submitted:

Regional trade agreements can be effective in opening up markets on a regional basis. From an economic standpoint, the only issue to watch is to ensure that regional agreements do not divert trade instead of creating trade. With global trade barriers on average as low as they are, the chance of this today is generally low. Regional agreements can be effective instruments for building trade and investment linkages among countries. Regional trade agreements should be seen as building blocks for global liberalisation.⁹⁵

- 3.123 The ACCI saw both rewards and risks in pursuing regional agreements. According to ACCI, RTAs could deliver the benefits of trade liberalisation to Australia in the absence of a multilateral round, and encourage capacity-building by countries (particularly developing countries), before embarking on the complex negotiation and obligations required of full membership of the WTO. On the other hand, if Australia focuses too much on regional agreements this could be seen as a weakening of our commitment to multilateral trade reform, and diminish our capacity to 'punch above our weight' in the WTO.⁹⁶

93 DFAT, submission no. 222, pp. 60 and 63.

94 National Civic Council (Qld Branch), submission no. 42, p. 1.

95 Effem Foods, submission no. 256, p. 8.

96 Australian Chamber of Commerce and Industry, submission no. 184, p. 18.

3.124 The NFF noted that regional trade has become more popular since the last multilateral round of negotiations (1994). NFF supports Australia pursuing regional pacts to further our trading interests, but is concerned that agriculture may be left behind:

... most regional trade agreements have traditionally left agricultural goods out, or included them in only very limited ways.

NFF accepts that progress in the WTO is slow and difficult and that regional trade wins, if they become available, should be grasped along the way. The danger, however, is that the world may become divided into regional blocs, which encourages high-cost trade within regions and an agricultural sector which is localised and excluded from other international markets.

Assuming regional trade blocs continue to flourish, the issues for NFF are whether the agricultural sector is fully included and whether resources and political attention are diverted from the more important multilateral agenda.⁹⁷

3.125 Professor David Robertson (Centre for the Practice of International Trade), highlighted the importance of multilateral trade reform, and urged Australia to concentrate on supporting a new round of negotiations:

To ensure that the spread of preferential trade agreements does not undermine the multilateral trading system, it is important to strengthen the cohesion of the WTO by tightening the rules and continuing the multilateral liberalisation of trade. Now the process of regionalisation has gone so far, there will be no going back.

Even though Australia has gained economic benefits from its own liberalisation, we still need to improve our access to others' markets, which the multilateral system of rules established by the WTO can guarantee. The continuing strength of the WTO system is important for Australia, especially in a world of regional trade agreements.⁹⁸

97 National Farmers Federation, submission no. 223, p. 7.

98 Centre for the Practice of International Trade, submission no. 117, p. 14.

United States / Australia free trade agreement

- 3.126 In recent months there has been high-profile discussion about the possibility of a free trade agreement between the United States and Australia.
- 3.127 In March 2001 the Minister for Foreign Affairs, Alexander Downer, and the US Secretary of State, Colin Powell, confirmed that preliminary discussions on an agreement had taken place.⁹⁹ During his September 2001 visit to the United States, Prime Minister John Howard raised the possibility of a free trade agreement with President George Bush. The leaders agreed to ask their trade ministers to report back to them by the end of 2001, on how to advance the proposal. However, the President acknowledged that the US Congress will influence the US Administration's position on the FTA.¹⁰⁰
- 3.128 The Australian Government has commissioned several reports to examine the benefits and policy implications of any free trade agreement with the US. In June 2001 the Government released the findings of its first report, stating that an FTA could increase Australia's Gross Domestic Product (GDP) by almost \$2 billion by 2010. Similar benefits are predicted for the US.¹⁰¹
- 3.129 It is important to note that the above figures are based on full liberalisation (removal of all tariffs). The report acknowledged that full liberalisation may be difficult to achieve, due to domestic political pressures (for example, protection for sugar in the US, and for motor vehicle production in Australia).
- 3.130 According to the report, the Australian industries to benefit the most from an Australia/US free trade agreement would be sugar and dairy. The US

99 Joint press conference, US Secretary of State Power and Australian Minister for Trade Downer, 22 March 2001 (Washington, US), at: <http://www.state.gov/secretary/rm/2001/index.cfm?docid=1647>, accessed 26 June 2001.

100 The Hon. John Howard MP, Prime Minister of Australia: *Joint Statement Between the United States of America and Australia*, 10 September 2001, available at: http://www.pm.gov.au/news/media_releases/2001/media_release1233.htm, accessed 11 September 2001.

101 Centre for International Economics, *Economic impacts of an Australia-United States Free Trade Area*, prepared for the Department of Foreign Affairs and Trade, June 2001, available at: http://www.dfat.gov.au/publications/aus_us_fta/aus_us_fta.pdf, accessed 26 June 2001. The second report, which is to examine the policy implications of an Australia/US FTA, was scheduled for release in late July 2001: http://www.dfat.gov.au/media/releases/trade/2001/mvt093_01.html, accessed 26 June 2001.

would gain most in the manufacturing sector (motor vehicles and parts, and metal products).

- 3.131 When we questioned DFAT about the value of an agreement which did not include agriculture, the response was:

We would not enter into an agreement if we did not get anything out of it. It is as simple as that.¹⁰²

- 3.132 The failure in Seattle to secure agreement for a new multilateral round has led to the proliferation of regional trade agreements which involve preferred arrangements being accorded only to the countries in the agreement.
- 3.133 Australia should be open to concluding RTAs where they deliver meaningful market access and broader economic gains for Australia than could be achieved through other mechanisms.

Recommendation 18

REGIONAL TRADE AGREEMENTS

- 3.134 **The Committee recommends that the Commonwealth Government ensure that Australia continues to actively participate on the WTO Committee on Regional Trade Agreements, and pursue Regional Trade Agreements that will result in enhanced market access and broader economic gains for Australia if those benefits cannot be advanced expeditiously through other mechanisms.**

102 David Spencer, DFAT, Transcript of Evidence 18 June 2001, p. TR517.

3.3 A MORE INCLUSIVE WTO

Impact of trade liberalisation in developing nations

- 3.135 As noted in Chapter 1, there are undoubtedly 'winners' and 'losers' from trade liberalisation. Many organisations and individuals expressing concern about trade liberalisation and globalisation argue that there is an increasing gap between the richest and poorest people in the world – and that this gap is widening as a result of trade liberalisation.
- 3.136 A 1999 WTO study found that while the percentage of the world's poorest people (those earning less than \$1 a day) had fallen in the decade 1987 – 1998, the world's increasing population means that the number has remained steady at 1.2 billion. The number of people earning just \$2 a day includes almost half the world's population – 2.8 billion people.¹⁰³
- 3.137 The WTO Agreements, particularly those relating to services and intellectual property, are widely criticised as harming developing countries. For example, Liberty Victoria told us:

In the developing countries...they are not only subject to the WTO but also have the imposition of the IMF and the World Bank. Under the loans that were given out through the IMF in 2000, 12 loans to poor African countries were conditional on the privatisation of water. When you have a population there half of which does not have access to clear water there is a problem, whether it is under the WTO or these other institutions, about the commercialisation of basic needs.¹⁰⁴

- 3.138 The International Womens' Development Agency highlighted the TRIPS Agreement as a key concern:

...it restricts the accessibility of food and medicines if they have been patented. It is a continuance of colonisation when indigenous processes and varieties are acclaimed as 'new' by Western corporations simply because they are not known in developed countries.¹⁰⁵

103 Ben-David, Nordstrom and Winters, *WTO Special Studies 5: Trade, Income Disparity and Poverty*, 1999, p. 8; at: http://www.wto.org/english/res_e/booksp_e/disparity_e.pdf, accessed 17 July 2001.

104 Anne O'Rourke, Liberty Victoria, Transcript of Evidence 27 April 2001, p. TR455.

105 International Womens' Development Agency, submission no. 286.

- 3.139 ACFOA pointed out a number of studies which conclude that while trade liberalisation may benefit some developing countries, this is certainly not the case for all. A World Vision publication cited by ACFOA states:

To listen to many free trade advocates, one would think that an ironclad case had been made for the virtues of the total deregulation of trade in any and all circumstances. These results [the studies outlined by World Vision] suggest that liberalisation...may not always produce favourable results for developing countries – especially in the short to medium term. Any moves towards greater trade liberalisation should, therefore, be undertaken with great care and with adequate safety nets for those likely to be adversely affected.¹⁰⁶

- 3.140 The 1999 WTO study found that trade liberalisation is an important factor in helping the world's poorer nations improve their economic performance:

...the evidence seems to indicate that trade liberalisation is *generally* a positive contributor to poverty alleviation – it allows people to exploit their productive potential, assists economic growth, curtails arbitrary policy interventions and helps to insulate against shocks. However, most trade reforms will create some losers (even in the long run), and poverty may be exacerbated temporarily. The appropriate response in those cases is to alleviate the hardships and facilitate adjustments rather than abandon the reform process.¹⁰⁷

- 3.141 Mike Moore, Director-General of the WTO, often refers to trade liberalisation and the WTO's multilateral rules system as essential for the growth of the world's developing countries. However, he has also commented:

Trade liberalisation is essential for growth and development. But it is not enough. A new WTO round will do little for a nation that is torn apart by war or that spends all its export revenues on weapons. Nor will it be much use if good governance is missing or crippling debt overhangs. Nor will a round help those poor

106 Inquiry Exhibit No. 15: Brett Parris, *Trade for Development – Making the WTO Work for the Poor*, A World Vision Discussion Paper, November 1999, p. 11.

107 Ben-David, Nordstrom and Winters, *WTO Special Studies 5: Trade, Income Disparity and Poverty*, 1999, p. 12; at: http://www.wto.org/english/res_e/booksp_e/disparity_e.pdf, accessed 17 July 2001.

countries who have no domestic capacity or infrastructure to take advantage of new market access opportunities.¹⁰⁸

- 3.142 At a recent UN Conference (May 2001) the developing countries' G77¹⁰⁹ stated:

Trade is the most important and multidimensional mechanism for almost all developing countries to mobilise and expand the resource base, both domestic and external, for financing for development.

...trade liberalisation is not an end in itself, but is a tool that seeks to facilitate economic growth and development and must be supplemented with other measures which deal with the structural vulnerabilities of the developing countries.¹¹⁰

Developing nations participation in the WTO

- 3.143 The ability for developing nations to effectively participate in the multilateral trading system will be a key factor in their status a 'winners' or 'losers' of trade reform.
- 3.144 Over two-thirds of the WTO's Member nations are developing countries.¹¹¹ The ability for developing nations to take full advantage of the multilateral trade system has been under question in the international arena since the inception of the WTO in 1995. Many developing nations do not have the adequate resources or expertise to make the most of the system. The WTO and United Nations Conference on Trade and Development (UNCTAD) highlighted this view in 1996:

... In many instances translating these multilateral trade rights into concrete trade advantages requires action by governments with

108 Mike Moore, Director-General of the WTO, Speech 17 May 2001, at: http://www.wto.org/english/news_e/spmm_e/spmm63_e.htm, accessed 18 May 2001.

109 The G77 Group (Group of 77) was established at the first meeting of the UN Conference on Trade and Development in 1964. G77 membership has now expanded to 133 developing nations. The purpose of the G77 is to provide the means for developing nations to articulate their collective economic interests, and to negotiate as a group where appropriate. More information is available at: <http://www.g77.org>.

110 Statement by Mr Mohammad Ali Zarie Zare, on behalf of the G77, at the Third Session of the Preparatory Committee for the International Conference on Financing for Development: Trade (4 May 2001), at: <http://www.g77.org/Speeches/050410b.htm>, accessed 27 June 2001.

111 Throughout this chapter we refer to both developing nations and least-developed countries (LDCs) as 'developing nations' or 'developing countries'.

active support of the business community. Many developing countries and countries in transition have found themselves poorly equipped in terms of institutions and human and financial resources dedicated to this objective.¹¹²

- 3.145 The WTO itself does not assign 'developed' or 'developing' status to its Member countries, preferring to allow nations to determine their own status. Informally, however, the WTO recognises that four out of five of its Members are developing countries.¹¹³
- 3.146 The WTO does recognise the world's least-developed countries, and accords them special status in a number of ways. The WTO uses the United Nations index to designate the world's least-developed countries (LDCs). There are 48 LDCs on the UN list, 29 of which are WTO members.¹¹⁴

Provisions in WTO Agreements for developing nations

- 3.147 The difficulties faced by developing countries in implementing trade reform are recognised in the WTO Agreements through provisions for Special and Differential Treatment (S&D) in some areas of trade liberalisation. The S&D provisions include:
- longer time periods for implementing agreements and commitments;
 - measures to increase trading opportunities for developing nations;
 - provisions requiring all WTO Members to safeguard the trade interests of developing nations; and
 - technical assistance and support to help developing countries develop the expertise required to engage in the WTO system.¹¹⁵

112 UNCTAD/WTO, *Strengthening the participation of developing countries in world trade and the multilateral trading system*, (1996), quoted at: http://www.wto.org/english/thewto_e/whatis_e/tif_e/dev4_e.htm, accessed 26 June 2001.

113 Mike Moore, Director-General of the WTO, Speech 17 May 2001, at: http://www.wto.org/english/news_e/spmm_e/spmm63_e.htm, accessed 18 May 2001.

114 The least-developed countries (LDCs) which are members of the WTO are: Angola; Bangladesh; Benin; Burkina Faso; Burundi; Central African Republic; Chad; Democratic Republic of the Congo; Djibouti; Gambia; Guinea; Guinea Bissau; Haiti; Lesotho; Madagascar; Malawi; Maldives; Mali; Mauritania; Mozambique; Myanmar; Niger; Rwanda; Sierra Leone; Solomon Islands; Tanzania; Togo; Uganda and Zambia. Six more LDCs are seeking accession to the WTO: Cambodia; Laos; Nepal; Samoa; Sudan and Vanuatu.

115 An overview of all the S&D provisions in WTO Agreements is available on the WTO internet site: *Summary of Provisions Contained in the Uruguay Round Agreements for the Differential and More Favourable Treatment of Developing and Least Developed Countries* (1999), at: http://www.wto.org/english/tratop_e/devel_e/anexii_e.doc, accessed 25 June 2001.

- 3.148 In 1997 WTO Members launched the Integrated Framework for Trade-Related Assistance for least developed countries. The package is funded and implemented jointly by the WTO, UNCTAD, the International Trade Centre, the United Nations Development Program (UNDP), the World Bank, and the International Monetary Fund (IMF).
- 3.149 The Framework is intended to coordinate technical assistance programs to least developed countries (LDCs), on a case-by-case basis. LDCs are responsible for identifying their own needs, which then are examined by the six agencies involved in the Framework, to determine how (either as individual agencies or collectively) to address the LDC needs. LDCs are then responsible for hosting a donor meeting, involving donor governments, intergovernmental agencies, other development partners and private sector interests. The LDC presents its needs and the proposed response from the six Framework agencies, and then negotiates a multi-year funding program.¹¹⁶
- 3.150 Other assistance to developing countries includes:
- Trade reference centres – established by the WTO in the trade ministries of some developed and all least-developed countries. The trade reference centres include computer equipment, internet access and training on how to access WTO information;
 - the Independent Advisory Centre for WTO Law – established in 1999 through funding from a number of WTO Members, to provide independent legal advice to developing nations in preparing and responding to dispute cases;
 - WTO training program – the WTO secretariat runs a series of three-month training courses for representatives of developing countries; and
 - Geneva week – a one-week program for those nations without permanent representation at the WTO in Geneva, to report on WTO issues and provide technical assistance to developing country representatives.¹¹⁷
- 3.151 Professor David Robertson highlighted the increasingly complex nature of developing countries' interaction with the WTO:

116 Integrated Framework for Trade-Related Technical Assistance for Least Developed Countries, internet site: <http://www.ldcs.org/how.htm>, accessed 28 June 2001.

117 More information on these programs is available on the WTO internet site. 'Support for developing countries', at: http://www.wto.org/english/tratop_e/devel_e/d4supp_e.htm, accessed 26 June 2001.

We now have 137 members, of which 100 are developing countries. *[WTO membership is now 142, at September 2001]*. The developed countries can no longer just run the show the way they want. The developing countries showed in Seattle that they were going to have their say and that they were not going to be bullied.

Where there is not free trade – agriculture, textiles, clothing and footwear – they are the areas where developing countries want progress because that is the way they can expand their exports... We have moved away from 'let us tackle industrial tariffs' to these more difficult, problematic areas where we are dealing with another part of the community.¹¹⁸

Developing country concerns

3.152 It is well documented that the 1999 Seattle WTO meeting failed to launch a new round of multilateral trade negotiations partly because developing countries were unhappy with the agenda for negotiations and with some aspects of the S&D provisions in the 1994 Agreements.

3.153 Paul O'Connor, an experienced WTO panellist, commented that developing nations have learned a lot since the Uruguay Round negotiations from 1986 – 1994:

Given that the Uruguay round took such a long time to conclude, there was a noticeable change in the attitude and the experience of members throughout that process. Today there is a much greater sophistication and awareness amongst the vast majority of membership, so in the next round there would be less opportunity for states to misunderstand and misinterpret what their interests are in terms of participation.

...some countries were not served well by the position they took during the Uruguay Round and ended up with an understanding of outcomes which did not accord with the text.¹¹⁹

3.154 ACFOA argued that while the structure of the WTO appears to give all countries equal status, the limited capacity of developing countries to participate places them on a lesser footing:

Formal equality of status of national states in international fora masks the inherent inequality between developed and developing

118 Professor David Robertson, formerly of the Centre for the Practice of International Trade, Transcript of Evidence 27 November 2000, p. TR68.

119 Paul O'Connor, Transcript of Evidence 20 April 2001, p. TR337.

nations. Many developing nations lack the capacity to fully and effectively participate in international fora to represent their national interests. Nor do they have the capacity to implement their obligations or represent their interests if drawn into a dispute.¹²⁰

3.155 At a recent UN Conference on the Least Developed Countries (Brussels, May 2001), the Global LDC Community made the following statement regarding trade liberalisation:

Trade opportunities for LDCs are critical. Unfortunately, the products with distinct comparative advantage from LDCs face tariff and non-tariff barriers in the world markets, creating insurmountable hurdles. These should speedily come to an end.¹²¹

3.156 In a similar vein, in May 2001 the G77 Group made a statement to a UN conference on Financing for Development, calling for a number of measures to assist developing countries to engage in multilateral trade. The G77 called for the WTO to give priority to the following issues:

- market access for developing countries, particularly for textiles and agriculture;
- sequential implementation of trade liberalisation in developing countries, so as to limit the social and economic adjustment costs;
- appropriate time-frames for implementation of existing and future WTO Agreements;
- technical and financial support from development banks and the donor community, to develop technological, human, entrepreneurial and infrastructure capacity; and
- an institutional arrangement between the United Nations and the WTO to strengthen consultation and coordination.

3.157 A 1999 WTO secretariat study in the lead-up to a High-Level Symposium on Trade and Development (1999) sought to summarise the concerns of developing nations regarding trade liberalisation. These included:

- access to markets;

120 ACFOA, submission no. 304, p. 5.

121 His Excellency Sheik Hasina, Prime Minister of Bangladesh and Coordinator of the Global LDC Community, Statement to the Third UN Conference on Least Developed Countries, at: <http://www.unctad.org/conference/address/bangladesh.htm>, accessed 25 June 2001.

- adequacy of safeguarding measures – the WTO secretariat reported that developing countries felt that other nations were not taking account of the special status of developing countries when applying SPS measures, technical regulations and other standards,
 - technical assistance – developing countries called for effective implementation of the Integrated Framework for Trade-Related Technical Assistance, and for a larger portion of the WTO general budget to be assigned to assistance for developing nations; and
 - the high cost of using the dispute settlement system, particularly the need to engage specialist legal advice, despite the legal assistance available through the WTO secretariat.¹²²
- 3.158 In June 2000 a group of 11 developing countries presented a proposal to the WTO's Committee on Agriculture regarding Special & Differential Treatment, and proposing the establishment of a 'Development Box'.¹²³
- 3.159 The group was concerned that current S&D provisions do not provide enough protection for food security. The group's recommended Development Box would aim to:
- protect and enhance developing countries' domestic food production capacity;
 - increase food security and food accessibility for the poorest nations;
 - provide for, or at least sustain, existing employment for the rural poor;
 - protect farmers from the onslaught of cheap imports;
 - provide supports to small farmers to increase their competitiveness; and
 - stop dumping of cheap and subsidised imports on developing nations.¹²⁴
- 3.160 Submissions to our inquiry highlighted many of the issues raised by developing countries above. AFTINET argued that the negotiating processes of WTO meetings exclude developing nations, in favour of the 'quad' – the US, Canada, EU and Japan:

122 WTO High-Level Symposium on Trade and Development, Background paper, 1999, at: http://www.wto.org/english/tratop_e/devel_e/hlmdev_e.htm, accessed 1 September 2001.

123 The 11 countries were: Cuba, Dominican Republic, Honduras, Pakistan, Haiti, Nicaragua, Kenya, Uganda, Zimbabwe, Sri Lanka and El Salvadore.

124 Agreement on Agriculture – Proposal to the June 2000 Special Session of the Committee on Agriculture, available at: <http://www.docsonline.wto.org> (Document Symbol: G/AG/NG/W/13).

...the 'quad' governments often draft agreements which are then discussed with a select group of 20-30 governments in what is called the 'green room' process... Thus developing country governments are excluded from most drafting meetings and often lack the numbers of negotiators required and the resources needed for negotiations.¹²⁵

- 3.161 Community Aid Abroad/OXFAM argued that total liberalisation would be damaging for developing countries, as they are not always the most competitive producers. CAA/OXFAM also called for recognition of the importance of agriculture in providing a livelihood for millions of workers in LDCs.
- 3.162 CAA/OXFAM and ACFOA argued that this problem could be overcome by the adoption of a Food Security Box within the WTO Agriculture Agreement, along the lines of the Development Box outlined above.¹²⁶
- 3.163 CAA/OXFAM was also critical of the current S&D provisions in WTO Agreements, arguing that they do not adequately recognise the vulnerabilities of developing nations:

It is unrealistic to expect that within, say, five years, 10 years, or whatever the additional years are, weak and vulnerable countries will be up to the same level as everybody else and will therefore be able to implement these measures in the same way.

We believe that special and differential treatment should be more than just giving them a few more years to implement the measures, that there should be a ranking of countries according to their viability and that special and differential treatment should be on the basis of their need for special and differential treatment in other words, it should be connected to a vulnerability index.¹²⁷

- 3.164 The effectiveness of the S&D provisions is also being questioned by trade academics. World Bank adviser Constantine Michalopoulos states:

While the principle of special and differential treatment has been embedded in many of the agreements that cover the rules of conduct of trade relations under the WTO, the practice of S&D continues to suffer from similar shortcomings to those in evidence at the beginning of the Uruguay Round.

125 AFTINET, submission no. 41.1, p. 14.

126 Community Aid Abroad/OXFAM, submission no. 187, p. 14.

127 Jeff Atkinson, Community Aid Abroad/OXFAM, Transcript of Evidence 27 April 2001, p. TR443.

Three main problem areas have emerged: (a) the commitments of developed countries regarding preferential market access and other treatment are in practice much less important than they appear to be on paper; (b) there is increasing questioning of one of the fundamental premises of S&D, namely that less liberal trade policies are optimal for developing countries; and (c) the commitments aimed at addressing developing countries institutional constraints have been made without serious planning of how they will be implemented.¹²⁸

- 3.165 The concerns of developing countries, particularly the adequacy of existing and future S&D provisions, will clearly have a large influence in the next round of WTO negotiations. The role for Australia in facilitating these concerns is discussed below.

Role for Australia

Funding for developing countries

- 3.166 As outlined earlier in this chapter, Australia's contribution to the WTO's budget is around \$1.5 million per annum – just over one per cent of the WTO's overall budget.
- 3.167 Australia's overseas aid budget for 2001-2002 is \$1.75 billion. The aid program is broken into five main sectors: governance, agriculture and rural development, health, education and infrastructure. Each of these sectors is linked to trade reform in some way. In delivering his portfolio's budget, the Minister for Foreign Affairs, the Hon. Alexander Downer MP, stated:

Globalisation will continue to provide opportunities for those developing countries that have an open approach to development, effective governance and efficient markets. With the right policy and regulatory environment, the revolution in information and communication technologies holds enormous potential to offer significant development gains. Australia will continue to work

128 Constantine Michalopoulos, Senior Economic Advisor to the World Bank, *The Role of Special and Differential Treatment for Developing Countries in GATT and the World Trade Organisation*, World Bank Policy Research Working Papers, no. 2388, July 2000, available at: <http://wbln0018.worldbank.org/research/workpapers.nsf/>, accessed 17 September 2001.

with developing countries, including through the aid program, to meet these globalisation challenges.¹²⁹

- 3.168 While the majority of Australia's aid budget is directed towards programs in specific countries (particularly within our own region), around \$500 million is spent on 'global programs' – those run by development banks, the United Nations, NGOs, and other organisations.
- 3.169 In September 2000 James Wolfensohn, President of the World Bank, called on Australia to take a lead role in using the information technology to help developing countries. In what he dubbed a 'virtual Colombo Plan',¹³⁰ Wolfensohn envisaged Australia providing education and skills training to future leaders in developing nations, through the internet. The plan has now been launched as a \$1.5 billion World Bank program, with \$200 million funding from the Australian Government.¹³¹
- 3.170 Wolfensohn believes Australia's existing expertise in distance education and IT skills, and our multicultural society, provides the ideal online education environment:
- To make Australia a central place for capacity building in developing countries would give in an influence wholly disproportionate to the size of the country. It would be fantastic leadership role for Australia to take, and it would be unique, because this is the beginning.¹³²
- 3.171 Indian academic Dr Jagdish Bhagwati suggests that 'rich' countries such as Australia should provide funding for their opponents in WTO dispute cases:
- ...rich countries can spend huge sums on their side but the poor countries are constrained by the limited resources available to them. Why not get a rich country to give to the poor countries

129 Minister for Foreign Affairs, Hon. Alexander Downer MP, *Australia's Overseas Aid Program 2001-02*, at: http://www.ausaid.gov.au/budget/budget_2001_2002.html#_Toc514063855, accessed 3 July 2001.

130 In the 1950s and 1960s the Australian Government offered university scholarships to students from Asia, Africa and the Pacific under the 'Colombo Plan'.

131 Minister for Foreign Affairs, Media Release 2 August: *Virtual Colombo Plan: Bridging the Digital Divide*, at: http://www.ausaid.gov.au/media/release.cfm?BC=Media&Id=7100_3867_2762_5309_1373, accessed 20 August 2001.

132 James Wolfensohn, President of the World Bank, quoted in *The Age* newspaper, 'World Bank Chief urges Australia to educate the globe', Tuesday 19 September 2000.

against which it is bringing a case a sum that matches its own estimated legal expenses, so that the contest is equal?¹³³

- 3.172 A number of organisations called for the Australian Government to increase its aid budget, including the component which funds international NGOs for their work in developing countries.¹³⁴
- 3.173 CAA/OXFAM questioned Australian agricultural exports which target developing countries, as this undermines the Australian overseas aid program's efforts to support local agricultural industries in LDCs. CAA/OXFAM highlighted the Australian dairy industry, which is one of the world's largest dairy exporters, as an example. According to CAA/OXFAM, 77 per cent of exported Australian dairy products go to Asian and African nations where many people depend on dairy cattle and production for their livelihood:

To the best of Community Aid Abroad's knowledge there has never been a study of, or even an interest in, what effect these products are having on local producers in the recipient countries.¹³⁵

WTO advocacy

- 3.174 Australia's participation in the Cairns Group helps to promote the interests of developing nations, particularly for agricultural interests. The NFF called on the Australian Government to increase research funding to agencies such as the Australian Bureau of Agricultural and Resource Economics (ABARE), to support the claims of the Cairns Group and the Australian government in agricultural negotiations:

As chair of the Cairns Group Australia should continue to fund trade policy research by ABARE and promote the results of this research in international forums. Good research can shift minds, but ideas must reach people.¹³⁶

- 3.175 OXFAM/Community Aid Abroad recommended that the Australian Government support the strengthening of the WTO's Special & Differential provisions, through calling for the following mechanisms:

133 Dr Jagdish Bhagwati, 'After Seattle: free trade and the WTO', in *International Affairs*, vol. 77/I, 2001.

134 For example, see: Australian Manufacturing Workers Union, submission no. 272.1; Rail Tram and Bus Union, submission no. 289; International Womens' Development Agency, submission no. 286.

135 OXFAM/Community Aid Abroad, submission no. 187, p. 11.

136 National Farmers' Federation, submission no. 223, p. 9.

- a vulnerability index which segregates developing countries into different categories for S&D treatment;
- review of existing S&D provisions to ensure their contribution to poverty reduction, and strengthening of operational measures;
- involvement of specialised UN agencies, trade unions and NGOs in WTO Trade Policy Reviews, to ensure international development strategies are supported; and
- developed countries should make their S&D commitments binding, and implementation subject to mandatory monitoring.¹³⁷

3.176 ACFOA commented:

Many developing nations lack the capacity to fully and effectively participate in international fora to represent their national interests. Nor do they have the capacity to implement their obligations or represent their interests if drawn into a dispute.

The Australian Government has a responsibility to its own citizens to represent the national interest. However Australia, as a nation, has a responsibility under the UN Charter to foster an international social order in which peace, stability and social and economic progress are realisable for all peoples. Foreign and trade policy should be informed by these broader goals.

3.177 ACFOA called for the Australian Government to support WTO reform to achieve equality of participation for developing nations, majority voting in negotiations to ensure the views of poorer countries are taken into account, increasing technical assistance, and protection for the poorest nations against unfair trade practices.¹³⁸

137 OXFAM/Community Aid Abroad, submission no. 187, p. 22.

138 ACFOA, submission no. 304, p. 5.

Recommendation 19**DEVELOPING COUNTRIES**

- 3.178 **The Committee recommends that the Commonwealth Government through its membership of the Cairns Group identify barriers to participation of developing countries in the WTO, and develop strategies as appropriate to assist developing countries to make full use of the WTO and the DSU to further their trading interests.**
- 3.179 As noted above, many developing countries do not have permanent representation at the WTO headquarters in Geneva, due to lack of resources. While the WTO provides limited funds for training of trade officials and visits to Geneva, developing countries' ability to fully participate in WTO activities, particularly dispute settlement, are limited. The distance and high living expenses of Geneva, as well as cultural differences, must all play a role in these limitations.
- 3.180 We believe the establishment of an Asia-Pacific Regional Centre of the WTO secretariat would greatly assist developing countries, and all others located in the Asian region, to better engage the WTO system.
- 3.181 The Regional Centre would serve as a venue for dispute hearings involving countries in the Asia-Pacific, a forum for negotiations, and a training centre for those countries needing to build skills in negotiation, information technology, and WTO law. This is an area in which Australia can show significant leadership and support for our regional neighbours, many of whom have shared interests in WTO issues (as demonstrated through the Cairns Group).

Recommendation 20**ASIA-PACIFIC WTO CENTRE**

- 3.182 **The Committee recommends that at the Doha WTO Ministerial Meeting, and at future WTO meetings, the Commonwealth Government advocate the establishment of an Asia-Pacific Regional Centre of the WTO.**

The Asia-Pacific Regional Centre would serve as a venue for WTO negotiations and dispute hearings, and as a training centre for developing countries within the region to build their capacity for WTO advocacy.

Labour and human rights standards

Labour standards

- 3.183 A large number of submissions called for the WTO to take more account of human rights and labour issues when determining and implementing trade agreements.
- 3.184 AFTINET argued that the WTO is creating new international law which does not adequately take account of environmental, human rights and labour concerns:

Because of the absence of links and references in WTO agreements to these basic UN universal standards, the WTO disputes mechanism is constructing a body of case law on an ad hoc basis, which tends to undermine the principles of some of these agreements. ...we are suggesting that WTO agreements and processes should be changed so that they can be interpreted to give much clearer recognition to UN international agreements on human rights, labour standards, health and safety and the environment. Where a conflict occurs between these principles and trade agreements, we believe the UN principles or agreements should prevail.¹³⁹

139 Pat Ranald, AFTINET, Transcript of Evidence 12 February 2001, p. TR140.

3.185 However, the National Association of Forest Industries (NAFI) argued that international trade and human rights/labour issues have historically developed over fundamentally different paths, and cannot therefore be easily reconciled:

...the two categories of agreement have distinct differences from one another. Rules of international trade and commerce have grown up over centuries to a point where a high degree of commonality characterises the expectations and practices of trading entities in different countries. On the other hand, environments, models for the regulation of labour and the evolution of forms of social and political governance are all much more diverse. National governments are still in the process of effectively coming to grips with these issues, and global rules are not so easily written.¹⁴⁰

3.186 The AFGC surmised that the WTO is a victim of its own success – those groups representing labour, environment and human rights have sought to graft their own interests onto the WTO framework:

One of the key reasons for the success of the WTO has been because it has concentrated on its core interest – the orderly reduction of global trade barriers.¹⁴¹

3.187 Nevertheless, union groups and others continue to push for labour issues to be included in the WTO's agenda. At the Seattle meeting in 1999 the US Government pushed for the inclusion of labour standards in WTO Agreements. Developing countries in particular were opposed to the proposal – this was one of the reasons the meeting failed to launch a new round of negotiations.

3.188 APHEDA Union Aid Abroad called for the WTO to adopt a set of Minimum Labour Standards, to be included in all WTO agreements. These Standards would include the rights to:

- freedom of association;
- organise and bargain collectively;
- a minimum age of employment, to combat child labour;
- prevention of forced labour and slave labour; and
- equality and non-discrimination in the workplace.¹⁴²

140 National Association of Forest Industries, submission no. 224.1, p. 4.

141 Australian Food and Grocery Council, submission no. 302, p. 18.

142 APHEDA Union Aid Abroad, submission no. 116, p. 5.

3.189 APHEDA argued that the WTO should include these rules because it is the one organisation which can impose sanctions or reward participants for compliance, rather than relying on moral persuasion.

3.190 The Australian Manufacturing Workers' Union (AMWU) called for the WTO to enforce sanctions against those countries which allow persistent labour standards violations. Under the AMWU's proposal, the sanctions would be enforceable by a WTO panel, on the advice of the International Labour Organisation (ILO). The AMWU's Doug Cameron told us:

We have to get one fundamental position understood and adopted that is, without labour, you cannot have trade and to artificially demark a position where you say trade stands on its own and core labour standards are to be dealt with by the ILO is intellectually weak and unsustainable.

We argue that there has to be a close working relationship between the WTO and the ILO. A working party should be established. Eventually the WTO, along with the ILO as equal partners, should be in a position to exercise sanctions against a country like Burma, which continues to use forced labour, slave labour and child labour and which persistently defies world opinion and standards for human rights.¹⁴³

3.191 According to the Australian Education Union, inclusion of labour standards is one way to enhance the credibility of the WTO:

...the reason labour standards should be enforceable and related to the operations of the WTO is simply so that it gains a level of credibility and acceptance. Until it does, I do not believe large numbers of people are going to give it that credibility. We are told that it is not possible, but we would like to draw the analogy with the TRIPS provisions which are, in effect, the way of enforcing the conventions of the World Intellectual Property Organisation, a UN body, and draw the analogy between the ILO and WIPO. Why shouldn't the WTO put the ILO in a comparable position to the one it put WIPO in?¹⁴⁴

3.192 The use of exploited labour was described as a 'negative subsidy' by academics from the Institute for Comparative and International Law. For example, if a state subsidises its footwear industry through cash grants, this is seen as a 'positive' subsidy. However, if the footwear industry were

143 Doug Cameron, AMWU, Transcript of Evidence 29 January 2001, p. TR118.

144 Rob Durbridge, Australian Education Union, Transcript of Evidence 27 April 2001, pp. TR468-469.

excused from meeting occupation health and safety (OH&S) requirements, this could amount to a similar financial benefit to companies, but not be viewed as subsidy:

Industries that are not able to obtain traditional governmental assistance may relocate to states which provide negative subsidies such as lower labour standards, systemic violation of human rights and unsustainable environmental regulations.¹⁴⁵

3.193 APHEDA also supported this argument:

Why does our Australian government so strongly oppose subsidies paid to agricultural producers in Europe or Japan, claiming it distorts free trade and removes the 'level playing field', while at the same time remaining silent about the indirect subsidies enjoyed by manufacturing and mining companies through the exploitation of their workers overseas?¹⁴⁶

3.194 The submission from the Department of Employment, Workplace Relations and Small Business (DEWSB) outlined the Australian Government's position against labour standards being incorporated into WTO Agreements, arguing that the ILO is the most appropriate body to deal with labour issues because:

- representatives of employer and worker organisations are formal partners in the ILO;
- the ILO operates by consensus, and provides technical assistance and advisory services, which are important when dealing with complex labour issues;
- the ILO Declaration on Fundamental Principles and Rights at Work will lead to enhanced supervision and implementation of core labour standards, whether or not member states have ratified the Conventions; and
- trade sanctions would be an inappropriate weapon against social issues.¹⁴⁷

145 Institute for Comparative and International Law, submission no. 249, p. 11.

146 APHEDA Union Aid Abroad, submission no. 116, p. 6.

147 Department of Employment, Workplace Relations and Small Business, submission no. 287, pp. 4-5.

Human rights considerations

3.195 Many submissions commented generally on the need to take more account of human rights (and labour and environment issues) in WTO Agreements. Few, however, outlined specifically how this should be done.

3.196 Amnesty International called for a 'human rights audit' of all existing WTO Agreements to determine the implications for human rights in the Agreements. Amnesty also asked for all new WTO Agreements to be subject to a Human Rights Impact Assessment – looking at the impact on democracy and sovereignty, workers' rights, human rights, and broader social and cultural issues:

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; and
- 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.¹⁴⁸

3.197 AFTINET argued that the 'social clause' in the preamble to the Marrakesh Agreement (at paragraph 3.78) does not provide enough protection to human rights, labour, the environment and related issues. AFTINET submitted that the following changes to WTO structures are required:

- WTO Agreements changed to give clearer recognition of UN international agreements on human rights, labour standards, health and safety and the environment;
- UN agreements to prevail in the event that the provisions of WTO Agreements and UN agreements clash;
- ongoing dialogue between the WTO, ILO, the UN and other international bodies; and

148 Amnesty International Australia, submission no. 86, p. 4.

- WTO should recognise the right of countries to make their own regulations in areas of human rights, labour, health, education and environment.¹⁴⁹

3.198 Sustainable Population Australia cited the shipbreaking beaches at Alang, India, as an example of how human rights have been degraded as a result of free trade. At Alang, and other areas in Asia, old ships are sold for scrap metal, and broken up, often by hand, by teams of poorly-paid workers. Western countries no longer undertake shipbreaking because of high labour costs and the toxic pollution risks to workers and the environment.¹⁵⁰ Sustainable Population Australia acknowledged that outside efforts to stop the shipbreaking are not often welcomed by the workers:

...it raises some of the dilemmas of fair trade where, rather than with gratitude, Third World people greet good intentions with antagonism, simply because they have no alternative livelihood. While populations continue to grow, however—and India has grown by 181 million in the last decade—we will be faced with this dilemma.

I can only say that this should not be a reason for not implementing fair trade where human rights and environmental considerations need to be taken into account. But, while populations continue to grow inexorably, labour will be cheap and people deemed expendable, as they are at Alang.¹⁵¹

- 3.199 Although human rights issues are not specifically dealt with in the WTO, human rights are explicitly recognised in the Preamble to the Marrakesh Agreement establishing the WTO. In particular, the objectives of the WTO recognise the importance of raising standards of living, optimal use of the world's resources, sustainable development and protection of the environment.
- 3.200 Recent debate has emphasised the connection between human rights and labour standards in the context of trade. Discussion of labour standards raises difficult questions that have perplexed many who are otherwise supporters of the WTO. Proponents of labour clauses in WTO Agreements have been unable to demonstrate that imposing labour standards would

149 AFTINET, submission no. 41.1, p. 18.

150 Inquiry Exhibit No. 12: William Langewieshe, 'The Shipbreakers', in *Atlantic Monthly*, August 2000, p. 31.

151 Jenny Goldie, Sustainable Population Australia Inc, Transcript of Evidence 2 April 2001, p. TR293.

have the desired effects without adverse impacts on those most dependent on work in developing countries.

- 3.201 Australia supports adherence to core labour standards and has sought to build support for workable proposals to be developed between key stakeholder agencies including the WTO, the ILO, the World Bank and the UN. The Committee notes the proposal that the WTO and ILO hold consultations on labour issues in the lead up to the Doha meeting.

Recommendation 21

HUMAN RIGHTS AND LABOUR ISSUES

- 3.202 **The Committee recommends that the Commonwealth Government continue to seek support to establish a forum outside the World Trade Organisation to discuss means to promote core labour standards, comprising key international organisations including the WTO, the International Labour Organisation, the World Bank and the United Nations.**

Senator Helen Coonan
Inquiry Chair

Mr Kerry Bartlett MP
Committee Chairman

18 September 2001

