

Submission to the Joint Standing Committee on Treaties

**Inquiry into Australia's relationship with the
World Trade Organisation ("WTO")**

1. Introduction

- 1.1 The Victorian Council for Civil Liberties Inc ("VCCL") is an independent non-government organisation which traces its history back to the first Australian civil liberties body established in Melbourne in 1936. The VCCL is committed to the defence and extension of human rights and civil liberties. It seeks to promote Australia's compliance with the rights and freedoms recognised by international law.
- 1.2 We welcome this opportunity to comment on the operations and processes of the WTO. Along with other human rights groups and individuals, we are concerned about the inappropriate priority given to trade agreements at the expense of desirable social and democratic values, and other international conventions, principally those relating to human rights and core labour standards. Thus far the WTO has pushed its narrow trade agenda independent of any given country's social and/or cultural needs. By having such an inflexible approach the WTO has ignored labour, health, safety and environmental concerns, and contributed to a downward harmonisation of standards by striking out national legislation aimed at protecting public health and the environment. Far from attempting to ameliorate some of these problems, Australia - alongside Russia - shamefully refused to vote for the insertion of a clause banning child labour. As such the Australian government displayed an immense moral deficit, and betrayed the undoubted concerns of most Australians.
- 1.3 The VCCL believes that no trade agreement should be considered by the Australian government if it does not acknowledge the rights of citizens and the sovereign power of democratically elected governments over corporations. Recognition of the need to preserve and protect the principles of dignity and equality for all is reflected in a number of international human rights instruments that the Commonwealth has ratified, including -
- the International Covenant on Economic, Social and Cultural Rights;
 - the International Covenant on Civil and Political Rights and its two Optional Protocols;
 - the Convention on the Rights of the Child; and

- the International Labour Organisation Convention

All these treaties elaborate upon the Universal Declaration of Human Rights which was adopted in 1948 by the UN General Assembly, and to which Australia has made a significant contribution. The VCCL is of the view that any international agreements, trade or otherwise, must operate within the framework of these international human rights treaties and be subject to them. "Technology and economic development must be put to the service of humankind as a whole. In particular, such developments should not marginalise, discriminate or systematically deny access to the majority of the world's populace".¹

2. Opportunities for community involvement in developing Australia's negotiating positions on matters with the WTO;

- 2.1 To date there has been no adequate opportunity for community involvement in the development of the policy positions of the Australian government nor the procedures by which such policies are considered or implemented.
- 2.2 The Australian government was presented with an opportunity to involve citizens' representatives and non-government organisations ("NGOs") in WTO negotiations during the summit in Seattle but refused their requests to form part of the Australian delegation. The Trade Minister, Mark Vaile, invited only business and industry groups to be part of the delegation.
- 2.3 The NGOs grouping, which included the Australian Council of Trade Unions, Australian Conservation Foundation, Australian Council for Overseas Aid, Australian Council for Social Service, World Wide Fund for Nature and Greenpeace Australia, offered to attend at their own expense rather than at taxpayers expense, yet unlike other western countries the Australian government excluded these representatives of the broader national interest in the trade deliberations. This is not an inclusive and democratic process. The Australian government clearly and deliberately favoured the corporate sector in its delegation despite the fact that the WTO system has been greatly expanded by the inclusion of 'non-tariff barriers' affecting the everyday lives of citizens from all ranks of society.
- 2.4 It is unacceptable in a democratic society that non-citizen entities' views are determining government policy in respect of a system that affects all. The government's stance on this issue is incongruous. On the one hand, the Howard government attacks the UN human rights committees as being too interventionist in respect of domestic affairs whilst refusing to acknowledge the hidden yet highly interventionist role of private companies and trading institutes. When an international trade organisation has the capacity to require a national government to amend or repeal a law enacted in the people's interest, then the people have a precedence over parliament and must be represented appropriately at high level

¹ UN Sub-commission on the Promotion and Protection of Human Rights Fifty second session Item 4 of the Provisional agenda, *The Realization of Economic, Social and Cultural Rights: Globalization and its full impact on the full enjoyment of human rights*, Preliminary Report submitted by J.Oloka-Onyango and Deepika Udagama (jurists), in accordance with Sub-commission resolution 1999/8, p4

trade deliberations. To do otherwise undermines the principle of representative government and the respect owed to the people by the elected government. This is not a trivial point, it goes to the core of government and raises issues of representation, trust and legitimacy.

2.5 ***Recommendation:***

That the government agree to and implement an inclusive and effective citizen participation in the development of trade and investment policies and WTO procedures.

3. **The transparency and accountability of WTO operations and decision making; and the effectiveness of the WTO's dispute settlement procedures and the ease of access to these procedures**

3.1 The WTO is an institution without democratic legitimacy. This lack of democracy extends from its internal negotiations right up to its dispute settlement mechanism. This trade institution, whose rules affect every country and every citizen, has never been elected by the citizens of any country. In modern times when so many governments adhere (or profess to adhere) to the principle of constitutionalism and representative government, it is unacceptable that such an unaccountable and unelected body is able to enforce its agenda on every nation irrespective of the interests of the people. For the Australian government's belief in the rule of law and democratic governance to be more than just rhetoric, there should be at the very least regular consultations with the public on these issues prior to Australian government commitment to WTO policies or, should the trade agreement involve massive structural change within Australia, then a referendum should be held. Only by such practices can the Australian government's policy position legitimately represent the interests of Australia's people.

3.2 The WTO has currently around 132 member states, approximately 98 are developing countries, yet the decision-making process is largely dominated by the United States, Canada, Japan and the European Union. We need only look at the inconsistent attitude applied when it comes to actual tariffs and subsidies in the United States and the fact that third world countries are largely forbidden to subsidise their crops² despite specific mechanisms negotiated to assist the least developed countries. Double standards are also apparent in the intellectual property rights agreement (TRIPS) which unfairly favour western countries and multinationals. If the proponents of free trade really believed in its virtues they would argue in favour of the abolition of intellectual property rights - which are in essence a non-tariff trading barrier and indeed a protectionist instrument. Whilst this form of protectionist exists there is no free trade.

3.3 A further example of the undemocratic nature of the WTO lies in the deeply flawed nature of the Dispute Settlement Process³. This process bears more resemblance to the

²*The Hidden Tentacles of the World's Most Secret Body'* Sunday Independent (London) 17 July 1999 - <http://www.globalpolicy.org/socecon/bwi-wto/wto99-10/htm>

³ Dispute Settlement :Legal Text, Understanding on Rules and Procedures Governing the Settlement of Disputes, Annex 2 of the WTO Agreement - http://www.wto.org/english/tratop_e/dispu_e/dsu_c.htm

proceedings used under the less democratic or dictatorial regimes than any modern democratic process of adjudication or decision-making. The latter is underpinned by the concept of '*open, accessible, fair and impartial*' justice. Any decision-making process, whether judicial, tribunal, etc, must be transparent, accountable and open to public scrutiny.

- 3.4 In contrast to a democratic adjudication process, the dispute settlement system of the WTO is held behind closed doors. Disputes are heard by a panel of three trade specialists or bureaucrats always in secret. There is no public access to documents or hearings. Nor is there the usual requirement or provision in the dispute settlement agreement covering conflicts of interest in respect of the sitting panelists⁴. When this type of adjudication process occurs within the national borders of non-western countries, Australia and other western countries are quick to condemn with their displays of righteous indignation, yet they are silent and complacent when the same undemocratic processes are used in WTO dispute forums.
- 3.5 The dispute settlement process must adhere to the same principles and procedures which underpin democratic judicial systems. Access to these proceedings must be open and amicus briefs from parties whose interests are affected - or their representatives, be it an NGO or legal Counsel - must be allowed.
- 3.6 In addition, the dispute settlement system should be required to take into account the different developmental stages and needs of the various member countries. Aileen Kwa, from Focus on the Global South, Bangkok, recently pointed to the consequential injustice that may arise from the erroneous assumption of a 'level playing field'. She said that "in the recent dispute over the banana trade, the WTO ruled in favor of the US over the EU's traditional arrangement of preferential access for Caribbean banana countries - a ruling that may have devastating economic consequences for Caribbean economies that depend solely on banana exports"⁵. According to the UN Sub-commission report subtitled, *Globalisation and its impact on the full enjoyment of human rights*;

A closer examination of the organisation [WTO] will reveal that while trade and commerce are indeed its principle focus, the organisation has extended its purview to encompass additional areas beyond what could justifiably be described as within its mandate. Furthermore, even its purely trade and commerce activities have serious human rights implications. This is compounded by the fact that the founding instruments of WTO make scant (indeed only oblique) reference to the principles of human rights (3). The net result is that for certain sectors of humanity - particularly the developing countries of the South - the WTO is a veritable nightmare.⁶

⁴ *ibid*, Article 14, Article 18 and Appendix 3, Working Procedures

⁵ '*In Focus: WTO and Developing Countries*' (Nov 1998), by Aileen Kwa, Focus on the Global South, Bangkok - <http://www.foreignpolicy-infocus.org/briefs/vol3/v3n37wto.html>

⁶ *Supra*, n 1, p6

3.7 To ignore the needs of different countries, specifically the poorer or more vulnerable countries, is to treat the citizens of those countries as a means to an end, an end that largely favors multinationals and developed countries. In essence, this is a Stalinist approach; the end justifies the means. Ignoring significant ethical considerations during the process (Australia's vote regarding child labour) it treats the end global trade liberalisation as the higher aim, the greater good. Stalin's end, higher aim, and greater good was farm nationalisation. In both cases, the absence of ethical considerations which necessitate a differentiated approach, was and is morally bankrupt. In fact, global trade is merely a means to an end, namely the fuller realization of the human potential described in the Charter of the United Nations, the UDHR, the human rights conventions and indeed the Preamble to the WTO agreement itself.

3.8 As the UN Sub-commission rightly concluded:

...what is required is nothing less than a radical review of the whole system of trade liberalisation and a critical consideration of the extent to which it is genuinely equitable and geared towards shared benefits for rich and poor countries alike. WTO must take on board the many suggestions that have been made with respect to improving access and transparency at the organisation, not only for the purposes of improving internal democracy, but also for the good of constructing a more equitable and genuinely beneficial international trading system.⁷

3.9 **Recommendation:**

1. *The procedures and processes of the WTO Dispute Settlement system must adhere to the same principles of open, accessible, fair and impartial decision-making which underpin democratic judicial systems and are prescribed by the International Covenant on Civil and Political Rights ("ICCPR").*
2. *That amicus briefs from citizens or groups whose interests are affected or their representatives must be allowed.*
3. *That considerations such as the differentiated developmental stages of countries be a factor in panel deliberations.*
4. *That the principles of autonomy, self-government and sustainable development should be required to be satisfied in the determination of disputes.*

4. **Australia's capacity to undertake WTO advocacy;**

4.1 The role of the Australian government is not to engage in advocacy on behalf of the WTO. The **job** of the Australian government for which it is **employed** by the Australian people is to engage in advocacy on their behalf, in their interests and in consultation with them.

⁷ *ibid*, p8

Should this mean advocating against the wishes of the WTO, the interests of the United States, or multinationals such as Monsanto, so be it.

- 4.2 Another factor which should be considered in this context is a point raised by Professor Mary Kalantzis at a recent forum in Melbourne. She was speaking about the need for the Australian government to define who we are in Asia, she said:

August 1997 was a turning point when we backed the wrong horse - we supported the IMF's restructuring program during the Asian Financial Crisis. Widely regarded in Asia as latter day imperialism, the IMF cure worsened the disease and imposed punitive conditions which favoured Western over local capital. Smugly, we sided with the West, and so we isolated ourselves from Asia.....

The timing has been terrible. The very same financial crisis has precipitously driven Asia towards the formation of a regional bloc, modelled on the EU or NAFTA, and equal in economic clout - the ASEAN Plus Three Group. This will include an Asian Monetary Fund to avoid the imposition of the IMF, and there's even talk of establishing an Asian Currency Unit along the lines of the Euro. Meanwhile, the WTO and APEC have failed. Now we are facing a three-block world, and we have ruled ourselves out of the only one we could conceivably have joined. Worse still, we're sitting in a highly unattractive position outside of that block - alongside New Guinea, the Solomons, East Timor and Fiji. It's rather like being Serbia to Ukraine end of the EU, or the El Salvador to Guatemala end of NAFTA.

- 4.3 The Australian government (and Opposition) need to come to terms with the fact that in regard to Asian countries, the crisis management model - adopted by both the IMF and APEC - does not work, nor does the one-size-fits-all approach of the WTO. Not only does it appear as a form of imperialism, financial imperialism to be precise, it operates independent of social, cultural or ethnic contexts. It lacks an integrated approach which ignores the very real impact that it has in societies whose value system may be somewhat differently structured than Western countries. Professor Kalantzis' point in essence is, we ignore the interests and priorities of our nearest neighbours at our risk. We should not be pushing on them what is now commonly referred to as the 'Washington consensus', an economic austerity programme that thus far they have indicated they do not want.

- 4.4 The Australian government should promote - on behalf of the Australian people, with consideration given to the diverse cultural structure of the Asia Pacific region - a more integrated and culturally sensitive approach to trading issues. This integrated approach must occur within a framework linking trade with core labour standards and respect for human rights.

- 5. The relationship between WTO agreements and other multilateral agreements, including those on trade and related matters, and on environmental, human rights and labour standards; and the extent to which social, cultural and environmental considerations influence WTO priorities and decision-making.**

- 5.1 The Preamble to the Agreement Establishing the World Trade Organisation, No 1 states:

The Parties to this Agreement,

1. *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 steadily growing volume of real income** and effective demand, and expanding the production of trade in goods and services, while allowing for optimal use of the 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;*

An integrated approach, unfortunately not lived up to in practice. The Venezuela and U.S. Clean Air case, the Beef Hormone case involving the EU and the US, the Caribbean Banana case; all indicate that environmental, safety regulations and development differentials, are not significant factors in WTO determinations, despite its preamble rhetoric. In addition, as humanitarian sanction laws are prohibited under the WTO, human rights abuses under dictatorial regimes are not given any importance during the determination process⁸. Had the WTO been established 15 years earlier, apartheid would still exist in South Africa and Nelson Mandela would still be languishing in prison. It is quite clear that there is an inappropriate relationship between trade agreements and human rights instruments. The latter have been improperly subordinated to the former subjecting human rights to the dictates of commercial relativism. Fifty two years after the Universal Declaration of Human Rights was proclaimed, this is an appalling development.

- 5.2 Another instance of a lack of respect for human rights principles is the promotion and encouragement of a downward harmonisation of wages and conditions for workers, greater job insecurity, casualisation, downward flexibility of wages and low costs for employers. This is evident in Australia as well as other western countries. In many countries trade unions are banned, people have been arrested and imprisoned for holding workers' forums, there is no freedom of speech nor freedom of association, slave labour is still a reality in many parts of the world. Capital flight from western countries to cheap labour in the third world endorses rather than overcomes slave labour. And let's be clear, this is slave labour, when you give people no options you effectively enslave them, they have no choice but to accept whatever conditions are imposed upon them. Trade liberalisation without a commitment to human rights and core labour standards supports slave labour. Multinationals which engage in this behaviour are no different from the German companies - that during the Nazi period - used camp labour. The premise is the same, the belief that certain people are expendable. In Germany it was the Jews, today it is generally people in third world, Asian or African, countries, who are subjected to sub-human working conditions and sub-minimum wages. There is an issue of complicity here for western countries which promote trade liberalisation whilst choosing to turn a blind eye to human rights abuses and conditions of servitude.
- 5.3 The attitude of governments towards trade agreements and human rights instruments is riddled with inconsistencies and contradictions. This is particularly so when it comes to

⁸ Government Procurement Agreement - Uruguay Round - see impact of WTO policies on 1996 Massachusetts state government laws discouraging purchases from companies operating in Burma - Kaplan and Black 'World Trade Outrage' - <http://www.princeton.edu/~progrev/99-00/n3-1kpb.html>

the use of legal mechanisms. William Greider, comments aptly on this double standard in his book, *One World Ready or Not*. He says:

The idea of labor rights is not, .. only about the freedom to speak and assemble with others. The core idea has always been the legal right to enter freely into a consenting business contract - a contract that will be protected by law, enforceable in a court, like any other self-interested business agreement. Every advanced economy..... recognises the right of workers to contract collectively on the terms of employment. Yet the global system tolerates - indeed welcomes - new labor markets where the governing powers will systematically deny that basic right.

The lawyerly contradiction in this is profound: global commerce insists on a legal system that will protect the contractual rights of capital but treats the same rights for individual workers as an impediment to economic progress or a luxury that is reserved only for the wealthy nations. The same opinion leaders who celebrate the virtues of free competition among firms are strangely silent on the subject of free labor. The trade lawyers who lobby for liberalising terms of trade are oblivious to the repressive, manipulative terms on which people are employed in many markets⁹.

This situation needs to be remedied. Now that we have a global trading system, the democratic values so cherished and bandied around so easily by western governments need to be given global priority. The principles that '*all people are of equal value*', and '*all people are equal before the law*', were not meant to be mere abstractions, they are substantive values and legal norms and must be put into practice by recognising and enforcing the universalist values embedded in international human rights instruments. Trade agreements ought to be seen as an elaboration of the economic provisions in the international human rights agreements, not a repudiation of them.

- 5.4 It is not just a matter of inserting social clauses into trading agreements, although this would be a good start. It is time that trading agreements were required to meet the basic standards set out in international human rights instruments. As a signatory to the ***International Covenant on Economic, Social and Cultural Rights 1966***, Australia must ensure that trade agreements are in line with the provisions pertaining to social and economic rights such as Article 6, 7 and 8 which provide:

Article 6

1. *The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*
2. *The steps to be taken by a State Party to the present Covenant to achieve the full realisation of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.*

Article 7

⁹ William Greider - '*One World, Ready or Not*' (1997) Penguin Books p 408

The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular:

- (a) Remuneration which provides all workers, as a minimum, with:
 - (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;*
 - (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;**
- (b) Safe and healthy working conditions;*
- (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;*
- (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.*

Article 8

1. *The States Parties to the present Covenant undertake to ensure:
 - (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organisation concerned, for the promotion and protection of his economic and social interest. No restrictions may be placed on the exercise of the right other than those proscribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;*
 - (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organisations;*
 - (c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;*
 - (d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.**

Universal Declaration of Human Rights

Article 4

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all its forms.

Article 23

1. *Everyone has a right to work, to free choice of employment, to just and favourable conditions of work to protection against unemployment.*
2. *Everyone, without discrimination, has the right to equal pay for equal work.*
3. *Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.*
4. *Everyone has the right to form and join trade unions for the protection of his interests.*

5.5 Similar economic and work related provisions are found in **Article 8 & 22, International Covenant on Civil and Political Rights 1966, Article 5(e)(i) & (ii), International Covenant on the Elimination of all Forms of Racial Discrimination 1966**, and the **International Labor Organisation Conventions**. Despite the fact that the current federal government is not favourably disposed towards these human rights instruments, Australia is a party to them, as such we are obligated to ensure that the expansion of rights and freedoms for corporations does not come at the expense or dismantling of rights and freedoms for the individual. Australia must not endorse the lawyerly contradiction (see 5.3). A country premised upon the rule of law and democracy cannot support "*one set of rules for society and another for the conduct of business*". Human concerns, social needs and human rights cannot be compartmentalised or subordinated to the interests of capital. Respect for human dignity and integrity must be part and parcel of Australia's economic and social agenda, and part of its platform in WTO forums.

5.6 The quasi-religious belief in "the market" certainly needs a dose of common-sense. Market values alone cannot sustain or ensure social stability. The market reduces everything to the status of commodity, it can have a corrosive effect on social institutions and civil society. Russia is the *exemplar par excellence* of the devastating effect of the misguided belief and consensus that the free market is the only means by which to achieve shared prosperity. The West, through the IMF and the World Bank, behaved with stunning arrogance when it imposed the January 1992 austerity programme on Russian society. The "*economic medicine killed the patient*", destroying both the economy and civil society, bankrupting state enterprises in the process.¹⁰ The West, the WTO, IMF and the World Bank should have learnt a lesson from that experience. They were too willing to exact a high price in suffering from the Russian people in their quest to open up the Russian market. Economic values without a corresponding respect for the dignity and human rights of the people, initiated a downward spiral in both the economic and social realms. The Russian people are still suffering from this externally imposed internal disintegration. This is just one example as to why it is imperative that social, cultural and environmental considerations must inform future WTO priorities and decision-making.

6. Conclusion

¹⁰ Michael Chossudovsky, *The Globalisation of Poverty*, (1997) Pluto Press, Australia p225

- 6.1 The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights are not mere addendums, or small stumbling blocks to be picked up or discarded at the whim of economic purists. Australia, by ratifying these conventions, has chosen to be bound by them.
- 6.2 The VCCL believes that all international trade and investment agreements should be governed by the following 6 principles. They must:
1. uphold the rights of citizens;
 2. protect the common good;
 3. promote the development of sustainable communities;
 4. guarantee the sovereignty of democratically elected governments over corporations;
 5. ensure effective citizen participation in the development of trade and investment policies¹¹; and
 6. comply with international human rights instruments.

In addition, the VCCL also supports the recommendation by the UN Sub-commission, that the WTO and its brother institutes, the World Bank and the IMF, "begin to conduct human rights impact assessments (HRIAs) in order to be able to assess the human rights implications of their activities before they execute them".¹² The bottom line is that the economy is meant to serve the people, not people the economy.

Liberty Victoria - the Victorian Council for Civil Liberties

per Anne O'Rourke, Assistant Secretary - Liberty Victoria, Level 4, 360 Little Bourke Street, Melbourne 3000 Ph (03) 9670 6422

¹¹ The first 5 principles were put together by the Council of Canadians, which included politicians, environmentalists, human rights and civil society NGOs. These principles plus No 6 encapsulates all the social and economic provisions of the international human rights instruments.

¹² Supra, n1 p26