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JOINT STANDING COMMITTEE ON TREATIES

Reference: Australia's relationship with the World Trade Organisation

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JOINT COMMITTEE ON TREATIES

Monday, 2 April 2001

Members: Senator Coonan *(Subcommittee Chair)*, Senators Bartlett, Cooney, Ludwig, Mason, Schacht and Tchen and Mr Adams, Mr Baird, Mr Bartlett, Mr Byrne, Mrs Elson, Mr Hardgrave, Mrs De-Anne Kelly, Mr Andrew Thomson and Mr Wilkie

Senators and members in attendance: Senators Coonan, Cooney, Ludwig and Mason and Mr Adams, Mr Byrne, Mrs De-Anne Kelly, Mr Andrew Thomson and Mr Wilkie

Terms of reference for the inquiry:

To inquire into and report on:

- opportunities for community involvement in developing Australia's negotiating positions on matters with the WTO;
- the transparency and accountability of WTO operations and decision making;
- the effectiveness of the WTO's dispute settlement procedures and the ease of access to these procedures;
- Australia's capacity to undertake WTO advocacy;
- the involvement of peak bodies, industry groups and external lawyers in conducting WTO disputes;
- the relationship between the WTO and regional economic arrangements;
- 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.

WITNESSES

ANTON, Mr Donald Kris, Director, Australian Centre for Environmental Law, Faculty of Law, Australian National University 289

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Subcommittee met at 10.07 a.m.

DREVER, Mr Phil, Assistant Secretary, Labour Relations Policy Branch, Department of Employment, Workplace Relations and Small Business

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FOSKEY, Ms Deborah Jane, Canberra Coordinator, International Women's Development Agency

GOLDIE, Ms Jenny, National Director, Sustainable Population Australia Inc.

REDDEN Mr Jim, Policy Director, Australian Council for Overseas Aid

CHAIR—I declare open this morning's panel discussions on Australia's relationship with the World Trade Organisation. Today's panel discussions are regarding environment, human rights and labour issues and how these relate to the World Trade Organisation. The committee decided to hold panel discussions rather than a formal public hearing, in order to expand on the arguments that we have already heard through written submissions and at previous public hearings. To begin with, I will ask each participant to make a short opening statement of around five minutes, outlining what they believe are the relevant issues surrounding Australia's relationship with the World Trade Organisation. We will then move to a free-flowing discussion involving the committee and all panel participants.

I would like to advise all participants that, although the committee does not require you to give evidence under oath, today's hearings are legal proceedings of the parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. In opening this panel session on environment, human rights and labour issues, I would ask if any of you would like to make a comment on the capacity in which you appear before the committee?

Ms Goldie—Yes. Australians for an Ecologically Sustainable Population changed its name last week to become Sustainable Population Australia. So our written submission is under our former name.

CHAIR—Thank you, Ms Goldie. Are you ready to make an opening statement, Mr Anton?

Mr Anton—Yes, thank you. In January 1995, the World Trade Organisation became the successor to the General Agreement on Tariffs and Trade, otherwise known as the GATT. The new organisation was the culmination of many years of negotiations aimed at liberalising world trade and extending the reach of the system that oversees international trade. Among other things, these negotiations also provided for a WTO ministerial meeting to be convened every two years. As we are all aware, the third ministerial meeting was held in Seattle at the end of 1999.

Although the importance of protecting the environment is at least nominally acknowledged in the preamble of the agreement establishing the WTO, a non-binding aspirational portion of that international convention, it was not the main focus of the Seattle negotiations. Indeed, it hardly figured in them at all. Calls were made from within Australia for Australia to take a leading role in finding ways to reconcile tensions between trade policy and the environment. These calls were largely ignored. Indeed, the Department of Foreign Affairs and Trade failed to even mention environmental issues in its call for submissions from the public in formulating Australia's approach to negotiations at the Seattle ministerial.

Largely because they were ignored, expressions of dissatisfaction with the WTO on the part of environmental and other public interest groups reached new heights during the meeting of the ministers in Seattle. Instead of launching the ninth round of multilateral trade negotiations since the late 1940s, the meeting concluded in disarray. The failure of the Seattle ministerial and the forceful expressions of concern by environmentalists before, during and subsequent to that meeting have increased the urgency of addressing constructively the issues that have bedevilled the trade and environment debate for some years. In particular, it has been argued that there is a natural or built-in potential for conflict between trade policy and policies relating to environmental protection within the WTO and GATT. Examples of such conflict include higher environmental standards in an importing country than in an exporting one, leading to a loss of international competitiveness for certain industries in the importing country and a pressure for lowering of environmental standards to gain back market share; weakly regulated pollution havens that attract foreign direct investment—in effect, a subsidy provided by weak environmental regulation; trade liberalisation and economic growth, which promote externalities as comparative advantage, leading to resource depletion and environmental degradation: cross-border pollution or environmental damage to the global commons, with trade sanctions that might otherwise be used as retaliatory measures seen to be in violation of WTO rules; eco-labelling as a barrier to trade; and, finally, conflicting obligations in multilateral environmental agreements, otherwise known as MEAs, and WTO agreements.

Obviously, in the five minutes I am allowed I cannot discuss in detail all of these issues. Instead I will focus, as I did in my submission, on the potential conflict between MEAs and the GATT/WTO trade disciplines. In addition to unilateral trade restrictions to advance environmental objectives, states may adopt, and indeed have adopted, trade related measures in order to implement trade provisions that are contained in international environmental agreements. Examples of MEAs containing trade provisions are conventions such as the Convention on International Trade in Endangered Species of Wild Flora and Fauna, commonly known as CITES; the Montreal Protocol on Substances that Deplete the Ozone Layer; and the Basel convention on control of transboundary movement of hazardous wastes and their disposal.

In agreements such as CITES and the Basil convention, the rationale for trade related measures between the parties seems clear. Trade must be reduced or eliminated because it represents the actual vehicle through which environmental damage occurs. Trade restrictions applying to non-parties may be based on similar reasons. As illustrated by the Montreal protocol, such restrictions may also be designated or designed to ensure that, by staying out of the agreement, non-parties are unable to take what is called the 'free ride'. In other words, they are not able to benefit from the environmental efforts brought about by the agreement without bearing any of the costs that that entails. On the contrary, these trade provisions will generally place non-parties in a disadvantageous position, thereby giving them an incentive to join.

Domestic measures adopted to implement these sorts of trade provisions may, however, conflict with the GATT 1994 in a number of ways. First, measures discriminating against parties and non-parties may violate article I's most favoured nations obligation. An example is the adoption of an import or export ban on chlorofluorocarbons, CFCs, which are an ozone depleting substance, and an import or export ban on CFC-containing products and technology against a WTO member that is not a member to the Montreal protocol itself. Second, measures subjecting imported products to more stringent obligations than like domestic products may violate the national treatment provision contained in article III. An example would be the adoption by a party to the Basel convention of a total ban on the import of foreign waste while at the same time continuing to generate like domestic waste at home. Third, such import or export prohibitions as those contained in CITES may amount to quantitative restrictions contrary to article XI. Finally, the exceptions contained in GATT articles XXB and XXG may not be able to justify such restrictions. As in the case of unilateral measures, a number of restrictions adopted pursuant to MEAs may therefore be found to be inconsistent with GATT.

So far there has not been a case of a GATT member challenging these types of trade restrictions adopted by another member. However, to the extent that the type of challenge that I have just outlined is possible, the situation should be clarified. This is something Australia should be working towards, particularly because this tension seems to be the least difficult to defuse. There continues to be an apparent high degree of consensus that MEAs are the best approach to dealing with international environmental problems.

Several approaches that I am sure this committee is familiar with have been suggested in connection with ways to bring about a reconciliation of these tensions. One option would be the adoption of a waiver allowing the function of trade related measures in multilateral environmental agreements. Another option would be the development of a new article XX exception specifically designed for MEA trade related measures. Finally, building on the example of the North American free trade agreement, it might be envisioned that it is possible to incorporate directly into the GATT a list of MEAs whose obligations would prevail over a GATT obligation, in the event of inconsistency.

To summarise, if there is indeed a window of opportunity in the post-Seattle period, it can either be seized or ignored. Given the current state of play in the trade and environment debate, either scenario is possible. It is to be hoped that Australia, through a constructive engagement with civil society actors and with the WTO, will make a contribution in ensuring that the opportunities are taken advantage of and are transformed into positive outcomes.

CHAIR—Thank you, Mr Anton. Ms Goldie is next.

Ms Goldie—Thank you, Madam Chair. I would refer you to my written submission in which I made the case for 'fair' as against 'free' trade. This submission was largely based on a paper produced by the Australia Institute that I commend to you. As it pointed out, the trade system is not neutral. The rules that govern trade can be designed to protect human rights and the environment, or to ignore them. Existing trade rules already reflect certain human rights, such as banning goods made by prison labour that can be produced more cheaply.

On balance, however, under the existing system, economic considerations are generally given precedence, and violations of human rights, exploitative labour conditions and environmentally destructive activities are ignored, if not encouraged. While the International Labour Office, the ILO, sets minimum standards, these are not reflected in the trade rules. Nike's use of sweatshops in Indonesia is a good example.

As another example to illustrate my written submission, I would like to table an article from the *Atlantic Monthly* of August last year called 'The Shipbreakers' by William Langewiesche. It describes the dismantling of ships—each one of them a sump of toxic waste—for scrap metal on the Indian beach of Alang by 40,000 impoverished Indian workers who live in a narrow shantytown that stretches for several miles along Alang with no sanitation and, for the most part, no power. Unemployment is high, and the residents are mostly men—migrants from neighbouring states who work for meagre pay in the shipyards. When I say 'meagre', we are talking about a dollar a day. As with many migrants camps, dunkenness, prostitution and violence are never far away.

Shipbreaking is a dangerous and polluting process. It was undertaken with cranes and heavy equipment on the docks of North America and Europe until the 1970s, when labour costs and environmental regulations drove them offshore to Korea and Taiwan. In turn, Korea and Taiwan did not find it profitable, and it was then that businessmen from India, Pakistan and Bangladesh decided that the process could be done by driving the ships up onto the beaches and tearing them apart by hand. But the whole transaction depended on the extent of poverty in South Asia, where there was a vast and fast growing population living close to starvation, who would work for a dollar or two a day, keep the unions out, and accept injuries and death without complaint.

Today 90 per cent of the world's annual crop of 700 condemned ships end their lives on the beaches of India, Pakistan and Bangladesh, and fully half of them at Alang. For the traders, shipbreaking is a marginal business, and many risk failure every year. But, for the workers, the risks are far worse: many are killed each year—in fact, on average, one a day—and they are killed from falls, fires, explosions and exposure to poisons. American workers had suffered these risks too, when they were dismantling ships in the US, to some extent because of the toxic substances. Then the Environmental Protection Authority there banned the export of hazardous PCBs that were used in the ship's electrical and hydraulic systems. The navy pressured the EPA to lift its ban so it could sell these government ships for profit on the South Asian scrap market.

After the conditions at Alang were exposed in a Pulitzer Prize winning article in the Baltimore *Sun* in 1997, the navy withdrew and stopped exporting its ships, though the practice still continued with US flagships. This article prompted Greenpeace and other activists in Europe particularly to stop the export of such ships to South Asia that contained toxic and hazardous substances. These activists were insisting on fair trade rather than free trade.

Ironically, the people of Alang were not happy, however, simply because there is no alternative work if this shipbreaking business goes bust.

I cite this article because 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. Encouraging family planning and an end to population growth will raise the value of the individual labourer. Implementing fair trade practices will be much easier in such circumstances.

CHAIR—Thank you. Ms Ffrench, do you or Mr Drever wish to speak, or do you both wish to?

Mr Drever—I will be speaking, Madam Chair. The Department of Employment, Workplace Relations and Small Business's interest in this inquiry relates to the inquiry's seventh term of reference, which is the focus of today's panel discussion. In particular, the department has responsibility for managing international labour issues, including through Australia's membership of the International Labour Organisation. The points we wish to highlight from our submission relate to the ILO being the competent international body to deal with international labour standards. In that regard, we make three points. The first is that representatives of employers and workers organisations are formal partners in the ILO, thus helping to ensure the legitimacy and acceptance of its work. Secondly, the ILO aims to operate by consensus, utilise cooperative approaches such as dialogue and promotional activities, and provide technical assistance and advisory services. In the department's view, these are appropriate strategies when dealing with labour issues, which can be complex and not necessarily clear cut. Thirdly, the ILO has recently made an effective response to the challenge of the labour standards aspects of trade liberalisation, by adopting the ILO Declaration on Fundamental Principles and Rights at Work. The follow-up work will lead to enhanced supervision and implementation of core labour standards, whether or not member states have ratified the associated conventions.

We note that the WTO has a powerful dispute settling machinery, which involves the use of untargeted trade sanctions. The department considers that it would be inappropriate to utilise the WTO to supervise labour standards for the following reasons. Firstly, at best, it would duplicate existing and most effective mechanisms in the ILO; at worst, it would result in diverging interpretations of labour standards. Secondly, trade sanctions would be an unsuitable weapon against social issues. The ILO's supervisory mechanisms are, in the department's view, more appropriate as, first, they are transparent and reported publicly; second, they can be targeted, applying the appropriate degree of leverage, depending on the issues and the country's response; and, third, they are supported by the ILO's technical assistance programs.

In summary, the department does not support the inclusion of labour standards clauses in trade agreements, as the ILO is the competent international body to establish and supervise international labour standards. It does so with the formal involvement of employer and worker representatives, as well as governments.

CHAIR—Thank you, Mr Drever. Mr Hyman is next.

Mr Hyman—Environment Australia, as the Commonwealth department responsible for implementing Australia's international environment responsibilities, has an interest in ensuring that WTO disciplines do not impede our ability to protect our domestic environment or to pursue our international environmental interests. The preamble to the agreement establishing the WTO states that trade relations should be conducted with a view to:

allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect the environment and to enhance the means for doing so ...

At both the national and international levels, sustainable development is now an almost universally accepted concept and aspiration. To achieve sustainable development, government agencies with policy, administrative and regulatory responsibilities in the trade and environment fields need to cooperate to ensure that the two systems are mutually supportive. Australia places particular importance on this, and Environment Australia works closely with other departments—especially with the Department of Foreign Affairs and Trade—to contribute to a whole of government approach to Australia's involvement in the WTO and particularly in its Committee on Trade and Environment. In seeking mutually supportive policies, we see it as particularly important to progress win-win scenarios where both trade and environment interests can be enhanced by specific trade liberalisation proposals—for example, in sectors such as fisheries, agriculture or forestry.

I will comment briefly and specifically on four of the inquiry terms of reference that are directly relevant to Environment Australia's activities in domestic and international environment protection. With respect to term of reference No. 2, which is on transparency and accountability of the WTO, we have encouraged efforts at the international level for greater transparency in the WTO's operations. We have also emphasised the importance of national mechanisms, such as whole of government decision making, for improving trade policy where it impacts on other policy areas and for increasing public confidence in the WTO system through greater coherence with non-trade policy areas.

With respect to term of reference No. 3, which relates to the effectiveness of the WTO's dispute settlement procedures and the ease of access to these procedures, we would see the WTO dispute settlement mechanism as existing to interpret and give effect to international treaty obligations that are covered by the WTO umbrella, including ruling on whether exemptions to the system—for example, for protection of the environment—are justified and properly and transparently applied. In our view, the dispute settlement mechanism has been reasonably effective in performing its proper role.

Term of reference No. 7 relates to the relationship between WTO agreements and other multilateral agreements, including those on the environment. We take the view that recent multilateral environment agreements show a greater level of consistency with WTO rules and agreements. There have been efforts, which we encourage, for greater coherence and cooperation between the WTO and the MEA secretariats and for greater transparency in the operation of these secretariats. In some cases, trade measures are an effective means of mitigating or minimising environmental degradation. This is especially the case where trade itself carries with it environmental risks or consequences—for example, trade in hazardous

wastes. It is also an issue where international trade in a particular product significantly increases the environmental impact of producing that product—for example, a product derived from an endangered species, where the greater market scale resulting from international trade enables much higher production levels than a domestic market might alone support. The use of trade measures in new environmental agreements on a case-by-case basis, where trade in a particular product can be shown to increase environmental risks to importing countries, is an important tool available to countries to improve global and domestic environment protection.

On term of reference No. 8, the extent to which social, cultural and environmental considerations influence WTO priorities and decision making, we would see the WTO's role as to provide the common institutional framework for the conduct of trade relations among WTO members; that is to say, the WTO is primarily a trade organisation. Clearly, environmental considerations influence its priorities and decision making, and this is reflected in the WTO framework itself. The preamble to the Marrakech agreement establishing the WTO recognises that trade relations should allow for the optimal use of the world's resources, in accordance with the objective of sustainable development, seeking both to protect and preserve the environment. The exemptions in article XX of the GATT allow for measures to protect human, animal or plant health or life, and also for measures to conserve exhaustible natural resources, provided such measures are not applied in a trade discriminatory manner.

The influence of environmental considerations is also reflected in the fact that a number of WTO disputes have considered environmental measures and have consistently reaffirmed the rights of WTO members to take national and international measures to protect the environment. The WTO has taken other steps to ensure environmental considerations are factored in to its processes. The establishment of a WTO Committee on Trade and Environment, which provides members with a forum to discuss trade and environment issues, is the most obvious example. The WTO has also been involved in other initiatives with UNEP and with the secretariats of some MEAs to encourage greater coordination on trade and environment issues.

CHAIR—Thank you, Mr Hyman. We will now hear from Ms Foskey.

Ms Foskey—Thank you. I wrote a submission for the International Women's Development Organisation and I noted, from my perusal of your web site, that very few submissions—in fact, I would say almost none; or one that I could not sight—related to gender issues in world trade. It is a very important issue, because trade liberalisation is not gender neutral. It has a different impact on women than on men, and that is because women and men differ in their economic and social status. Consequently, I think it is very important that I draw this out as an issue.

Women are organising globally around trade issues. They have pointed out that the World Trade Organisation, as it currently exists, undermines many major international agreements that women have worked very hard to get their governments to commit to. That includes the United Nations Conference on Environment and Development action agendas, the World Conference on Human Rights, the World Summit for Social Development, the Fourth World Conference on Women and Habitat II. We recommend a comprehensive gender social and environmental assessment of the implementation of the Uruguay Round agreements before any new round is undertaken. Such a review should address the negative impacts and correct the deficiencies and imbalances in the agreement, and this review and assessment should involve consultations with women's and other non-government organisations.

At the Beijing Plus 5 review in New York last year, an understanding that economic globalisation could be bad for women was for the first time incorporated into official documents. Under the heading ‘Women and the Economy’, F21, it was recognised as an obstacle that:

The importance of a gender perspective in the development of macro economic policy is still not widely recognised.

Recommendations were made that governments take effective measures to address the challenges of globalisation, including through the enhanced and effective participation of developing countries in the international economic policy decision making process; and in order to, inter alia, guarantee the equal participation of women, in particular those from developing countries, in the process of macro-economic decision making. It was also recognised that national efforts need to be complemented by intensified regional and international cooperation to identify and tackle the risks and to create opportunities which globalisation does also hold for women but from which women at present are not benefiting.

It is interesting that, in our delivery of development in this country and in most OECD countries, gender considerations are seen to be crucial to the effectiveness of our aid. AusAID has a system of gender and development markers, and gender and environment are recognised as crosscutting issues in all its priority areas. The World Bank now uses the language of gender in all its approaches, and emphasises that it is absolutely important that, at the national level, countries develop legal, economic and social institutions that focus on providing equal rights for men and women. The bank acknowledges that economic growth will not improve gender equality without the establishment of an institutional environment which promotes women’s human rights and access to resources—and I think most of us know that the World Bank is not a soft institution.

Human rights experts who have looked at the World Trade Organisation from a gender perspective have observed that women stand to gain little from WTO structures, because they are absent from its decision making structures, and its rules are gender insensitive. In fact, women are one of the distinct groups of society who benefit least from economic globalisation, although their labour is crucial to it. It is estimated, for instance, that women provide up to 80 per cent of labour in the free trade zones—which governments, of course, are setting up in order to encourage industrialised industries, in the free trade agenda of the WTO. The World Trade Organisation has not made public any policy approach to gender. Until it does, the International Women’s Development Agency has no confidence that its policies will improve the situation for the poor women who are the focus of our concern.

That is the institutional side of gender and the WTO. There has been a lot of work done, especially by researchers in developing countries, on the effect of economic liberalisation on women. There is an observable growth of women’s participation in the informal sector where, of course, they have no employment related benefits but do have insecurity and vulnerability. It is also noted that migration—which is another aspect of economic liberalisation in that the free movement of labour is required—is a response to unemployment and to policies which increase poverty and falls most heavily upon women. For instance, the ratio of migrant females to males amongst Filipinos is 12 to one, and women are the main labour migrants from many countries. Even women who are not involved in paid work are affected by the policies of trade liberalisation. Of course, while I am talking primarily about women in the global south, a lot of

this we will recognise in our own country. Women who work in the home, for instance, find their work increased as public services decrease, because women's work is the shock absorber of the process of adjustment and its social costs.

The International Women's Development Agency makes a number of specific recommendations to the inquiry. At the international level, the Australian government is only one of the 134 member bodies of the WTO. But I am sure that it would find a lot of support amongst other developing countries—for instance, within the European Union and the United States, which also have women's organisations that are looking for a more gendered perspective. The International Women's Development Agency would like the Australian government to work towards a literature review of all available research on the effects of trade liberalisation on women in the north and the south; an identification of areas where more research needs to be done, and the commissioning of that research by relevant gender specialists; the training by gender specialists of WTO officials in gender issues; and the preparation of guidelines for member countries on gender sensitive trade policy.

In Australia itself, as a representative of IWDA, I have actually attended a number of DFAT consultations on trade, and it is very evident that there is a lack of any understanding of gender impacts of trade policy amongst DFAT, even though officials do recognise that gender is an issue that actually could be incorporated into WTO approaches. So, at the Australian level, IWDA recommends that, to overcome the lack of understanding between trade bureaucrats of the gendered aspect of trade liberalisation, gender and development experts should offer a series of workshops to key representatives of business as part of their preparation for involvement in future WTO meetings; that studies on the gendered effects of trade liberalisation, competition policy and other mechanisms promoted by the WTO be undertaken; that, to overcome the lack of women at WTO consultations representing Australia's women, key women's organisations should be identified and supported to attend; and that, finally, DFAT should employ a gender expert—at least one—within its trade unit to advise the APEC and WTO sections on issues related to marginalised groups, particularly women.

You have my submission, so I will leave it there. I would also like to table a copy of the paper, *Gender Issues in International Trade*, which is a far more fulsome treatment of the topic.

CHAIR—Thank you, Ms Foskey. You can assume that we have read the submissions, but thank you for that additional one. We will now hear from Mr Redden.

Mr Redden—Thank you, Madam Chair and committee members, for your time. ACFOA welcomes this timely inquiry, given the importance of trade to poverty reduction in developing countries as well as to the welfare of ordinary Australians. The Australian Council for Overseas Aid represents some 97 international development agencies—including, for example, Amnesty International, the Australian Conservation Foundation, and development agencies such as World Vision, Community Aid Aboard, CARE and the International Women's Development Agency, who have just spoken.

International development NGOs realise the intricate relationship between economic growth, development and poverty reduction, and they recognise the potential value of an increased number of trade opportunities for both Australia and developing countries. We believe that Australia can play a unique and valuable role in furthering the interrelated concerns of Australia

and developing countries, especially in areas of agriculture and in the regulation of agribusinesses. ACFOA believes that, in a more globalised, interconnected world, it is short-sighted for any Australian government to continually promote trade policy that is solely in the national interest—an unfortunate catch-cry when the interests of all Australians are intricately bound up with the economic and social welfare of the Asia-Pacific region in particular, but with major trading partners and trading powers globally, such as Japan and the United States of America.

I would like to reinforce from the outset from ACFOA's written submission that ACFOA strongly supports a multilateral rules based trading system, so long as it can do two things. The first is to address the growing wealth-poverty divide in Australia and globally. The World Bank estimated last year that, over the last two years to the year 2000, the number of people living in absolute poverty on less than $US1 a day increased from 1.2 billion to 1.3 billion. The second is that the WTO be able to rein in the uncompetitive practices of transnational companies who, we believe, unduly influence the WTO decision making process. At this point, if I may, I would table a submission from ACFOA to the inquiry into the Corporate Code of Conduct Bill on a corporate code for the regulation of Australian transnational companies.

CHAIR—Thank you. That committee will accept that. We will give it a number later.

Mr Redden—Thank you. To date, the evidence for the World Trade Organisation being able to exact a better deal for the global poor—for example, as a result of the Uruguay Round of multilateral trade agreements—is not strong. The agreement on agriculture, for example, of the Uruguay Round of trade agreements, meant that industrialised countries were to reduce trade tariffs by 36 per cent over a period from 1995 to 2000, while developing countries were to reduce their tariffs by 24 per cent over a period of 10 years. Similarly, industrialised countries had to reduce the value of export subsidies to a level of 36 per cent below the 1986-90 base level, also over a six-year period. There are also a number of provisions for special and differential treatment for the least developed countries—such as a multilateral compensatory food import facility to enable non-food importing developing countries to cope with foreign exchange shortages.

Unfortunately, very few of these trade reforms have actually been implemented. ACFOA's concern is that very little progress has been made by the industrialised countries. While many poor countries have liberalised their markets, many rich countries—and, I am glad to say, not so much Australia—have remained protectionist, especially in the areas of textiles and agriculture. Each year developing countries lose approximately $700 billion as a result of trade barriers in rich countries. To put it another way: for every $US1 provided by the rich world in aid or in debt relief, poor countries lose $14 to the rich countries because of trade barriers.

Unfortunately, the post-Seattle record has also produced little for developing countries. Industrialised countries promised to provide the 48 least developed countries in the world with improved market access. Nothing had happened on this front until recently, when the Europeans signalled some preparedness to reduce protectionism in agriculture—though it is difficult to know what will happen now, given the horrific cost of the current foot-and-mouth disease outbreak in Europe.

Therefore, ACFOA believes that, for the World Trade Organisation to realise its own charter and to improve not only the trading opportunities but the economic and social welfare of the global poor, a progressive reform agenda is necessary. The key thrust of ACFOA's submission is to call on the Australian government to be a strong proponent of that reform agenda. We espouse the practical application of five key principles, which are in our submission and which I will summarise briefly.

Firstly, Australia should support equality of participation and the democratisation of the trade negotiating process. Secondly, Australia should support transparency and the legitimate interests of the community of Australians and of civil society internationally. For example, in Australia the government should ensure that there is an appropriate ministerial advisory committee on sustainable development, environment and labour issues, and also adequate civil society representation on Australian delegations to key trade fora. Thirdly, Australia should adopt a rights based approach to trade agreements. Civil, political, economic, social and cultural rights provide guarantees for minimum standards which ensure that no trade agreement violates the food security, shelter or civil liberty of other people. Fourthly, Australia should do all it can to increase the capacity of developing countries to utilise and benefit from greater market access. Australia should support capacity building trade measures in the Asia-Pacific region in particular, and this would require an increase in Australia's aid budget. Fifthly and lastly, we need to redress the current inequities that do exist. This requires a review of the Uruguay Round of agreements with regard to an assessment of their impact on poverty, on women, on human rights and on labour—in particular, child labour.

We believe that the Australian government should support the enshrining of the food security principle in the agreement on agriculture. It should pursue a full review of the TRIPs agreement to protect vulnerable communities against the exploitative practices of transnational countries in patenting local indigenous products. It should support the regulation of Australian transnationals through an enforceable code of conduct. Also, it should strengthen technical support and diplomatic advocacy, whether through the Cairns Group or through other means, to advance the interests of developing countries as well as of Australia.

In conclusion, as stated at the outset, ACFOA will support a multilateral system of trade rules, if it can produce tangible results for the benefit of the disadvantaged in Australia but also of the poor globally. At this stage, as far as we are concerned, the jury is still out. We trust that a number of our recommendations in the submission to you will encourage the Australian government to play a stronger role as an advocate for progressive reform of the World Trade Organisation. I commend ACFOA's principles and recommendations to this committee, and I thank you for your time.

CHAIR—Thank you. These discussions are not quite as formal as we normally have with Senate hearings. So, if any representative wishes to contribute to the discussion that will ensue, please signal to me so that we can have some order in it. But it need not just be questions and answers—and that, of course, goes for all members of the committee. If anyone wants to take up a point that somebody raises, please let me know. We will start with Senator Cooney.

Senator COONEY—Thank you, Chair. I want to ask about a matter of process. Perhaps I might direct this question first to Mr Drever and then to Mr Anton from the Law School. I hope that he is not so demarked that he cannot comment on matters of contract. I am talking about the

issue of demarcation. The Department of Employment, Workplace Relations and Small Business seems to be approaching this on the basis that you demark areas of interest. So you have trade, you have environment, you have labour. It is as though somehow you could not make an agreement unless there were three separate agreements.

Say that you were in the private sector and you went to a lawyer and said, ‘Look, I have this problem; could you make me an agreement that covers the situation? Not only do I want to talk about trade; I also want to talk about employment, the environment and gender, for that matter.’ I think that that firm would have no great difficulty in at least getting an agreement together and then discussing it so that there was an exchange of minds and an agreement written. Yet there seems to be—not only on this occasion, Mr Drever, but on other occasions as well—a feeling, a perception or an attitude in government to say, ‘Well, no; we have these departments; each department handles its own. The ILO is what we have a purchase on, and we want our ILO to operate here. If there are to be negotiations about employment, we are going to be in it. If it is about trade, DFAT has to go and do trade. If there is something about environment, then the ministry for the environment will look after it, and that is it.’ That all seems pretty sort of tortured. First of all, Mr Anton, is it possible to make an agreement that would encompass all these things, and where you would have, nevertheless, an ability to have a structure for deciding the issues—very much like the one you have now, where you have dispute settlements procedures and places to go to appeal and so on? Is there any problem in doing that legally, Mr Anton?

Mr Anton—No. I believe it is not only possible but essential. I believe that the WTO provides a model that can be used to incorporate all these concerns. We heard Mr Hyman talk about sustainable development being prominent in the preamble. While not binding states, it does show that the WTO recognises the importance of that concept. In order to meet that concept, you cannot divorce trade from environment; you cannot divorce work, labour or human rights concerns from the environment. They all play and figure together in reconciling the way forward.

So I believe that it is dangerous to talk about segmentation, demarcation and divorcement of these issues. I think they need to be included in the WTO negotiations and in further development of the regimes under the WTO. To do otherwise makes it politically expedient and very easy for trade negotiators and those with a fixation on trade to say, ‘Oh, the environment is somewhere else; we do not have to talk about it or even consider it anymore.’ I think it is very important, at least with respect to environment, that it finds its way into the WTO in a binding fashion. Take moving the sustainable development notions from the preamble into, for example, an article XX exception: why can we not have states agree that, in addition to articles XXB and XXG, which relate to protection of human health, animal and plant life, or relating to the conservation of exhaustible natural resources, we have an exception for unilateral and multilateral action designed to promote, in a non-disguised fashion, sustainable development? I think that is very possible. I will yield the floor to my other colleagues on that.

Senator COONEY—There would be no problem technically with any of that?

Mr Anton—No.

Senator COONEY—You would have people with the necessary legal and other ability to make decisions that encompassed all these?

Mr Anton—Politically it is very difficult. Politically you find entrenched positions. But legally, technically, states are free to agree upon anything besides violating norms of duce cogens or pre-emptory norms of international law. States can agree to anything, so legally there is no problem.

CHAIR—That is quite a controversial point. Does anyone else want to comment on that?

Senator COONEY—Mr Drever, do you want to make any comment?

Mr Drever—Certainly the answer is that legally there would be no impediment to do that. The suggestion that there are territorial grabs between departments with regard to who looks after what is a misconception. In essence, the position that we are putting is that the ILO is the competent body which deals with labour standards, and has done so since 1917. We would point out that the ILO actually survived the break-up of the League of Nations in terms of its acceptance internationally and its acceptance as a tripartite body.

The difficulty is not in a split but in which avenue can be pursued that will deliver better outcomes. We see that the ILO is making substantial ground. I do not think we should be looking at the ILO as working in isolation; that the WTO sits on one side of the fence and the ILO on the other. There is growing cooperation between the two organisations. They operate more in a complementary way. For example, the ILO at the ministerial conferences of the WTO has observer status. In the first two ministerial conferences, the ILO had no speaking rights. At the third conference, the Director-General of the ILO attended and addressed the conference. So there is growing harmony between the two organisations and growing complementarity between them.

Senator COONEY—I would just comment that it reminds me of what we used to do in legal history. You would go off to the court of equity, then you would go off to the common law court; you would go off to three or four courts to get your result.

CHAIR—And then you got struck out.

Senator COONEY—Then you would get struck out, because it would be all too late. It seems as though that way of approaching things may well be in amongst the world governments—but I might be unfair there.

Mr Hyman—I was going to comment that, as a matter of fact, as I have said and as other speakers have said, there are environment agreements which include trade provisions, and there are trade agreements—not only WTO agreements but also other multilateral or bilateral trade agreements—which include environmental provisions. So, as a matter of fact, the two worlds are already overlapping. I used the term ‘mutually supportive’ in my statement to describe the approach that the government takes to ensuring that the interface between these two worlds is properly managed. But I would like to make the point that many multilateral environment agreements exist for reasons that have very little to do with trade. They exist to address an environmental issue, problem or concern globally and to try and find a solution to it. Very often

the trade considerations are largely peripheral to what the major interest of the agreement is about. They are, if you like, the enabling elements in that agreement.

The United Nations Environment Program is the umbrella organisation for most of the MEAs—not all of them—and that is appropriate, because the basis for their negotiation has been an environmental concern. The disputes that arise under that agreement tend to be resolved through mechanisms created by that agreement and by parties to that agreement. We would view that as being entirely appropriate. Those are the concerns that the parties have; they are concerns under that agreement, and the agreement provides mechanisms for their resolution. We would not see it as a source of problem that that is separate from the WTO dispute resolution mechanisms.

Mr ADAMS—We have had representation that it is the dispute settling procedure that people would like to get into: when people do not come to the party on the environmental agreement, they go before the dispute settling tribunal to get it sorted out.

Mr Hyman—There has been no case—and I think Mr Anton said this earlier—under an MEA which has been taken to the WTO mechanisms. There have been WTO disputes which have raised environmental considerations, of course, and those have been entirely—

Mr ADAMS—That is not what I meant. I said that we have received representation that the reason people would like to have trade tied to environmental considerations would be so that there is a process of rectifying environmental issues: 'You do not get the trade, you do not get to sell your produce, if you do not do X about the environment.' That is the point I am making. You are taking a totally different view from that and saying, 'We've got agreements under the other agreements, the environmental agreements, that do not come into being.' The old issue about this report that we are doing is that there are conflicts coming in together.

Mr Hyman—There are certainly tensions. But, if I understand you correctly, you are saying that people are proposing that various forms of trade sanctions should be used as an enforcement measure under MEAs.

Mr ADAMS—Okay; we will say that for the purpose of the debate.

Mr Hyman—That may have been proposed. One of the points I have made in my written statement is that considerable effort has gone in in recent years to try to ensure that those MEAs that are negotiated are consistent with the WTO disciplines. Considerable attention has gone in in the making of policy and in the negotiation process, to ensure that consistency to the degree possible. The kinds of measures that people may be proposing, at first glance, sound as though they would raise questions of consistency. As a general principle, the government would prefer to see, I think, different areas of policy consistent with one another rather than inconsistent.

CHAIR—It has been put to us that, to a certain extent, the dispute settlement system has been the victim of its own success, and that it has the potential to be overloaded by what some would say are issues extraneous to the straightforward trade disputes. Does anyone have a view about that? It is a theme that has come through.

Mr Anton—I think the resolution of a lot of trade disputes is not necessarily a black-letter legal issue that is appropriate for courts. It is a political matter to be hammered out at negotiating tables. That is a personal view of mine. I think the existence of law is important, nevertheless, in terms of formulating argument and counterargument to reach some sort of political compromise. If you leave it to those with the most power to get their way, that is not a workable solution either. The existence of law is very necessary.

What I would like to raise is the ability of civil society actors to access these dispute settlement mechanisms. I was very heartened earlier in the year when the appellate body invited anybody in the world, any person in the world—virtually an opening standing invitation, if you will—to submit applications to file amicus curiae briefs in the asbestos dispute between France and Canada. A lot of people, including me and Jan Macdonald at Bond University, put in a lot of time in formulating an application. When it came down to the crunch, we were told in a three-sentence order that we had not complied with paragraph 3 of the special procedures. When we asked why, they said, 'Well, we can't tell you why.' It became apparent that states did not want anybody filing an amicus brief in this matter. Indeed, every application was knocked back. I think the WTO did themselves a real disservice in doing that, in terms of opening the dispute settlement process to civil society actors—and that is a thing to be avoided.

Mr ANDREW THOMSON—Mr Anton, what is your view of an application to non-consenting third parties of MEAs? If, for example, a democratically elected country in a country like Indonesia or India objected to a countervailing measure being taken as a trade measure against it, how would you regard its rights as a democracy, versus the sort of agenda that you in civil society would wish to pursue?

Mr Anton—It is a difficult question. I think you have to look at the amount of participation by states in the particular MEA at issue. Is there near universal participation, or is it something bordering on 50 per cent to 75 per cent? In the cases of near universal participation, I have no trouble with the application of trade related measures as they are found in MEAs, for the simple reason that the MEA is not going to be effective if you allow people to opt out and become free riders. That is something that should be recognise in the WTO agreements. It is something that is not recognised explicitly in the WTO agreements. It relates to, for example, the recent decision of the United States to pull out of Kyoto. That agreement will not be effective without the largest contributor of greenhouse gases in the world signing on. It is the same for other multilateral environmental agreements: without partition of states, they become ineffective; they become paper—they become so much wasted paper.

Mr ANDREW THOMSON—So the act of not joining or participating in a treaty is something that you and your movement will or will not allow? It is a question now of allowing. Getting back to the basics of treaty making, which is this committee's role: is it your submission that states are or are not to be allowed to participate?

Mr Anton—Absolutely. States are allowed not to participate, but they are given an incentive to participate by the existence of trade related measures in these international environmental agreements, which are necessary to protect the international environment to prevent the continuing degradation of the planet.

Mr ANDREW THOMSON—Where does the authority spring from that there should be some standard against which states are judged, whether or not they participate? The United States with Kyoto is a good example. What source of legal authority do you bring to bear on a judgment that they should or should not be sanctioned for participating?

Mr Anton—It relates to the particular treaty in issue and the effectiveness, or the ability to make the treaty effective, and the agreement of states who are willing to participate.

Mr ANDREW THOMSON—So effectiveness is now a new norm of international law?

Mr Anton—I would not say that it is a customary norm of international law, no. I think it is a practical reality. Why even go to the bother of wasting the taxpayers' money to turn up at multilateral environmental negotiations, if all you are doing is getting a document on paper which will have no effect in improving the tangible environment on the ground? I think that is a waste of time and money.

Mr ANDREW THOMSON—We spend a lot of money in the parliament here, and we do not pass certain laws. But you cannot call the whole process of parliament a waste of money just because the Senate knocks back certain legislation.

Mr Anton—No; but we were going to the effectiveness of multilateral environmental agreements and whether or not that is a customary norm. Whether or not it is—and I would not contend it is—is a practical political matter. If you are going to have effective agreements, or if you are going to have multilateral environmental agreements that are worth anything, they need to be effective.

Mr ADAMS—I am seeking information from the NGOs that are here. Were any organisations asked to have input before the last round, or since the last round, into Australia's participation of the WTO?

Mr Redden—Firstly, in the previous round—that was before Seattle—the Department of Foreign Affairs conducted a consultation with NGOs. So there was a one-off roundtable consultation. That included not just NGOs but all groups: industry groups, the Farmers Federation and so. So it was fairly limited, in that you only had a couple of hours to get out a quick point of view, and that was it. The NGOs protested strongly that the delegation that went to Seattle was all businessmen, reflecting business interests and trade, and that there were no women and no representatives of the environment, of development needs or of labour needs. Over the last few months, the Department of Foreign Affairs have initiated, I think, a much more rigorous consultation process and they have been consulting with NGOs about a consultation that is coming up soon. So we are hoping for more over the next year and towards Qatar.

Mr ADAMS—The point that I hope you would will be able to answer is dealing with gender issues. We had Mike Moore before us at a roundtable some time ago, and I saw the BBC World Service talking to him last week and asking a similar question to the one I asked. I do not know whether they read the transcript of this committee and lifted some of the questions. It was really about benchmarks and poverty alleviation: show us how the World Trade Organisation is doing in the benchmarks; put up some actual ticks or some levels at which we can start to look about

what we are achieving. The richer countries are getting richer, and the poorer countries are getting poorer; and within the richer countries there are still bigger divides. And that goes for the wealthiest country in the world. We have to start to get benchmarks. The argument is that, by opening up Third World countries or developing countries, we will give them more opportunity to get into trade, to improve gender balance and to improve human rights issues. We are looking at China as one country. What is your answer to those questions that are put to us from the WTO saying, 'This is why we are a good organisation, and we are working in the world to open up the world on a broader way'?

Ms Foskey—Jim Redden will probably want to answer this. One of the real problems here is that it is not the brief of the World Trade Organisation to alleviate poverty. That is, in fact, an area on which they are extremely vulnerable, because there is no demonstrable evidence that levels of poverty have been decreased. In fact, we know that they have increased. I would contend that we need the research to show that those increases are related to trade issues; but at the moment the work is not done to show that. The kind of thing that both Jim Redden and I and a number of other NGOs are saying is that the World Trade Organisation, or a multilateral trade organisation, needs to exist, but it needs to have a different brief. It is not just to open up the world for trade, to open up markets—which is pretty much what it is all about; it is a pretty simple organisation—and we would like it to be much more complex.

Mr ADAMS—You do not think that it will achieve, by opening up trade, some of the issues that you would like—

Ms Foskey—It will not achieve that. That is what was interesting about the World Bank stuff on to gender, because the World Bank is now admitting that measures need to be taken specifically at the institutional level for any gender benefits to occur.

Mr Redden—The problem we are facing is, firstly, that there is a body of international law around multilateral environment agreements, which obviously we support; but there is not the equivalent of multilateral development agreements which are binding on governments.If you like, the voice of 70 per cent of the poor, who are women, is powerless. So we are looking to try and have trade agreements subject to UN and human rights law, and to increase the strength and potency of economic, social and cultural rights, so that trade agreements are subject to those rights and do not contravene the basic dignity and rights of the poor. That is one avenue that we are pursuing, and we are hoping that the Australian government will also pursue that rights based approach to trade.

Mr ADAMS—There is an argument that says that developing countries do not want any of this. They want the WTO, and they would like more legal dispute settling procedure, so that they can actually get into other markets. There is some writing about on that; there are some pretty persuasive articles. Do you have any comment on that?

Mr Redden—Can you explain a bit further?

Mr ADAMS—The developing countries, as groups, argue that the WTO is in their interest and that, by putting human rights issues, labour issues and environmental issues onto it, they lose out.

Mr Redden—It is a complex issue. The stance that ACFOA has taken is that obviously we support the communities of developing countries first and that we look at those who are being impacted adversely by trade: we want to give a voice to those people. We are happy to support those governments who are acting in the interests of their people, but that is not always the case in some areas and in some countries of the world. So we are interested in giving a stronger voice to civil society—which goes back to the point that was made earlier about granting civil societies standing in the dispute settlement process. But, where possible, we are trying to give a greater voice to civil society groups so that, where the government of the day might not reflect the best interests of its people, there is a chance for them to be heard as well. However, we do recognise the tensions that you are referring to, and there are no easy solutions.

Mr ADAMS—On the issue about having input into dispute settling procedure, up to this stage the WTO has basically settled things as a government to government organisation; and that is the argument about where NGOs have their input. But how would you see input into dispute settling by civil society occurring?

Mr Anton—I recognise political realities, and I happen to advocate for open standing: the ability for a civil society actor to have the standing to complain, to actually bring a dispute within the WTO. However, to fail to recognise the valuable input and expertise of all civil society actors sitting here at this table today, in terms of providing the expertise and reservoir of knowledge that they have in an amicus, friend of court, setting is poor. It is counterproductive for the WTO and the states that make up the WTO to continue to oppose that.

CHAIR—I want to make a point here for comment by the participants. It was put to us by a previous panel that a lot of NGOs are very difficult to really accredit, if you like, because some of them, while they have memberships, may not be as representative as some other groups. How do you actually shift through who should be able to have an amicus standing? There may be 200 organisations that claim, quite legitimately on those guidelines that you have just talked about, some right to make some submission.

Mr Anton—You do exactly what the appellate body did in the asbestos case: they invited anybody in the world to submit.

CHAIR—But that is not realistic in every dispute.

Mr Anton—Yes. Why not?

CHAIR—You would never get it finished, would you?

Mr Anton—They only got 26 responses from the entire world—two which came from Australia.

CHAIR—That tends to suggest then, perhaps, that some of the NGO bodies may not necessarily see their role as making those kinds of submissions, because the number of NGOs that seem to want to participate in the rounds and have input at other levels seems to be much greater than in the dispute settlement system.

Mr Anton—You are talking about making law and resolving disputes. Input at the negotiating table, with a voice and vote in terms of what the rules will be, is a very different situation from allowing an enterprise or organisation with particular expertise in a dispute at issue to submit written comments to a dispute settlement panel. If the WTO is going to live up to the rhetoric of transparency and accountability which comes forth all the time, I think that it does need to open up the negotiating table to at least observation. It is unrealistic to expect a vote at the negotiating table by civil society actors, but I see no harm in letting civil society actors see what is going on.

Senator MASON—That is perhaps one of the crux points for today—and it is about the capacity and the accountability of institutions of civil society to have an input into the World Trade Organisation and, indeed, in other organisations. Just a bit of preamble, if I may, Madam Chair, quickly: Mr Redden, on page 3 of your submission, you say—and Mr Anton has just touched on this:

The lack of openness of the WTO can be addressed by formally recognising the interests of civil society by:

reforming the WTO to grant standing to civil society organisations which represent particular communities of interest. This would ensure that all stakeholders views and interests are given formal consideration in determinations;

That is your view. As for the other view, an article was given to us today that was written by the Hon. Gary Johns, a former Labor minister, a very sound man generally. He says this:

The NGO movement may think it is the greatest expression of democracy. It is not. The greatest expression of democracy lies in those institutions which give expression and due weight to the opinion of all the people, organised and unorganised. The central institution is the parliament, itself constrained by the electorate, by the Constitution and by the courts. The challenge for governments is not to allow the mantle of political legitimacy to slip from the premier democratic institutions into the more apparently popular one of civil society. That way lies a less accountable democracy.

That is the general point. Let us go to trade. In the issue of trade, speaking nationally, every time we talk about deregulation or free trade, we get particular groups complaining about how that will affect them, and the great mass of people that would benefit have no-one to speak for them. We try to in parliament. Similarly, internationally, once again where people think they are disadvantaged, nations—or, more particularly, people professing special interest groups, such as gender, human rights, environment and labour standards—say they are affected. What worries me is that the same principle can be applied here. Who is speaking, for example, for those countries that want to trade and that do not want Western standards applied to them across the board? That is the issue, put down into a couple of sentences. Ms Goldie?

Ms Goldie—To that last point, I would ask who is going to speak for the people in those countries. There are many countries around the world whose governments do not represent the interests of the people. Burma is a case in point. In the example that I cited of India, the business community of India want the shipbreaking industry to continue, but it is barely raising the people out of poverty. They are going from, I suppose, starvation to near starvation by participating in this industry.

Senator MASON—Is not ‘from starvation’ to ‘near starvation’ an improvement? It is very fine, sitting in Australia as an educated Western middle-class person. But, when people are starving, they do not want to be starving. Someone has to speak for them.

Ms Goldie—Yes, I know. That is the critical question, and I am not sure that I particularly want to answer it. But I think it is the subject of a debate, because that is indeed what is happening around the world in too many places: free trade is merely lifting people from no dollars a day to one dollar a day. It is clearly not good enough and, therefore, we have to look at other alternatives. I personally believe that the ships should be dismantled in their own countries and the toxic waste kept in the countries where the ships were built; but some other solutions have to be determined for providing a basic living standard and wage for—

Senator MASON—Ms Goldie, don't you think the big issues are rather that, if developed countries, Western countries, stop subsidising all their industries when they are involved in international trade, poorer countries may be able to compete? So many of these issues raised are, in effect, non-tariff barriers; and that is what developing countries tell us all the time. The Western Europeans can sit there and talk about human rights and be extremely trendy and fashionable. It plays very well in Stockholm and in the suburbs, but it does not play too well in Dacca.

Ms Goldie—That is the point that I raised in my submission today: that there are these inherent dilemmas in it. I find it very difficult to come up with a solution. But I certainly feel that in the environmental area, where it relates to toxic substances in ships, as in this case in Alang, those environmental problems should be kept at home. If a ship is built in America, it should be dismantled in America. This indirectly answers your question, I think: we should be protecting people in developing countries from the developed world's toxic waste.

Senator MASON—What worries me is that too often we simply want to protect them from themselves, and that always concerns me.

Mr Redden—I have a couple of points. First of all, the NGOs that ACFOA represents are very much on the side of economic growth for developing countries—there is no doubt about that—but, firstly, growth with equity. Therefore, we support developing countries' involvement in WTO where it can lead to economic growth and economic development. The problem, as I outlined in the submission, is the barriers that are established to trade by industrialised countries, which we believe are preventing development in developing countries. In no sense are we opposed to the reduction of barriers to open up economic development for developing countries.

In answer to your other question, obviously the private sector and transnational companies are a powerful lobby group with a lot of money and do influence processes of government as well as the WTO. You, the government, are here to represent the people of Australia. I would have thought that you would understand that development NGOs are in regular contact with people in developing countries, whether Burma, Indonesia or East Timor. That is my mandate—to try and speak on behalf of, and give voice to, those people through advocacy, through these agreements. I would have thought you would respect that as a legitimate role.

Senator MASON—You can speak on behalf of whomever you think you are able to, but the bottom line is: do you? That is the question—and I am elected, and you are not. NGOs have these often very small memberships and claim to have this enormous mandate.

Mr Redden—We have 97 members across the board. That means that there are 97 community organisations which are members of the Australian Council for Overseas Aid, and we have been around for 35 years. So, if you are looking for legitimate interests—

Senator MASON—It is how accountable you are for your views. Particularly in the area of the environment, this committee and other committees day after day listen to these NGOs with extremely small memberships, and we get conflicting evidence from either side, and they are not accountable to anyone, ever.

Ms Foskey—Can I just respond? You are quoting from the Johns paper there. I am lucky enough to have had a chance to read it, but probably not everyone here has. For a start, it was published under the auspices of the Institute for Public Affairs and its agenda is pretty clear. But I just want to say that—

Senator MASON—What is the agenda, Ms Foskey?

Ms Foskey—Excuse me, Senator Mason; I will just finish my point and then I will answer your question. The NGOs also consist of business organisations and so on who, I would say, have had a great deal more influence on the Australian government's input with the WTO. As someone who has attended the government's consultations with NGOs where business organisations were also present, it is very clear to me that the weekly meetings between the business organisations and the government have counted for a lot more influence than, in this case, the one or two consultations with NGOs. Whether they are representative or not is not an issue in the case of who has influence. I would say that the actual unelected nature of the business lobbies is relevant, for instance—in terms of the National Farmers Federation saying that it speaks for farmers in this country, when clearly it cannot speak for all farmers and, I would actually go so far as to say, it does not speak for many of the small farmers.

Senator MASON—Ms Foskey, do you claim to speak on behalf of all women?

Ms Foskey—Of course not.

Senator MASON—What woman do you claim to speak on behalf of?

Ms Foskey—I am speaking for an organisation, International Women's Development Agency, which works in partnership with a very large number of women all around the world. Probably, in Australia, it has as good an understanding as anyone in this country does of the needs of poor women in a number of countries.

Senator MASON—So it is the needs of poor women you are speaking on behalf of. How many members do you have in your group?

Ms Foskey—It is a development organisation. It employs a number of people. It has thousands of supporters in Australia.

Senator MASON—How many members do you have?

Ms Foskey—It is not a membership organisation; ACFOA is. I really feel, Senator Mason, that you could well be going off in the wrong direction on the basis of the Johns paper.

Senator MASON—No, Ms Foskey. If you make claims that you speak on behalf of the poor women in the world and you are against free trade, there is—

Ms Foskey—Is that what I have said?

Senator MASON—No.

Ms Foskey—I do not believe that I have said that.

Senator MASON—No; but that is the implication of what you have said. As soon as you do that, there is a disjuncture.

Mr ADAMS—I thought the argument back was that it was business communities that actually went to Seattle with the Australian trade mission that had more input than NGOs did. They are not elected, just as NGOs.

Senator MASON—The difference is that they are not claiming to speak on behalf of everyone in the country; we do. NGOs mention women, and then it is narrowed a bit. This is the problem with NGOs: their ambit is broadened and narrowed, depending upon the issue.

CHAIR—Senator Mason, we need a bit of order here, because we are running out of time. I know that the exchange that has just taken place has provoked us and that all of us would like to say something about it. However, there are some other members who have not had an opportunity to say anything at all—in particular, Senator Ludwig.

Senator LUDWIG—I do not really want to reopen the debate with you, Ms Goldie, but I am curious about the article that you seem to have adopted in making the trade system fairer. In the last paragraph, you say:

> By preventing firms from benefiting from poor practices, changing the trade rules to allow bans on imports that do not meet core standards would make international trade a mechanism for a general improvement ...

A couple of things are raised out of that. Who would judge whether or not they meet core standards? You then say that bans would be imposed: what type, what style, what level of bans would be imposed? In effect, would they be near to trade sanctions? You then make the point that it would not be a return to 'the bad old days of protectionism'. I just cannot see the difference. Perhaps you could explain to me the difference between what you say are the bad old days of protectionism and a ban on imports and other trade related sanctions or countervailing measures, as you say in the penultimate paragraph. That might be a lot to do in the time available. I am happy for you to take that on notice and get back to me.

Ms Goldie—I am happy to answer it. By having bans in order to protect the environment or people—relating to labour standards—it is much more selective than in the old days of protectionism. It is much more specifically directed at things, rather than at a nation. It is aimed at eliminating poor labour conditions and poor environmental standards and conditions.

Senator LUDWIG—In your view, would the placing of selective bans work?

Ms Goldie—I think it is the direction we have to go in.

Senator LUDWIG—I am sorry; did you say that this is the direction we have to go in?

Ms Goldie—I am not a lawyer and I can only speak in general terms.

Senator LUDWIG—Neither am I, so I am happy for you to do that.

Ms Goldie—But I am saying that we have to implement fair trade as against free trade; which does mean, by some mechanism, stopping trade—

Senator LUDWIG—But that is what I am curious about. I am not stopping you, but my question was: what mechanisms are you talking about, how are you going to implement them and how would you then enforce them? That is what my question was about. You then use the words 'fair trade'. I was just trying to dissect what you mean by fair trade. If you mean the imposition of selective bans on imports, as you then say, I am curious about how you would implement them, how you would stop them escalating between countries that are subject to the ban, and how would you then enforce them in those countries. But by all means, as I have said, I am happy to take those on notice.

Ms Goldie—I would support, for instance, the banning of Nike shoes that are made in sweatshops in Indonesia.

CHAIR—Ms Goldie, would you be prepared perhaps to amplify your answer in writing?

Ms Goldie—Yes.

CHAIR—I am very sorry to each of the participants, but we have just simply run out of time and we have another hearing to conduct. So I have to conclude this hearing.

Senator LUDWIG—I have one more short question of Mr Anton. Perhaps you might like to take this question on notice, in any event. I am curious about the amicus curiae briefs. As the High Court would work, you would have to get leave to be able to present that argument. Would you be satisfied with the WTO similarly adopting a process where they would then determine whether or not they would accept an amicus curiae brief? I ask that in the sense that you can understand that even NGOs differ in their view about things; and that the range and style of argument that would be put would be, I think, overwhelming.

Mr Anton—I would absolutely be satisfied with that. Indeed, that was the special procedure adopted by the appellate body in the asbestos case. They called for applications for leave to submit the amicus curiae, not to rush into the amicus curiae. However, unlike the High Court in Australia or supreme courts in other countries, the appellate body knocked everybody back with a three-sentence judgment, and refused and failed to give reasons for that.

Senator LUDWIG—If I get the opportunity, I will ask that question of the relevant people.

CHAIR—The committee has decided to extend for a few more minutes. I am going to have to keep very strict time limits. So, if I need to interrupt you, would you please respect that.

Mr Redden—If I may, can I also table for the committee—because I know there is only a short period of time—a very comprehensive 60-page document produced by World Vision from developing countries, based on what they see as free and fair trade.

CHAIR—Thank you very much.

Mr Redden—Lastly, I have an answer for—unfortunately, he has left—Senator Mason.

CHAIR—We will pass it on.

Mr Redden—Organisations, like ACFOA, and indeed like ACOSS, run a very strict code of conduct. Indeed, we negotiated with the government to implement a very accountable code of conduct for our 97 member agencies. That does make us very thoroughly accountable and, when I produce policy and make statements here, they are based on the consensus of 97 organisations across Australia who are in consultation with their counterparts in developing countries. So I think we are as accountable as any political person can be in terms of whom we represent and whom we have to respond to. I am surprised that the senator, given the power and influence of transnational companies and of the big end of town, would be so hostile to the democratic process and the legitimate interests that we represent.

Senator COONEY—I do not think he was doing that; I think he was trying to check with you.

Mrs DE-ANNE KELLY—My question is to Ms Goldie. You have quoted the Australia Institute in Canberra in your submission. In the second last paragraph, they make the suggestion that it would be better to restrict imports from countries that do not meet environmental standards, or to put in place countervailing measures against countries that exploit labour practices, and they quote Nike. This is a question I often get from my electorate, so I was very interested that you raised it in your submission. Bear in mind that Nike present themselves as very cool and hip and that, when it was discovered and in fact advertised that they did some pretty uncool things, like exploiting poor people, there was a fair reaction from Nike. Perhaps I could ask your opinion: if you restrict imports, really you are only going to hurt others in that country or perhaps just cause that multinational to move to another country where they are less likely to be overseen. Would it not be better to ask imports into countries to list the payment per day to workers in that country, and the conditions under which they work? Wouldn't Australian consumers, for instance, be interested to know that the shoes they bought for $230 had a labour component of $1, for argument's sake? Are you strictly in line with this view of restricting imports and countervailing measures, or would you prefer to see some moral impetus?

Ms Goldie—I would like to see both, quite frankly. I think consumers do react appropriately when given the information. It has been seen—as with the campaign against the Nestle company that has been going on for 30 years on the breast feeding issue—that companies can be hurt when information gets out to consumers and they stop buying. But there is a broader question here, an ethical question: we have to send a message to Indonesia that we as a nation

find it offensive that they allow sweatshops to occur. That is why I think there has to be country to country action, as well as consumer action.

Mrs DE-ANNE KELLY—Do developing countries really have very much choice? If company X is either going to set up in your country or in the next country that will capitulate to their demands, do you really have any choice?

Ms Goldie—I am from an NGO—a slightly beleaguered NGO, today—that is an environmental organisation primarily concerned with population. We are concerned that the population growth in certain countries is one of the causes of very poor labour conditions. The fact that this situation can occur—

Mrs DE-ANNE KELLY—With respect, that is not the question I asked.

Ms Goldie—I know. But, in getting to answer the question, I am saying that, while we condone or allow sweatshops to occur, countries will not come to grips with the reasons why these situations occur. We must, in the end, have a world where the population is stable and we can lift the living conditions of everyone in the world. To not make a statement about the sweatshops in Indonesia to Indonesians is a fault of ours. We have to, as a nation, make a statement about that; and Indonesia has to come to grips with the reasons why they have an excess of labour—which is, in turn, a cause of poor working conditions.

Mr ADAMS—But won't they just say, 'Look, the developed countries got there by having sweatshops'? We used to send kids down the mines at age nine and 10. That is why we are rich now. It is too simplistic.

Ms Goldie—No, it is a question of evolution, and we have to get these countries into adopting our labour and environmental standards as soon as possible, and not condone these terrible standards.

Mr ADAMS—Absolute nonsense: go and work on your policy.

Mrs DE-ANNE KELLY—I will leave it at that. I will just say that I am disappointed that everyone has pushed their own barrow without looking at the broader questions. All I would say is that I am disappointed with today's submissions.

CHAIR—If there is some question you have not been able to adequately answer, I will let every one of you put some further submission.

Mr BYRNE—On page 9 of your submission, you talk about the ILO constitutional consequences for non-compliance, with particular reference to Burma. You talk about a series of measures that will take effect on 30 November, 'unless, before that date, the governing body is satisfied that the intentions expressed by Burma to implement the recommendations have been translated into effect'. Can you give us an update as to where that is at?

Mr Drever—Certainly. At the November governing body, for the first time, article 33 of the constitution was implemented, which is to bring out specific sanctions or ways to deal with Burma. The Director-General wrote to all members of the ILO—that is 174, excluding Burma, I

guess—outlining what the resolution was. He sought each of the member states to respond to him about which measures they would take to reinforce the ILO's stance against forced labour in Burma. At the recent governing body meeting, which concluded last week, the Director-General put a report together as to what member states had indicated that they were prepared to undertake or what actions they had taken to date. I believe that a further report will be produced for the International Labour Conference, which is scheduled in June of this year.

Mr BYRNE—What sort of potential measures or constitutional consequences for non-compliance have been contemplated at this point in time?

Mr Drever—At this point in time, I do not have available to me the conclusions from the governing body meeting last week. But I understand that the Director-General characterised the responses from the member states as being more or less a 'wait and see' attitude. A number of members of the governing body expressed some concerns about the level of that response. It is for that reason that it will be taken forward to the International Labour Conference in June.

Mr BYRNE—So you are not able to indicate what potential measures are until June, after that report has been discussed?

Mr Drever—It was left open to each of the states, each of the members of the ILO, as to what actions they were contemplating and to report on.

Mr BYRNE—From your perspective, if you were seeking to make a recommendation, what would you recommend?

Mr Drever—The Australian government has responded to the Director-General in the terms that there are no government programs supporting forced labour in Burma; that Australian companies known to be working or investing their revenue in Burma have been apprised of the resolution; and that there are other government programs funded, in terms of human rights training workshops, that have been conducted in Rangoon.

Mr BYRNE—Is there any contemplation of any trade measures at all, in your understanding?

Mr Drever—As I understand it, not at this point in time.

CHAIR—I have to close this meeting. I repeat my invitation: if anyone feels that they have not had an opportunity to adequately address a question, you may do so in writing. I thank you all for your participation. It has been a most stimulating meeting.

Resolved (on motion by **Mr Adams**):

That the following documents be accepted as exhibits to the inquiry into Australia's relationship with the WTO:

Gender Issues in International Trade, by Marina Fe B. Durano; 'The Shipbreakers' by William Langewiesche; ACFOA's submission to the parliamentary inquiry into the Corporate Code of Conduct Bill 2000; and 'Trade for Development' from World Vision Australia.

Resolved (on motion by **Mr Byrne**):

That the evidence taken by the committee at the hearing this day be published.

Subcommittee adjourned at 11.51 a.m.