

**SUBMISSION BY THE
DEPARTMENT OF EMPLOYMENT, WORKPLACE RELATIONS
AND SMALL BUSINESS
TO THE PARLIAMENTARY
JOINT STANDING COMMITTEE ON TREATIES INQUIRY INTO
AUSTRALIA'S RELATIONSHIP WITH THE WORLD TRADE ORGANISATION**

September 2000

INTRODUCTION

This submission from the Department of Employment, Workplace Relations and Small Business (DEWRSB) focuses on the following term of reference of the inquiry by the Joint Standing Committee on Treaties (JSCOT) into the nature and scope of Australia's relationship with the World Trade Organisation (WTO):

the relationship between WTO agreements and other multilateral agreements, including those on trade and related matters, and on environmental, human rights and labour standards.

DEWRSB is the Commonwealth Government Department responsible for managing international labour issues on behalf of Australia, in particular Australia's membership of the International Labour Organisation (ILO). This submission addresses the role of the ILO and its relationship to the WTO.

INTERNATIONAL LABOUR ORGANISATION (ILO): STANDARD-SETTING AND SUPERVISION

The ILO is one of the oldest of the international bodies, having been established in 1919 and surviving the break-up of the League of Nations. In 1945, it became a specialised agency of the United Nations. The ILO has 175 member States, including Australia.

Unusually for UN bodies, the ILO Constitution provides for the inclusion of non-government organisations as partners in most of its functions, especially its standard-setting work. Representatives of employer and worker organisations from each member State have the right to be represented at the annual General Conference of the ILO. Employer and worker representatives are also members of the Governing Body. These employer and worker representatives participate in the activities of the ILO in their own right, and are independent of governments. Employers and workers have equal voting strength to governments both in the Governing Body and at the ILC.

The key work of the ILO is to establish, promote, monitor and supervise international labour standards, and to assist member States to meet those standards.

Adoption of international labour standards by the ILO

The adoption of international labour standards by the ILO involves the following steps:

- the Governing Body considers proposals put forward by the Secretariat, and decides the agenda topics of the annual International Labour Conference (ILC), usually two years in advance;
- the ILO Secretariat prepares a report and a questionnaire on the topic, to which all member States are invited to respond;
- governments consult with employer and worker organisations when responding to the questionnaire, but these organisations may also respond direct to the ILO;
- the ILO Secretariat analyses responses to its questionnaire, and prepares a report for consideration by the ILC;
- following discussion and debate, the ILC adopts a draft text of the new standards;
- member States, including employer and worker organisations, comment in writing on the ILC draft texts, and another report is prepared for a second discussion by the ILC;
- following the second ILC discussion and debate, at least a two-thirds majority of delegates present must accept the text in a recorded vote for the new standard to be adopted.

Once an item has been placed on the ILC agenda, there are four distinct opportunities for all parties to comment and contribute towards the development of new standards. The intimate involvement of workers' and employers' representatives in standard-setting makes an important contribution to viable and credible ILO standards.

Standards comprise both Conventions and Recommendations. Conventions have treaty status, and become binding at international law on member States which ratify them following their adoption by the ILC. Recommendations provide guidelines for governments, employers and workers.

Supervision of international labour standards by the ILO

The ILO cannot take any form of coercive action against a member State which defaults in its obligations under ratified Conventions. It relies instead on dialogue with a view to achieving a better understanding of the situation by both the government concerned and the ILO itself; and the force of international public opinion. The ILO has formal complaints procedures under Articles 24 and 26 of the ILO Constitution, which include the establishment of a Commission of Inquiry in the most serious cases of alleged non-compliance, and referral to the International Court of Justice. However, these processes are not used as frequently as the other supervisory mechanisms described below.

Committee of Experts on the Application of Conventions and Recommendations (CEACR)

Member States are required to report regularly to the ILO on the effect given to ratified Conventions, in accordance with Article 22 of the ILO Constitution. Not only are employer and worker organisations consulted by governments during the preparation of these reports, but they also have the right to put forward their views directly to the ILO. The Committee of Experts on the Application of Conventions and Recommendations (CEACR), which was established in 1926 and is made up of 20 independent eminent international jurists, examines these reports. It publishes observations in its annual report to the ILC and makes unpublished direct requests to governments. Direct requests address less important matters than do observations.

Observations are not unusual and are part of the normal process. They may be neutral (eg requesting further information), positive (eg, "the Committee notes with satisfaction") or negative. When the CEACR makes a negative comment, governments may enter into an on-

going dialogue with a view to ensuring that all parties have a full understanding of the situation.

Conference Committee on the Application of Standards (CCAS)

The tripartite Conference Committee on the Application of Standards (CCAS) uses reports of the CEACR as a basis for discussion, and can ask member States to appear before it to further explain their position. The CCAS report to the ILC Plenary often contains criticism of governments for their failure to honour their international obligations.

Direct contacts

Under a procedure adopted in 1964, a member State may request direct contacts with the ILO to discuss questions raised by the supervisory bodies. The ILO appoints a representative to discuss the situation with the government and the employer and worker organisations.

Special Freedom of Association Mechanisms

The ILO also has two special mechanisms to ensure that freedom of association principles are observed. Member States are expected to comply with freedom of association principles by virtue of being a member of the ILO, whether or not they have ratified the freedom of association Conventions. The first is the Fact-finding and Conciliation Commission on Freedom of Association and the second is the Governing Body's tripartite Committee on Freedom of Association (CFOA). The Commission is usually instigated only for significant cases, whereas the CFOA has dealt with over 2000 complaints since it was established in 1951.

ILO Constitutional Consequences for Non-compliance

In an unprecedented resolution under Article 33 of the ILO Constitution dealing with failure to carry out recommendations of ILO Commissions of Inquiry (COI), the ILC in June 2000 called upon Burma (Myanmar) to "take concrete action" to implement the recommendations of a 1998 COI, which found that forced labour in the country was "widespread and systematic". A series of measures will take effect on 30 November 2000 unless, before that date, the Governing Body is satisfied that the intentions expressed by Burma to implement the recommendations have been translated into effect.

ILO RESPONSE TO THE SOCIAL ASPECTS OF TRADE LIBERALISATION

In addition to its standard-setting/supervisory activities, the ILO has taken a broader approach to promoting its fundamental principles partly in response to trade liberalisation through the adoption of a Declaration on fundamental principles and rights at work in 1998, which enables the ILO to monitor activities of all ILO members in respect of the fundamental principles.

ILO Declaration on fundamental principles and rights at work, 1998

In recent years, the ILO has been giving renewed consideration to the social aspects of trade liberalisation. As a consequence, the ILO launched an ongoing campaign for universal ratification of the seven (now eight) core ILO Conventions in 1995, with some considerable success. Furthermore, the ILC unanimously adopted a new *Declaration on Fundamental Principles and Rights at Work* and its follow-up mechanism in 1998. Australia strongly supported the Declaration.

The purpose of the Declaration is to reaffirm the commitment of ILO members to the fundamental principles of the ILO regardless of whether or not they have ratified the core Conventions which deal with the principles, which are:

- freedom of association and the effective recognition of the right to collective bargaining;
- the elimination of all forms of forced or compulsory labour;
- the effective abolition of child labour; and
- the elimination of discrimination in respect of employment and occupation.

The aim is to encourage member States to respect, promote and realise these principles, recognising at the same time the ILO's obligation to help members achieve these objectives through technical cooperation and other means.

The Declaration has a follow-up mechanism that consists of two reports:

- an annual report from member States that have not ratified the relevant Conventions; and
- a global report prepared by the ILO to review progress on efforts made by member States in observing the fundamental principles. This report is based on the annual reports and other information received.

ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE)

The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE) was adopted by the Governing Body in November 1977. It establishes widely-accepted guidelines for MNEs, governments, employers and workers in such areas as employment, training, conditions of work and life, and industrial relations. These guidelines include references to related ILO Conventions. While the Declaration is not mandatory, the ILO conducts surveys of members every three years to monitor the extent of its application.

Global Compact

The Global Compact was initiated in 1999 by the UN Secretary-General together with the ILO and other UN agencies. It is a UN-sponsored platform for encouraging and promoting good corporate practices and learning experiences in the areas of human rights, labour and the environment. The labour principles of the Global Compact are rooted in the ILO *Declaration on Fundamental Principles and Rights at Work*. Business and worker organisations and NGOs are partners in the Global Compact.

LABOUR STANDARDS AND THE WTO

The ILO is the most competent international body to deal with international labour standards:

- representatives of employers' and workers' organisations are formal partners in the ILO, thus helping to ensure the legitimacy and acceptance of its work;
- 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;

- the ILO has recently made an effective response to the challenge of the social 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.

The Department supports the declaration by WTO Trade Ministers on labour standards, made in Singapore during December 1996:

We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration.

The WTO has a powerful dispute settling machinery which involves the use of trade sanctions. The Department considers that it would be inappropriate to utilise the WTO to supervise labour standards, for the following reasons:

- it would duplicate existing and the most effective mechanisms in the ILO, and
- trade sanctions would be an unsuitable weapon against social issues.

SUMMARY

The Department does not support the inclusion of labour standards clauses in trade agreements, as the International Labour Organisation (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 of member States.

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