

-----Original Message-----

**From:** Rolf Sorensen [SMTP:r.sorensen@umpa.unimelb.edu.au]  
**Sent:** Thursday, August 10, 2000 11:54 AM  
**To:** jsct@aph.gov.au  
**Subject:** SUBMISSION TO THE JOINT STANDING COMMITTEE ON TREATIES' INQUIRY INTO AUSTRALIA'S RELATIONSHIP WITH THE WORLD TRADE ORGANISATION

***SUBMISSION TO THE JOINT  
STANDING COMMITTEE ON  
TREATIES' INQUIRY INTO  
AUSTRALIA'S RELATIONSHIP WITH  
THE WORLD TRADE  
ORGANISATION***

**Rolf Sorensen**

**P.O.Box 12111,**

**A'Beckett Street, 8006**

**Ph: (Mobile): 0411 826 970**

**: (Work): (03) 9 344 8272**

**E-Mail:r.sorensen@umpa.unimelb.edu.au**

**OPPORTUNITIES FOR COMMUNITY  
INVOLVEMENT IN DEVELOPING  
AUSTRALIA'S NEGOTIATING  
POSITION ON MATTERS WITH THE  
WTO/**

# **TRANSPARENCY AND ACCOUNTABILITY OF WTO OPERATIONS AND DECISION- MAKING**

In an era where people are increasingly demanding a more direct input into political decisions which affect them ( as evidenced, for example, by the support for a directly elected Australian President ), Australian citizens knowledge of and input into the agenda of the World Trade Organisation remains extremely indirect at best. **Given that economic decisions with a potentially drastic affect on people's lives are increasingly being taken by international bodies such as the WTO, rather than by national Governments, it is absolutely vital that opportunities for more direct community input into the decisions of the WTO be developed.**

At present, the only opportunity for "community involvement" is being given a vote every three years which simply gives an opportunity to choose between parties with a package of policies. Both major parties are uncritically committed to supporting an agenda of unconstrained free trade at the WTO. The elected Government relies on unelected buerocrats to pursue the ongoing agenda of unconstrained liberalisation of trade at the WTO. The secret development of the Multilateral Agreement on Investment and the continued pursuit of the component parts of the MAI through the WTO, regional trade

negotiations, the World Economic Forum, etc is a process which is seriously deficient in terms of transparency.

In terms of accountability, voters can effectively only punish a Government for pursuing the current agenda at the WTO by voting for an alternative Government which supports the same stance. The buerocrats who actually pursue the Government's agenda at the WTO keep their jobs for carrying out Government policy and get rewarded and promoted for it even when the taxpayers who pay their wages often don't know about the agenda being pursued and often oppose that agenda when they do know about it.

## **EFFECTIVENESS OF THE WTO'S DISPUTE SETTLEMENT PROCEDURES AND EASE OF ACCESS TO THESE PROCEDURES**

Only nation-states are recognised by international law, except to the extent that states choose to give rights to other parties. There seems to be an agenda to extend these rights to transnational corporations without extending them to other private parties. Those favouring regulation of international trade should have as free access to dispute settlement procedures as those favouring unconstrained free trade.

International legal obligations are generally unenforcible, yet WTO dispute-resolution bodies don't seem to have a problem imposing economic penalties on those found to be in breach of WTO rules. **I comment below on the contrast**

**with the unenforcibility of other, possibly competing, international obligations and the reluctance of parties recognised by the dispute-settling bodies to make out a vigorous case for the sanctity of these obligations. In this context, the "effectiveness" of the WTO's dispute-settlement procedures is not necessarily a positive thing because it may occur at the expense of enforcement of other international obligations. Whether these obligations should be directly enforceable through the WTO itself is a separate issue, but inconsistency with such obligations should be a reason for non-enforcement of WTO rules.**

## **AUSTRALIA'S CAPACITY TO UNDERTAKE WTO ADVOCACY**

I outline elsewhere in this submission my concern that Australia's position at the WTO is insufficiently responsive to community input reflecting the practical experience of actual people affected by the WTO's decisions. I also outline elsewhere in this submission on Governments unwillingness to vigorously pursue an agenda of ensuring that enforcement of WTO rules should not be at the expense of enforcement of other international obligations. **These are the most obvious constraints on the effectiveness of Australia's advocacy at the WTO and they are matters which it within the Australian Government's power to correct rather than being inherent constraints on "Australia's capacity to undertake WTO advocacy".**

# **INVOLVEMENT OF PEAK BODIES, INDUSTRY GROUPS AND EXTERNAL LAWYERS IN CONDUCTING WTO DISPUTES**

As I comment elsewhere in this submission, the Government and those who it invites to be involved in WTO disputes are too uncritically committed to unregulated free trade and insufficiently forceful in trying to ensure that free trade does not occur at the expense of enforcing other international obligations. The ability of non-governmental parties relies on the Government's preparedness to counter their involvement. **Trade unions and non-governmental organisations should be allowed to be involved and should be recognised for the purposes of international law rather than having their recognition subject to the whims of Government who can withdraw their recognition for taking a stance a Government doesn't like.**

# **RELATIONSHIP BETWEEN THE WTO AND REGIONAL ECONOMIC ARRANGEMENTS**

Regional economic forums, treaties, etc add to the lack of transparency with which the continued push for free trade is being pursued. Proposals are secretly developed in regional forums in preparation for fast-track implementation through the WTO or implemented at

regional level to try to create pressure for implementation on a wider scale through the WTO. Proposals which fail at the WTO are pursued at regional level, or vice versa, when many are under impression that the rejection of a proposal implies that there will be at least some time lapse before the same proposal is pursued in another form; ie: people don't realise that proposals they've opposed are being brought back for reconsideration again and again and again and shifting the forum in which proposals are pursued is one mechanism to achieve this. **Greater transparency about overlapping agendas is required.**

## **RELATIONSHIP BETWEEN WTO AGREEMENTS AND OTHER MULTILATERAL AGREEMENTS, INCLUDING THOSE ON TRADE AND RELATED MATTERS AND ON ENVIRONMENTAL, HUMAN RIGHTS AND LABOUR STANDARDS**

Some supporters of unconstrained free trade enforced by the WTO simply assert that because WTO agreements deal with trade and other international agreements deal with matters such as human rights, labour rights or protection of the environment, there is no conflict between them.

However, it is simply not logical to say that *enforcement* of WTO agreements prohibiting constraints on free trade can *never* conflict with enforcement of these other agreements which require positive action from Governments which

potentially may involve some restraint on free trade (Whether there are actual conflicts is another matter, but sadly it is necessary from my experience to point out that there is no *logical* reason why a conflict *can't* arise).

**There should be clear, explicit recognition that the obligation to comply with international obligations on human rights, labour rights and environmental protection should take precedence over enforcement of WTO agreements providing for free trade. An effort should be made at the negotiating phase to ensure that conflicts do not arise in the sense of imposing specific obligations which conflict with other international obligations.**

Another difficulty perceived by myself ( and I strongly suspect shared by others ) is the impression created by the constant rhetoric of Governments in favour of free trade and their frequent references to the need to be vigilant to ensure that labour standards ( most commonly ) are not "manipulated" to constrain free trade. This creates an impression that the only party recognised by international law as having a right to enforce international obligations starts from an assumption that at best, claims that a genuine conflict exists between enforcing free trade and enforcement of other international obligations are to be regarded sceptically. Moreover, even if the explicit objective of upholding competing obligations *was* to impede free trade, this would not be an argument for non-enforcement. The protections provided by the competing obligations are there for the benefit of citizens and Governemnts have a responsibility to seriously assess

whether they are being breached and an obligation to enforce them on their behalf. If they want to revoke the relevant treaties they should do so in a transparent manner which allows the public to judge their actions. Non-enforcement of existing obligations is not an acceptable option.

When an alleged conflict actually arises, those whose first argument is usually to argue that a conflict is not possible at all, is to argue that none has occurred in this particular case because the potentially competing obligations are not in fact being breached. Given the near paranoia of Governments about "manipulation" of competing obligations, a suspicion arises that they do not argue as vigorously as they might that these standards have actually been breached in particular cases.

The same suspicion is raised by settlement of claims against national Governments for impairment of free trade allegedly justified by upholding competing obligations. In these cases, there is also the added problem of lack of transparency. The Ethyl Corporation Case in Canada is perhaps the most obvious example. The actual validity of the environmental concerns raised is not the issue I am raising here. The issue is the lack of transparency and accountability in a situation in which a national Government actually purports to be enforcing environmental standards in a manner that potentially impinges on free trade and then when challenged backs down, allowing the challenger to claim that the scientific evidence of breach of environmental standards was never valid.



Either the Government took a tactical decision not to try to enforce the environmental standards because defending the case against it would be too costly and time-consuming ( a problem in itself ), the Government wilfully refused to enforce the environmental standards or the Government deliberately or incompetently claimed that environmental standards were being breached when they weren't and then backed down when challenged. In any case, the public have a right to enough information about what happened to judge their Government for its actions and to judge the extent to which trade obligations which their Government has entered have or could conflict with upholding other obligations.

The fact that potentially competing obligations are usually not effectively enforceable as are those under WTO agreements provides an obvious incentive to simply enforce the latter at the expense of or without considering the former. Moreover, because only nation states can agree to undertake these competing obligations and not all Governments choose to do so, a temptation exists for Governments who have adopted the obligations to resort to non-enforcement as the next best thing to non-ratification of the relevant treaty in terms of reassuring investors that they are really no more serious than other Governments about enforcing human rights, labour rights or environmental standards which might potentially reduce profits. **Consideration should be given to making International Monetary Fund and World bank assistance conditional on some sort of commitment to human rights, labour rights and environmental**

**standards.** National sovereignty would be maintained by the choice not to be involved with these international bodies. The imposition of the obligation would be a consequence of a conscious choice by a national government.

## **EXTENT TO WHICH SOCIAL, CULTURAL AND ENVIRONMENTAL CONSIDERATIONS INFLUENCE WTO PRIORITIES AND DECISION- MAKING**

**As I have commented above, there should be clear, explicit recognition that the obligation to comply with international obligations on human rights, labour rights and environmental protection should take precedence over enforcement of WTO agreements providing for free trade. An effort should be made at the negotiating phase to ensure that conflicts do not arise in the sense of imposing specific obligations which conflict with other international obligations.**



WOTORSUB