

National Association of Forest Industries
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15 September 2000

The Secretary
Joint Standing Committee on Treaties
Parliament House
CANBERRA ACT 2600

Dear Sir

RE: Inquiry into Australia's Relationship with
the World Trade Organisation

Further to the letter we sent you on 25th August, we wish to provide some comment on the Committee's published terms of reference.

(i) *Community involvement in developing Australia's negotiating positions.*

We are happy to see the responsible government departments take steps to consult community views about global issues of trade. We are happy to participate in these consultations when they are relevant to us and we have information or insights to offer that may be relevant. We do not, however, regard these consultations as anything more than a specialised and welcome supplement to the role of the elected government in determining the proper conduct of Australia's relations with the rest of the world, including through intergovernmental fora such as the WTO. We do not count these consultations as a "right", and we do not count ourselves as representatives of some mystic entity, called "civil society" in some quarters, without consulting which governments' actions somehow lack legitimacy.

(ii) *Accountability and transparency of WTO operations and decision making.*

The governments which comprise the membership of the WTO are, on the whole, much more accountable and transparent in their operations than are the critics currently laying siege to the WTO. There may be more that the WTO could do to publicise its discussions and decisions, but we have no complaint about the discussions themselves taking place behind closed doors, any more than we do about Cabinet discussions taking place behind closed doors, or meetings of the UN Security Council.

Our view is that the basic accountability we are looking for is the same as that enjoyed by every Australian citizen, namely the accountability of the government we elect. The WTO is not an elected body. Rather, it is an intergovernmental forum. This forum has some rules of membership, but the rules do not apply to countries not holding or seeking membership.

The picture that is sometimes painted of the WTO by its critics, that it is a global corporate entity with a dark personality and a hidden agenda seems to us to be more a comment on the understanding and outlook of its critics, rather than a comment on the WTO itself.

(iii) *Effectiveness of and ease of access to dispute settlement procedures.*

We have no knowledge of either the effectiveness of dispute settlement procedures, or of ease of access to them, never having had occasion to seek relief through them. What does concern us however, is that the dispute settlement procedures do not seem capable of dealing with non-tariff barriers to trade erected by parties which are not governments.

The timber industry globally is currently being challenged by a system of forest management certification and timber product being promoted by an international conservation group. The group in question, which is not transparent, representative or accountable, has nevertheless attained a position of considerable wealth and influence, which it is using to promote on a monopoly basis its scheme of forest management and timber certification. Its promotional tactics involve threatening suppliers with loss of market access, and threatening retailers and major users with economic injury if they do not sign up. It concerns us that an intergovernmental forum dedicated to promoting trade liberalisation so far appears to be unable to come to grips with this phenomenon because it does not represent an action by a member government, but by a private entity.

(iv) *Australia's capacity to undertake WTO advocacy.*

This term of reference appears to invite comment on the calibre and diligence of the officials and politicians charged with the conduct of Australia's interests in the WTO. We have no reason at all to doubt the competence or diligence of either. We could go further and say that we have been impressed by the determination of senior officials not to indulge ill-informed, irrelevant or mischievous lobbying by groups which are not themselves trading entities and which appear to have no knowledge or involvement in commerce any more complicated than the collection of charitable donations.

(v) *The involvement of peak bodies, industry groups and external lawyers in conducting WTO disputes.*

This association does not have a view on the involvement of external lawyers in dispute settlement, except that if this involvement is at the expense of commercial litigants, it will very likely eventually ensure that WTO justice can only be afforded by the very rich, like the justice dispensed through other

court systems. Our industry is not notoriously litigious, possibly because it has not been able to afford to be.

As for peak bodies and industry groups, it seems to us that they have some ability to represent trading entities, and to assemble expeditiously information about a whole industry, including the impediments it may face in overseas trade. We think it makes sense for government officials to maintain close links with these groups, given their shared interest in trade.

If a trade dispute involves more than one company within an industry, we see no problem with the case being argued by peak industry bodies on behalf of members.

(vi) *The relationship between the WTO and regional economic arrangements.*

We do not see much scope for any relationship between the two. Regional economic arrangements tend to reflect national aspirations for regional co-operation and development. Where these aspirations involve the harmonisation of national policies across a broad front, as they do in the EC, it may well be that adequate dispute settlement procedures can be devised and implemented at a regional level to serve the regional interests of trading entities. But even for countries party to such regional arrangements, it seems unlikely that they would displace WTO mechanisms, which serve a global purpose.

(vii) *The relationship between WTO agreements and other multilateral agreements.*

It would seem fair to posit a relationship between WTO agreements and other agreements if those other agreements also deal with trade. The relationship between two or more agreements dealing with the same phenomenon or issue could then be examined to determine complementarity, inconsistency, duplication etc. The Convention on Trade in Endangered Species (CITES) purports to deal with trade in a limited class of goods, (in the regulation of which it has not been clearly effective), and it would be legitimate to examine whether the relationship between WTO and CITES is complimentary, duplicative, inconsistent etc. What to do about any problems revealed by this examination would then become a matter for the governments party to each to determine.

It seems to us that where there is no primary trade content to another multilateral convention, for example one dealing with human rights, or the environment or labour standards, then there is no prima facie relationship. It is open to the parties signatory to such other multilateral agreements to endow them with a trade content if they see fit, but until and unless those governments take that action, the simple assertion of the existence of some kind of relationship lacks substance.

One very good reason for not indulging the unsupported assertion of such a relationship is that the two categories of agreement have distinct differences from one another. Rules of international trade and commerce have grown up over centuries to a point where a high degree of commonality characterises the expectations and practices of trading entities in different countries. On the

other hand, environments, models for the regulation of labour and the evolution of forms of social and political governance are all much more diverse. National governments are still in the process of effectively coming to grips with these issues, and global rules are not so easily written.

Proposals to recognise a relationship between trade agreements and agreements dealing with the more diverse and volatile phenomena subsumed under the headings of environment, human rights and labour standards could easily be seen as an attempt by the proponents to use the trade rules, in their relatively highly developed and consensually-supported state, to achieve objectives in these other areas that may or may not be supported by national governments, or embodied in multilateral agreements. The proposal could be seen as an attempt to use one set of international rules to achieve ends in other areas of human activity where the rules have not yet been sufficiently developed at the national level to permit the evolution of satisfactory multilateral arrangements.

Such attempts could lead to a weakening of the consensus supporting the trade rules themselves, and give rise to anomalous and unenforceable outcomes with regard to the environment, human rights or labour standards.

It seems to us that global consensus may emerge over time in relation to the detail of environmental regulation and management, labour standards and human rights, or they may not. We doubt however, that any attempt to use rules developed to govern trade to promote such consensus will be effective. We think that any willingness on the part of governments to allow the trade rules to be used for that purpose will put their effectiveness in regulating trade at risk.

(viii) *The extent to which social, cultural and environmental considerations influence WTO priorities and decision making.*

In an ideal world, governments which sit down together to discuss trade issues would be represented by elected office bearers and officials who take a whole-of-government position in relation to the matters before them. This would ensure that the policies and laws of those governments in relation to social, cultural and environmental matters are taken into account in making decisions about trade matters. There would be no obligation incumbent on the WTO to ensure that its members approach their deliberations in such a manner, because all members would be alert to their political responsibilities.

The world is not ideal, of course. Some conference delegations take a whole-of-government approach. Some seem not to know the meaning of the term. It does not follow that they would understand it any better if the WTO tried to instruct them. Moreover, the WTO does not have the means to instruct member governments in the proper manner of transacting their business in that forum. As we understand it, the WTO is endowed with no more than modest secretariat functions, (unlike the United Nations, whose secretariat functions are extensive).

Fortunately, variability in the degree to which member governments of the WTO take a whole-of-government approach to their participation in its deliberations probably does not matter greatly, as there are now a host of other specialised fora where issues important to those areas of government dealing with social, cultural and environmental considerations can be discussed. (In these fora too, it is often more the exception than the rule for a whole-of-government approach to be adopted by many delegations.)

Whether or not these other fora are efficient or effective in transacting their business is another matter. It is also a matter that is not properly the concern of the WTO. If the parties to the Biodiversity Convention, for example, have transacted no useful business since the Convention was signed, it would be a bizarre suggestion indeed that this failure in some way reflected on the WTO, or that the WTO should in some way be called upon to compensate for that failure.

The issue of the sovereign right of member governments to transact trade business in a whole-of-government manner or any other manner that they deem appropriate, is fundamental. So much so in fact, that the question of whether these governments should be expected to give special consideration to social, cultural and environmental considerations *when they meet under the aegis of the WTO* is a question that invites further scrutiny. Why would that be a good idea, and why would those same governments *not* give due consideration to those issues domestically when framing the positions they intend to adopt in the WTO intergovernmental context?

Behind these questions, it seems to us, lie the importunings of specialist advocacy groups such as human rights groups, labour unions and environmental groups, which see the WTO and its fora as a *further* opportunity to lobby for points of view they have pressed in domestic contexts as well. A WTO meeting is a high profile, well publicised fora through which to bring attention to themselves and their respective agendas, and to advance the causes they espouse. If those groups, collectively known as NGOs, had a character that was fully representative and accountable, they would speak with the same authority as governments. Almost uniformly, however, the representative nature of these groups and the levels of accountability that characterise their operations, is miniscule in proportion to the financial resources they control, and are able to invest in self-promotion. Some of the biggest and most vocal operate from narrow bases of membership and the most oligarchic of structures. The lack of a representative or accountable structure behind the outward manifestations of Greenpeace is notorious. It is much less widely understood, however, that other international environmental groups are no different. One high-profile international environmental group claims 3.4 million supporters globally, but as far as we can determine, has only 1001 actual members. It admits new members by invitation only.

In our view, this situation would be material to judging the weight that should be accorded to the views expressed by the organisation concerned. It does not purport to be a scientific or research organisation, so it is not making a contribution to the sum total of our knowledge about scientific matters. If the opinions it expresses are on behalf of its members, then it is relevant that there are only 1001 of them. (For purposes of comparison, there are about 1300 members of the Institute of Foresters of Australia.)

The Committee may wish to investigate further the intriguing contrast between claims often made by NGOs that the WTO is not transparent, accountable, etc with the secretive, oligarchic and unrepresentative nature of most of the NGOs themselves.

Some highly pertinent observations about this phenomenon are contained in the report "NGO Rights and Responsibilities: A New Deal for Global Governance", already supplied to the Committee. This report, produced by a UK foreign relations institute of which the Foreign Secretary of the Blair government is President, takes a long hard look at the phenomenon of NGO advocacy which has dogged the WTO, and reaches some conclusions which the NGOs themselves will probably find startling.

In summary, we think that the issue of the extent to which governments should allow social, cultural and environmental considerations to inform the positions they adopt at the WTO is one that they are fully capable of determining for themselves before they leave home. We do not believe that it assists them in their collective endeavours to create opportunities to be lobbied by pressure groups on these matters once they are assembled at WTO meetings, especially given that the groups undertaking the lobbying are almost uniformly less representative, less accountable, less transparent and less well-informed than they are themselves.

We believe that creating such opportunities subverts whatever democratic processes are maintained domestically, and deprives the multilateral forum of the representative character that gives its decisions and findings moral authority and binding force. It seems to us that this shortcoming has been amply demonstrated in the workings of UN Committees to which NGOs have had unfettered access, and that there are no compelling reasons for wishing the same fate on the WTO.

We thank the Committee for the opportunity to present our views.

Yours sincerely

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