

Submission to the Department of Foreign Affairs and Trade regarding Australia's Approach to Further Multilateral Trade Negotiations. April 27,1999

Board for Social Responsibility NSW Synod Uniting Church in Australia

This paper is a contribution to DFAT's Public Consultation on trade negotiations. It was adopted by the Board for Social Responsibility NSW Synod) Uniting Church in Australia at its meeting on April 15, 1999

Introduction

The Board for Social Responsibility welcomes DFAT's public consultation regarding Australia's approach to further multilateral trade negotiations. Like a number of other community organisations, the Board made a submission to the Joint Standing Committee on Treaties in 1998, opposing Australia's support for the MAI. It is clear from that committee's inquiry into the MAI that there is serious concern throughout the Australian community about matters of principle that should apply, whether the agreement is the MAI through the OECD, or some other agreement on trade and investment undertaken through the WTO or some other international body.

This submission is in two parts. The first addresses a range of issues related to whether Australia should be involved in multilateral agreements on international trade, and if so, what such agreements need to include. The second part provides a critique of the economic assumptions that seem to underlie the current public consultation process. The conclusion lists criteria that should apply to future agreements on international trade.

Part A Criteria for international agreements

Is a multilateral agreement on international trade necessary?

The Treasury and the Attorney General's Department (AG) seem to have assumed in the negotiations on the MAI that a multilateral agreement on international trade is necessary and appropriate. AG claimed that there were precedents for the concepts in the MAI in treaties to which Australia was already a party. The argument seems

to be that if Australia enters into bilateral agreements, then it should have the same agreement with every nation and hence enter a multilateral agreement. This is a specious argument. Bilateral agreements are instruments of foreign policy, which Australia enters into freely and deliberately where they serve the joint interests of Australia and the other nation. This is internationally recognised in the granting of Most Favoured Nation status, which, by definition, involves treating some nations differently, i.e. more favourably, than others. Reasons may range from self-interest to the desire to extend special privileges to less developed nations who need help in developing their international trade. Most Favoured Nation status would have been abolished under the MAI as inconsistent with its purpose. A universal agreement limits a nation's options in foreign policy and trade in a way that bilateral agreements do not.

Any multilateral agreement on international trade amounts to regulation of the market. International capital markets have two types of participants: those individuals and companies who want to make investments in nations other than their own, and the nations that seek investment. Markets by their very nature depend on the free participation of all parties, so that contracts are determined on conditions which fulfil the needs of each of the parties to the transaction. A free market for international capital only operates where nations are free to determine what conditions they want to offer foreign investors in particular industries. The market imposes its own discipline on such conditions, since investors are free to choose to invest where conditions are most favourable. This already gives foreign investors considerable power in limiting the conditions that nations may impose. The concept of free trade, when applied to international capital markets, logically requires that it should be left to nations to determine the extent to which they should modify their conditions on foreign investors to meet the demands of the market. The draft MAI reduced the freedom of nations as participants in the market, imposing on them inappropriate and unnecessary legal obligations and undermining their sovereignty and government responsibility to their own citizens. It is not appropriate for Australia to enter into any agreement that has these effects.

Most of the supporters of a multilateral agreement on international trade would, in other policy contexts, argue for minimal regulation and for non-interference in the market. They would require, in other contexts, that there be a demonstrated market failure before regulation was introduced. It is not evident from the submissions of the Treasury or the Attorney-General's Department, nor from the report of the Joint Standing Committee on Treaties, what market failure the MAI or any proposed future multilateral agreement on international trade is supposed to be addressing. Absolutely no justification has been provided as to why the market cannot consist of nations competing for investment on the basis of the terms and conditions that they choose, through democratic processes, to impose on particular groups of foreign investors (provided, of course, that these conditions are clearly evident before the investment is made). Before Australia enters into any multilateral agreement on international trade, it needs to be shown that such regulation addresses a significant market failure, and is an appropriate and effective mechanism for correcting that problem. Some current agreements do not meet these criteria.

If there is a multilateral agreement on international trade, what should it cover?

One of the problems with the draft MAI was that it confused the different bases for government and markets. This was particularly evident in its use of the concept of "disciplining" governments, an entirely inappropriate concept in the market context. Governments, under international law, are responsible to their citizens and their sovereignty derives from the will of citizens. That is why human rights instruments have moral power even though they do not involve effective sanctions: they require governments to fulfil their responsibility to citizens. Any future multilateral, or indeed bilateral, agreement on trade should recognise the different roles of government and companies. While governments should be required in international law to honour their contracts with particular companies, once they have been entered into, the idea that any and every company in the world should have enforceable rights against a sovereign government purely to satisfy the purposes of that company, is clearly a betrayal of national sovereignty and of the rights of citizens to self-determination. It cannot and must not be assumed that the interests of international capital and nations always coincide, anymore than it should be assumed that they never coincide.

The Treasury and Attorney-General's Department in their submissions on the MAI took far too

narrow a view of what was appropriate and in Australia's interest. In any future trade negotiations, the definition of Australia's interests need to be holistic, taking account of the many dimensions that contribute to the well-being of people and society. There is now a substantial literature about this, which should inform all public policy. Some examples are taken up later in this section. The criteria for assessing Australia's interests need to be clearly defined, and to be publicly debated before being finalised. This is also relevant to bilateral agreements.

The Board challenges the Australian government's assumption (evident in the MAI negotiations) that human rights and environmental issues are dealt with in separate international agreements and therefore have no place in trade negotiations. Human rights are about fundamental aspects of human life. The economy and trade shape many of those aspects of life. Governments therefore undermine human rights when they ignore human rights issues in other forms of international agreements. The human rights instruments are the minimum standards for all forms of policy that affect human beings, and need to be acknowledged as such in all trade agreements. International trade agreements must never be, or appear to be, in competition with human rights instruments. As many economists acknowledge, without a moral basis, without adequate ethical standards to govern human interactions, no economy can flourish. Human rights provide the most basic of those ethical standards, since they are based on human dignity. When human dignity is denied, there can be no ethics. Without ethics, there can be no workable, stable economy.

The trade in money itself is the best example of a multilateral agreement "on investment" which is out of control, and parasitic on real economic production. The widespread use of money as a commodity by the world's bankers and financial institutions, has generated the Third World Debt crisis and the current situation where 95% of all financial transactions are now non-productive and speculative. Instead of facilitating the purchase and production of goods and services, most financial transactions now consist of short-term speculation. Deregulated and unprotected financial markets generate the volatility essential for all speculative activity, and allow big financial players to raid selected national currencies. By driving the value of a currency down, financial raiders have brought national economies to their knees. Interventions by the IMF have consisted of requiring that governments use their budgets to pay their now mushrooming overseas debt obligations by drastically reducing expenditures in health, education, welfare and even food subsidies in the

recent case of Indonesia. Any multilateral agreement on international trade must allow every country to control its overseas borrowings, foreign debt and ownership, and protect its currency from international speculators and unpayable interest rates. There is increasing international concern and discussion about the need for such financial controls as foreign exchange transaction taxes (Tobin Taxes) and financial transaction taxes, as well as dual currency and other mechanisms to manage foreign exchange movements. Meantime any multilateral agreement on international trade must allow all countries to control speculative and predatory financial activity which is destructive and destabilising to their national economies.

Similarly, the Australian government's assumption that there should be trade agreements without reference to environmental standards is unrealistic. While some pressures on the environment may be simply the result of increasing population, most pressures come from economic development, which has the goal of increased growth and increased consumption. There are now a number of international agreements on environmental matters. In the long term, any trade agreements which do not take seriously the need for environmental responsibility will undermine those environmental agreements, and place at risk the well-being of the whole biosphere, including the human race.

The Australian Government, the Treasury and the Attorney-General's Department in their attitude to trade negotiations in 1998 seemed to assume that economic growth is necessarily beneficial and does not create harm. Yet in 1997, speakers at a major conference sponsored by the CSIRO and the Australian Bureau of Statistics consistently challenged this assumption. The issue was summarised by Richard Eckersley, (at that time with CSIRO Wildlife and Ecology, now with the National Centre for Epidemiology and Population Health at the Australian National University).

The rationale for economic growth seems flawed in several important respects: (1) it reflects too narrow a view of human well-being, and fails to explain why, after 50 years of rapid growth, so many people today appear to believe life is getting worse; (2) it overestimates the extent to which past improvements in material well-being are attributable to growth; and (3) it underestimates the gulf between the magnitude of the environmental challenges we face and the scale of our response to them.

There is evidence that the developed world has passed a threshold, a point beyond which economic growth (as currently defined and derived) ceases to improve quality of life. New indicators that adjust GDP for social and

environmental factors suggest the trends in GDP and national well-being, once moving together, are now diverging. Sustainable development offers an alternative to conventional growth as a path of progress, but exactly what it means and how it can be achieved remains unclear. (Richard Eckersley "Perspective on progress" in Richard Eckersley (ed.) *measuring progress: is life getting better?* Collingwood: CSIRO Publishing 1998 page 4)

He also points out, later in his paper, that there is agreement on the most basic point about sustainable development.

(Sustainable development) requires the incorporation of environmental considerations into the mainstream socio-economic policies that currently steer society. (page 12)

We urge that any future negotiations of multilateral agreements on international trade fulfil the requirements set out in paragraph 8.40 of Report 18: Multilateral Agreement on Investment: Final Report (Joint Standing Committee on Treaties.)

8.40 Any such new document should be based on a clear understanding of the features of the draft MAI and which made it unacceptable to so many Australians. It should therefore include clear statements of such matters as the rights and obligations of both host countries and international investors and protection of existing rights, together with equitable dispute resolution processes. These areas were among the greatest deficiencies of the draft MAI. Without such a framework, any successor document would almost certainly fail to gain acceptance in Australia. (The two errors of grammar in this paragraph are in the original).

It is essential that the statements mentioned in this recommendation include reference to human rights instruments (including UN covenants and ILO conventions), and international agreements on the environment, as well as to relevant statements of the obligations of companies, such as the OECD guidelines for multinational corporations.

Philip Alston has pointed out that the debate on treaties exhibits considerable inconsistency in Australia. Some people are highly critical of human rights treaties and complaints processes, claiming that they reduce Australia's sovereignty, even though no actual sanction is possible. Many of these same people accept the appropriateness of ceding sovereignty in the area of international trade, on the assumption that freer trade is always in the interests of Australia. Having provided a

number of examples (which could be supplemented with more recent examples) he comments:

International engagement is not a smorgasbord from which we can pick the choice offerings and have nothing to do with those that are seen as unappealing. The UN Human Rights Committee's role under the International Covenant on Civil and Political Rights cannot be attacked as improper and democratic, while Australia seeks to rely in its trade relations upon determinations by the WTO's dispute resolution panels. Australia cannot expect to be able to interact with the world in a selective manner entirely of our own choosing...

...At least in the long term, therefore, the logic and the dynamics of globalisation will demand a balanced and holistic approach which takes account of the need to protect the environment, social well-being and human rights. (Philip Alston "Reform of the treaty-making process: reform over substance" in Philip Alston and Madelaine Chiam (eds.) *Treaty-making and Australia: globalisation versus sovereignty* Leichhardt: Federation Press 1995 page 8-9

It is often asserted by economists that the market can serve the interests of non-material values, if that is what participants so choose. The draft MAI, if implemented, would have severely reduced that possibility by ensuring that all nations were disciplined by the same, materialistic set of values. Any future agreements must not restrict the options in this way.

Are exceptions appropriate?

One of the most perplexing aspects of the Australia's support for the MAI was that Australia's support was contingent on numerous and extensive exceptions (29 areas by April 1997). The appropriateness of Australia entering an occasional, specific exception, as it has done in the case of some human rights instruments, often on a temporary basis, is not in question. This, however, is quite different from reliance on numerous and extensive exceptions. There are at least three major problems with entering into any international agreement on such a basis. First, it undermines the purpose of the agreement. This is particularly the case when the purpose of the agreement is to simplify international trade relationships and make international investment easier. Second, standstill and rollback provisions mean that such mechanisms do not effectively protect Australian public policy in the long term. There is a "ratchet effect". Once the agreement is signed, it is difficult, if not impossible, to enter new exceptions. Governments cannot adopt policy that widens its exceptions, and if a government reduces or removes an exception, the new situation becomes the standard and later

governments cannot re-instate the exception. Third, exceptions complicate both the meaning of the agreement and the nature of national policy. It is a no win situation. If only a simple list is given, as occurred in the negotiations for the MAI, it is unclear both to citizens and to bureaucrats, as ATSIC pointed out, exactly what the exceptions mean. If Australia attempts to articulate the exact nature of the exceptions, this then limits public policy to whatever has been defined. Whatever way Australia does it, the numerous and extensive exceptions make the meaning of the agreement unclear for both its own citizens and for foreign investors.

There is a second type of problem with reliance on numerous and extensive exceptions. This approach means that Australia is seeking to impose on other nations conditions which we refuse to meet ourselves. We are asking for one set of rules for ourselves, and another set to govern other nations who sign the agreement. This is particularly reprehensible when the agreement is intended, as was the MAI, to apply to less developed nations, whose public policy may be less developed, but who would be locked into to the current situation in some areas of policy. That is, the agreement would deprive them of some policy options that we insist on exercising ourselves.

Numerous and extensive exceptions mean that an international agreement is, from Australia's viewpoint, fundamentally flawed and inappropriate. If the principles on which Australian public policy is based are sound, then we should negotiate agreements consistent with those principles. Australia should not sign agreements where it has to rely on exceptions.

Evaluating draft agreements

The report of the Joint Standing Committee on Treaties noted that the Treasury paper supporting the draft MAI was inadequate and inappropriate. It is imperative that future draft international agreements be rigorously assessed from a range of viewpoints, that is, with many different areas of policy in mind. It is also important that when Australia enters into international agreements these do not merely express the ideology of the government of the day. There needs to be some objectivity in their assessment. A wide range of government departments and all three levels of government need to be consulted, along with other agencies and the community. For example, it would have been appropriate, in considering the draft MAI, to consult the Human Rights and Equal Opportunity Commission, the Australian Law Reform Commission, the Environmental Defenders Offices, the CSIRO and recognised Australian experts in international law such as Philip Alston,

as well as bodies such as ACOSS, ACFOA and the ACTU. The breadth of interest and expertise in the community sector on this issue is evident in the range of submissions from community organisations to be published in *Corporate power and globalisation: Opposing the Multilateral Agreement on Investment (MAI)* Patricia Ranald and James Goodman (eds.) , to be published later this year. In the end, the community forced consultation. From the report of the Committee on Treaties, it is evident that this was both appropriate and useful, enabling significant issues to be raised that had previously been ignored. Some of the debate, however, was less useful than it might have been because of the mistrust aroused by the failure to consult adequately at an earlier stage.

Part B Critique of economic assumptions in the consultative process

The request for submissions that the Department of Foreign Affairs and Trade has issued regarding further multilateral trade negotiations in the World Trade Organization is limited by its own orthodoxy. It uses a set of assumptions to underpin its support for free trade that are not justified by rigorous academic evidence or analysis, either in the request itself or in the web-site documents available from the Department. They are statements of belief made as though they were self-evident fact or they are *a priori* assumptions without reference to experience or evidence. The Department appears to be seeking to invest this particular theory with the character of a universal scientific truth like gravity. In this context, free trade can be seen to be more of a moral doctrine than an economic strategy (David Morris. Quoted in 'What is Globalization?', International Forum on Globalization, San Francisco, 1998. Extracted from *The Case Against the Global Economy*, (ed.) J Mander and E Goldsmith, Page 218).

The very process that is used in some of the DFAT documents to support the uncritical adoption of the theology of free trade is illustrative of the mindset that excludes any other possibility. Those documents ask a number of rhetorical questions, that they then go on to provide formulaic answers to. These questions are: "What does economic theory tell us?", "What does economic modeling say?" and "What do trade trends tell us?". (Department of Foreign Affairs and Trade. 'Trade Liberalisation-How Australia Gains'. – dfat.gov.au/trade/liberalisation/gains/index.html)

The very fact that they are placed in this sequence illustrates the pre-determined conclusion of the debate. The economic theory to which they refer is

itself the subject of fierce debate and contention amongst economists themselves. This is not acknowledged, nor are the alternative views on these theories canvassed. Thus the debate is effectively confined within the constraints and assumptions imposed by this theory.

The second question regarding the economic modeling also seeks to confine the debate within the constraints and assumptions of the contested theory. It also imposes a whole range of new assumptions that enable the construction of the model in mathematical terms. The model being used, like all such models, makes a wide range of assumptions that find little or no parallel in the real world. If any one of those assumptions can be found not to apply in the real world, it invalidates the conclusions produced by the model. The answer to the third question, "What do trade trends tell us?", being based on interpretations of reality flowing out of both the theory and the modeling, can also only lead to one conclusion.

Thus the consultation process which it is intended should be belatedly commenced simply excludes from any consideration the idea that the current model of totally free trade may not be the most appropriate course for Australia to follow in it's own national interest. That the consultation and debate, which follow from such a process, may be sterile, isn't considered. This illustrates the complete subjugation of common sense and experience to abstract reasoning.

Such has been a characteristic of economic debate in the western world for the last two decades. Many of the partisans of that conventional wisdom in economics have, through similar methods to those employed in the Departmental documents, sought to exclude from the realm of debate any conflicting views. Yet that conventional wisdom is evidently failing to either sensibly explain what is actually happening in the real world, or to provide workable solutions to the multiplying social, economic and political problems being generated by Global Capitalism. There is thus an increasing challenge to that conventional wisdom arising spontaneously from communities around the Globe. The popular global resistance to the MAI is a clear example of such community concerns.

So how can we describe the theory, to which the Departmental documents refer, that is driving the debate and then analyze its idiosyncrasies and shortcomings. The best place to start is to examine the assumptions on which it is based and the values which underlie those assumptions, to test whether they either provide a sound basis for analysis or reflect an understanding of the real world that is being created by Global Capitalism.

The major tenets of free trade theory have been widely stated and are regarded by the faithful as self-evident truths. They are:

Increasing size of standardized production units brings economies of scale and increased specialization. These produce lower prices and increased efficiency.

Prices reflect real value and are the best allocator of resources.

Free markets are the engine of economic growth

Increasing production unit size requires global markets.

Free trade is governed by the 'Law of Comparative Advantage'. This can come in two variants, absolute and relative. Absolute comparative advantage is the kind that is reflected by climate and natural resources. Australia has an absolute comparative advantage in coal production over Ireland because it has a rich endowment of coal not share by Ireland. Relative comparative advantage states that even where one country is more efficient at producing both commodities, both countries will benefit if the more efficient one concentrates on the production of the goods at which it has the greatest comparative advantage and trades with the second country for the other good. That is, each country concentrates on that which it does best.

The supporters of this theory suggest that it is value-free 'normative' economics that they are supporting. To a detached observer however, there can be no doubt that the assumptions set out above clearly reflect a set of values. One of the inherent values underlying them is that national independence should be sacrificed and that dependence should be embraced. We are exhorted to abandon self-reliance. Big is best is another value which emerges from these assumptions, as is the belief that competition, not co-operation, is the primary motivating force of all human behavior. This latter is linked to the idea that material self-interest drives humanity. Economic, social, cultural and political sovereignty over our national affairs is to be traded for higher employment and better material living standards (David Morris, IFG, Ibid)).

Well what about markets in the real world?

Two developments in the real world of production in more recent years have rendered controversial the assumption that increasing size of standardized production units alone will bring economies of scale, reduced costs and therefore reduced prices. The first is the advent of computers and the

combining of these with robotics technology. This has led to a phenomenon called "mass customization", where the benefits of mass production in terms of lower cost can now be gained whilst providing products customized to the needs of each buyer and produced in smaller production units. This is happening because of the increasing tendency of consumers to focus more and more on quality, rather than on price, where high-tech products are concerned. Much of the world motor vehicle industry is now moving in this direction. The second development is the growth of world overcapacity in many industries. There is little point in being able to produce more and more standardized products when world markets for these products are saturated and declining, both because of declining or static incomes and increasing demand for diversity. This is true in computer hardware, aircraft, motor vehicles, pharmaceuticals, steel, oil and many others. (William Greider, *One World Ready or Not.*, Penguin Books, 1998)

The second assumption, that prices reflect real value and are always the best allocator of resources, is also now under increasing scrutiny. The logical extension of that assumption is that price actually tells us something about efficiency. Well, in terms of the world economy that turns out to be not the case. In fact price, in this context, is not a reliable measure of anything. Wage differences between comparably skilled countries can be as great as 30 to 1. This disparity can, and does, contrary to the simplistic assertions of the Department, (DFAT, *Open Markets Matter: The Benefits of Trade and Investment Liberalisation* <dfat.gov.au/trade/negotiations/trade_liberal.pdf>) overwhelm even the most productive worker. In addition "Differences in product cost that are due to totalitarian political institutions or restrictions on economic rights reflect no natural or entrepreneurial advantage. Free trade has nothing to do with incomparable political and economic institutions that protect individual rights in one country and deny them in another" (David Morris, IFG, Ibid)). The price of goods in developed countries also reflects a wide range of subsidies and cross-subsidies. Most transport systems in such countries have been constructed, and in many cases operated, by Government without passing on to the users in the charges made, the full cost of either their construction, maintenance or operation. Farmers are often subsidized in non-obvious ways, through for example paying less for water than it is worth, or through agricultural extension services not charged for or pollution causing practices for which the community carries the burden. Thus price, even within a country, does not accurately reflect the cost of producing a product and, if used to

determine resource allocation, will lead to inappropriate decisions.

As for free trade being the engine of growth the distinguished economic historian Paul Bairoch (Economics and World History., Univ of Chicago Press, 1993, Pp 136-8) has amply dealt with the notion that the US has grown to its present powerful size on the basis of free markets. His conclusion, after an exhaustive study of the evidence is that 'it is difficult to find another case where the facts so contradict a dominant theory' as the doctrine that free markets were the engine of growth. Or for that matter, that great powers adhered to them except for temporary advantage. 'The United States, in particular, has always been extreme in rejecting market discipline. That is how it developed from the beginning, including textiles, steel, energy, chemicals, computers and electronics, pharmaceuticals and biotechnology, agribusiness, and so on, gaining enormous wealth and power instead of pursuing its comparative advantage in exporting furs, in accord with the stern principles of economic rationality.' (Noam Chomsky. Power and Prospects., Allen and Unwin, Sydney 1996, Page 101)

America was by no means the first to follow this road. Britain had for over 150 years followed a similar protectionist policy until it had accumulated a level of contrived comparative advantage that was so great as to render its subsequent advocacy of free trade an extremely safe bet. Indeed, it is difficult to find an exception to the rule, as far back as Europe's Industrial Revolution, that protectionism promoted economic growth. That is why today, with the rapid spread of free trade ideology, the widespread recent experience of the western world is that external trade is rapidly growing and economic growth is concurrently slowing in virtually all the developed world.

In 'Trade as an Engine of Growth: Theory and Evidence', James Riedel (Quoted in Economics and World History by Paul Bairoch, Page 138) sums up the argument that trade is an engine of economic growth in the following terms, "In fact, there is little left of the assumptions which generated the mechanistic conclusions of the theory of the 'trade engine of growth'. In short, the 'engine' for foodstuffs has no fuel, while there is no fixed gear for other products, especially manufactures. The economic relationship between developed and developing countries cannot be described meaningfully in simple mechanical terms. The 'stylized facts' that underlie the theory of the 'trade engine of growth' turn out on close examination to be little more than myths."

Had the US, under Ronald Reagan, allowed market forces, which he extolled in public, to function, there would be no steel or automobile manufacturing in the US today, nor would there be a semiconductor and many other industries. Reagan simply closed the market and poured in public funds when Japan began to destroy the US industry through tough competition. (Chomsky Ibid, pg 102) Similarly the huge success of the US aircraft manufacturing industry, which allowed it to become almost a monopoly supplier to the free world, was achieved through massive Government funding of the development of the industry for defense procurement during and after the Second World War.

The forgoing leaves the idea that increasing production unit size requires global markets somewhat out on a limb. Once it is conceded that the cost benefits of the old concept of mass production of standardized goods is achievable with more flexible production units based on mass customization, and that the advantages of free trade are largely based on comparative advantages derived from infringements of human rights and false price signals, global markets appear not only superfluous, but positively inimical to human rights.

This analysis also renders obsolete the whole framework of the 'Law of Comparative Advantage', both absolute and relative. If 'comparative advantage' is no more than an acquired advantage achieved through human intervention, as is demonstrably the case with the advanced industrial nations, then it loses its power to determine what countries will produce and trade. After all, they can go out and produce a new comparative advantage whenever they choose, if they have the resources and the will.

Where does this leave the world trade agenda? The forgoing analysis does not lead inevitably to the conclusion that we should return to the era of old-style protectionism and closed markets. Rather it suggests that the benefits of a totally free trade regime might well have been oversold by an economic establishment that is unwilling to heed alternative voices in the debate. We need to recognize that Australia's best interests might not be served by a slavish adherence to a doctrine whose results, particularly for the third world, are looking increasingly like a form of twenty-first century colonialism.

Conclusions

The foregoing discussion suggests that the following criteria should be met in any future agreements on international trade to which Australia is a party. This includes agreements which may emerge from the current work program of the WTO and other forms of negotiation listed in DFAT's issues paper. Some of these matters would be relevant to future bilateral trade agreements as well as to any multilateral trade agreement.

In setting out these criteria, we are mindful of the importance of differentiating between the legitimate national interest, and isolationism or xenophobia. We would expect all these criteria to be interpreted in accordance with international jurisprudence, including the United Nations Charter, which recognises both national sovereignty and international responsibility.

- The agreement should respond to major problems of international market failure and provide effective solutions;
 - The agreement should be based on substantial and carefully considered international jurisprudence, not highly debatable economic ideology;
 - The agreement should acknowledge that it is subordinate to pre-existing international agreements on human rights, labour standards, and the environment;
 - The agreement should recognise that a government's first responsibility is to its citizens, not foreign investors, and that the rights of foreign investors are subordinate to the public interest; that is, there should be a public interest defence in any dispute with government, and the dispute mechanisms should include investor accountability;
 - The agreement should allow every country to control its overseas borrowings, foreign debt and ownership, and protect its currency from international speculators and unpayable interest rates.
- The agreement should only include dispute resolution mechanisms that give rights to all stakeholders, including the right of individual citizens and NGOs to bring actions against foreign investors;
 - The agreement should not require extensive national exceptions; if it does so, this is a sign that it needs to be renegotiated;
 - The agreement should recognise binding responsibilities as well as rights for foreign investors;
 - The agreement, if multilateral, should not disadvantage less developed nations or assume that the needs of less developed nations and highly developed nations are the same;
 - The agreement should meet a clearly defined, holistic set of criteria regarding Australia's national interest; the national impact statement should include rigorous examination of the impact on citizens, the community sector, national and state legislation to protect the environment, workers rights, Indigenous rights, and so on.
 - The agreement should not put at risk the special role and privileges of the community (not-for-profit) sector in Australia, nor the right of Australia to have mechanisms to encourage specifically Australian initiatives in any field.

Part B was prepared by Les MacDonald. The rest of the submission was prepared by Ann Wansbrough, in consultation with the Board.