



National Farmers'
F E D E R A T I O N

National Farmers' Federation

Submission to the

**Senate Foreign Affairs, Defence and Trade
Standing Committee**

In relation to the

Fair Trade (Workers' Rights) Bill 2013

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By

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1. EXECUTIVE SUMMARY

The National Farmers Federation (NFF) has been invited to make a submission to the Senate Foreign Affairs, Defence and Trade Standing Committee on the Fair Trade (Workers' Rights) Bill 2013 (*hereafter the 'Bill'*). The Bill seeks to encourage Australia's trading partners to ensure that workers in their country are protected by certain internationally accepted minimum standards about workers' rights.

Members of the NFF are committed to policies that support trade and investment liberalisation, recognising the benefits to Australia from increased access to new markets for our goods, services and capital, and from greater access to global supply chains. The NFF also recognises the importance of regulations which protect workers' basic rights.

NFF acknowledge that Australia has been a founding and active member of the International Labour Organisation (ILO). We are of the view that there is no evidence of a policy failure with regard to Australia's current approach to free trade agreements (FTAs) and workers' rights. In the NFFs view a more effective way of assisting developing countries to improve workers' rights may be through higher, rather than lower, trade and investment.

While multilateral trade reform remains the priority trade policy objective for the NFF, we remain committed to the pursuit of high quality bilateral and regional trade agreements under strict principles. The principles that should be adopted by the Australian Government in negotiating bilateral and regional trade agreements should include the following:

- They must be comprehensive;
- They must lead to genuine commercial opportunities;
- They must avoid new protectionism;
- They must be a transparent process;
- They must not undermine the WTO negotiations;
- They must not undermine the process of unilateral reform; and
- They must not compromise public policy.

Australia's existing agreements have been far from perfect and have not always abided by all of these principles. However, they have led to some improvements in the trading opportunities available to many farmers and lifted the net welfare of Australia's agriculture sector. These improvements have been welcomed by the Australian farm sector, which relies so heavily upon its export markets.

The NFF is calling upon the Government and Senate Foreign Affairs, Defence and Trade Standing Committee to stop and think about their national interest responsibilities. NFF is of the view that it is not in the national interest for the Bill to become law as it will complicate negotiations for future FTAs. NFF recommends the government focus upon finalising the outstanding FTAs and we do not support the enactment of the Bill.

2. INTRODUCTION

The National Farmers' Federation (NFF) was established in 1979 and is the peak national body representing farmers, and more broadly, agriculture across Australia. The NFF's membership comprises of all Australia's major agricultural commodities. Operating under a federated structure, individual farmers join their respective state farm organisation and/or national commodity council. These organisations form the NFF.

The NFF has recently implemented a re-structure of the organisation. Through an associate category this has enabled a broader cross section of the agricultural sector to become members of the NFF, including the breadth and the length of the supply chain.

Each of NFF's members deal with state-based - grass roots issues or commodity specific issues, respectively, while the NFF represents the agreed imperatives of all at the national and international level.

The NFF welcomes the opportunity to provide a submission to the Senate Foreign Affairs, Defence and Trade Legislation Committee inquiry into the Fair Trade (Workers' Rights) Bill 2013 (*hereafter the 'Bill'*).

Trade continues to be a major focus for NFF as Australian farmers export around two thirds of all domestic production. Agriculture globally remains the most distorted area of international goods trade with average tariffs more than three times higher than in non-agricultural goods. Agricultural tariffs on some commodities face prohibitive tariff barriers of as much as 800%. Agricultural exports such as sheep meat, dairy and beef also face restrictive tariff rate quotas into markets such as the European Union.

Because of this, it is therefore worth restating the logic behind the critical importance of trade policy to the profitable survival of agriculture.

1. Australia is already a well-fed, prosperous nation with a slow growing population. Domestic food demand can only rise slowly.
2. It follows that for Australian agriculture (and the supporting regions and industries) to expand and prosper, we must export more.
3. This goal is not unrealistic, Australia is already a large successful agricultural exporter - in fact, we could be the most export dependent agricultural sector of major developed countries (64% in volume of production and 75% by value of production).
4. Global demand for food and fibre is also set to expand on the back of an increasing world population, changing diets driven by increasing consumer affluence in developing countries, the emergence of energy related demand for agricultural goods, and escalating natural resource scarcity.
5. But agricultural trade is among the most protected and restricted of all goods and services in world trade.
6. There are large gains to Australia from successfully addressing agricultural trade barriers that would be far in excess of the effort we put in. And we have no choice: we simply have to make the export side work if we are to remain sustainable and prosper.

Globally, agricultural protectionism remains an acute trade problem. Overall levels of agricultural protection remain near record levels despite the liberalisation of much of the global trading system in previous General Agreement on Tariffs and Trade (GATT) rounds.

As demonstrated by increasing responses by international leaders, particularly in light of the Global Financial Crisis, the fundamental question for the future of trade policy has moved on from whether trade should be liberalised – but rather how.¹ The difficulties faced in bringing the Doha Round to a conclusion and the proliferation of FTA's has brought this question to the fore.

While the economic principles in favour of the multilateral approach are well known, the political and pragmatic reality of the important role that FTA's and regional trade agreements can play is ever increasing. This comes not only from a desire to open up new markets and improve economic welfare but also derives from defensive reasons.

It is clear that FTA's must be managed carefully to avoid pitfalls and developed with sound principles in mind, however it is no longer realistic or fair to simply classify them as being counterproductive or a distraction to gaining real positive outcomes. Governments must ensure that bilateral and regional trade agreements continue to play a critical role in Australia's trade objectives, while never losing focus on the major goal of multilateral reform and the important trade liberalisation benefits to be derived on the unilateral scale.

3. NFF TRADE POLICY

NFF has been a strong advocate of open markets, and recognises the important contribution trade makes to economic well-being and the development of competitive and world class industries. Australia's trade liberalisation framework should be developed in partnership between business and government, be strategic in focus, consultative, reflective of actual business opportunities and contribute to the sustainability of our export sector.

Unilateral trade liberalisation has been a key component of Australian agricultural policy since the 1970's, with average Australian tariffs falling from over 30% to less than 5% in this period. Imports of most agricultural products are now tariff (and quota) free.² The NFF has been a key supporter of this unilateral reform to reduce domestic trade barriers in the recognition that they only acted to increase the price of vital farm inputs such a fuel, fertilizer, tractors and machinery.

Yet trade distorting policies are not just confined to developed countries and many developing countries have also adopted protectionist policies. Despite this, the economic research finds that the protectionist measures of the United States, Japan

¹ Humphries. J & Stoeckel. A, (2005) '*Free*' Trade Agreements - Making Them Better, Prepared for Rural Industries Research and Development Corporation.

² Productivity Commission, 2000, *Review of Australia's general tariff arrangement*, Canberra.

and the European Union distort global markets far more than those of developing countries.³

The benefits accruing to Australian farmers from elimination of global agricultural support through subsidies and barriers to access are significant. For this reason, the NFF trade policy to open markets and remove distortions has been a priority for the organisation.

A successful outcome from the multilateral negotiations in the WTO remains the NFF's number one trade policy priority, and has the potential to result in billions of dollars in extra income for rural and regional Australia. There are a range of estimates as to the potential gains because there are still many uncertainties about the shape of the final agreement.

The Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) projects an increase in the value of Australian agricultural exports for all products of between 3%-15% over the no-Agreement 'baseline' outlook. The increase in gross producer incomes in Australia would range from 2%-8% over the no-Agreement 'baseline' outcome.

Even the bottom of this range represents a meaningful positive change in the outlook for NFF members, especially when you take account of the expected distribution of increased benefits that favours producers in industries like sugar that have suffered most from unfair trade and production practices in the past.

Of course, it's impossible to be certain what the outcome will be until we get there. But ABARE's analysis is like every other expert analysis, confirming that Australian farmers will be among the biggest 'winners' from an agreement.

As a result, NFF believes a continuing focus on multilateral trade negotiations coupled with a pragmatic and focused policy on bilateral and regional trade negotiations and ongoing unilateral reform must remain the main trade policy focus of the Australian Government.

In addition, the NFF remains committed to its international NGO engagement through our leadership of the Cairns Group (and Cairns Group Farm Leaders' forum) in the Doha negotiations. The NFF will continue to monitor and, where necessary, realign its alliances so it is responsive to change and continues to have an influential voice in the WTO.

³ Ag and Food Policy Reference Group, (2006). *Creating our future – agriculture and food policy for the next generation (the Corish Report)*, Canberra.

4. PRODUCTIVITY COMMISSION REPORT

The Productivity Commission considered labour provision in free trade agreements in its 2010 *Review of Bilateral and Regional Trade Agreements*, which stated:⁴

‘Labour standards vary from country to country depending on each country’s stage of development, per capita income and political, social and cultural conditions and institutions. They can cover an array of matters, including hours of work, leave allowances, remuneration levels, pension rights, hiring and firing procedures, rights to union representation, workplace discrimination and workplace health and safety matters. At present, the enforcement of labour standards within each country is a matter for that country’s government.

Most countries are also members of the International Labour Organization (ILO). Based on a tripartite structure, with representation from employers, unions and governments from member countries, the ILO promulgates various ‘international’ labour standards. However, the ILO currently has no means, beyond moral suasion, of enforcing its standards.

Since the ILO’s formation in 1919, there have been numerous attempts to link labour standards to trade agreements, such that failure to observe certain standards would be justification for trade sanctions. In supporting such moves, some groups in developed countries have contended that ‘labour linkage’ is necessary to counter the suppression of workers’ rights and the exploitation of labour in developing countries. However, others have argued that efforts to bring about such linkages are disguised protectionism and/or that linkage could undermine the comparative advantage of developing nations, retard economic development and delay the realisation of the very conditions that labour standards seek to protect.

Although WTO members - and its developing country members in particular - have resisted efforts to link labour standards to the multilateral trading system, labour standards have increasingly found their way into BRTAs. DFAT indicated that the Australian Government currently takes a case-by-case approach to the inclusion of labour standards in trade agreements and labour provisions have been included only in its agreements with the United States and Chile (sub. 53, p.38).⁵

... ‘The Commission examined whether core labour standards should be linked to trade agreements in the context of advising on Australia’s approach to the Doha Round negotiations and in associated research (PC 2001, pp. 33-6 and Nankivell 2002). It noted that, in contrast to issues with predominantly cross-border ramifications, the impacts of a country’s

⁴ Productivity Commission, 2010, *Review of Bilateral and Regional Trade Agreements – Research Report*, Canberra. See p 277 to 280.

⁵ Ibid, see page 277.

labour standards mainly fall on its own citizens. This may help explain why efforts by developed countries to link labour standards to trade agreements are sometimes seen as raising national sovereignty issues by developing countries. Moreover, while adherence to core labour standards can generate social and economic benefits in many cases, the net effects may not always be positive. In any case, attempts to enforce compliance with labour standards through trade agreements have limited prospects of affecting the wellbeing of the workforce in developing countries, not least because the vast bulk of workers operate in the informal and domestic sectors of developing economies. Overall, the Commission considered that other measures, such as trade liberalisation and appropriate technical and financial assistance to developing countries, are more likely to alleviate poverty and lift living standards in such countries. Financial assistance, for instance, can be used to help address the educational opportunities and health needs of children.

Similar issues apply in the context of whether labour standards should be included in BRTAs. It should also be noted that, in recent years, alternative mechanisms have emerged for encouraging compliance with core labour standards. For instance, World Bank loans are now contingent on the recipient country observing the core standards, and the Joint Standing Committee on Foreign Affairs, Defence and Trade recently proposed that Australia use its influence to have the same preconditions extended to Asian Development Bank loans to ASEAN countries (CPSU-SPSF, sub. 22, p. 5).

While the same committee also recommended that Australia seek to have core labour standards incorporated in all of its BRTAs, the Commission's assessment in the Draft Report was that government should adopt a cautious approach to this matter. It noted that there are generally likely to be more direct and appropriate means of alleviating poverty and lifting living standards in developing countries than through Australia seeking to include enforceable provisions on labour standards in BRTAs.⁶

... 'The Commission considers that efforts to encourage compliance with core standards should focus on mechanism that are likely to be effective in enhancing living standards in developing countries, and that entail as few risks of adverse side effects as possible. As noted above, attempts to incorporate core labour standards in BRTAs is a very indirect means of achieving this goal, and the effect may not always be positive. Accordingly, the Commission remain of the view set out in the Draft Report.⁷

The NFF supports the Productivity Commission recommendation that the government should adopt a cautious approach towards the inclusion of core labour standards in trade agreements, and should not include matters in bilateral and regional trade agreements that would serve to increase barriers to trade, raise costs or affect

⁶ Ibid, see page 279.

⁷ Ibid, see page 280.

social policies without a transparent review of the implications and other options of change.

5. CURRENT FREE TRADE AGREEMENTS (FTAs)

Australia has, to date, entered into three trade agreements containing labour provision, with the United States, Chile and Malaysia.

The Australian Government's position on labour and environment in FTAs is that it has undertaken to explore the inclusion of environment protection and labour standards in FTA negotiations on a case-by-case basis.⁸

Australia has included provisions on labour in two previously negotiated FTAs, the Australia United States FTA (AUSFTA) and the Australia Chile FTA (ACI-FTA).⁹

Under the AUSFTA, individual chapters on labour were negotiated following the then US 'template' on these matters, including enforcement and dispute settlement provisions.

In particular, in the AUSFTA chapter on labour (Chapter 18), the Parties agreed to:

- Reaffirm their existing obligation as members of the ILO, and their commitments under the ILO Declaration;
- Enforce their respective domestic labour laws and not to waive or derogate from those laws in a manner that reduces or weakens adherence to internationally recognised labour principles for the purposes of attempting to encourage trade or investment between them;
- Provide for procedural guarantees, such as the commitment to ensuring that persons with a legally recognised interest have appropriate access to administrative and judicial tribunals for the enforcement of labour laws, and that the proceedings of these tribunals are fair and equitable;
- Promote public awareness of labour laws;
- Allow for the possible establishment of institutional arrangements such as an FTA Subcommittee on Labour Affairs to facilitate discussion of matters related to the AUSFTA labour provisions;
- Establish contact points within respective governments to facilitate exchange on labour matters, and provide a procedure for consultations regarding labour matters if requested by either Party;
- Provide access to the government-to-government dispute settlement provisions of the FTA in respect of any sustained failure by either Party to

⁸ See the Government's response of September 2009 to the Joint Standing Committee on Treaties (JSCOT) report on the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area, at <http://www.aph.gov.au/house/committee/jsct/governmentresponses/102nd.pdf>

⁹ In the most recent of these, Australia included labour provisions in the agreement with Malaysia through a side letter, affirming the parties' commitments as members of the ILO and under the 1998 Declaration on Fundamental Principles and Rights at Work. The parties also recognised each other's responsibility to adopt, administer and enforce their own labour laws, regulations and practices, and noted both were committed to ensuring that such labour laws, regulations and practices were not used for trade protectionist purposes or to weaken labour standards to gain a trade advantage.

effectively enforce its labour laws in a manner affecting trade between the Parties, with potential application of monetary assessments if the complained against Party is found to have failed in this requirement. Under the system of monetary assessments, the complained against Party is expected to contribute funds to the remediation of the labour (or environment) problems in its own territory. The provisions are included in the FTA's Dispute Settlement Chapter (Chapter 21).

Under Chapter 18 on 'cooperation' in the ACl-FTA, the Parties have agreed to cooperate on labour and employment matters of mutual interest based on principles embodied in the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998).

The NFF is of the view that current policy settings already allow provision on labour standards to be included in free trade agreements where there is a recognised need.

Australia currently has bi-lateral and regional trade agreements with New Zealand, Singapore, Thailand, US, Chile, the Association of South East Asian Nations (ASEAN) (with New Zealand), Malaysia and South Korea. The countries covered by these FTAs account for 28 per cent of Australia's total trade. Australia is currently engaged in nine FTA negotiations: four bilateral FTA negotiations (China, Japan, India and Indonesia) and four plurilateral FTA negotiations (the Trans-Pacific Partnership Agreement (TPPA), the Gulf Cooperation Council (GCC), the Pacific Trade and Economic Agreement (PACER Plus), and the Regional Comprehensive Economic Partnership Agreement (RCEP). The countries covered by these negotiations account for a further 45 per cent of Australia's trade. The NFF believes the Fair Trade (Workers' Rights) Bill 2013 if enacted will protract negotiations for future trade agreements.

6. INTERNATIONAL LABOR CONVENTIONS

Since the beginning of the 1990's, the need to create a minimum social foundation for the development of trade - one that guarantees certain safeguards against social dumping - has resulted in the signing of an increasing number of FTAs which include a labour dimension, either in the agreement itself or in a parallel agreement.

Not only do such labour clauses list minimum commitments for the protection of human rights at work and refer to specific international labour standards adopted by the ILO, but they also provide for conflict resolution systems as well as funds and parallel labour cooperation/consultation. Indeed, a growing number of bilateral free trade agreements - particularly those signed by Canada, the United States and the European Union - contain social and labour provisions along those lines.

As the 'Explanatory Memorandum' to the Bill states 'This Bill seeks to encourage Australia's trading partners to ensure that workers in their country are protected by certain internationally accepted minimum standards about workers' rights'. The bill specifically nominates a number of conventions a country must have ratified before the Minister can sign a trade agreement. The nominated ILO conventions are:

- The Convention concerning Freedom of Association and Protection of the Right to Organise [9 July 1948];
- The Convention concerning the Application of the Principles of the Right to Organise and to Bargain Collectively [1 July 1949];
- The Convention concerning Discrimination in Respect of Employment and Occupation [25 June 1958];
- The Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour [17 June 1999];
- The Convention concerning the Reduction of Hours of Work to Forty a Week [22 June 1935];
- The Convention concerning Occupational Safety and Health and the Working Environment [22 June 1981];
- The Convention concerning the Application of the Weekly Rest in Industrial Undertakings [18 November 1921];
- The Convention concerning Weekly Rest in Commerce and Offices [26 June 1957].

By way of example, China has not ratified some of these conventions, including those on freedom of association and the right to organise and bargain collectively, despite the country being a member of the International Labour Organisation since 1919. If the Bill was to be enacted Australian would be forbidden from striking a free trade deal with its largest trading partner. Australian and China have been involved in protracted negotiations since 2005. Australia is seeking greater market access for farm products, while China is demanding a better deal on investment

The Government has set an ambitious target to clinch three free trade deals by the end of 2014 with South Korea¹⁰, Japan and China. In the NFFs view, the Bill may be seen as raising national sovereignty issues and interfering with labour standards set by each country's government and possibly inhibit reaching a trade agreement with these countries.

7. CONCLUSION

Workers' rights are a contentious part of the public debate surrounding the enactment of Free Trade Agreements (FTAs). Labour rights advocates criticise these regimes for reflecting a zealous pursuit of trade and investment deregulation without creating an institutional infrastructure sufficiently protective of workers basic needs, such as respect treatment, high work and safety standards, liveable wages and benefits, and rights of association and collective bargaining.

Opponents of current FTAs assert that while international free trade may bring certain benefits to a national economy, workers often bear a disproportionate burden because low labour standards, amid competition for scare investment capital, offer developing countries a comparative economic advantage. The Australian government is currently negotiating a regional trade agreement with the US, New Zealand, Canada, Mexico, Peru, Chile, Singapore, Brunei, Malaysia, Vietnam and Japan. In the NFFs view, should the Fair Trade (Workers' Rights) Bill 2013 become law the ability to negotiate

¹⁰ The South Korean agreement was completed in December 2014.

and/or reach agreement will be hindered. This would be detrimental to the Australian farm sector and place farmers at a disadvantage to its competitors in the market place.

NFF and its members are strong supporters of multilateral trade negotiations, and of a trade agenda that delivers tangible and definitive outcomes for Australian farmers. The current Australian Policy settings already allow provision on labour standards to be included in FTAs where there is a recognised need.