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Foreign Affairs, Defence and Trade Committee  
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Thank you for the opportunity to provide comment to the committee regarding its inquiry into the *Fair Trade (Workers' Rights) Bill 2013*.

The Construction, Forestry, Mining and Energy Union of Australia (CFMEU) consists of three Divisions namely the Construction and General Division, the Forestry and Furnishing Products Division and the Mining and Energy Division. We are the major union in these industries. The CFMEU supports the bill and the submissions by the Australian Council of Trade Unions (ACTU) to whom we are affiliate and the Australian Fair Trade and Investment Network (AFTINET) of which we are a member.

Australia is a trading nation and there have been material benefits for the nation from its involvement in international trade. For most of the past 25 years, global trade and investment has been growing at twice the rate of global GDP allowing nations to create opportunities for their domestic firms in a growing international market. Unfortunately, the benefits of this have occurred in a non-uniform way across the Australian economy and across Australian society. The current rising unemployment rate is not just a product of the mining boom levelling off, it is also a result of a legacy of unfettered free trade policies. Having damaged the capacity of the manufacturing sector to compete already, more tariff reduction without securing a level playing field for import competing industries first would damage the sector further.

One of the consequences of lower tariff entry levels into the Australian market has been and continues to be the material injury to Australian industry caused by having to compete against imported goods in our domestic market. Local industry has and continues to adapt to lower entry levels for competitors. However, the continued adaptation through productivity, ingenuity and continued investment in the attributes which have traditionally helped Australian industry be world competitive in the traded goods sector is undermined by a lack of a level playing field. The Government must act to ensure that Australian industries are not placed at a competitive disadvantage by other nations whose enforcement of internationally recognised standards is lax or non-existent.

The International Labour Organisation (ILO) states that the 'violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage.'<sup>1</sup> The violation of fundamental principles and rights at work

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#### **<sup>1</sup> ILO DECLARATION ON SOCIAL JUSTICE FOR A FAIR GLOBALIZATION**

The ILO also states that labour standards should not be used for protectionist trade purposes. This bill does not have the intention or effect of using labour standards as protectionist trade purposes in that it does not seek to be more trade restrictive as it needs to be whilst promoting a mechanism to prevent the violation of fundamental principles

currently provides a significant comparative advantage that is widely used, including by producers that export to Australia. To demonstrate the scale of the problem and significance of the unfair cost advantage take the example of sawn timber, where approximately a third of the costs of production can be attributed to raw materials, a third to energy and other inputs and a third to labour inputs.

Those violating fundamental rights at work in countries Australia has trade agreements with have unfairly benefited from tariff free or reduced entry to our market, whilst maintaining sub-standard working conditions; unfairly increasing profitability at the expense of Australian industry and Australian workers and doing so through the continued exploitation of workers.

This bill should be supported in order to assist the creation of a level playing field for Australian workers, and an incentive for other nations to improve their labour standards and reduce the exploitation of workers. It is equally important to better utilise current rights that Australian industries have within the World Trade Organisation (WTO). Rights enshrined in the WTO's Anti-Dumping Agreement, the Subsidies and Countervailing Agreement and the Technical Barriers to Trade Agreement have thus far been underutilised, and this Government should follow the US Governments' strategy of using these mechanisms to create a leveller playing field.

When assessing the eligibility of Anti-Dumping duties being levied on imported products to Australia which cause material injury to Australian industry and subsequently assessing the 'normal value' of goods produced overseas, the body responsible should take into account when constructing normal value 'reasonable costs' of production. Reasonable costs are not actual costs if the actual labour costs are deflated through violations of the fundamental rights at work. Non enforcement of national and international labour laws and fundamental rights at work by nation states effectively act as an unfair subsidy.

In addition, legitimate objectives for trade restrictions according to the agreement on Technical Barriers for Trade include the 'protection of human health or safety'. We know from decisions of the WTO that striving to assure health and safety is not limited to its protection exclusively in the importing country, but can also apply to it being realised in the producer country. For instance there is the well-known decision of the WTO appellate body related to a U.S. embargo on imports of shrimp fished with methods that killed endangered sea turtles. The embargo was found to be justified. Violations of the fundamental rights at work are incompatible to the protection of human health and safety of the workers doing the producing, their families and their communities on a number of grounds and Australia has a significant interest in the violations ceasing.

## **Conclusion**

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) and Malaysia. The countries covered by these FTAs account for 28 per cent of Australia's total trade. Australia is currently engaged in nine FTA negotiations: five bilateral FTA negotiations (China, Japan, Korea, India and Indonesia) and four plurilateral FTA negotiations (the Trans-Pacific Partnership Agreement (TPPA), the Gulf Cooperation Council (GCC), the Pacific Trade and

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and rights at work and ensuring that violations are not used as a cost advantage by competitors overseas. The bill does not seek to impose Australian Industrial Relations laws in our trading partner's jurisdictions.

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 Government, when in Opposition, criticised the former Government heavily for the loss of manufacturing jobs to the economy. In order to reverse this trend the Government should acknowledge that job losses in manufacturing over that period was heavily contributed to by a combination of the following factors:

- The signing of free trade agreements and unilateral trade deregulation by the former Hawke/Keating, Howard and Rudd/Gillard Governments in the absence of enforceable and comprehensive labour chapters in trade agreements providing for a greater level playing field for import competing industries.
- The trade-off of Australian industry's WTO rights (for instance in 2005 the ceding of the right to treat China as a Non Market economy for Anti-Dumping purposes) as a condition for entering trade agreement negotiations.
- The Australian Government's unwillingness to use remaining trade remedies and standards conformity enforcement on imports (also having the effect of providing a disincentive for countries to enter liberalising trade agreements with Australia when Australia demanded a level of fairness through the mechanisms of labour chapters)
- The historically high Australian Dollar over the period

The Australian dollar remains at a historically high level so the need for a level playing field is as great now as it has been in the previous period. The passing of this bill **AND** the use of trade remedies and so called 'technical barriers to trade' to prevent Australian industry being undermined by competitors violating fundamental rights at work, labour standards and laws should be an action taken by the Government as a matter of urgency.