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Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
Department of the Senate, Parliament of Australia

By email: legcon.sen@aph.gov.au

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Dear Committee Secretary

Please accept this submission into your **Inquiry into the International Trade Integrity Bill 2007**. I was the drafter of a letter sent to the Attorney General by 22 Australian lawyers and academics on 13 April 2006, urging the Government to empower the Cole Commission to report on whether the Australian government breached any Australian or international laws in relation to the United Nations' Oil-for-Food program (a copy of that letter is attached).

In general, I sincerely welcome this Bill and commend the Government for responding so fully to the recommendations of the Cole Inquiry. The Bill makes a vital contribution to strengthening the domestic legal framework for implementing United Nations sanctions regimes and in ensuring that Australia complies with its international obligations under the UN Charter.

I would, however, make two short points. First, there is a risk that the automatic incorporation via regulation of persons or entities proscribed by the Security Council (proposed s 6(2)(a) of the *Charter of the United Nations Act 1945*) may give rise to procedural fairness concerns. Certainly in the anti-terrorism context, the Security Council's proscription powers have generated serious human rights concerns, since proscription (which carries serious consequences) has been based on a low standard of proof, untested evidence, and an absence of an opportunity for affected persons to respond: see Ben Saul, *Defining Terrorism in International Law* (Oxford University Press, Oxford, 2006), pp 231-233.

My other concern is with what remains outside the Bill, which focuses largely on the conduct of individuals or companies rather than on the specific responsibilities of the Australian government in upholding sanctions. The Cole Inquiry was not empowered, and did not report on, the wider question of whether Australia breached its *international* obligations in relation to the Iraq sanctions. Specifically, there remain international legal questions as to whether Australia had a duty to ensure (as a matter of strict liability) that its companies were not in breach of sanctions, and whether that duty could – or could not – be discharged by relying on the United Nations vetting of commercial contracts.

At a minimum, the Bill should include a specific provision creating a strict liability offence for any Australian official or minister to (intentionally or recklessly) authorise or permit the export or import of UN-sanctioned goods (additional to the proposed offences of actually importing or exporting such goods). Such an offence would make it clear to Australian officials that a proper inquiry must be made into whether proposed trade may violate sanctions – and that negligence is not a sufficient defence.

Yours sincerely