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CFMEU
NATIONAL OFFICE
Construction Forestry Mining & Energy Union
AUSTRALIA

Introduction

The CFMEU is Australia's main trade union in construction, forestry and furnishing products, mining and energy production. We welcome the opportunity to submit to the Foreign Affairs, Defence and Trade Legislation Committee inquiry into the *Customs Amendment (China-Australia Free Trade Agreement Implementation) Bill 2015* and the *Customs Tariff Amendment (China-Australia Free Trade Agreement Implementation) Bill 2015*.

We strongly support the submissions of the Australian Council of Trade Unions (ACTU)- of which we are an affiliate, the Electrical Trades Union of Australia (ETU) and the Australian Manufacturing Workers' Union (AMWU).

We take this opportunity to reject the insulting and defamatory accusations by the Coalition Government, that the Union's campaign against specific provisions in the China Free Trade Agreement (ChAFTA) is racist and xenophobic. We note that the Government's recent concessions to the ALP on ChAFTA, where it has backed down from its initial position of refusing to acknowledge any problems with the agreement, show that these accusations were false.

Unfair Tariff Outcomes

<u>Inequitable Treatment</u>

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Free Trade should work both ways and the proposed ChAFTA does not. The proposed Bill, consistent with the agreement, eliminates all tariffs on Chinese imports (95% of tariff lines on ratification and 100% within 5 years) whereas China maintains tariff protection under the agreement for no less than 257 tariff lines, for eternity.

Some of Australia's principle agricultural sectors such as cotton, rice, wheat, sugar, and vegetable oil do not benefit from any changes to China's high tariff regime under the agreement. Some fertilizer producers and others are in the same category.

Other sectors in the agricultural industry are high profile supporters of the deal due to market access enhancement from the agreement. But the entire agriculture industry employs 130,000 people in Australia and by contrast the forestry and forest products industry employs 120,000 people.

But when it comes to manufactured forest products including copy paper, sanitary paper, packaging, newsprint and some plywood, particleboard and Medium Density Fibreboard (MDF), China are not obligated to remove tariffs on Australia's exports ever. The Regulation Impact Statement justifies this on the grounds that China considers their forestry and forest products industry "sensitive".

With the forestry industry being the lifeblood on many regional communities in Australia, it is sensitive here too but in disparity all Australian products within five years lose all tariff defence under the proposed agreement. As a union which represents workers in the forestry and forest products industry we support the recommendations made to the Joint Standing Committee on Treaties (JSCOT) and the Senate references committee

by the Australian Forest Products Association which, (like our submissions to those inquiries do also) demanded:

"Until there was a reciprocal commitment for comparable reductions in Chinese tariffs on Australian paper exports to China, the pre-existing Australian tariffs on Chinese paper imports should remain in force."

…due to the fact that the effect of this not occurring:

> *"Will have an adverse impact on investment and trade in the Australian paper industry".*

The Australian Industry Group also warned companies impacted by inequitable tariff treatment could:

> *"Make the strategic decision to move manufacturing to China, as this is the business model currently being rewarded under ChAFTA"*

Adverse impact on investment and trade in the industry and offshoring obviously means adverse impact on jobs and communities so the union supports this recommendation from AFPA and also would like it extended to wood products which have a similar treatment by the agreement including all tariff lines related to plywood, particle board and Medium Density Fibreboard (MDF).

Recommendations:

1. The committee recommend the Bill be amended to remove Australia's proposed tariff commitments for products under codes 4410 and under 48.
2. The committee recommend Australian wood and paper sectors maintain their tariff duties pending acceptable outcomes achieved through bilateral discussions with China on a timeline for reciprocal tariff reduction/abolition or alternative acceptable compensation for the Australian industry being agreed.

Tariff Elimination on Imports Despite No 'Level Playing Field'

The Bill reduces revenue and therefore industry assistance for Australian industry to the tune of over $4 billion over the forward estimates.

Much has been made in the ChAFTA debate about the market access for Australian producers in contrast to the market access achieved by New Zealand producers in relation to the China New Zealand Free Trade Agreement of 2008. But little has been made about the market access to China provided by New Zealand compared to Chinese exporters' proposed access to Australia. A cursory look at the New Zealand tariff schedule shows that many more sectors were given longer periods of adjustment with commitments staggered over 5 years as opposed to Australia's proposed commitments which sees 95% of tariffs removed immediately.

It is unsurprising therefore that the Australian Industry Group under the heading *Staging tariff reductions* in their submission to JSCOT states:

"Ai Group still has significant concerns with the imbalance of the staging of tariff reductions under ChAFTA as it appears that the fears that many Australian

manufacturers had for ChAFTA have been realised; namely that industries deemed sensitive in China remain heavily protected while most Australian industries face zero tariffs from day one of the agreement. This is an issue that has been a concern for members in other FTAs and contributes to the perception that the defensive interests of Australian companies are not considered during FTA negotiations. We understand that Australia is already a low tariff environment and while ChAFTA does not change that trajectory, it has reduced the time industry has to transition."

The concern is exacerbated because the Australian Government has provided no indication that it is willing to proactively assist with levelling the playing field in Australian domestic markets for Australian industry as compensation for losing tariff defence and there been no inclusion of labour and environmental chapters in the agreement. Given China's industrial and export profile and record, a level playing field for Australian industry is vital in the absence of tariff defence.

In our submissions to the JSCOT inquiry and senate references inquiry we made concrete, sensible proposals in order to facilitate a fair go for Australian industry in domestic markets which will be expected to compete against Chinese imports unfettered in the absence of tariffs. The recommendations included improvements to Australia's antidumping and countervailing system, new conformity assessment protocols for imports, fairer government procurement procedures, a more robust approach to the consideration of bilateral safeguards, stronger enforcement of illegal logging prohibition legislation and regulations and the delivering of the promise of full, fair and reasonable participation of Australian industry in Government supported projects and large projects.

These recommendations have been completely ignored by the Government in its JSCOT report. We also support the AMWU's submission to this inquiry which reiterates the need for industry policy to 'lift up' the more advanced value adding sectors of the economy that inevitably bare the cost of such agreements. It was these industry policies which accompanied the deregulation of the Australian economy in the 1980's and 1990's.

It is completely disingenuous for the Coalition Government to scream for bi-partisan support for liberalisation, claiming it is in legacy of the Hawke/Keating years but abdicate on their responsibilities to deliver on the other element of that legacy which is the transition of the economy, workers and communities impacted through the changes brought through that very liberalisation. This abdication is exactly what the Coalition is doing. Again, as described by the AMWU and outlined in our submission to the JSCOT and Senate References inquiries; the Government's 'Industry Innovation and Competitiveness Agenda' is *'little more than a fig leaf'* and a *'con designed to make it appear the government is doing something about getting industry more competitive and growing jobs.'*

Recommendations:

3. The Turnbull Government re-establish with its former membership (in legislation considered at the same time as this Bill) and then urgently convene the former Manufacturers' Leaders Group (which was abolished by the previous Industry Minister under the former Prime Minister) so that it can implement its' tri-partisan approach to the development of industry policy and addressing competiveness issues in Australia's economy and workplaces.

4. The Government seek and accept recommendations from the Manufacturers' Group on the 'level playing field' issues outlined in this submission in regards to the antidumping and countervailing system, conformity assessment protocols for imports, government procurement procedures, bilateral safeguards, illegal logging prohibition legislation and regulations and the full, fair and reasonable participation of Australian industry in Government supported projects and large projects.

Concerning Labour Mobility Provisions

The CFMEU, along with other unions, hold significant concerns about the labour mobility sections of ChAFTA as it stands. It is bad news for our members and bad news for Australian jobs. We have outlined these concerns in our submissions to the Joint Standing Committee on Treaties (JSCOT) and Senate inquiries.

Of primary concern is the unprecedented labour mobility concessions that Australia has made under this agreement. These concessions are contained in four separate documents in the FTA package:

- Chapter 10 of the agreement itself on the movement of natural persons;
- The Memorandum of Understanding (MOU) on Investment Facilitation Arrangements (IFAs);
- A side-letter on the removal of mandatory skills assessments; and
- The MOU on Working Holiday Arrangements.

<u>Labour Market Testing</u>

Chapter 10 of the agreement is troubling as it commits Australia to remove labour market testing for all Chinese nationals in several categories. These categories are

described in ChAFTA as 'contractual services suppliers', 'intra-corporate transferees' and 'installers and services'. This means that employers will not be required to test the market to see if there are local workers to do the jobs and will not be required to offer jobs to locals first.

Specifically, Chapter 10, Article 10.4 section 3 states:

> *"In respect of the specific commitments on temporary entry in this Chapter, unless otherwise specified in Annex 10-A, neither Party shall:*
>
> *…. (b) require labour market testing, economic needs testing or other procedures of similar effect as a condition for temporary entry."*

If ChAFTA enters into force as it is, labour market testing under the Migration Act 1958 by all sponsors nominating Chinese citizens for non-concessional 457 visas in the trades, engineering and nursing occupations will no longer occur. While it is true, that some occupations are already exempt from labour market testing, evidence presented to the JSCOT inquiry into ChAFTA by the DIBP confirmed that there will be many occupations such Chinese tradespersons at category 3, engineers and nurses that are currently subject to labour market testing conditions that would not be subject to labour market testing when ChAFTA comes into force.

In addition to the agreement itself, under the unprecedented MOU on Investment Facilitation Arrangements (included as part of the China FTA package) the Governments of Australia and China can establish IFAs for projects of at least $150 million (with as little as 15% or $22.5 million Chinese investment). Under these IFAs

employers can use Chinese workers and other foreign nationals under a temporary worker visa program under concessional 457 visa labour agreements. This includes 457 visas for semi-skilled workers (i.e. sub-trade level workers such as concreters, scaffolders, truck drivers, etc.) who have never before been included in labour mobility progressions under a free trade agreement. These workers are in addition to any non-concessional 457 visa workers where labour market testing is not required under Chapter 10 of the agreement itself.

The MOU allows the project company to negotiate concessions with the DIBP on a range of issues including the occupations covered by the IFA project agreement; English language proficiency requirements; qualifications and experience requirements; and calculation of the terms and conditions of the Temporary Skilled Migration Income Threshold (TSMIT). The MOU also states that "*There will be no requirement for labour market testing to enter into an IFA.*" This means that employers will be able to hire Chinese workers under concessional 457s for projects with as little as $22.5 million investment without the need to offer jobs to locals first.

The Government had argued that Labour Market Testing for IFAs was mandatory under Department guidelines that require employers to show that there is a 'labour market need'. However, these guidelines are not legislated and are subject to change at the whim of the government. Dr Joanna Howe, a labour law and migration expert at the University of Adelaide, stated that the guidelines:

> "*Can be whittled away at any time so that the ability of these requirements to protect local workers' preferential access to jobs becomes virtually meaningless*".[1]

Stuart Rosewarne, expert on international migration at the University of Sydney confirmed that:

> *"The Department of Immigration might decide it's appropriate but there's nothing in the agreement that requires them [Department of Immigration and Border Protection (DIBP)] to mandate there will be labour market testing"*[2]

In their dissenting JSCOT report, the ALP proposed to amend the *Customs Amendment (China-Australia Free Trade Agreement Implementation) Bill 2015* by adding a new schedule which amends the Migration Act 1958. The amendments included requiring

> "*Employers nominating 457 visa workers under work agreements, including ChAFTA IFAs, to meet labour market testing requirements (legislated labour market testing requirements currently apply only to employers under the general 457 visa stream)*"

…as well as a range of other safeguards.

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[1] Howe, J. (2015), ***Abbott has sold out Australian workers to China,*** The Age, 22 Jul 2015, accessible at: http://www.theage.com.au/comment/abbott-has-sold-out-australian-workers-to-china-20150720-gigata.html

[2] Howe, J. and Rosewarne, S. (2015), ***Should Australian workers be worried about the China FTA?,*** The Drum, 31 Aug 2015, accessible at: http://www.abc.net.au/news/2015-08-31/howe-and-rosewarne-fears-about-the-china-fta/6737460

On 21 October, the Government and the ALP came to an agreement on the China FTA to amend regulation to require labour market testing in all work agreement projects (for concessional 457s) before taking on a semi-skilled temporary overseas worker.

The CFMEU recognises that while the requirement that labour market testing for concessional 457s under IFAs is a significant step towards ensuring Australian workers have the opportunity to get jobs through investments by Chinese companies, the main labour market testing exemption for 457 workers in Chapter 10 of the ChAFTA itself is not addressed. Much more work is needed in order to ensure Australian jobs are protected in the longer term.

Recommendations:

5. Require the Immigration Minister to make Labour Market Testing exemptions strictly limited to the specific categories in the text of Free Trade Agreements, and not to broader exemptions
6. Define the specific categories of occupations as per the Australia Chile Free Trade Agreement
7. Require the Minister to table information on Project Agreements in addition to Employer Agreements

This includes amendments to the Migration Act to define the categories of occupations for which labour market testing exemptions apply need as per the Chile free trade agreement; require the immigration minister to make labour market exemptions strictly limited to the specific categories in the text of free trade agreements; and require the Minister to table information on project company agreements.

Mandatory Skills Assessment

In a side letter on skills assessments and licensing as part of the ChAFTA package, Trade Minister Andrew Robb has removed the requirement for mandatory skills assessments for ten occupations, with the aim of further reducing the number of occupations or eliminating the requirement within five years. Specifically, the side letter reads:

> "*The Parties undertake to cooperate to streamline relevant skills assessment processes for temporary skilled labour visas, including through reducing the number of occupations currently subject to mandatory skills assessment for Chinese applicants for an Australian Temporary Work (Skilled) visa (subclass 457). Australia will remove the requirement for mandatory skills assessment for the following ten occupations on the date of entry into force of the Agreement.*
>
> *Automotive Electrician [321111]*
>
> *Cabinetmaker [394111]*
>
> *Carpenter [331212]*
>
> *Carpenter and Joiner [331211]*
>
> *Diesel Motor Mechanic [321212]*
>
> *Electrician (General) [341111]*
>
> *Electrician (Special Class) [341112]*
>
> *Joiner [331213]*
>
> *Motor Mechanic (General) [321211]*
>
> *Motorcycle Mechanic [321213]*

The remaining occupations will be reviewed within two years of the date of entry into force, with the aim of further reducing the number of occupations, or eliminating the requirement within five years."

From July 2009, the ALP had progressively introduced mandatory 457 skills assessments for China and other high risk countries as part of its 457 integrity reforms. These reforms were introduced to restore integrity to the 457 visa program due to concerns about the trade training standards and the extent of qualification and document fraud in some countries. The ALP JSCOT dissenting report states before the introduction of mandatory skills assessments

"it was commonplace for employers to nominate Chinese and other workers for skilled 457 visas in trade occupations but work them as semi-skilled or unskilled workers... There was also concern about trade training standards and qualifications and document fraud in some countries. Authorities like the World Bank say those concerns are still valid."

There is no sound evidence for the removal of mandatory skills assessments.

As four of the construction trades listed above have no licensing requirement for working as workers in the trade, removing mandatory skills assessments removes the only regulatory safeguard to ensure that Chinese workers possess Australian-standard skills in these trades.

As part of their original safeguards, as presented in the JSCOT dissenting report, the ALP sought to strengthen the enforcement of skills assessments and occupational

licensing requirements by creating new visa criteria and conditions for 457 visa workers including:

- *"visa applicants in these occupations either to hold the relevant licence when they apply for a visa or to demonstrate that they meet the requirements for obtaining a licence. This criterion will need to be met for the Minister to grant a 457 visa.*
- *New visa conditions will require 457 visa holders in licenced occupations:*
    - *not to perform the occupation before obtaining a licence;*
    - *to obtain the licence within 60 days of arriving in Australia;*
    - *to provide the Department with documentation showing they hold the licence, and showing any conditions or requirements imposed on their licence, before they perform the occupation;*
    - *to comply with any conditions on the licence;*
    - *not to engage in any work which is inconsistent with the licence or conditions imposed on the licence;*
    - *to notify the Department of any changes to their licence or the conditions imposed on the licence.*
- *These new visa conditions will improve the Department's ability to enforce occupational licencing requirements and ensure 457 visa workers do not operate as unlicensed workers in trades such as electrical work;*
- *Breaching these visa conditions would provide the Department with grounds to cancel the worker's visa and to impose sanctions on the nominating employer."*

Under the agreement with the Coalition, amendments to the Migration Act will be limited to skilled workers meeting the necessary licensing requirements within 90 days of

arrival as well as requirements for the holder to comply with conditions of the license; not engage in work inconsistent to the license; and a requirement to notify the department when the license is revoked, refused, ceased or cancelled; no onus of proof to provide evidence to the DIBP that the appropriate licence has been obtained or any other monitoring obligations.

Again, while we recognise that the new visa conditions negotiated between the Government and the ALP are a good starting point, without the onus on either workers or employers to provide evidence to the DIBP that the appropriate licence has been obtained, coupled with the limited resources of the DIBP to investigate and enforce licensing, there is still scope for serious misuse of the 457 visa system. We believe that there should be an onus of proof on the employer to provide evidence to the DIBP that the appropriate licence has been obtained.

Recommendations:

8. Amend the Migration Act to include all of the ALP's original amendments;
9. An onus of proof on the employer to provide evidence to the DIBP that the appropriate licence has been obtained;
10. Remove the ability of an IFA agreement to vary the English language requirements; and
11. Remove the ability of an IFA agreement to make concessions on the Temporary Skilled Migration Threshold (TSMIT) and increase the TSMIT to average weekly earnings.

<u>Working Holiday Visas</u>

The MOU on the Working Holiday visa arrangement in the China FTA package includes an unprecedented non-reciprocal 'Work and Holiday' visa agreement that provides 'up to 5,000' 462 visas each year for young Chinese to live and work in Australia for a year with no reciprocal visa arrangement allowing any young Australians to visit and work in China, let alone 5,000. All Chinese 462 visa holders will be eligible for 457 visas, with no LMT obligation on their employers.

Recommendation:

12. No increase in the annual cap of 5,000 visas until China gives reciprocal working holiday visas to Australians.

ends