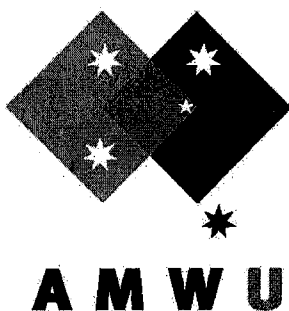


AUSTRALIAN MANUFACTURING WORKERS' UNION



**SUBMISSION TO THE
JOINT STANDING COMMITTEE ON TREATIES
THE PROPOSED AUSTRALIA - UNITED STATES
FREE TRADE AGREEMENT**

APRIL 2004

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1. Introduction

1.1 The AMWU's Submission: Fair Trade Not Free Trade

The Australian Manufacturing Workers' Union (AMWU) welcomes the opportunity to make submissions to the Joint Standing Committee on Treaties (the Committee) inquiry into the proposed Australia - United States Free Trade Agreement (AUSFTA).

The full name of the AMWU is the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union. The AMWU represents approximately 145,000 workers in a broad range of sectors and occupations within Australia's manufacturing industry. The union has members in each of Australia's states and territories.

For many years the AMWU has been an important voice for working people in debates concerning trade policy. The AMWU has consistently argued for fair trade rather than free trade. In the AMWU's submission, the proposed AUSFTA is neither free nor fair.

This submission identifies a number of problems with the proposed AUSFTA. The problems discussed include:

- Australian manufacturing's trade imbalance with the United States and the effect of tariff reductions
- The broader economic effect of the agreement
- The inadequacy of the labour chapter
- The loss of tariff revenue
- The social and cultural impact of the agreement
- The commitments concerning foreign investment
- The capitulation over sugar
- Issues concerning the rules of origin
- Issues concerning government procurement in the agreement

The AMWU's submission concludes that the problems identified with the proposed AUSFTA are such that the Australian government should not enter the agreement.

The AMWU strongly urges the Committee to recommend that Australia should not enter the proposed AUSFTA.

1.2 Supplementary Submission

The AMWU notes that a Senate Select Committee on the Free Trade Agreement between Australia and the United States of America is conducting a similar inquiry (the Senate Inquiry) concurrently with the Committee's inquiry. As the AMWU strongly opposes the Australian government entering the proposed AUSFTA it is the AMWU's intention to make submissions to both inquiries.

Unfortunately due to the timing of the closing date for submissions to the Committee's inquiry the AMWU is not in a position to provide a comprehensive economic assessment of the AUSFTA nor to fully detail the union's concerns in relation to the AUSFTA. In contrast, because of the later closing date for submissions, the AMWU's submission to the Senate Inquiry will include a more complete

analysis of the agreement, including the results of economic modelling the AMWU is commissioning into the likely effects of the agreement.

If the Committee is of the view that the AMWU's submission to the Senate inquiry may be of value to the Committee's deliberations, the AMWU would be pleased to forward a copy of the union's submission to the Committee upon its completion.

2. Australian Manufacturing's Trade Imbalance With The United States and The Effect of Tariff Reductions

2.1 The Status Quo: The Current Trade Imbalance

Australia currently has a significant trade imbalance with the United States. The Australian Bureau of Statistics reported that for 2002/03 Australia's merchandise trade deficit with the United States was \$12,129 million. This was easily the highest merchandise trade deficit that Australia recorded with any trading partner.¹

Australia's trade imbalance with the United States was most acute in manufactured goods. For example, in the 12 months ended March 2003 the Australian Bureau of Statistics reported that Australia had:

- a \$2,554 million trade deficit in chemical and related products;
- a \$696 million trade deficit in manufactured goods classified chiefly by material;
- a \$10,459 million deficit in machinery and transport equipment; and
- a \$2,267 million trade deficit in miscellaneous manufactured articles.²

Given the importance of the automotive industry to Australian manufacturing and the treatment of automotive products in the proposed AUSFTA, it is appropriate to give additional consideration to the trading relationship between the Australian automotive industry and the United States automotive industry. Interestingly, the latest U.S. Government trade data shows that in 2003 the United States had a massive trade deficit of \$US 109, 982 million with the rest of the world in the automotive sector (as approximated by the HS Code 87). The enormous trade deficit in the automotive sector included a \$US 41,240 million deficit with Japan, a \$US 17,807,318 deficit with Germany and a \$US 15,815 million deficit with Mexico. However, the country with which the United States had the *largest trade surplus* in the automotive sector - an amount of \$US 885 million - was Australia. It is notable that in the auto components sector (which is within the broader automotive sector), the United States recorded a \$US 272 million trade surplus with Australia for 2003.³

2.2 The Status Quo: The Current Tariff Regimes

Although both nations presently have a low tariff structure, U.S. manufacturing tariffs are generally lower than Australian manufacturing tariffs. According to the World Trade Organisation, the average applied tariff for non-agricultural products for the United States in 2002 is 4.2%. In contrast, the World Trade Organisation has reported that Australia's average applied MFN tariff for industrial products is 4.7%.⁴

Again, given the importance of the automotive industry to Australian manufacturing and the treatment of the automotive industry in the proposed AUSFTA, it is relevant to note that in the

¹ Australian Bureau of Statistics - International Trade in Goods and Services - 5368.0 - February 2004.

² Australian Bureau of Statistics - International Merchandise Trade - 5422.0 - March Quarter 2003.

³ See US Office of Trade and Economic Analysis's "TradeStats Express" website at <http://ese.export.gov>.

⁴ World Trade Organisation, Trade Policy Review, United States of America, 1993; World Trade Organisation, Trade Policy Review: Australia, 2002.

automotive sector, tariffs on Australian goods going into the United States are generally lower than the tariffs on U.S. goods coming into Australia.

For example, most auto components and passenger motor vehicles imported from the United States into Australia face a 15% tariff (10% from 1 January 2005) whereas (with the much publicised exception of utes) most auto components and passenger motor vehicles exported from Australia to the U.S. face considerably lower tariff rates of around 2.5%.

Therefore, while the vast majority of tariffs on manufactured goods in *both* nations will fall to zero upon entry into the proposed AUSFTA, Australian tariffs will too often have further to fall.

2.3 The Impact of the Proposed Tariff Reductions - A Minister Asleep at the Wheel?

Australia's large trade deficit on manufactured goods with the United States can, at least in large part, be attributed to the larger economies of scale enjoyed by U.S. manufacturers as well as U.S. manufacturing's higher rates of investment in research and development and technology. More recently, the U.S. trading position has been dramatically enhanced by downward movements in the value of the U.S. dollar. Such advantages will not disappear overnight.

What then will happen when Australia surrenders its tariff advantage over the United States virtually overnight? The AMWU submits that it is clear that to the extent employers are unable to pass losses directly on to their workers through insecure forms of employment and downward pressure on wages and conditions, increasing numbers of Australian manufacturers will either cease production or move offshore.

It is in this context that the AMWU notes Canada's experience in relation to free trade agreements with the United States points to the risk of large scale job losses, particularly in manufacturing. Between 1989 and 1997 it has been estimated that Canada lost 276,000 jobs as the 870,700 export jobs created were not enough to match the 1,147,100 jobs destroyed by imports.⁵

The government has been quick to promote the potential for Holden to increase exports of utes to the U.S. market. However, as the Victorian Minister for Manufacturing and Exports told Mark Vaile, General Motors is most unlikely to allow this to happen in any volume.

The head of General Motors North American operations, Mr. Bob Lutz, pointed out to the Detroit Press, that if the Australian manufactured Monaro (exported to the U.S. and co-badged as the Pontiac GTO) achieved sufficient volumes and market acceptability, production would be shifted from Australia back to the U.S. Even if GM Australia had the capacity (which it does not) a favourable exchange rate (which it does not) support from American company and union officials (which it does not), why would the fate awaiting the Monaro not apply to utes as well?

Moreover, focusing only on the potential for increased exports while steadfastly ignoring the likelihood of increased imports presents a completely distorted picture of the likely effects of the proposed AUSFTA.

⁵Industry Canada, Duncan P. and S. Murphy, 1999 "The Changing Industry and Skill Mix of Canada's International Trade", Paper No. 4

As Doug Harland, Manager of Toowoomba Metal Technologies (a company which makes wheels for the automotive sector) pointed out on ABC radio on 6 March 2004:

We had about a 2.5 per cent tariff we paid on our product going into the States, they had a five per cent tariff on product coming into Australia, so the net result will be a 2.5 per cent benefit to American exporters"

The windscreen manufacturer Pilkington, has already announced the reduction of its workforce because of the loss of a 70 year old contract with Holden. The contract was lost due to increased import competition arising out of the Australia - Thailand free trade agreement.⁶ Previously Pilkington had lost a contract with Ford Australia who chose to source from China. This occurred because increasingly American companies are being required to source as much auto components as they can from China to sustain their own position inside that country's booming auto industry.

How many thousands of employees working for the Doug Harlands or the Pilkingtons out there are about to lose their job because every time the Trade Minister is required to consider the possible impact of increased imports under a bilateral free trade agreement he appears to drop into one of Dr Karl Kruszelnicki's "micro-sleeps"? Will the findings of this Committee or the Senate Inquiry force the Trade Minister to "stop, revive, survive" in time to save manufacturing jobs in Australia? Australian communities reliant on manufacturing and the AMWU can only hope so.

As the extracts below indicate, interest groups in the United States do not appear to be oblivious to the proposed AUSFTA's likely effects on manufacturing. Neither have the likely effects on Australian manufacturing workers escaped the notice of economists or a number of important stakeholders.

2.3.1 Commentary Concerning the Effect on the Manufacturing in the United States

The President of the National Association of Manufacturers has predicted that the AUSFTA will bring a \$US 2 billion gain per annum to U.S. manufacturing:

"This superb agreement can result in close to 2 billion dollars in new U.S. manufactured goods exports"

"With all the up-front benefits for manufacturers and the American economy in general, there is no reason to delay in getting this FTA implemented"⁷

The U.S. Trade Representative had the following to say to the *Wall Street Journal* in relation to the proposed AUSFTA on 3 March 2004:

"This agreement will eliminate tariffs on more than 99% of U.S. manufactured goods exports to Australia on day one. Those exports account for 93% of total U.S. sales to Australia's large market, and support 150,000 good-paying American jobs. In creating new export opportunities for America's manufacturers, this deal will help a vitally

⁶Bachelard M, "Holden Dumps Its Aussie Glass Firm", *The Australian*, 12 February 2004 page 4.

⁷Media release of National Association of Manufacturers 8 February 2004. The media release can be found at www.nam.org.

important segment of our economy while also expanding markets for America's services firms, creative artists, and farmers."

...

"Australia is America's ninth-largest export market, and a significant consumer of American-made products such as aircraft, construction equipment, trucks and SUVs, machinery, chemicals, and paper. Every year, Australia buys more than \$13 billion in products from the United States. Every single U.S. state sells to Australia, and it is a particularly important market for companies in the heart of our Midwestern manufacturing belt. With virtually all of those exports going duty-free under this agreement, America's manufacturers estimate they could sell \$2 billion more per year to Australia, and they predict that U.S. national income would grow by nearly that much as well."

Meanwhile the U.S. Business Roundtable said in a press release on 9 February 2004:

"The U.S.-Australian free trade agreement will significantly further economic growth in America. This agreement will also strengthen our more than 50-year relationship with one of America's most reliable allies. Tariffs will be eliminated for more than 99% of U.S. products and will boost U.S. exports to Australia by close to \$2 billion. This will mean increased output and new jobs in our nation."

A U.S. Chamber of Commerce Letter to the U.S. House of Representatives on 19 February 2004 stated:

"Bilateral trade between the United States and Australia reached over \$28 billion last year, and the United States enjoys a substantial trade surplus with Australia of over \$6 billion. The FTA would further eliminate trade barriers, lower tariffs and provide increased market access for U.S. companies. By knocking down trade barriers in Australia and in the rest of the world, we can help support even more American jobs."

And the Chairman of the American - Australian Free Trade Agreement Coalition claimed in a press release on 9 February 2004:

"This is the most significant reduction of industrial tariffs ever achieved in a U.S. free trade agreement. The United States is the largest and Australia the 15th largest economy in the world and this agreement will strengthen these economies even further. American workers will benefit the most from this deal, especially manufacturing jobs"

2.3.2 Commentary Concerning the Effect on Manufacturing in Australia

Meanwhile, the original Centre for International Economics (CIE) report commissioned by the government predicted a worsening of the bilateral trade balance in the automotive sector under a AUSFTA and a contraction in output in the industry:

"the majority of additional exports from the US to Australia as a result of AUSFTA are manufactured goods ... For example US exports of motor vehicles and parts to Australia

increase by US\$525 million following Australia's elimination of bilateral motor vehicle and parts tariffs."⁸

...

"However we observe a slight fall in the output of the Australian MVP sector, meaning that the sector's loss of market share to US MVP imports outweighs any expansion effect brought on by cheaper production inputs and increased export opportunities to the US."⁹

The study commissioned by the Victorian Department of Premier and Cabinet from the Centre of Policy Studies came to similar conclusions about the impact of AUSFTA on Australia's auto and component industry. As the authors of the study concluded in summarising the impact on Victoria "over 1,100 full and part-time jobs will be lost from the Motor Vehicles and Parts Industry in the long run. Of this around 800 will come from Melbourne and almost 200 from the Barwon region."

A University of Michigan analysis of a "free trade deal" between the United States and Australia (completed prior to the text of the agreement becoming available) predicted a small overall gain as a result of the agreement but also a reduction of output and employment in many Australian industries including: Agriculture, Mining, Leather Products and Footwear, Wood and Wood Products, Chemicals, Non-metallic Mining Products, Metal Products, Transportation and Equipment, Machinery and Equipment, Other Manufactures, Electricity, Gas and Water, Construction and Government Services.¹⁰

The AMWU also notes that the AMWU expects that the more detailed econometric modelling the union has commissioned from NIEIR will show far larger job losses in the auto and component industry in Victoria and South Australia than the study commissioned by the Victorian Department of Premier and Cabinet from the Centre of Policy Studies, as well as significant job losses across a wide range of manufacturing industries throughout Australia.

In addition to the above warnings there have been mixed signals coming out of Mitsubishi and Toyota. Prior to the finalisation of the AUSFTA Ken Asano, the Chief Executive of Toyota Australia, was quoted in *The Age* on 1 December 2003 as saying:

"A free-trade deal between Australia and the US that cut automotive tariffs quickly would be "suicide" for the local industry".

Similarly, there continues to be speculation about where Australia will fit into a forthcoming review of Mitsubishi's world-wide operations.¹¹ The proposed AUSFTA will do nothing to encourage Toyota or Mitsubishi to remain committed to Australian manufacturing.

⁸ Centre For International Economics, "Economic impacts of an Australia - United States Free Trade Area", June 2001, at at page 43.

⁹Ibid at at page 40.

¹⁰Brown D, Kiyota K, Stern R, "Computational Analysis of the US Bilateral Free Trade Agreements with Central America, Australia and Morocco", University of Michigan, February 2004.

¹¹See for example the article entitled "Long Term Doubt Over Mitsubishi" by Michael McGuire and Robert Wilson in *The Australian* on 1 April 2004.

As the Committee would be aware, the closure of an automotive plant in Australia would be a disaster for those communities reliant on the automotive plant. Submissions to the 2002 Productivity Commission Inquiry suggested job losses from Mitsubishi's closure in South Australia would be somewhere between 11,000 and 22,000. If the AUSFTA in anyway inhibits Mitsubishi's competitiveness relative to other producers and its capacity to export product to North America, it could be the final nail in the coffin for this company.

Not only would this be a disaster for South Australia, the flow on effects from such a closure would have very serious consequences for the Australian manufacturing industry as a whole.

2.3.3 Some Further Context: The Rising Aussie Dollar

The AMWU asks that the Committee be particularly mindful of the challenges faced by Australian manufacturers and Australian manufacturing workers as a result of the recent appreciation of the Australian dollar. While in April 2001 the Australian dollar fell to a low of US\$0.48, the dollar is now consistently above \$0.75. Last year alone the dollar rose by around 33%. In a small to medium sized open economy, a currency appreciation of such a magnitude inevitably puts significant pressure on many manufacturing businesses.

In a recent survey the Australian Industry Group found:

- 57% of exporters reported a reduction in export orders due to the higher Australian dollar in 2003. This is estimated to have resulted in the loss of \$3.2 billion export orders.
- 53% of Australian manufacturers reported increased import competition. This is estimated to have resulted in the loss of \$4.1 billion orders.
- The combined loss of \$7.3 billion income from fewer exports and imports resulted in nearly 10% of manufacturers employing fewer workers because of the dollars appreciation.
- With the higher dollar, around 20% of manufacturers are considering moving some of their production offshore.¹²

At the same time, in the recent round of AMWU delegate consultations in the lead up to the AMWU's National Conference later this year, delegates reported rising job insecurity and increased levels of casualisation as Australian businesses have sought to assign a greater proportion of the risk of doing business in a global economy directly to their workforce.

In such circumstances a preferential trade agreement with the United States, which requires Australian manufacturers to face down the most powerful manufacturing nation in the history of the world, is clearly not the answer for Australian manufacturing or Australian manufacturing workers.

Moreover, it is the AMWU's concern that the proposed AUSFTA will not only cost Australia manufacturing jobs in the short term to medium term but may well have the effect of tying one hand behind the back of future state and federal governments when it comes to the type of flexible and coordinated policy development that will be essential to growing manufacturing in Australia in the long term. This additional effect of the proposed AUSFTA is further developed in the context of the AMWU's discussions of foreign investment and government procurement later in this submission.

¹²See Aussie Dollar Challenges Manufacturing Competitiveness, Australian Industry Group, January 2004.

The AMWU urges the Committee to recommend that the Australian Government not enter the proposed AUSFTA on the basis that the AUSFTA will negatively impact upon Australia's manufacturing industry and Australian manufacturing workers.

3. The Broader Economic Effect Of The Agreement

The AMWU submits that the government's credibility on the issue of the overall economic costs and benefits of the agreement has been severely compromised. The government's misuse of earlier modelling, the highly questionable handling of the ACIL Consulting report and the refusal to involve the Productivity Commission in any assessment of the proposed AUSFTA is enough to raise legitimate concerns about the governments willingness to play politics with the economics of the proposed AUSFTA.

The AMWU strongly submits that the fact that the government does not have the economic modelling that it will presumably use to justify entering the proposed AUSFTA available for public scrutiny at the time of the close of submissions into this inquiry is highly unsatisfactory.

In such circumstances, the AMWU has sought to commission independent modelling of the effect of the agreement from the National Institute of Economic and Industry Research. Subject to the Committee's willingness to receive supplementary submissions, the AMWU can provide the results of that modelling when they become available.

The AMWU notes however that notwithstanding the unavailability of the government's latest economic modelling, the weight of opinion of mainstream economists appears to be that the broader economic effect of the agreement on Australia will be negative:

- ACIL Consulting in its report "A Bridge Too Far - An Australian Agricultural Perspective on the Australia/United States Free Trade Area Idea: A Report for the Rural Industries Research and Development Corporation February 2003 " predicted that a AUSFTA agreement would create losses rather than gains for Australia.
- An International Monetary Fund Working Paper "The United States and the New Regionalism/Bilateralism "¹³ also found that a bilateral trade agreement between Australian and the United States was likely to create losses for Australia - particularly if agricultural goods were not included.
- The Productivity Commission has twice questioned the economic utility of bilateral agreements. Once in its Staff Working Paper "The Trade and Investment Effects of Preferential Trading Arrangements - Old and New Evidence"¹⁴ and most recently in its Annual Report¹⁵.
- Greg Cutbush, of ACIL Consulting when pushed by Michael Brissenden on the ABC's 7:30 report indicated: "I would be expecting small single digit billion negative answers on this deal."¹⁶
- Professor Ross Garnaut has many times questioned the economic gains to be made by pursuing a bilateral free trade agreement with the United States.¹⁷

¹³The working paper by Alvin Hilaire and Yongzheng Yang is coded WP/03/206.

¹⁴Adams R, Dee P, Gali J and McGuire G, "The Trade and Investment Effects of Preferential Trading Arrangements - Old and New Evidence", Productivity Commission Staff Working Paper, Canberra, May.

¹⁵Productivity Commission Annual Report 2002-3003, page 14

¹⁶The interview was broadcast on 11 February 2004 on the ABC. A transcript can be found at www.abc.net.au/7.30/content/2004/s1043094.htm.

- Economists writing in the press have been equally sceptical of the overall benefits of a free trade agreement with the United States for instance Alan Wood, Economics Editor of *The Australia* wrote in an article titled "If this FTA is so great, why won't a scared John Howard let the Productivity Commission review it?":

"Because the Government has already determined the result it wants and it can't trust the [productivity] commission to deliver it"

"The modelling work commissioned by the Government is not going to convince anybody if it simply confirms Howard's view. It certainly won't dispel the suspicion the Government has something to hide, so the FTA may end up a political liability rather than an asset for the Government."¹⁸

The AMWU submits that the proposed AUSFTA will not deliver the gains to Australia that the government has previously claimed. The AMWU submits that the proposed AUSFTA will in fact deliver more costs than benefits for the Australian economy.

The AMWU urges the Committee to recommend that the Australian Government not enter the proposed AUSFTA on the basis that the agreement will not be economically or socially beneficial to Australia.

The AMWU further urges the Committee to recommend that for future trade agreements no JSCOT review should take place until the government's final economic modelling of the agreement is made public and there has been an opportunity for analysis of that modelling.

¹⁷See for example Professor Garnaut's submission to the Senate Foreign Affairs, Defence and Trade Committee's Inquiry into the proposed Australia - United States free trade agreement and the general agreement on trade in services. The submission can be downloaded at www.apf.gov.au/Senate/committee/FADT_CTTE/gats/submissions/sublist.htm

¹⁸See the article "If this FTA is so great, why won't a scared John Howard let the Productivity Commission review it?" Allan Wood, *The Australian*, 9 March 2004.

4. The Inadequacy Of The Labour Chapter

The AMWU submits that Australia should not enter trade agreements that do not guarantee that all parties subject to the agreement must observe the core labour standards contained in the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work. These standards include:

- the right of workers and employers to freedom of association and the effective right to collective bargaining (conventions 87 and 98);
- the elimination of all forms of forced or compulsory labour (conventions 29 and 105);
- the effective abolition of child labour (conventions 138 and 182); and
- the elimination of discrimination in respect of employment and occupation (conventions 100 and 111).

The Labour Chapter in the proposed AUSFTA contains various commitments to "strive" to ensure that certain internationally recognised labour principles are upheld. Indeed the first Article of the Labour Chapter the parties purport to "reaffirm their obligations as members of the International Labour Organisation (ILO) and their commitments under the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up". However, it is important to recognise that these commitments are *not* enforceable under the AUSFTA.

The *only* part of the Labour Chapter that is enforceable under the AUSFTA's disputes settling procedure is the obligation contained in Article 18.2.1(a). Article 18.2.1(a) provides:

"A Party shall not fail to effectively enforce its labour laws, through a sustained or recurring course of action or inaction, in a manner affecting trade between the Parties, after the date of entry into force of this Agreement."

This obligation is watered down by Article 18.2.1(b) which provides:

"The Parties recognize that each Party retains the right to exercise discretion with respect to investigatory, prosecutorial, regulatory, and compliance matters and to make decisions regarding the allocation of resources to enforcement with respect to other labour matters determined to have higher priority. Accordingly, the Parties understand that a Party is in compliance with subparagraph (a) where a course of action or inaction reflects a reasonable exercise of such discretion, or results from a bona fide decision regarding the allocation of resources."

The AMWU submits that the protections for workers contained in Article 18.2.1, which are the only enforceable protections in the agreement, are so slight as to be almost meaningless in the context of the AUSFTA.

The AMWU urges the Committee to recommend that the Australian government not enter the proposed AUSFTA on the basis that the AUSFTA does not contain clauses which guarantee the observance of core labour standards.

5. The Loss of Tariff Revenue: A \$1.5 Billion Black Hole

The U.S. Trade Representative has claimed in its fact sheet on the AUSFTA:

``Because Australian tariffs are much higher than U.S. average tariffs, American firms today pay 10 times as much in total annual import tariffs to Australia as the U.S. collects from Australian imports. The U.S.-Australia FTA will eliminate this disparity."¹⁹

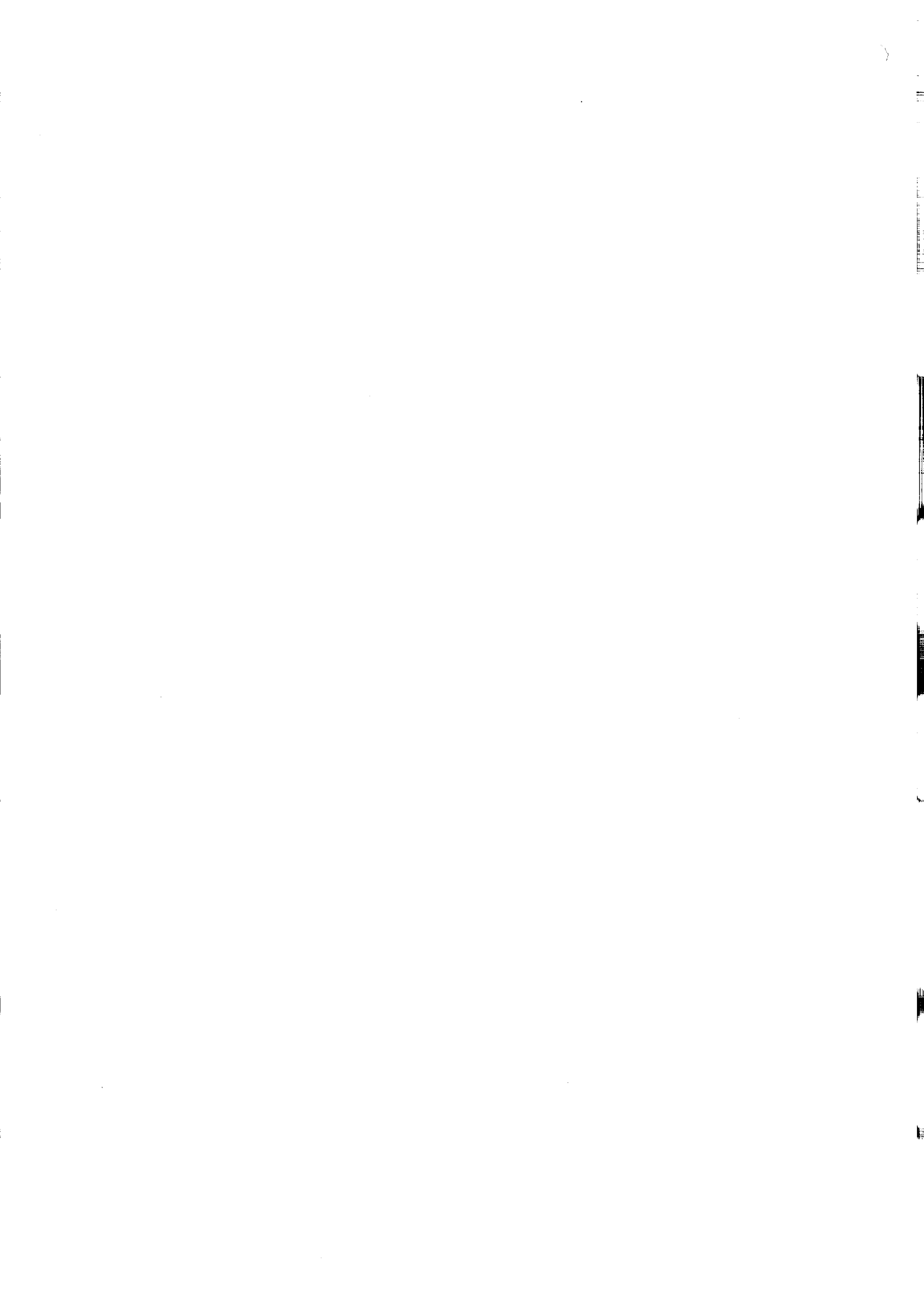
The AMWU condemns the Australian government for proposing to enter an agreement which would eliminate such an obvious benefit to Australia.

The AMWU notes that even the National Impact Assessment (which considerably underestimates the cost of the agreement to the Australian taxpayer by not including the additional administration costs of the agreement or the effect of trade diversion flowing from the agreement) indicates that the Australian taxpayer loses \$190 million in 2004/05, \$400 million in 2005/06, \$420 million in 2006/07 and \$450 million in 2007/08.

This money would be better spent on health, education or local industry policy initiatives - rather than as a \$1.5 billion leg up to U.S. multinationals.

The AMWU urges the Committee to recommend that the Australian government not enter the proposed AUSFTA on the basis of the huge cost to the Australian taxpayer.

¹⁹The fact sheet can be downloaded at www.ustr.gov/new/fta/australia.htm.



6. The Social and Cultural Impact of the Agreement

The AMWU is an active member of the Australian Fair Trade and Investment Network (AFTINET). In submissions to the Committee, AFTINET has identified serious concerns in relation to the social and cultural impact of the proposed AUSFTA. The AMWU adopts the submissions of AFTINET and commends them to the Committee for its consideration.

In addition, the AMWU wishes to expressly state its opposition to the inclusion of a number of matters in the proposed AUSFTA.

The Pharmaceutical Benefits Scheme

The proposed AUSFTA contains provisions which require changes to Australia's Pharmaceutical Benefits Scheme. The changes appear likely to provide benefits for U.S. multinational pharmaceutical companies at the expense of the Australian taxpayer. In this context, the AMWU particularly notes the comments of Republican Senator Jon Kyl to a US Senate Finance Committee, quoted in the *Sydney Morning Herald* 11 February 2004:

"One of the ways of addressing the causes [of high US pharmaceutical prices] is to get the other countries of the world to help bear part of the burden of the R&D. So, my hat's off to your [Mr Zoellick's] team and the work that you did in at least beginning to address this with Australia."

The Pharmaceutical Benefits Scheme provides affordable medicines for all Australian workers and their families. It is a scheme that works and works well. The scheme has no place in a bilateral trade agreement with the United States.

Media Local Content Requirements

The proposed AUSFTA contains provisions which will prevent Australian governments from increasing media local content requirements beyond the present levels. The proposed AUSFTA also seeks to restrict the future regulation of Australian content requirements in new media. A democratically elected Australian government should have an unfettered right to support Australian voices and Australian stories in the Australian media. The AMWU strongly submits that restrictions on media local content requirements have no place in a bilateral trade agreement with the United States.

Other Concerns

The AMWU also shares AFTINET's concerns with respect to the effect the AUSFTA will have on blood plasma product supplies; the new restrictions on the regulation of services and investment; and the likelihood of increased U.S. influence on quarantine, GE laws and environmental policy-making.

Although the AMWU is pleased that the proposed AUSFTA does not contain an investor-state complaint mechanism, the AMWU does not support the inclusion of the clause providing that a future investor-state complaints process may be developed if it is requested by an investor.

The AMWU urges the Committee to recommend that the Australian government not enter the proposed AUSFTA on the basis that it is likely to have negative social and cultural impacts on Australia.

7. The Commitments Concerning Foreign Investment

The AMWU strongly opposes the commitments in relation to foreign investment in the proposed AUSFTA.

The AMWU notes that, with a number of narrow exceptions, the proposed AUSFTA would dramatically reduce the ability of the Australian Government to vet foreign investment to ensure that it is in the national interest. Under the AUSFTA the Foreign Investment Review Board's threshold for reviewing foreign acquisitions would be lifted from \$50 million to \$800 million.

The AMWU notes that this would mean that almost 99% of Australian manufacturing companies could be acquired under the proposed AUSFTA with no regard for whether such an acquisition is in the best interests of Australia or Australian workers.

In addition by entering the proposed AUSFTA Australia would be agreeing, with a number of specific qualifications, to not place requirements on foreign investors to undertake a whole range of performance requirements including:

- (a) to export a given level or percentage of goods or services;
- (b) to achieve a given level or percentage of domestic content;
- (c) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;
- (d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;
- (e) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;
- (f) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory; or
- (g) to supply exclusively from the territory of the Party the goods that such investment produces or the services that such investment supplies to a specific regional market or to the world market.²⁰

The AMWU submits that such unwarranted restrictions on Australian industry policy are not in the national interest.

The AMWU urges the Committee to recommend that the Australian government not enter the proposed AUSFTA on the basis that the provisions in relation to investment will prevent Australian governments from legitimately seeking to exercise control over foreign investment to ensure that such investment is in the national interest.

In addition, the AMWU urges the Committee to recommend that the Australian government not enter the proposed AUSFTA on the basis the provisions in relation to investment will prevent Australian governments from using useful policy levers to enhance the benefits of foreign investment to Australia and Australian industries.

²⁰ See Article 11.9.1.

8. The Capitulation Over Sugar

The AMWU condemns the Howard government for capitulating to the United States over the exclusion of sugar from the proposed AUSFTA. The AMWU submits that sugar's exclusion, combined with the treatment of manufacturing tariffs in the proposed AUSFTA, clearly confirms what the AMWU and others were saying prior to the release of the text of the AUSFTA - that the Howard Government would not be able to negotiate a bilateral trade agreement with the United States that would provide benefits to Australian workers and their communities.

Like manufacturing workers all over the country, the 39,000 Queenslanders who are employed in the sugar industry have been badly let down by the Howard Government.

The AMWU urges the Committee to recommend that the Australian government not enter the proposed AUSFTA on the basis that the agreement does not provide market access for Australia's sugar producers.

9. Issues Concerning the Rules of Origin

The AMWU rejects the government's claims in its fact sheet on the proposed AUSFTA that the rules of origin in the agreement are "simple and objective". On the contrary, the AMWU submits that the hundreds of pages of product specific rules of origin are extraordinarily long and complex.

While the AMWU is still analysing the relevant clauses, the AMWU's preliminary view is that in many cases the rules of origin clauses in the agreement appear insufficient to ensure that only products which are substantially produced in Australia or the United States obtain concessional entry under the agreement.

The AMWU is particularly concerned that not only will the rules of origin in the proposed AUSFTA grant concessional access to products for which a significant proportion of their manufacture took place in a country that has not granted reciprocal access to Australian producers but that it will also grant concessional access to products for which a significant proportion of their manufacture has taken place in a country or countries with a very low commitment to environmental or labour standards.

For example, the partial reliance on the change in tariff classification approach used in the AUSFTA incorporates a strong element of arbitrariness into the tariff treatment of many products. The arbitrariness arises in part because the Harmonized System was not designed for the identification of origin but for the presentation of trade statistics. As the Productivity Commission has noted when recommending against a proposal to change the rules of origin under the Australia - New Zealand CER Trade Agreement to a tariff classification approach, "the extent of transformation involved in a change in tariff classification would vary between classification levels and between categories at each level".²¹ Merely because a good may have changed (or may have not changed) tariff classification in a country does not mean that a product was (or was not) substantially produced in that country.

On its present analysis the AMWU is not satisfied that the additional requirements attached to some products will be sufficient to remedy this problem.

Taking another example, a proportion of products are subject to a modified change in tariff classification approach which involves either an additional or optional (lesser) test in relation to the value of inputs not coming from either Australia or the United States. Under this approach domestically sourced materials and processes must reach an agreed proportion of the final value of the product (the regional value content requirement). The agreement provides for three methods to work out the regional value content. These methods are a "Build Down method"; a "Build Up method" and a "Net Cost method".

The Build Down method generally requires 45% regional value content. The Build Up method generally requires a 35% regional value content. The Net Cost Method, which applies only in relation to some products in the automotive sector, generally requires 50% Australian / United States content.

The AMWU is yet to be convinced such additional requirements will be effective in preventing the problems that the AMWU identified above. After all, if up to 65% of the value of a product was

²¹Productivity Commission, Rules of Origin under the Australia- New Zealand CER Trade Agreement, Interim Research Report, Canberra at page 133.

added in Mexico, why should such a product be considered to be from the United States for the purpose of the AUSFTA?

The AMWU also notes that the rules of origin appear to largely operate on a self-assessment basis. Although there is some capacity for requiring the production of records after the event, the AMWU is concerned that the agreement will in practice be difficult to monitor and enforce.

The AMWU urges the Committee to recommend that the Australian government not enter the proposed AUSFTA on the basis that the rules of origin in the agreement do not protect the integrity of the agreement and are not in the national interest.

10. Issues Concerning Government Procurement

The AMWU has completed its preliminary assessment of Australian participation in that part of the AUSFTA dealing with procurement. The AMWU will make public its full assessment in its submission to the Senate Inquiry. The AMWU will also seek to make a supplementary submission as soon as the CIE Report (which includes a chapter on the costs and benefits of Australian participation in the procurement agreement) is made public.

In summary the AMWU has concluded the following in relation to the likely operation of the chapter relating to procurement.

During the second half of this decade (2005-2010) imports into the US procurement market are unlikely to exceed \$25 billion, and on some estimates could be below \$15 billion. Some 80% of these imports will be goods and 20% services.

During the 4 years and 8 months to August 2003 Australia's share of goods imports to the U.S. (economy wide) averaged 0.55%. During the same period Australia's share of commercial services imports to the U.S. (economy wide) averaged just over 1%. These import shares achieved by Australian exporters occurred during a period when the Aussie dollar averaged just under 60 cents US.

The most reasonable assumption to make about what Australia wins from exports to the US procurement market is to assume that eventually we win approximately the same import share in the US procurement market that we win economy wide which is around 1% for commercial services and 0.5% for goods.

Based on the assumptions above (with imports in the US procurement market being between \$15 and \$25 billion Australian) Australian services exporters could by 2010 win export orders worth \$30 million to \$50 million per annum. Australian exporters of goods could win \$60 million to \$100 million per annum.

The AMWU expects that its final assessment will suggest that Australian exporters will not win more than \$100 million in exports (per annum) any time before 2010.

With Australian exporters winning less than \$100 million per annum by 2010 the other issue that must be addressed is how much of Australian government purchasing (both federal and state) will be lost as a result of making the changes required to Australia's purchasing policies.

It is unclear how much of Federal government procurement in Australia would be subject to the FTA procurement arrangements. It is also unclear whether any or all of the state governments will sign up. However we think a reasonable assumption is that if both the federal and state governments participate then by 2010 at least \$20 billion of government spending would be covered by the procurement agreement.

Participation by Australia will require the federal and state governments to give up price preferences, and a vast array of policies that require offsets or local content in return for winning orders in the Australian procurement market. This will require changing things that we do today. But more importantly it will limit what we can do in the future to help encourage higher levels of Australian industry participation through government purchasing. While ostensibly this will only apply to American firms tendering and will exclude small and medium size businesses the AMWU believes

the effects will be very large compared to what we do now and could do now with government purchasing.

The AMWU expects to conclude that by 2010 an additional amount equivalent to between \$400 million to \$600 million (or 2% to 3%) of the \$20 billion procurement market will end up in imports rather than local production. In simple terms we would suggest that by giving up the things we do today as well as the right to pursue more creative offsets policies to increase Australian industry participation the import share of that \$20 billion in government procurement will be 2% to 3% higher than would otherwise be the case by 2010.

In conclusion the AMWU would suggest that our exporters will be winning less than \$100 million per annum in export orders to the US procurement market by 2010. With 60% of that being manufactures we find it hard to imagine Australian manufacturers winning more than \$60 million. On the other hand we think that by 2010 we will have lost another 2% to 3% of the government procurement market to imports, a loss of somewhere between \$400 to \$600 million. With 60% of this being manufactures we believe Australia could be forgoing the opportunity of winning somewhere between \$240 million and \$360 million of orders as a result of the US FTA procurement agreement

The AMWU also finds it interesting to note that no Canadian provincial government has ever agreed to be part of a procurement agreement involving the United States. The Canadian Provinces have never accepted that countries like United States provide fair access to Canadian suppliers under the provisions of the WTO GPA. In addition they have consistently maintained a position that what they will gain by utilising procurement as an industry development tool for local industry far exceeds any potential benefits from access to other countries procurement market through the WTO GPA. As the Federal Government of Canada told the WTO in its last trade policy review:

"The Provinces having reviewed the offers from other signature countries, particularly that of the United States, have concluded that they would not be prepared to commit to coverage of their entities until such members were prepared to improve market access in sectors of priority interest to Canadian suppliers and to agree to circumscribe the use of small business set asides (Buy American provisions) in a manner that would provide Security of Access"²²

The AMWU believes that any econometric modeling of the procurement agreement is likely to show:

- Australia's additional exports to the United States building up to no more than \$100 million by 2010 with 60% of that being manufactures.
- Australia's additional imports building up to \$500 million by 2010 with 60% of that being manufactures.

As a final point, the AMWU notes that in the proposed AUSFTA Australia appears to have received considerably less access to U.S. government procurement than Chile was able to negotiate in the Chile - United States Free Trade Agreement. One example of the apparent disparity is that the Chile - United States Free Trade Agreement applies to 37 U.S. states whereas the proposed AUSFTA

²²WTO: Trade Policy Review of Canada: WT/TRP/5/53 pg79

appears to apply to only 27 states. Arizona, California, Illinois, Kentucky, Massachusetts, Michigan, Mississippi, Oklahoma, Tennessee and Wisconsin all feature in the Chile - United States Free Trade Agreement but are absent from the proposed AUSFTA. The AMWU submits that Australia should not be agreeing to government procurement clauses which are less favourable than what the United States has offered other nations.

The AMWU urges the Committee to recommend that the Australian Government not enter the proposed AUSFTA on the basis that the agreement contains government procurement provisions that will have a negative impact on Australian industry policy and Australian industry.

11. Conclusion

The AMWU submits that each of the problems the union has identified in this submission justifies the Australian government not taking action to enter the proposed AUSFTA.

The AMWU strongly urges the Committee to recommend that Australia should not enter the proposed AUSFTA.