Electrical Trades Union of Australia

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SUBMISSION

Foreign Affairs, Defence and Trade References Committee

Customs Amendment (CHAFTA Implementation) Bill 2015 and the

Customs Tariff Amendment (CHAFTA implementation) Bill 2015

('the CHAFTA enabling legislation')

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Executive Summary

The Electrical Trades Union (ETU) is the Electrical, Energy and Services Division of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU). The ETU represents approximately 65,000 workers electrical and electronics workers around the country and the CEPU as a whole represents approximately 100,000 workers nationally, making us one of the largest trade unions in Australia.

The ETU welcomes the opportunity to make a submission to this Senate Inquiry into the Customs Amendment (CHAFTA Implementation) Bill 2015 and the Customs Tariff Amendment (CHAFTA implementation) Bill 2015 ('the CHAFTA enabling legislation').

We, along with numerous other unions, have a number of longstanding significant concerns ChAFTA and how it will negatively impact on our members. Our concerns centre on skills assessment and licencing, overseas worker exploitation, labour market testing and our nations sovereignty.

The ETU has made submissions to the two previous ChAFTA inquiries, and we continue to rely on those submissions. A copy of the submission made to this Committee is attached (Attachment A).

We were disappointed this week to learn that the Coalition Government and Labor Opposition has struck a deal on amendments to the *Customs Amendment (CHAFTA Implementation) Bill 2015* and the *Customs Tariff Amendment (CHAFTA implementation) Bill 2015* ('the CHAFTA enabling legislation').

The deal between the Coalition and Labor on the CHAFTA enabling legislation does not protect our members' interests and those of working Australians, and we cannot in good conscience support it.

Unfortunately the final outcome does not provide meaningful protections for Australian workers as there are still gaps on critical areas such as job security, skills assessment, safety and labour market testing (LMT).

Recommendations

We recommend further amendments to the *Customs Amendment (CHAFTA Implementation) Bill 2015* and the *Customs Tariff Amendment (CHAFTA implementation) Bill 2015* that require:

- LMT for all 457 visa classes;
- LMT for all classes of workers under ChAFTA Chapter 10 Annex 10A and all similar provisions in trade agreements;
- An onus of proof on visa holders and sponsors to produce appropriate evidence of licencing qualifications within 60 days of the visa being issued. Penalties for non-compliance to include cancellation of the visa;
- Mandatory skills assessments for all overseas workers who are applying to work in any electrical occupation under all visa classes;
- All future trade agreements to include worker rights and environment clauses; and
- Exclusion of Investor State Dispute Settlement clauses from all future trade agreements.

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Skills Assessment and Licencing

The original Labor amendments put to the government regarding the CHAFTA enabling legislation proposed a reversal of the onus of proof for 457 workers in skilled trades, where sponsor employers would be required to provide proof of a license or the visa would be cancelled.

The fact that this was not acceptable to the Coalition government is an indication of the extent to which they are willing to undermine skills and safety in Australian workplaces.

On our understanding the agreed amendment will make a regulation to require skilled workers to meet necessary licensing requirements within 90 days of arrival, and before commencing work as a condition of their visa, but there will be no onus of proof or other proactive monitoring obligations.

In our view this compromise is open to serious abuse and is, in effect, simply maintain the status quo rather than delivering real improvements and safeguards.

Further the loss of the mandatory skills assessments for Chinese workers in ten occupations without reasonable alternate legislation exasperates our concerns.

We have no faith that the Department of Immigration as it is currently resourced has the capability to enforce the licensing requirements for 457 workers and there is little doubt that workplace and public safety has been significantly compromised by the Government's bloody-minded refusal to accept reasonable protections in this area.

Surely there can be no compromise on ensuring that workers in licenced trades have the appropriate qualifications, and a solution can formulated was a relatively easy administrative function and in no way affected the text of the agreement, as was indeed done with Labor's original amendments.

Labour Mobility and Labour Market Testing

We support a diverse, non-discriminatory labour migration arrangements and we recognise there may be a role for some level of temporary labour migration to meet critical skill needs. However, there needs to be a proper, rigorous process for managing this and ensuring there are genuine skill shortages and Australian workers are not missing out.

With respect to LMT, the deal that has been struck will still leave the door wide open for unlimited importation of overseas workers across a broad range of occupations and professions.

We acknowledge that the agreed bi-partisan amendments will require LMT to be introduced for projects that subject to work agreements that are struck under Investment Facilitation Arrangements, and that the scope of the amendments is such that they will also require LMT to apply to work agreements outside of formal trade instruments such as Enterprise Migration Agreements and Designated Area Migration Agreements.

However the amendments will not require LMT to apply to occupations listed in Chapter 10 Annex 10A, as workers in these occupations can be brought into Australia without a work agreements, therefore the LMT provisions under the agreed amendments will not apply.

The terms used in Annex 10A to describe the occupations are so broad that virtually any skilled, semi-skilled or professional occupation. We are particularly concerned about the scope under the 'Contractual Service Suppliers' and 'Intra Corporate Employees' occupational categories, with the later including "a specialist, who is a natural person with advanced trade, technical or professional skills and experience who must be assessed as having the necessary qualifications, or alternative credentials accepted as meeting Australia's standards, for that occupation."

Even under the proposed 'safeguard' amendments, these provisions will still clearly allow for an unlimited number of Chinese workers in trades and other professions including nursing and engineering.

The failure to require labour market testing for workers outside specific work agreements is deeply disappointing and when considered within the context of Chapter 10 Annex 10A, virtually meaningless.

Under the terms of CHAFTA, a general prohibition on labour market testing applies to positions being filled by Chinese nationals under the standard 457 visa program – or any other temporary visa types for that matter. This means an employer will not have to provide any evidence of their efforts to first employ an Australian worker to

fill those positions. The text of the agreement leaves no room for ambiguity on this point, as is clear from chapter 10, article 10.4 (3) which states:

3. In respect of the specific commitments on temporary entry in this Chapter, unless otherwise specified in Annex 10-A, neither Party shall:

(a) impose or maintain any limitations on the total number of visas to be granted to natural persons of the other Party; or

(b) require labour market testing, economic needs testing or other procedures of similar effect as a condition for temporary entry.

Significantly, the text of the agreement shows the relevant "specific commitments" made by Australia to not undertake labour market testing extend beyond high-level occupations such as 'independent executives' and 'intra-corporate transferees', and apply to the broad category of 'contractual service suppliers of China' coming to Australia for up to four years, as well as installers and services under short-term 400 visas. This is confirmed by Mr Robb's own Department, DFAT, in their information note to the JSCOT inquiry on the specific commitments under chapter 10, and is set out again clearly in the Explanatory Memorandum to the Customs Amendment Bill.

Under chapter 10, clause 10 in Annex 10-A to the agreement, a contractual service supplier is defined as:

"…a natural person of China who has trade, technical or professional skills and experience and who is assessed as having the necessary qualifications, skills and work experience accepted as meeting Australia's standards for their nominated occupation and is:

(a) an employee of an enterprise of China that has concluded a contract for the supply of a service within Australia and which does not have a commercial presence within Australia; or

(b) engaged by an enterprise lawfully and actively operating in Australia in order to supply a service under a contract within Australia."

Effectively, this means the exemption from labour market testing under article 10.4 (3) applies to any and all workers from China with trade, technical and professional skills i.e. all 651 occupations currently under the standard 457 visa program. The exemption applies regardless of whether the employer is a Chinese company or an Australian company.

It is true that some of these occupations at professional and managerial skill levels are already exempt from labour market testing on other grounds – exemptions the ACTU has never supported – but the real impact and change that will result from CHAFTA is that hundreds of occupations across nursing, engineering, and the trades, that are currently covered by labour market testing will no longer be covered. The full list of occupations that will be removed from labour market testing obligations as a result of CHAFTA is set out in the Dissenting Labor members report from the Joint Standing Committee on Treaties.

Conclusion

Overall, the 'protections' that have been secured as part of the negotiated CHAFTA enabling legislation amendments are, in our view, manifestly inadequate.

The narrowness of the labour market testing provisions still leave the door open for the driving down of conditions and the exploitation of migrant workers and the comparative weakness of the licensing regulation changes means that there are still serious safety concerns around the removal of mandatory skills testing.

Without further amendments as per the recommendations in this submission the *Customs Amendment (CHAFTA Implementation) Bill 2015* and the *Customs Tariff Amendment (CHAFTA implementation) Bill 2015* will only give effect to a Free Trade Agreement that in not in the national interest.