

Customs Amendment (ChAFTA Implementation) Bill 2015 and Customs Tariff Amendment
(ChAFTA Implementation) Bill 2015 – AMWU Submission



Australian Manufacturing Workers' Union (AMWU)

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Foreign Affairs, Defence and Trade Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Via email: fadt.sen@aph.gov.au

22 October, 2015.

Dear Senators,

Re: *Customs Amendment (ChAFTA Implementation) Bill 2015 and Customs Tariff Amendment (ChAFTA Implementation) Bill 2015*

The “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union”, known as the Australian Manufacturing Workers’ Union (AMWU) represents around 100,000 members working across major sectors of the Australian economy, in the manufacturing sectors of vehicle building and parts supply, engineering, printing and paper products and food manufacture. Our members are engaged in maintenance services work across all industry sectors. We cover many employees throughout the resources sector, mining, aviation, aerospace and building and construction industries. We also cover members in the technical and supervisory occupations in engineering and across diverse industries including food technology and construction. The AMWU has members at all skill levels and classifications from entry level to degree.

We welcome the opportunity to make this submission to the Foreign Affairs, Defence and Trade Committee in relation to the *Customs Amendment (ChAFTA Implementation) Bill 2015 and Customs Tariff Amendment (ChAFTA Implementation) Bill 2015*.

We strongly support the submission of the Australian Council of Trade Unions (ACTU) with whom we are affiliated. The ACTU submission provides a comprehensive discussion of numerous issues concerning the ChAFTA agreement, in particular on its labour mobility and labour skills provisions and impacts. We share the concerns expressed in this submission, which have also been raised by the AMWU in the context of our submission on the ChAFTA agreement to the Joint Standing Committee on Treaties.¹

This submission does not propose re-prosecuting the arguments contained in the ACTU submission. However, we feel it is worth putting on the record the AMWU’s views regarding trade agreements such as the ChAFTA as well as our view of the recently announced

¹ Available at:

http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/17_June_2015/Submissions

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opposition and government compromise package of new Migration Act regulations and guidelines.

Free trade agreements only in name

Despite what has been written about the AMWU and our views on trade, The AMWU has never been anti trade. We acknowledge trade can be good for people's wellbeing and the economy's efficiency. But we have never shied away from pointing out where trade agreements fail to live up to their promises and where they sacrifice sovereignty, fairness, labour rights or other fundamental values. This has led to the AMWU being labelled by some, including the current government, as protectionist, economically ignorant and in the context of the recent debate on ChAFTA, even xenophobic. We strongly and firmly reject all of these labels and accusations.

While they are called 'free trade agreements, bilateral trade agreements like ChAFTA are not about free trade at all. They preference trade with one country over trade with others and they preference some economic sectors over others. Rather than free trade, they should be called preferential trade agreements that pick winners along the way. This is not a 'protectionist' view, it is shared by free trade economists and orthodox economic institutions like the Productivity Commission.²

At a time when the Australian economy is becoming simpler rather than more advanced and less rather than more complex and diverse, with an increasing rather than falling reliance on primary industries like mining and agriculture, trade agreements like ChAFTA fuel this trend. They are often 'beef for car' deals that sacrifice advanced value added sectors for simpler primary sectors. This is bad for good jobs and it is bad for our longer term growth. If we are to have these agreements, they should be accompanied by industry policies to lift up the more advanced value adding sectors of the economy that inevitably bare the cost of such agreements but in our experience, the same governments that are happy to 'pick winners' through trade agreements are loath to 'pick winners' through strong industry policy.

Trade agreements don't create a fair and even trade playing field. When they don't include strong and enforceable labour and environmental chapters, as none of the recent agreements do, including ChAFTA, they open the door to companies and countries gaining competitive advantage from labour and environmental exploitation. This doesn't promote efficient resource allocation; it promotes resources being allocated to sectors and companies that result in increased negative human and environmental externalities. It does not increase prosperity in any real sense, but it does impose additional relative costs on Australian businesses which are rightly unable to exploit workers or the environment. It is bad enough to lose your job because your government withdraws support for your industry, as is currently the situation faced by tens of thousands of automotive manufacturing workers. It is worse to lose your job because the worker replacing you can be exploited overseas and you can't be at home. Yet this is the reality of what 'free trade' agreements like ChAFTA actually deliver for too many manufacturing and other workers.

² For example, see the latest Productivity Commission Annual Trade and Assistance Review, available at:

<http://www.pc.gov.au/research/ongoing/trade-assistance/2013-14>

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To be fair, trade agreements should include a basic standard of reciprocity; give and take should be balanced in a basic way, especially in terms of the removal of trade barriers. Yet too often, Australian governments agree to deals that give benefits to trade partners that we don't get ourselves. This is clearly the case with ChAFTA. The recent frustration expressed by the Australian Industry Group that the ChAFTA sees Australian tariffs for paper and packaging products go to zero on day one, while Chinese tariffs on the same products do not fall at all, is just one example.³ This has been labelled a \$58 million subsidy from the Australian government to Chinese producers, while Australian businesses struggle to compete and good Australian jobs disappear.

Trade agreements are increasingly including Investor State Dispute Settlement (ISDS) clauses, which elevate foreign investor profits above the sovereign rights of Australian citizens. Like the Korean Australian FTA and the upcoming Trans Pacific Partnership, ChAFTA includes such a clause. These clauses mean that when Australian governments make laws or policy in the interests of Australian people, foreign investors can sue for damages if their profits are affected in an international 'kangaroo court'. Kangaroo court is a fitting description because these ISDS tribunals don't need to consider the benefits of the policy change for the population, don't have an independent judiciary⁴, don't need to respect precedent and don't have an appeal mechanism. By being restricted to foreign investors, these clauses also discriminate against local businesses which can only access our domestic court system for any claims for compensation.⁵

We've seen Australia get sued for plain packaging on tobacco products through ISDS after the case was thrown out of our domestic court system and we've seen Egypt get sued by a French company for among other things increasing their minimum wage.⁶ Free trade is about the ability of companies to sell their products around the world, it isn't about elevating foreign company's rights to profit above that of Australian business or Australian's right to decent laws and policies.

There's no doubt that one of the main reasons trade agreements have deviated so far from basic notions of fairness, reciprocity and even free trade is due to how they are negotiated and implemented. In particular, there is zero transparency for the broader community while these agreements are negotiated, limited assessment of deals once negotiated and no real debate before agreements are implemented. Large parts of industry and unions generally are excluded from any detailed consultation, and we must all wait till an agreement is reached before we learn what our government has signed on to on our behalf. Once agreements are signed, there is no Parliamentary debate or vote on the agreement as a whole and no rigorous assessment of the likely impact of an agreement. Government

³ For example, see: <http://print21.com.au/china-trade-deal-threatens-australian-packaging-industry/93820> and <http://thenewdaily.com.au/money/2015/09/22/australia-china-free-trade-agreement-raw-deal/>

⁴ 'Judges' can preside over one case while acting as a paid advocate in another, even if claimants and clients overlap between the two cases – a clear conflict of interest.

⁵ This likely has an impact on relative access to finance and certainly violates basic principles of national treatment and competitive neutrality.

⁶ See: <http://aftinet.org.au/cms/veolia-vs-egypt-workers-2014>

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modelling of agreements happens before an agreement is struck and is based on a hypothetical and optimistic agreement rather than the actual agreement reached. In addition, this modelling is of the Computable General Equilibrium type, which completely abstracts from distributional and social impacts and usually includes optimistic assumptions (such as resources and people move between industries and regions seamlessly).

In the case of ChAFTA, this modelling exercise was even poorer than is usually the case, with ChAFTA being modelled concurrently with the Korean and Japanese agreements, so no specific attempt to assess the impact of ChAFTA was ever made.⁷ Like other agreements, ChAFTA's implementing legislation, which is debated in Parliament, doesn't cover the majority of concessions made in the agreement, so no parliamentary consideration is given to concessions as far reaching and potentially disrupting as ISDS clauses.

If we are to have any hope of improving these agreements in future, we need a new approach to trade policy. Not only to what we agree to in trade agreements; enforceable labour and environmental chapters, accompanying industry policy, reciprocity, but to transparency too. We need a process that sees wide and real consultation during negotiations, full and honest assessment of agreements after negotiations and full and open Parliamentary debate on all aspects of agreements.

Labour mobility and the agreement struck between the ALP and Government

As discussed above, the ACTU submission expresses our concerns regarding labour mobility and qualification recognition provisions in ChAFTA well.⁸ In addition, the ACTU submission provides a detailed exposition of our views regarding the proposed compromise reforms to migrant worker visa processes, in particular with respect to the implementation of labour market testing, qualifications and migrant worker pay.

However, it is briefly worth reiterating that in our view that while welcome, this compromise package of regulations do not address the removal of labour market testing for contract service suppliers, do not adequately address skill and qualification requirements and totally fail to address the other faults of the ChAFTA as discussed above.

In addition, as was pointed out by the final report of JSCOT's inquiry into the ChAFTA, the effectiveness of any labour market regulation and in particular regulations aimed at ensuring the migrant worker visa program functions as desired, depends on adequate resourcing of agencies and in particular the Department of Immigration. The report stated as its first recommendation:

⁷ The ChAFTA modelling report is available here: <https://dfat.gov.au/about-us/publications/Documents/economic-modelling-of-australias-north-asia-ftas.pdf> It is worth noting the employment impacts of all three North Asian FTAs modelled peaks at 14,600 new jobs in 2020, while the government has itself cut at least 16,500 public service jobs since coming to power. See: <http://www.theguardian.com/australia-news/2015/may/11/mathias-cormann-refuses-to-put-figure-on-public-service-job-cuts-in-budget>

⁸ These concerns are also expounded upon in some detail in the AMWU JSCOT submission, available at: http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/17_June_2015/Submissions

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“The Committee recommends that all government departments and agencies responsible for curbing unlawful immigration activity, particularly the Department of Immigration and Border Protection, are adequately resourced to carry out their functions effectively and efficiently.”⁹

In addition, in an analysis of the impacts of ChAFTA by University of Adelaide academic Dr Howe, it was stated:

“the body charged with weeding out exploitation of temporary migrant workers in the Australian labour market [the Fair Work Ombudsman (FWO)] is not sufficiently resourced to uncover every instance of exploitation”

And, the FOW:

“has 300 inspectors... Its inspectorate is required to serve up to 11.6 million workers, over 10% of which are temporary migrants with work rights in the domestic economy.”¹⁰

It is clear that current resourcing for the FWO (and likely the Department of Immigration more broadly) is insufficient to guarantee migrant workers aren't exploited and regardless of the regulations in place, regulations are not being adequately enforced. This is supported by recent revelations regarding worker exploitation at 711 convenience stores as well as in the manufacturing and agricultural industries.¹¹

This needs to be addressed as a matter of urgency and until it is, no Australian worker can rest assured that even the relatively loose protections agreed to by the Labor party and the government will actually protect them or migrant workers.

Conclusion

We urge the committee to reject the implementing legislation for the ChAFTA as it has not been adequately demonstrated that the agreement in its current form is in the national interest. Indeed, because the agreement fails to meet general principles of fairness and reciprocity, includes a dangerous ISDS provision, opens up contractual service suppliers to migrant workers without the need for labour market testing and fails to include enforceable labour and environmental protections, we fail to see how the agreement could be in the national interest.

We also urge committee members to work towards reform of the treaty making process to ensure future trade agreements avoid these faults and do serve the national interest.

⁹ Report available at:

http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/17_June_2015/Report_154

¹⁰ Available at: file://amwu-gra-cfs-01/home/au010906/Documents/chafta-howe-report_impact-chafta-jobs-wages-conditions151006.pdf

¹¹ For example, see: <http://www.abc.net.au/4corners/stories/2015/05/04/4227055.htm> and <http://www.smh.com.au/business/workplace-relations/7eleven-a-sweatshop-on-every-corner-20150827-gj8vzn.html>