

Submission on FTA

12 May 2004

In this submission, I discuss movement of natural persons and investor dispute mechanisms. I will also be sending in a second submission discussing intellectual property issues. I am a research software engineer who is also undertaking research into workforce issues in the software industries. My interest in the Victorian hazardous waste issue arises from being associated with one of the areas under threat.

1. Movement of natural persons

Several submissions have commented on the FTA's failure to ease visa access. None of the commentary seems to be aware of the significant issues involved in facilitating movement of natural persons. It actually means surrendering immigration policy to trade agreements.

I think we should be grateful to US Congress for keeping immigration policy out of the FTA. Californian Democrat Senator Dianne Feinstein and Judiciary Chairman James Sensenbrenner (Rep-WI), in a scathing attack on the USTR representatives, pointed out that it is almost impossible to change such policy once it's embedded in trade agreements. This applies just as much to Australia as to America.

Even though America and Australia are roughly comparable in economic attractiveness, unconstrained movement between the two nations could swamp relatively small professional sectors in Australia, with deleterious impacts for Australia's long-term future. Although the FTA is between the US and Australia, there are several ways that movement of natural persons between the two could be exploited by other nations to flood markets. Unlike America, we have no quotas on the number of temporary skilled workers admitted on H-1B visas and other pro-business access arrangements. America has relatively free access under international transfer visas called L1's. Indian outsourcer firms are in fact lobbying strongly for free movement of natural persons in trade agreements.¹

¹ Indian firms lobby for free immigration in free trade agreements
<http://economictimes.indiatimes.com/cms.dll/html/uncomp/articleshow?msid=7059>

A pointer to the scale of this phenomenon in America is provided in a study by Dr Ron Hira. He found that Indian outsourcers Wipro, Tata and Satyam applied for a staggering 23,700 visas in 2001, whereas equivalent American companies EDS and American Management Systems needed only 700 visas in the same year. He found that between 61 and 65 percent of the Indian companies' US revenue was directly dependent on the temporary workers thus imported.²

None of these issues seem to have been considered in the Australian studies of the FTA. Movement of natural persons should not be embedded in trade agreements. In this respect, the FTA takes the appropriate course.

2. Investor disputes could expand Victorian toxic waste dump

Madelaine Chiam's highlighting of the possibility that investor disputes might still be possible under the FTA³ has direct implications for a controversial \$200 million toxic waste dump proposed for Victoria. The concern is confirmed by the fact that the Victorian Premier's own submission⁴ to the JSTC inquiry also identifies investor disputes as a possible problem, and specifically mentions the impact on hazardous waste.

The Victorian dump is intended to store 50,000 tonnes per year of untreatable toxic waste generated by Victorian industry. Rural Victorians are already furious at plans for the dump, citing dangers in transporting hazardous industrial waste up to 500 km through the state, contamination, fires and toxic smoke, and damage to agriculture markets.

One of the proposed sites is only five kilometres from and upwind of a town of 1,200 people with three schools. Even current storage loads would involve between 10 and 40 truck loads of dangerous waste every day, driving along busy roads and through peaceful country towns. Plans call for the dump to be 1 kilometre square, with a 5 kilometre exclusion zone all around.

A serious concern is that the dump will be operated by private industry. Under the investor disputes provisions of the FTA, such an operator might seek to expand the role of the dump, so it can store profitable waste from interstate and even overseas. This would dramatically increase risks to rural Victorians and probably Melbournians too, if the toxic waste came through Melbourne ports.

² Ron Hira: Utilizing Immigration Regulations as a Competitive Advantage: An Additional Explanation for India's Success in Exporting Information Technology Services, Centre for Science Policy and Outcomes, Washington, 2003 <http://www.cspo.org/products/papers/Bangalore.PDF>

³ Chiam's submission to the JSCT Inquiry, 5 Apr 2004
<http://www.aph.gov.au/house/committee/jsct/usafta/subs/SUB034.pdf>

⁴ Victorian Premier's submission to the JSCT Inquiry, 15 Apr 2004
<http://www.aph.gov.au/house/committee/jsct/usafta/subs/SUB91.pdf>

There are several cases in North America where investor dispute mechanisms have resulted in governments paying compensation to corporations after making decisions aimed at keeping their environments clean and safe. Probably there are many more cases where threats based on these mechanisms have constrained government decision-making, without it becoming public.

Examples of compensation awards include US \$976 million to a Canadian chemical company after California banned the company's petrol additive MBTE, which had contaminated water supplies,⁵ US \$50 million to Ohio-based toxic waste disposal company SD Meyers after Canada denied it permission to store hazardous polychlorinated biphenyls waste⁶ and US \$15.6 million to the US Metalclad Corporation after a Mexican municipality denied it permission to build a hazardous waste facility⁷.

In an article on the subject in a Seattle newspaper, University of Washington economist Paul Heyne, a supporter of trade agreements, is quoted as saying: "If the United States has somebody who's in the business of treating hazardous waste, why shouldn't they be allowed to import hazardous waste, which is an input in their business?"⁸

The Victorian government's handling of the toxic waste dump has been bad enough as it is, but the possibility that the FTA would greatly expand the role of such a facility, and cause supervision to be relaxed, calls for serious attention to investor dispute mechanisms in the FTA.

⁵ US may have to pay US \$976 million to chemical company for banning petrol additive
<http://www.tradewatchoz.org/wto/environment.html>

⁶ Mexico pays US \$15.6 million to Metalclad for refusing toxic dump
<http://www.aftinet.org.au/campaigns/localgovtmotion1.html>

⁷ Canada pays US \$50 million to SD Meyers for blocking export of PCB's
<http://www.mindfully.org/WTO/NAFTA-Flouts-Dumping-Treaty.htm>

⁸ Economist says facility operators should be free to import wastes
<http://seattlepi.nwsource.com/business/wto05.shtml>