



State Public Services Federation
Group

CPSU-SPSF Submission
to
the Productivity Commission Review
of
Bilateral and Regional Trade Agreements

1 March 2010

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Summary of the SPSF group position on international trade

The SPSF group supports the development of trading relationships with all countries and recognises the need for regulation of trade through the negotiation of international rules. We support the principle of multilateral trade negotiations provided these are conducted within a framework which is transparent, provides protection to weaker countries and is founded upon respect for democracy, human rights and environmental protection.

We believe that the following principles should underpin Australia's trading relations and agreements:

- Trade agreements should not undermine human rights and environmental protection, based on United Nations and International Labour Organisation standards,
- Trade agreements should not undermine the ability of governments to regulate in the public interest,
- Trade agreements should allow developing countries the flexibility to make laws and policies which will allow them to direct their own development,
- Trade negotiations should be undertaken through an open, democratic and transparent process which allows effective public consultation to take place,
- Australia's trade negotiations with developing countries should be consistent with Australia's development goals,
- Before trade negotiations begin, comprehensive studies of the likely impacts should be undertaken and made public for debate and consultation. The issues studied should include the impacts on:
 - human rights and labour conditions
 - employment
 - environment
 - particular demographic groups, particular regions and particular industries
 - the ability of governments to regulate in the public interest
 - the ability of developing countries to direct their development.

General Principles

The SPSF group welcomes the opportunity to contribute to the Productivity Commission's review of Bilateral and Regional Trade Agreements.

Before responding to some of the specific items of the Terms of Reference of the Review, we would like to outline the general principles and concerns about trade agreements for our union and its members. These are primarily but not exclusively:

- the importance of maintaining essential services in the public domain,
- the exclusion of migration and labour mobility from trade discussions and agreements,
- the inclusion of core labour, human rights and environmental standards in all trade agreements.

Public Services

The SPSF group is committed to the principles of a properly functioning public sector, both in Australia and for all our trading partners. There is a strong connection between the inability of governments to provide adequate services for its people and the decline into corruption, criminality and the inevitable breakdown of the state itself.

It is only governments which can deliver services in the public domain to guarantee fair and equitable access to all constituents including the poorest and the most marginalised of society. We are particularly concerned that under PACER Plus there is the potential for Pacific countries to experience such decreases in revenue that their governments will not be able to fund their services, utilities and infrastructure needs. Experience has demonstrated that this universal access will be threatened by private provision of these services.

Furthermore, we are concerned about the inclusion of services in any agreement which adopts the WTO GATS definition of public services

A service supplied in the exercise of governmental authority...which means any service which is supplied neither on a commercial basis, not in competition with one or more service suppliers.

We reject this definition which could exclude areas of joint provision of many public and private services including education, health, water and correctional services as is the case in Australia.

We are also concerned about the possibility that trade agreements covering services could be defined under the *negative list* system meaning laws and policies of a country could be affected by the agreement unless specifically listed as excluded. This places significant restrictions on governments to regulate their own services and is a departure from the *positive list* system of the WTO GATS agreement. A *positive list* agreement would enable Australia to determine precisely which sectors to include thus protecting the government's rights and responsibilities to regulate.

Migration and Labour Mobility

Our position on labour mobility begins with the principle that people are not commodities and cannot be traded. There is no place for agreements about movement of natural persons and/or migration policy in trade agreements. Any policies governing labour mobility must remain in the jurisdiction of immigration policy.

We recognise that workers' remittances account for a large proportion of developing countries' revenue. However, we do not see this as a long-term solution which will contribute to the effective functioning of a country's social or economic development.

The long-standing, indeed permanent nature of signed free trade agreements means that they are inappropriate mechanisms for arrangements around temporary movement of labour and risk locking governments into agreements which may become redundant and even

harmful over time.

Furthermore, we must recognise the lessons learned in Australia over the sometime abuse of the Temporary Business (Long Stay) Standard Business Sponsorship or Visa 457. Although the scheme was initially aimed at bringing skilled workers, it has often been misused by some employers as a source of cheap labour and sometimes with tragic consequences when proper and decent working conditions were ignored.

Core Labour, Human Rights and Environmental Standards

We were pleased to see the release of the Joint Standing Committee on Foreign Affairs, Defence and Trade's report after its inquiry into Australia's relationship with ASEAN

(<http://www.aph.gov.au/house/committee/jfadt/asean1/report/Final%20Report.pdf>) and its recommendations:

Recommendation 7

The Committee recommends that the Commonwealth Government should use its influence with the Asian Development Bank to ensure that the adherence to core labour standards become a precondition for loans.

Recommendation 8

The Committee recommends that human rights, core labour standards, and the environment be pursued in future free trade agreements and, when existing free trade agreements which do not contain such issues are reviewed, these issues should be pursued.

Recommendation 9

The Committee recommends that when the Department of Foreign Affairs and Trade reports annually to the Parliament under Recommendation 2, progress with regard to human rights, core labour standards, and the environment be included.

The SPSF group welcomes this commitment to recognising this set of core labour standards and look forward to these recommendations being translated into official policy and legislation.

SPSF group's response to the Terms of Reference

Examine the evidence that bilateral and regional trade agreements have contributed to a reduction in trade and investment barriers. Consider also to what extent such agreements are suited to tackling such barriers, including in the context of the proliferation of such agreements between other countries;

Bilateral agreements, as compared with multilateral agreements, have a tendency to lead to trade "distortions". In an agreement including all countries, goods and services will be sourced from the best producer at the best price, whereas under bilateral and regional agreements trading partners favour each other even when price and/or quality may be inferior.

A report¹ commissioned by the World Trade Organisation (WTO) in 2005 was critical of the growth of bilateral and regional trade agreements which have made the 'most favoured nation' principle the exception rather than the rule

¹ WTO 2005, *The Future of the WTO*

and has led to increased discrimination in world trade. At the same time, the report expresses concern that preferential trade agreements often have less to do with trade than with providing 'rewards' for non-trade related objectives. (p79)

Another example of FTAs creating, rather than reducing, barriers is the complicated system of Rules of Origin (ROO). The administrative and compliance costs associated with confirming to the ROO may act to discourage investment and trade.

A survey of exporters carried out by the Australian Industry Group, revealed that less than half of the companies surveyed reported benefits from FTAs with well over half reporting no benefits.

*"However, our survey results suggest the potential benefits of FTAs are not being fully realised by Australian exporters due to excessive red tape, complex compliance regimes and subtle protectionism. "*²

Consider the role of bilateral and regional trade agreements in lending support to the international trading system and the World Trade Organization;

Bilateral and regional trade agreements actively undermine the international trading system and the WTO, rather than support them. Countries engaging in the proliferation of bilateral and small regional trade agreements are contributing to the spread of Preferential Trade Agreements (PTAs) and seriously eroding the fundamental principle of most-favoured-nation treatment.

*...what has been termed the "spaghetti bowl" of customs unions, common markets, regional and bilateral free trade areas, preferences and an endless assortment of miscellaneous trade deals has almost reached the point where MFN treatment is exceptional treatment*³.

Of particular concern to Australia is the issue of agricultural export subsidies which, because they are direct payments to producers and are not tariffs, can only be reduced by multilateral negotiations. Through bilateral agreements the USA and the EU have been able to maintain their subsidies at the same time as they also gain access to other markets. Because there is thus no incentive for the USA or the EU to remove their subsidies, the bilateral system is actively undermining multilateral negotiations.

Engaging in negotiations for bilateral and smaller regional agreements diverts a government's resources and focus away from the broader multilateral objectives:

The WTO's founding and guiding principles remain the pursuit of open borders, the guarantee of most-favoured-nation principle and non-discriminatory treatment by and among members, and a commitment to transparency in the conduct of its activities. The opening of national markets to international trade, with justifiable exceptions or with adequate flexibilities, will encourage

² Heather Ridout of Australian Industry Group, quoted in media release 7 January 2010 "Business seeks better returns from free trade agreements"

³ WTO, The Future of the WTO, 2005. p19

*and contribute to sustainable development, raise people's welfare, reduce poverty, and foster peace and stability. At the same time, such market opening must be accompanied by sound domestic and international policies that contribute to economic growth and development according to each member's needs and aspirations.*⁴

While the various rounds and subsequent failures of WTO negotiations may have been a reason for countries losing hope of an imminent conclusion to a global multilateral trading agreement, it may also be the case that some countries have used this to their own advantage. Khor⁵ notes that developed countries will typically use a bilateral agreement to extract conditions from a 'weaker' partner which they had been unable to achieve at the WTO because the collective strength of the developing countries had been able to oppose them.

What tends to become lost in the complexity of multiple bilateral and smaller regional agreements is a concerted and uniform commitment to the principles of sustainable development, human rights, environmental and labour standards such as those expressed by the ILO and other international organisations and agreements.

Analyse the potential for trade agreements to facilitate adjustment to global economic developments and to promote regional integration;

In spite of increased questioning of the global financial system in light of the recent financial crisis, trade policy is still being defined and promoted in free market terms. While most western and developed countries built their economies over time with protected and subsidised production, developing countries are expected to embrace a free market trading model regardless of their level of industrialisation. And this is in spite of widespread acknowledgement that FTAs between unequal trading partners deliver benefit to the more developed entity.

*An industrialised product exporting/commodity importing country is wealthy and an undeveloped product-importing/commodity-exporting country is poor.*⁶

Furthermore, bilateral trade agreements can include limits on a government's ability to regulate in the public interest, particularly in the area of financial services. The recent financial crisis demonstrated the need for governments to be able to act quickly and decisively in their own countries' best interests unfettered by any limitations imposed by trade agreements.

Assess the impact of bilateral and regional agreements on Australia's trade and economic performance, in particular any impact on trade flows, unilateral reform, behind-the-border barriers, investment returns and productivity growth;

⁴ *About the WTO — a statement by the Director-General*, WTO website
http://www.wto.org/english/thewto_e/whatis_e/wto_dg_stat_e.htm

⁵ "Bilateral and Regional Free Trade Agreements: Some Critical Elements and Development Implications" TWN, September 2008 p.3

⁶ J.W. Smith, *World's Wasted Wealth II*, Institute for Economic Democracy, 1994 p 127) quoted on www.globalissues.org.au *Some Regional Free Trade Agreements*

In spite of a proliferation of bilateral free trade agreements in recent years, there is no conclusive evidence to suggest that this has been to Australia's economic benefit. On the contrary, a Parliamentary Library background note concludes:

Of the four FTAs currently in force⁷, a common feature has been their impact on trade flows. The FTAs were followed by higher Australian trade deficits and a much slower rate of reciprocal export growth, as well as trade diversion as products were sourced from countries with which Australia has zero tariffs. The potential risks of the current FTA model adopted by Australia are clear: structural trade imbalances leading to higher trade deficits favouring the FTA partner country, long phase-in periods for free trade (in particular agricultural trade), and negative impacts on the Australian economy which are related to trade diversion. ... In light of the current experience it is questionable whether Australia's FTAs, on a country by country basis, can speed up trade liberalisation by delivering benefits to Australian producers faster than through the multilateral process.⁸

There is increasing evidence that Australia's free trade agreements do not deliver on promised economic benefits and furthermore they also jeopardise wider benefits to the community. For example, trade agreements have not led to the expected job creation in mining or agriculture, and under a proposed Trans Pacific Partnership Agreement Australia's media interests and Pharmaceutical Benefits Scheme will again come under threat.

Research suggests that FTAs offer little in the way of trade liberalisation and a shift to more liberal trade policies, particularly in agricultural trade. Rather FTAs are used more often to promote other non-economic, diplomatic and regional interests.⁹

Assess the scope for Australia's trade agreements to reduce trade and investment barriers of trading partners or to promote structural reform and productivity growth in partner countries. Consider alternative options for promoting productivity improving reform in partner countries;

Australia has already eliminated most of its trade barriers such as tariffs and so has reduced bargaining power. As previously noted, it is unlikely to gain better access for agricultural products for example to subsidising countries like the USA because removal of such subsidies can only happen through multilateral negotiations. As a result it can only offer concessions on issues such as health, investment, cultural and quarantine, all involving regulatory and policy concerns which should only be decided and controlled via government and the attendant democratic processes.

When Australia is the 'stronger' or more 'dominant' partner in the trade negotiations, it needs to consider very carefully the impact of FTAs on the other country's economy and its ability to protect and regulate in the interests of its own people. Media reports and other documentation last year before

⁷ At the time of the report these were with Thailand, Singapore, US and Chile

⁸ Michael Priestley, *Australia's Free Trade Agreements*, Parliament of Australia, Parliamentary Library, December 2008

⁹ Audley, J. *Bad Bilateral Trade Deals Are No Better Than Bad Multilateral Deals*, issues brief, Carnegie Endowment for International Peace, October 2003 see www.carnegieendowment.org/pdf/files/issuebriefoct2003.pdf

and during PACER Plus discussions reveal that Australia was not behaving well in this regard. This continued into the Copenhagen climate change conference with Australia again using its weight to try to influence the Pacific countries to adopt its position.

Assess the scope for agreements to evolve over time to deliver further benefits, including through review provisions and built-in agenda.

If there is to be the possibility for trade agreements to 'evolve' by which we mean to deliver true benefits and not disadvantage participating countries, there needs to be better processes of consultation, economic modelling, impact studies, accountability and transparency. We have always advocated for more participatory processes which would mean that trade agreements are tabled and debated in Parliament rather than simply being negotiated behind closed doors and finally presented as a 'fait accompli'.

We would like to see more than lip-service being paid to the inclusion in trade agreements of clauses ensuring better enforcement mechanisms for labour and human rights and environmental protection.

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CPSU-SPSF GROUP – Background Information

The CPSU is one of the largest public sector unions in Australia with more than 180,000 members. There are two "**Groups**" in the Union, the **SPSF Group** and the **PSU Group**.

The State Public Services Federation (SPSF Group) primarily represents employees of State Governments such as State Government Administration, Education, Agriculture and Natural Resources, or their agencies like Universities, Electricity Authorities, Roads and Traffic or Water Resources bodies. We have branches in all six states.

The PSU Group's members are generally employed by the Commonwealth Government or its agencies, such as Tax, CentreLink, Defence, Immigration, and a significant number of private Telecommunications and Call Centre operators.

What we do

The Federal Union looks after nationwide industrial issues for Universities and also industrial matters that span more than one State. It handles industrial relations between other Federal unions and deals with other Peak Bodies, like the ACTU, on behalf of the rest of our Union Branches and the "Associated Bodies". Also, it coordinates any issues that interest more than one Branch. These can include training standards, rights of women members, health and safety and so on.

Union policy on issues relevant to all the State Branches is made by the Federal Council, the SPSF Group committee of management under the Workplace Relations Act.

The CPSU-SPSF group is affiliated to the international trade union global federation, PSI (Public Services International). The Federal Secretary is a member of the Executive of PSI and is Chair of the Oceania region.

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