CFMEU RESPONSE TO PRODUCTIVITY DRAFT RESEARCH REPORT

'BILATERAL AND REGIONAL TRADE AGREEMENTS JULY 2010'

By email: tradeagreements@pc.gov.au

To:
Bilateral and Regional Trade Agreements
Productivity Commission
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1. Introduction

The Construction, Forestry, Mining and Energy Union of Australia, (CFMEU) welcomes the opportunity to respond to the PC's draft report on Bilateral and Regional Trade Agreements (BRTAs).

The CFMEU consists of three Divisions namely the Mining and Energy Division, Forestry and Furnishing Products Division and the Construction and General Division. We are the major union in these industries and represent approximately 110,000 members.

The CFMEU broadly supports the comments on the draft PC report made in the ACTU First and Supplementary Submissions.

However, there are some aspects of the draft report on which we wish to make additional comments. These now follow, and concern:

- Benefits claimed for multilateral or unilateral liberalisation
- Periodic reviews of actual benefits from BRTAs
- Labour standards
- Mode 4, the Movement of Natural Persons

2. Benefits claimed for unilateral liberalisation

A key point in the draft PC report which we wish to address does not concern BRTAs at all. It is the PC's view that it is not BRTAs or even multilateral liberalisation that confers the most benefit on Australia, but *unilateral* trade liberalisation, as in the following:.

> Over the last four decades, Australia has gained significant economic benefits as a result of programs of unilateral reform, which entailed reducing our own trade barriers without the need for any specific international engagement. Indeed, and contrary to mercantilist notions that focus on export promotion and market access and often cloud debates about trade policy, the main benefits that arise from trade liberalisation result from a country purchasing its inputs and final goods from the lowest cost sources of supply, and exposing its industries to greater import competition by reducing its own trade barriers. This creates a competitive environment that drives productivity and a more efficient utilisation of resources within the economy. (PC draft report pXX)

CFMEU comment

Given the strength with which the PC puts the case for unilateral liberalisation we are surprised that evidence is not produced or cited that underpins such a proposition. It is clear from both the submissions to the PC Inquiry, plus some of the views expressed at the HC Coombs Policy Forum on the Draft Report of the Productivity Commission on Bilateral and Regional Trade Agreements, held at the ANU in August 2010 that unilateral liberalisation has become something of a 'Holy Grail' for free trade economists.

Thus we would have expected a comprehensive and detailed assessment of the costs (economic and otherwise) and benefits of unilateral liberalisation, but this assessment is not provided.

Such an assessment would include, among other things, some honest accounting for the economic loss of the foregone productive contributions of experienced workers who lost jobs as a result of unilateral liberalisation, particularly in manufacturing, and who spend many years unemployed or under-employed, often as passive recipients of Disability Support Pensions (DSPs) or other social security benefits because they are unable to find appropriate work at commensurate wages.

It would also include a serious attempt to measure comprehensively the non-economic costs of these policies, in terms of individual workers, social and regional dislocations.

The issue of the merits of an Australian policy favouring unilateral liberalisation will become more important in the immediate future, for at least two reasons.

The first is because of problems with the other options. The PC draft report expresses serious misgivings about the BRTA/FTA option, and progress with the multilateral option is not likely in the WTO Doha Round at least, in the near term. Doha progress is probably unlikely so long as economic and political conditions in the US remain around their present levels.

The second is that direct labour importation (and immigration-related concessions) are now much more likely to be part of unilateral liberalisation because Australia has already removed most of its barrier protection relating to traded goods over the last 20 years or so. This means more attention will be given to Mode IV, the Movement of Natural Persons, as outlined below.

This issue is therefore of great concern to the CFMEU and also other unions.

3. Periodic reviews of actual benefits from BRTAs

The CFMEU strongly supports Draft recommendation 6 in the report which calls for an independent assessment of community-wide impacts/benefits of the actual BRTA agreed, not an overly-optimistic 'potential' best-case BRTA, as occurs now.

> **Draft Recommendation 6**: The Australian Government should institute measures to substantially enhance the scrutiny of the potential impacts and benefits of prospective agreements, particularly those involving preferential arrangements.
>
> - Before an agreement is signed, an independent and transparent assessment of the likely impacts and community-wide benefits of the proposed agreement, commissioned independently of the executive, should be undertaken. The assessment should be made against the text of the agreement and not an overly optimistic scenario. It should take into account any additional administrative and compliance costs and the economic effects of the proposal for reducing barriers to trade and investment and other provisions.

CFMEU comment

The CFMEU believes there should be periodic reviews undertaken after say every 5 years, to measure actual achievements against the promise benefits/costs of the actual BRTA agreed.

This would provide some 'reality check', and would be in keeping with the draft report's call for greater transparency.

4. Labour standards

The issue of labour standards in BRTAs is dealt with Draft Recommendation 4 and at 13.21-23 in the body of the draft report.

> **Draft Recommendation 4:** The Australian Government should not include matters in bilateral and regional trade agreements that increase barriers to trade, raise industry costs or affect established social policies without a comprehensive review of the implications and available options for change. It should adopt a cautious approach to:
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> • referencing core labour standards in agreements (among other things).

In its discussion of Labour standards in the body of its report, the PC concludes by noting that a recent report from the Joint Standing Committee on Foreign Affairs, Defence and Trade[1] 'also recommended that Australia seek to have core labour standards incorporated in its BRTAs' but that the PC took a different view:

> ….., the Commission's draft assessment is that government should adopt a cautious approach to this matter. There are generally likely to be more direct and appropriate means of alleviating poverty and lift living standards in developing countries than through Australia seeking to include enforceable provisions on labour standards in BRTAs. (Draft report, p13.23)

CFMEU comment

The CFMEU considers that this reasoning by the PC misses the key point about core labour standards. As the PC report itself notes, the ILO core labour standards relate to freedom of association, the right to organise and bargain collectively, abolition of child labour, discrimination and slavery.

These are universal rights, not simply a means of alleviating poverty and lifting living standards. They should be recognised as such, vigorously pursued for inclusion in BRTAs, and in the strongest possible form.

As the ACTU initial submission pointed out, the Labour Standards Chapter in Australia's FTAs could be modelled on the Canadian version or the EU model, but preferably the strongest version is contained in the US-Peru FTA in which both parties are obliged to 'adopt and maintain' in their laws and regulations the core labour standards (rather than 'attempt to ensure' them); and dispute settlement procedures are provided.[2]

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[1] Joint Standing Committee on Foreign Affairs, Defence and Trade, *Inquiry into Australia's relationship with ASEAN,* June 2009, pxxii. http://www.aph.gov.au/house/committee/jfadt/asean1/report/Final%20Report.pdf

[2] ACTU, *Submission to Productivity Commission Review of Bilateral and Regional Trade Agreements*, 1 March 2010, pp7-8.

The draft PC report also does not accurately represent the recommendations on core labour standards and trade agreements in the June 2009 report from the Joint Standing Committee on Foreign Affairs, Defence and Trade.

The Joint Standing Committee recommended not only that core labour standards (and human rights and the environment) be pursued in *future* free trade agreements, but that:

- "when existing free trade agreements which do not contain such issues are reviewed, these issues should be pursued"; and
- that "progress with regard to human rights, core labour standards, and the environment be included" in the annual reports to the Parliament also proposed by the Joint Committee (Joint Committee Recommendations 8 and 9).

These recommendations reflect the importance which a Joint Standing Committee of the Australian Parliament placed on the role of core labour standards in free trade agreements. The passing reference to the Joint Committee's views in the PC draft report does not adequately reflect this importance.

The PC report also cites uncritically the claim that efforts to link labour standards to trade agreements are 'disguised protectionism', as in the following:

> However, others have argued that efforts to bring about such linkages are disguised protectionism and/or that linkage could undermine the comparative advantage of developing nations, retard economic development and delay the realisation of the very conditions that labour standards seek to protect. (Draft PC report, p13.21)

The CFMEU rejects the argument that incorporating enforceable provisions on core labour standards in BRTAs amounts to 'disguised protectionism'. The grounds for this position are adequately set out in the ACTU submission to the PC Inquiry dated 1 March 2010, at pp6-11.

As well, in the interests of balance, the PC report's discussion of the claim that incorporating core labour standards is 'disguised protection' should note that this view is not universal even among authors strongly committed to trade liberalisation.

For example, Richard B. Freeman, Ascherman Chair of Economics at Harvard University, wrote as far back as 1996:

> The view that core standards are disguised protection is erroneous. The distinction between core and cash standards, made by virtually every advocate of standards, is fundamental. Adherence to core standards will not substantially affect the comparative advantage of developing countries nor have more than a minimal effect on trade.[3]

[3] Richard B. Freeman, 'International labour standards and world trade: friends or foes?', in *The world trading system: challenges ahead* By Jeffrey J. Schott, Peterson Institute for International Economics (U.S.) Washington, DC , 1996, p. 87-112 at p87.

We also take issue with the characterisation of the labour standards argument at 13.21 where the argument is reduced to one of whether such standards will help workers in developing or lesser developed trading partners.

The raison d'etre for FTAs is that both or all trading partners are advantaged. To assess the benefits and costs one has to look at the impact on all participants not simply one partner.

In our experience those who argue for the inclusion of labour standards do so with an eye to the interests of workers in all partner countries – not simply those in developing or lesser developed countries.

5. Immigration and the 'Movement of Natural Persons'

None of the 7 Draft Recommendations in the PC draft report deal explicitly with the "Movement of Natural Persons" or GATS Mode 4 of the supply of services, in BRTAs or more generally.

As well, the draft PC report contains no extensive discussion of this issue and no discussion of the concerns of the CFMEU and other unions about the inclusion of immigration matters in trade agreements (set out below).

The draft report lists domestic policies and programs 'that have a significant influence on trade and investment'. One of these is 'border regulation maintained by the Australian government' which includes a passing reference to the employer-sponsored temporary work visa, the 457 visa:

> Movement of people: Australia operates a visa system that allows foreigners to come to Australia for short periods of time as visitors or tourists. Australia also grants visas for business purposes, including an employer-sponsored worker migration system, as well as migration visas for professionals and those with skills in a range of defined employment areas. (Draft Report, P 4.11.)

But it seems clear that the PC draft report is in favour of fewer restrictions on the movement of labour into Australia. For example, under the heading "Benefits from the freer movement of labour' under BRTAs, the draft report refers favourably to the Australia-NZ agreement that allows unrestricted access to the Australian labour market by New Zealanders:

> Overall, in terms of the freer movement of individuals between economies, some BRTAs to date have achieved limited, albeit positive, benefits in this area with ANZCERTA being a standout example in terms of the free movement of labour. (Draft report, p 10.14)

CFMEU Comment

The CFMEU considers that the PC final report should address the issue of the movement of labour in BRTAs and trade agreements directly and more comprehensively than in the draft report. It could:

- Set out the existing concessions on the movement of labour made or offered by the Australian government in BTRAs and WTO GATS, including the 2005 Doha Round offer to remove Labour

Market Testing (LMT) from the 457 visa program for all 'specialists' (persons with trade, technical and professional skills).[4]

- Set out and address the unions' concerns about these issues.

The CFMEU and other unions[5] have raised serious concerns about the inclusion of immigration matters in trade agreements at all, the specific terms of offers made in relation to temporary work visas in the Doha Round and FTAs, and the use of work visa concessions as bargaining chips in trade negotiations. But these do not appear to have been dealt with in the draft PC report.

The CFMEU first submission to the PC inquiry recommended the following position, which was broadly similar to the submissions from other unions:

> All major trade agreements must not further limit the capacity of the Government to make effective policy in immigration. Trade agreements must not include the movement of temporary workers other than senior executives and managers; and no offers should be made by the Australian Government on 457 visa arrangements in any trade agreement.

The CFMEU notes that this position is consistent with the ALP National platform which states:

> Para 72 Labor will not allow trade agreements to limit the capacity of the Australian Government to determine immigration policies which promote education and training, permanent rather than temporary migration, local employment and fair employment standards. Labor will ensure that future trade agreements do not prevent Australia effectively regulating temporary migration. Labor will ensure trade agreements promote the recruitment of labour locally, and protect the wages and conditions of local workers.

Since its first submission in March 2010, the CFMEU has further developed its position on the appropriate policy on trade agreements and temporary movement of foreign workers under the 457 visa program, where trade obligations are applied.

This position, which is also shared by the ACTU, is as follows:

1. The Australian government's policy should be guided by its binding commitment from the Uruguay Round in 1995 (WTO GATS) that Labour Market Testing (LMT) will not be imposed in relation to intra-corporate transfers of "executives, senior managers, independent executives and service sellers".

2. In regard to all trade agreements currently being negotiated or under consideration by Australia (Doha and FTAs), the government should reassess its offer to make LMT concessions in the 457 visa that go beyond Australia's 1995 WTO GATS commitments. It should:

[4] See the Attachment to the CFMEU first submission to the PC Inquiry.

[5] For example, see the ACTU supplementary submission at paras 37-39 and the AMWU first submission at paras 19-20.

- Maintain the Australian government's right to impose LMT for specialists (persons with trade, technical and professional skills) on 457 visas, as per our 1995 WTO GATS commitment.

- Restore the Australian government's ability to require employers to give preference to Australian workers over 457 visa-holders in redundancy situations.

3. The government should re-introduce LMT in the 457 visa program as promised in the 2007 ALP Election Platform, for all trades occupations (as a minimum).

4. There needs to be more informed public debate on Australia's position on free trade and access of foreign workers to the Australian labour market, and the implications of this for Australian workers at all levels. As a first step, the Australian government should publicly release an Information and Policy Paper setting out in plain language Australia's current commitments and offers, and their full implications for the rights of Australian workers relative to temporary migrant workers

The basis for the concerns of the CFMEU is that if the Doha offer is signed into treaty, or if the same offer is agreed in BRTAs, that will permanently prevent the Australian government from re-introducing LMT for occupations at trades level and above in the 457 visa program.

This is a significant downgrading of the rights of Australian workers to jobs within Australia, ahead of foreign nationals, and is proceeding with little or no public debate. It is also a significant erosion of national sovereignty over immigration policy, which makes even less sense when Australian governments are giving higher priority to developing sustainable population policies.

The fundamental principle that temporary foreign workers should be admitted only when Australian skilled workers are not available is one recognised and supported by Ross Garnaut in his 1989 landmark report:

> There will continue to be pressure from China and the Republic of Korea for Australia to accept temporary entry for labourers and skilled workers on, for example, joint venture developments. Australia's approach has been to welcome migrants on a non-discriminatory basis but to refuse entry to guest workers unless they possess an important skill that is not available in Australia. This approach has deep roots in Australian labour and immigration policy. In a country receiving migrants from diverse sources, it is important to the maintenance of national coherence and identity. It is defensible in principle and should be maintained.[6]

The CFMEU acknowledges that changes made to the 457 visa program in the last 3 years have increased integrity in the scheme and protections for potentially vulnerable foreign workers. However, the removal of any requirement for LMT in the program places undue power in the hands of employers.

Employers have greatly disproportionate bargaining power relative to 457 visa workers, especially those workers seeking an employer-sponsored permanent residence (PR) visa. The Commonwealth

[6] Ross Garnaut, *Australia and the Northeast Asian Ascendancy*, 1989, pp293-4.

government has given top priority to employer-sponsored PR visas in its skilled migration program, and over one half of all 457 visa holders now seek PR.

This is a vastly different scenario for so-called 'temporary' visas than the one envisaged in the 1995 WTO GATS. It was not foreseen then that the Australian government would make the temporary skilled visa the main pathway to skilled permanent residence visas.

One argument sometimes raised against a LMT in temporary work visa programs is that it can be a cumbersome burden on business. We reject that assertion, and point out that a well-designed LMT can be simple, low-cost, and a prudent step for a business to take anyway. We also note that LMT (excluding intra-company transfers) is a crucial element of temporary visa programs in most other developed countries including the UK, various EU countries, Canada, and the US.

6. Conclusion

The draft PC report places great store in transparency and developing community understanding and consensus on the need for change. The CFMEU supports this approach.

We take serious issue with the PC stance on unilateral liberalisation and on the exclusion of labour standards- in our view compelling arguments exist which justify changes to the draft report in both regards.

The final PC report on BRTAs could also make a valuable contribution to promoting community understanding and debate on the issue of movements of people under BRTAs.

We believe that community confidence in trade liberalisation policies will be seriously undermined, if the Australian community is suddenly confronted with the knowledge that because of binding trade agreements, the Australian government has given extensive and equal rights to employment in Australia to large numbers of temporary foreign workers, with virtually no public debate.