



Submission to the US FTA Task Force

Office of Trade Negotiations

Department of Foreign Affairs and Trade

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Authorised by:

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US FTA Task Force
Office of Trade Negotiations
Department of Foreign Affairs and Trade
Barton ACT 0221

Dear Review Secretariat,

Attached in electronic format please find the Australian Education Union (AEU) Submission to Submission to the US FTA Task Force, Office of Trade Negotiations, Department of Foreign Affairs and Trade.

We would welcome the opportunity of furthering our response in person.

Should you have any inquiries regarding this submission, I can be contacted at (03) 9693 1800 or 0416 254 154.

Yours sincerely,

Denis Fitzgerald
Federal President

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Welcome and Regret

1. The Australian Education Union welcomes the call for public submissions on the proposed US-Australia Free Trade Agreement but regrets the limited time available for preparation of views. The AEU presented a submission and appeared before the Joint Standing Committee on Treaties Inquiry into Australia's relations with the World Trade Organisation and has expressed concerns over the content of DFAT's curriculum materials project on Free Trade provided to schools. The Union provides information on trade and development issues to its 155,000 members who work in Australia's public schools and colleges and will publicise the questions raised by this issue.
2. The AEU supports fair trading relationships between nations such that economic and social development can occur together with the promotion of human and labour rights. In a global environment where inequality and conflict are growing realities, it is imperative that industrialised nations create sound trade policies for the benefit of all.

Who benefits?

3. It is with some concern then that we note some of the contents of the letter of US Trade Representative Robert Zoellick, who at the direction of the President, notified the US Congress of the negotiations with Australia on November 13, 2002, and said, inter alia,

We believe the United States has much to gain in pursuing a negotiation with Australia...The increased access to Australia's market that an FTA would provide would further boost trade in both goods and services...an FTA would result in greater business integration, especially in the information technology sector, increasing efficiency and the competitiveness of U.S. industry.

4. The extracts quoted suggest that the US would be the beneficiary of an FTA and provide weight to the argument advanced by economists that economic gains from an FTA would be extremely modest or harmful to Australia. Ross Gittins in the Sydney Morning Herald for example has argued that "bilateral FTAs ... do more to shift trade to the favoured country and away from our other trading partners than to increase our trade overall". DFAT's report on the proposed agreement notes that Australia's economy is only 4% of that of the US and that, "an FTA is thus a much less significant national economic decision than for Australia." This alone should give Australian cause to consider the proposed agreement in great detail.

US Objectives

5. The targets which the US has identified as objectives for negotiations with Australia include a range of policies of long standing which sustain the social, economic, environmental and health standards of this country.

To trade off such standards for the mere possibility of at best an increased GDP of half a per cent per year as predicted by the Centre for International Economics would be a matter to be determined against each issue. To do so for a shift in favour of the US would be contrary to the national interest.

Investment

6. The objective of the US to remove all controls on investment includes the abolition of the Foreign Investment Review Board and the abolition of any requirements for minimum Australian ownership of any industries. The FIRB has the power to review foreign investment in the national interest. While it seldom does so, the power is crucial and should not be removed.
7. Removal of controls on investment would also confront legislative requirements in areas such as the media, telecommunications, airlines and banking. Such legislation has been enacted as a result of policies presented to the Australian people and enacted through parliament and should not be removed without proper debate.

“Competition” and “State Enterprises”

8. The Zoellick letter sets as an objective under the heading of “Competition” the need to address “anti-competitive business conduct, state monopolies, and state enterprises.” The AEU represents 155,000 public educators principally employed by state education or technical education departments, which are parties to enterprise agreements, in all states and territories of Australia.

Public education in Australia operates in competition with state-subsidised private educational institutions and systems. The FTA thus has profound implications for both the public and private systems of educational provision in Australia whereby US providers may argue either for the same subsidies as domestic providers or that state systems are unfair competition and should be eliminated.

Services like Education as Traded Goods

9. While the General Agreement on Trade in Services of the WTO formally excludes from its scope the public systems of education, the AEU is concerned that those systems are brought within the terms of GATS by the caveat “where these are not provided in competition with private providers.” Public

education provision in Australia is subject to private competition in all sectors. The combined effect of an FTA and the operation of the GATS is not clear to us. A possible serious implication is that GATS, which is a multilateral agreement, could be no less restrictive than the terms of the bilateral FTA once concluded. This may undermine the caveat provided by the GATS for public services. In that case state enterprises such as public education could potentially be eliminated or restricted in their capacity in relation to private providers. Another implication could be that relations between two countries which have concluded a bilateral FTA should be open to the commercial interest of a third country with which either of the original countries has also concluded an FTA.

An FTA with the US could therefore raise possibilities of challenge from interests in Singapore with which Australia already has concluded an FTA or even with any other country with which Singapore concluded an FTA. These questions need to be examined prior to any FTA being concluded and the lack of transparency in the processes makes such concerns legitimate.

Access by US firms to the “Education Services Market”

10. The Zoellick letter includes under the heading “Trade in Services” the goal of pursuing a comprehensive approach to market access, “...including enhanced access for US services firms to telecommunications and any other appropriate services sectors in Australia’s market.” US firms already have access and have considerable purchase in commercial services in Australia. The intention here is apparently to treat essential services like telecommunications which is named as well as education, health and water as traded commercial goods. Australian governments have provided such essential services based on democratically determined legislation and often as a result of people’s campaigns for rights and standards. Opening such services to the market would be to risk the forms of regulation which ensure quality and accountability in services such as education, health and water. Regulation by local, state and federal governments is essential to maintain equity and access to these services.

Human and Labour Rights

11. The AEU is committed to the promotion of human and labour rights in treaties and trade agreements. We note that an FTA would be negotiated under the terms of the *Bipartisan Trade Promotion Authority Act 2001* (TPA) which sets out the conditions under which the Bush Administration can proceed. These include:
 - (6) to promote respect for worker rights and the rights of children consistent with core labour standards of the International Labour Organisation; and

- (7) to seek provisions in trade agreements under which parties to those agreements strive to ensure that they do not weaken or reduce the protections afforded in domestic environmental and labour laws as an encouragement for trade.
12. As a member of the International Labour Organisation, Australia should support the inclusion of the core labour standards of the right to association, the right to organise and bargain collectively and a prohibition on the use of any form of forced, child or compulsory labour, as set out in the TPA Act and the ILO Convention, and that such provisions should be a prior condition to the conclusion of the FTA.
13. The experience of Free Trade Agreements between the US and other countries has shown that labour rights are best secured by not following the formula of a side agreement such as that made with the NAFTA which has proven ineffectual. Rather the model which should be followed is that of the US-Jordan FTA signed into force by President Bush on 7 December 2001. The provisions include:
- a. reaffirmation of obligations under the ILO;
 - b. affirmation of the need to maintain the strength of domestic laws;
 - c. recognition of the right to establish labour standards and to meet international standards;
 - d. commitment not to fail to enforce labour laws;
 - e. discretion about enforcement and compliance with above;
 - f. recognition of the capacity to enhance labour standards; and
 - g. definition of “labor laws” which includes the right to association, the right to organise and bargain collectively, prohibition of forced or compulsory labour, minimum employment age for children and acceptable conditions with respect to minimum wages, hours of work and Occupational Health and Safety.

Environmental Protection

14. The AEU supports the protection of the environment and the promotion of sustainable development through trade agreements including in the body of the proposed FTA.
15. We note that the *Bipartisan Trade Protection Authority Act 2001* also stipulates that environmental provisions must be included in trade agreements between the US and other countries which ensure that trade and environment policies are supportive and seek to protect the environment and optimise the use of the world’s resources in a way which does not weaken the protection afforded in the domestic environment.
16. The provisions included in the US-Jordan FTA should be the minimum included in the proposed FTA to maintain the efficacy of Australian environmental laws defined to include those which prevent danger to human, animal or plant life or health through:

- a. control of pollutants or contaminants;
- b. control of hazardous or toxic materials;
- c. protection of wild flora and fauna.

Abolition of the Pharmaceutical Benefits Scheme

17. The AEU supports social equity and the rights of all citizens to health care and basic medicines. The indication that as part of the FTA the US Government wants reform of the Pharmaceutical Benefits Scheme which ensures that low-income families and pensioners are able to afford basic medicines should be treated with extreme care. The AEU urges the Australian Government to ensure that the provision of affordable medicine under the Pharmaceutical Benefits Scheme is maintained.

Consultation

18. The AEU supports transparent processes of government and adequate time for citizens and parliament to debate matters of vital interest to them. There should be adequate time for all organisations and individuals who wish to do so to express views about the proposed FTA with the US and to have the matter properly debated by the Australian parliament.

An FTA with the US is contrary to Australia's national interest

19. For the reasons outlined above, the AEU opposes the conclusion of an FTA with the United States of America as it would be contrary to Australia's national interest. However, should an agreement be made, it should at least contain the protections in relation to services, investment, the environment and labour rights set out above.