

A Fair Australia

Trade

Background Paper

ACTU CONGRESS 2003

Quick Fact:

The US Congress requires FTA's to contain labour and environmental clauses. The AFL-CIO criticised the outcome in the recent US FTA with Singapore for omitting core ILO standards and simply prohibiting the parties from failing to enforce existing domestic labour standards to secure a trade advantage. However, even this type of clause is unwelcome to the Federal Government.

CONGRESS 2000

1. The trade policy at Congress 2000 suggested the development of a Trade and Industry Development program aimed at *"attract[ing] wealth-creating investment in high value added industries and ... creat[ing] more jobs"*.
2. The policy stated:

The ACTU supports campaigns in Australia to encourage consumers, companies and major project developers to buy "Australian made" and keep jobs in Australia. At present there is a substantial trade deficit confronting the Australian economy which, overall, is too dependent on agricultural and mineral exports which in turn are often subject to downward pressure on prices. Australia needs a viable manufacturing sector competing on the domestic and export markets to provide jobs and have a stable economy into the future.

3. Finally the trade policy sought the implementation of anti-dumping laws and measures.

DEVELOPMENTS SINCE CONGRESS 2000

The State of Multilateral Negotiations

4. A WTO meeting of Trade Ministers in Doha last year launched a round of comprehensive negotiations on trade liberalisation. Currently the round is stalled over the objectives for negotiations on industrial goods and agriculture. In addition, the US and developing countries are still arguing over arrangements to give the latter access to low cost pharmaceutical products. The Doha round is also complicated by a European Union push for WTO agreements on investment, competition policy, and government procurement.
5. However, other rounds were ultimately successful despite seemingly insurmountable impasses.

Bilateral Agreement with Singapore

6. The Commonwealth has concluded the Singapore-Australia Free Trade Agreement (SAFTA) and has started negotiations with the US and Thailand. The aim is to conclude the negotiations with Thailand by October and the US by the end of 2003.
7. The Federal Government approached Japan about negotiating a FTA, but has had to settle for a more limited trade and investment framework agreement because Japan has other priorities, and it is reluctant to liberalise agriculture. A FTA with China was also contemplated, but again a framework agreement is the expected outcome. The issue of a FTA with South Korea is under consideration. The cumulative effect of Australia's bilateral initiatives, those of Japan, New Zealand, the US, Mexico, and Singapore, and the negotiations for regional free trade agreements covering South East Asia and the two Americas, is to sideline APEC to a considerable degree. Nevertheless, APEC continues to be a forum for trade liberalisation initiatives, while avoiding consideration of labour standards and other issues of importance to unions in the region
8. SAFTA provides for zero tariffs for goods, subject to rules of origin requiring 50% local content for most goods and 30% for others. The rules measure local content in terms of onshore processing costs, including a range of overheads, as a proportion of the total allowable cost to manufacture. Many Singaporean companies use nearby Indonesian islands for cheap labour offshore processing. There is a danger that the manufacturing undertaken in Singapore and associated overheads could, due to the difference between Singaporean and Indonesian wage and other costs, meet the content requirement even though the product was largely processed in Indonesia.

9. Outcomes in bilateral agreements are generally in advance of the parties' multilateral commitments. Australia's services sector commitments under SAFTA are greater than currently the case under GATS, and SAFTA is a negative list in design. This means that free trade applies for all services, including those that may be developed in the future, unless a service is listed in one of the two annexes setting out exceptions. One annex retains full national government rights to set and change regulatory policy in respect of the services listed. The other has a "standstill" effect, that is, existing trade restrictive measures can be maintained but new measures would breach the agreement.
10. SAFTA's chapter gives Singaporean companies rights to Australian government procurement on the same basis as Australian firms, but there is a reservation allowing the government to assist small business in competing for procurement contracts. There are no labour or environmental standards in the agreement, in contrast to Singapore's FTA with the US.

The Proposed Australia-US Free Trade Agreement (AUSFTA)

11. Australia's Chief Negotiator for the Singapore and US negotiations has praised SAFTA as a template for other proposed bilateral FTAs. The US is expected to push for commitments above the standard of free trade achieved in SAFTA as well as GATS. For example, the US is pushing for the abolition of Australia's local content rules for TV and radio, whereas no Australian commitments in this area have been given under GATS or SAFTA.

ISSUES FOR POLICY AT CONGRESS 2003

Negotiations on the General Agreement on Trade in Services

12. The GATS is a positive list agreement, which means its key obligations only apply to service sectors or sub-sectors that governments offer for inclusion on national schedules of commitments. In each round of GATS negotiations requests are made by individual countries for others to add new sectors and sub-sectors to their commitments, and to remove reservations on their existing commitments. Offers in response, once locked-in, apply to all WTO members.
13. A WTO working party on domestic regulation is considering the introduction of new obligations to apply to the licensing requirements, technical standards, and qualification requirements set by national, state, and local governments. The Federal Government has proposed a "least trade restrictive" test in these negotiations, which would enable one country to initiate a dispute over another's regulation on the grounds that:

- it was not introduced to meet a legitimate domestic policy objective, or
 - though intended to achieve a legitimate objective, the regulation is more trade restrictive in impact than necessary compared to feasible alternative measures for achieving the same objective.
14. Licensing requirements, technical standards and qualification requirements operate in a wide range of service sectors, for example TV stations, energy utilities, construction, and education institutions. The Federal Government's proposal could mean that, where an Australian domestic regulation is above a relevant international standard, Australia would have difficulty justifying its position. In the absence of an international standard, a WTO dispute panel could review the Australian measure having regard to the practices of comparable countries. For example, Australia bans TV advertisements for listed pharmaceutical products, the US permits advertisements if they comply with US advertising standards, while a number of other OECD countries encourage industry self-regulation for such advertisements.

Industrial Goods and Agriculture

15. Developing countries are arguing that OECD countries have failed to deliver on their Uruguay round promises in respect of agriculture, textiles, clothing and footwear. Proposals for negotiating objectives tend to vary according to the nature of each country's WTO commitments, and their actual tariff or quota practices. For example, some nations have very high tariffs for a range of goods, some use a rising tariff rate in proportion to the degree of value-adding embodied in the import, while others maintain a low rate of tariff, with a few exceptions.
16. The ability to temporarily vary WTO commitments and impose higher tariffs or more restrictive quotas to protect domestic industry from a surge in imports is being questioned in the wake of America's use of this mechanism for its steel industry. The Doha meeting also foreshadowed a possible review of practices in connection with anti-dumping provisions.
17. Proposals for negotiating objectives for agriculture include the abolition or at least a major expansion of quotas, and either a large across the board tariff rate cut, or a scale of percentage reductions requiring greater cuts for goods with the highest tariffs.

Issues Raised by Critics of the WTO

18. Unions have raised a number of concerns about WTO agreements. The ICFTU has highlighted the absence of labour standards clauses. Public

sector unions have queried claims that GATS excludes “services in the exercise of governmental authority”, pointing out that few public services meet the GATS definition of being supplied neither on a commercial basis nor in competition with other service suppliers. A broader argument is that services such as water supply should be outside the scope of a free trade agreement even where privatised.

19. Environmentalists are concerned that WTO commitments could override obligations under multilateral environment agreements to restrict trade in substances or products that are themselves harmful, or were harvested, processed, or produced in a manner deleterious to the environment. Another concern is that exemption clauses in WTO agreements for measures taken by governments to protect the environment, human health, and safety, can be interpreted by the WTO to challenge such measures as unduly trade restrictive.
20. Critics generally have complained about the lack of transparency of WTO dispute resolution procedures, and the absence of rights of non-government organisations to intervene in trade disputes between countries and present their views before WTO panels hearing the case.
21. There is little sign of progress on these issues in the Doha round, apart from indications of support from OECD countries for reforms to dispute resolution.

The Proposed Australia-US Free Trade Agreement

22. Because of the size of their domestic market and transnational reach, US firms have massive advantages in terms of economies and scale and scope. Even Australian advocates of AUSFTA acknowledge the US will be the prime beneficiary of tariff-free movement in industrial goods. The two countries, however, have very different approaches to rules of origin.
23. The US is seeking access to Commonwealth and State governments' procurement on the same basis as Australian firms, and offering reciprocal access to Federal and 37 US State governments' procurement. It regards the Pharmaceutical Benefits Scheme (PBS) as a trade barrier, and has raised concerns about Australian quarantine procedures. The Bush Administration's statement of US negotiating objectives described Australia's requirements for label advice that a food product contains genetically modified ingredients as a technical barrier to trade. Australia's foreign investment policies are on America's list of Australian trade barriers, and there may be an attempt to attain provisions similar to the Investment Chapter of the North American Free Trade Agreement (NAFTA) into AUSFTA. The NAFTA provisions have been used by US companies to challenge Canadian and Mexican social and environmental policies.

24. Intermediate outcomes are possible on many of these issues. They might seem reasonable compared to initial US proposals, but still compromise Australian interests. For example, a standstill outcome for audiovisual services would preserve current Australian content rules, but prevent the adoption of new content rules for pay TV, and for audiovisual product transmitted via new technology. The PBS may be kept, but its effectiveness in capping prices could be reduced through changes to meet US proposals for “greater recognition” of the research and development costs of innovative US pharmaceutical products. An AUSFTA chapter on investment could narrowly define Australia’s national interest test on foreign investment, and exclude proposed US investment below a specified dollar value from the jurisdiction of the Foreign Investment Review Board.

Unexpected Allies and Precedents

25. Australian advocates of trade liberalisation disagree about whether AUSFTA is in Australia’s interest. This disagreement reflects varying estimates of US willingness to liberalise agricultural trade and also a broader debate about bilateral agreements generally. Critics argue that because such agreements provide the signatory countries with preferential access to each other’s markets, it is likely that much of the projected increase in trade between America and Australia would be a redirection of trade currently conducted with other countries. The proliferation of bilateral FTAs with differences in rules of origin and other provisions also increases complexity and hence businesses’ export costs.
26. There are a couple of areas where US requirements are in advance of Australia. The US Congress requires FTA’s to contain labour and environmental clauses. The AFL-CIO criticised the outcome in the recent US FTA with Singapore for omitting core ILO standards and simply prohibiting the parties from failing to enforce existing domestic labour standards to secure a trade advantage. However, even this type of clause is unwelcome to the Federal Government. The US has Congressional hearings on US negotiating objectives, reasonably transparent processes for assessments of proposed outcomes, and a requirement for a vote of Congress for an FTA to be adopted. Australia’s procedures for the negotiation and adoption of trade agreements are well short of these practices.