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The Australian Workers' Union Standing Committee on Treaties Inquiry into the ASEAN-Aust-NZ FTA Submission

April 2009

Executive Summary

The Australian Workers' Union (AWU) supports free trade and the negotiation of free trade agreements (FTA) on just terms. When respected by all parties these agreements are vital in ensuring the maximum access to overseas markets for Australian goods and services which sustain and build jobs in industries which employ thousands of AWU members.

FTAs also provide the building blocks to consolidate gains in bilateral cooperation which can feed into multilateral agreements in the future. In this case, the ASEAN-Australia-NZ FTA will ensure consistency between ASEAN countries with Australia and New Zealand for the first time.

In addition, the FTA provides scope to build further cooperation with ASEAN aimed at ensuring that their domestic policies do not cut across the interests of our own producers. Australia is always rigorous in this regard in terms of granting access to Australian markets (maybe too rigorous). It is therefore essential the same level of rigour is demonstrated by other member countries in ensuring equivalent access to Australian producers and not just in word but by deed. If it is not action must be taken immediately to address this imbalance.

On balance, if actively pursued and followed up, this agreement should assist in achieving improved opportunities for Australian producers as growth recommences in the region when recovery gains traction beginning in 2010 following deep global recession in 2009.

At the same time, the AWU has a number of key interests and concerns that are outlined in this submission:

- 1) Assurances concerning the application of the FTA on terms which will not effectively grant more favourable access to our own market for foreign suppliers than we are entitled to receive as suppliers to their markets (our starting point is making up for almost \$1 billion in foregone tariff revenue over the forward estimates which results from the FTA);
- 2) There is the opportunity to use the agreement to build a new model of local procurement which avoids dumping by developing a regional 'benchmark' of the costs of production; and
- 3) Working to militate against leakage of industry and jobs to other member countries occurring in response to the imposition of an emissions trading scheme in Australia. This can be achieved through harnessing regional cooperation for exploiting sectoral agreements where producers and consumers have important shared interests in the supply and demand of such products as iron and steel, aluminium and cement.

The AWU also queries whether delinking human rights completely from the FTA serves the interests of the regional community in particular the outlook for the people of Burma who have been living under military dictatorship for a generation. Australia's participation cannot simply go the ASEAN way and remain silent in this reform effort. It is hoped that the FTA will provide impetus to reform efforts among members to the Agreement on a range of levels.

The AWU urges the government to be proactive and to ensure that the full suite of rights, obligations and entitlements contained in the agreement to serve and promote the national interest are exploited. The AWU would also support a review of the Agreement in order to take stock of progress along the triple bottom line after a defined period.

Introduction

This submission responds to an invitation by the Joint Standing Committee on Treaties to respond to its inquiry into the Agreement establishing the ASEAN-Australia-New Zealand Free Trade Areaⁱ tabled in the Australian Parliament on 16 March.

The AWU makes 3 main points which are dealt with in turn. The overarching theme is the opportunity presented by the FTA to promote Australian industry and jobs. This is particularly the case as the impacts of the Global Financial Crisis (GFC) on the real economy are resulting in higher levels of unemployment and reduced investment by industry. At this time, the Government has a critical role in ensuring that the economy's productive capacity is supported and sustained as much as possible.

1) Application of the FTA on fair terms

Australia has a trading reputation second to none. Since the 1970s successive Australian Governments have been committed to the goal of global trade reform and ensured that the competitiveness of the Australian economy has benefited from reduced tariffs and non-tariff barriers. However, while underwriting trade reform, active industry policy aimed at promoting opportunities for Australian made goods and services and to support innovation and an export orientation has been much more patchy and run a poor second to trade policy reform.

The AWU therefore supports the development of an industry policy plan which will sit alongside the FTA such that the market opportunities which will become available to Australian industry will be fully exploited.ⁱⁱ Such an industry policy plan would assess the market opportunities for Australian suppliers and develop a strategy to harness these.

On the other side, an audit of potential risks to local suppliers should be undertaken which will assist in identifying possible areas of potential trade policy failure in particular the risk of dumping of subsidised product onto the Australian market under cover of the FTA. The risk may be more pronounced under the pressure of the GFC to offload surplus inventories and to sustain local industry in Asian markets.

The bottom line is the Federal Government must ensure that the application of the FTA occurs on fair terms. More information and intelligence provided by a monitoring service or team dedicated to tracking the application of the FTA and to provide early warning to Government will assist in this effort. It will be self-defeating for Australia's producers if local markets are lost to subsidised imports under cover of the FTA while being expected to look for their own market opportunities in the free trade area.

The risk is real despite the assurances of the assessment by the National Interest Analysis (NIA) concerning the benefits of the agreement with regard to regional rules of origin.ⁱⁱⁱ For example, will the FTA shield Australian producers from the kind of local content measures being planned in Vietnam for steel which will make it harder for non-ASEAN producers but for ASEAN still apply non-tariff measures including tighter customs clearance involving sampling and stringent inspection? How will the NIA assurances be implemented in practice? The AWU urges the Committee to test the capacity of the Agreement to assist Australian producers in this regard and the plans and intentions of the Government to ensure enforcement of rights where they exist and how we intend avoiding encountering the kind of border measures being proposed by Vietnam.

Vietnam Steel Association seeks tighter import restrictions

It has been reported that the Vietnam Steel Association (VSA) submitted on 3 April a proposal to the prime minister's office and to the ministries of industry & trade and finance for more stringent requirements for the importing of steel products such as wire rod, cold rolled coil, metallic coated steel and welded pipe. Imports of steel which are not being produced domestically or sufficiently, such as hot rolled coil and billet, are not included, Steel Business Briefing is told. The association has also proposed that long products from most favored nations as well as from Asian countries be imposed the current 15% import duty. Those wanting to qualify for the 0% preferential duty for Asean imports will need to apply, whereby customs clearance of the imports will involve sampling and stringent inspection. "We want to make sure that wire rod from an Asean country has at least 40% local content. This is no longer the case if imported billet is used for making the wire rod," Dinh Huy Tam, VSA's secretary general tells Steel Business Briefing. "We want to ensure that there is fair competition for our domestic producers," he adds. The VSA had previously proposed higher import duties on billet and long products and these duties were subsequently raised by 3 points effective 1 April. Source: Steel Business Briefing.

2) A new model of local procurement to avoid dumping

The AWU has been concerned for some time regarding the poor and timely application of Australian rights to take steps to protect itself against the dumping of subsidised product onto the Australian market. For example, the AWU's New Steel Plan^{iv} outlines in detail the concerns held by industry and some of the measures which could be implemented to improve application of countervailing measures to ward off dumping.

Giving foreign suppliers a free kick onto the local market regardless of whether the foreign suppliers are selling at prices which reflect the true cost of production rather than a subsidised price is no longer tenable to the AWU and should not be tolerated by the Australian Government.

The New Steel Plan outlined a range of measures from the development of a more informed and transparent database of production costs and prices to the consideration of the application of countervailing duties by the relevant department and Minister. Such a model would mirror more closely the circumstances in the US where these issues are dealt with in a more timely manner in consultation with industry and unions. Are we simply making it easier for competitors to target the Australian market with subsidised or dumped product? How will the FTA serve to lessen this risk? Absent institutional reform in dealing with dumping cases, how effective will the FTA be in mitigating the risks?

The AWU notes that the NIA claims the department consulted widely with unions^y, however, apart from a couple of submissions received, direct consultations appear to be thin on the ground as set out in Annex II of the NIA. The AWU would ask the Committee to ensure that adequate and representative consultation with all stakeholders was in fact undertaken.

**USW Joins Oil Tubular Trade Case Against China Imports
Seven domestic producers file petition representing 6,000 production workers**

Washington, DC (Apr. 8) -- Seven U.S. oil country tubular goods (OCTG) producers and the United Steelworkers (USW) today filed an antidumping and countervailing duty trade case against China imports with the U.S. Department of Commerce (DOC) and the U.S. International Trade Commission (ITC).

OCTG represents welded and stainless steel pipes that are used to extract oil or gas from a drill well. The USW and the domestic companies allege that Chinese producers benefit from massive government subsidies and dumping margins ranging from 40 to 90 percent. According to the USW, the increase in Chinese imports of OCTG are made worse by the global recession that increases the impact on good jobs in the steel and pipe manufacturing sector.

USW International President Leo W. Gerard declared: "There are more than 2,000 workers currently on layoff at companies making OCTG. We cannot let China get away with targeting these family-supportive and skilled jobs through predatory trade practices. China must be stopped from cheating on trade with illegally dumped and subsidized products that destroy our ability to drill for oil and gas in the U.S."

The USW is the largest union representing production workers employed by the petitioner companies that make OCTG. The total employment of OCTG is estimated at 6,000 workers.

Tom Conway, USW International Vice President, who oversees the union's pipe sector, says: "Because of the astonishing volume of unfairly-traded drill pipe from China, we have large numbers of laid off workers at world class production facilities that need strict enforcement of our trade laws before it's too late and we lose the capacity to make this critical product." In addition to the USW as co-petitioner, the seven producers of the OCTG petition are: U.S. Steel Corp., Pittsburgh, Pa.; Maverick Tube Corp., Hickman, Ark.; Evraz Rocky Mountain Steel, Pueblo, Colo.; TMK IPSCO, Downers Grove, Ill.; V&M Star, LLP, Houston, Texas.; V&M TCA, Houston, Texas.; and Wheatland Tube Corp., Beachwood, Ohio.

Rob Simon, Vice President and General Manager of Evraz Rocky Mountain Steel Mills, said, "Dumped and subsidized imports from China have tripled from 750,000 tons in 2006 to 2.2 million tons in 2008 and have continued increasing in the first quarter of this year. These imports significantly undersold our producers and have created a huge inventory build up in the U.S. market."

According to Roger Schagrin, trade counsel for the USW's petition, China imports of OCTG pipe from China are subject to very high antidumping and countervailing duties in Canada, the world's second largest market. Schagrin also said the European Union (E.U.) today made a preliminary dumping determination of margins ranging from 35 to 51 percent against China imports of seamless pipe. China exported over 600,000 tons to the E.U. last year, much of which China could potentially now shift towards the U.S.

Under U.S. trade law, the ITC is to make a preliminary injury determination no later than May 26, 2009. The DOC is expected to issue a preliminary subsidy finding by Sept. 8, 2009, and a preliminary dumping finding by Nov. 6, 2009. Contact: Gary Hubbard 202-778-4384; 202-256-8125.

The AWU recognises that much time and effort is put into negotiating and striking agreements among the parties which aims to serve the interests of more effective and efficient access for trade and investment for all. However, when dumping, perceived or real and injurious occurs, it is up to the individual members to implement domestic countervailing policy measures including review and policy responses (the example of Vietnam's response to steel imports above is a case in point).

It seems appropriate therefore that the FTA framework could offer scope for members to "pool" their market understanding for the prices and production costs of goods traded and to establish a benchmark by which trading terms can be objectively measured and against which action may be taken against injurious dumping by all.

This would facilitate fair trade while providing a disincentive for subsidised exports. In the AWU's view such an approach would serve Australian exports because we are efficient and competitive producers, who, while offering access to the Australian market on fair terms, also expect to receive it in return. And actions against third parties outside the agreement could be potentially taken collectively which would serve to limit incentives for subsidised exports occurring in the first place.

3) Militate against leakage of investment and jobs because of carbon trading

Finally, the AWU believes there is scope to produce a stronger sectoral policy approach linked to the implementation of domestic policy responses to climate change which could serve as a building block to a comprehensive global agreement.

The AWU has been a strong advocate for the merits of sectoral deals covering major energy and emissions intensive exports such as steel, aluminum and cement which would see a collective agreement on approaches to implementing carbon reduction strategies including emissions trading. A number of AWU submissions have pointed to the benefits of sectoral agreements^{vi} and the AWU was influential in achieving a united position among the International Metalworkers' Federation supporting this approach.^{vii}

The FTA gives impetus to put together developed and developing countries at a critical time in the negotiation of a more comprehensive global agreement on climate change. This work is also being promoted by the Asia Pacific Partnerships and should be supported by agreements such as this one.

We believe new impetus could be given to the Copenhagen negotiations if all trade-exposed industries went onto the front foot and asserted the need for sector-by-sector agreements instead of waiting for governments to agree on economy-wide quantified commitments and a globally-acceptable ETS. Robert Pritchard, ResourcesLaw International

Sectoral agreements offer scope to limit the impact of domestic trading agreements encouraging the relocation of operations and with it jobs and investment to countries without similar regulatory frameworks. This is particularly true of the circumstances of ASEAN partners in the production of substitutable products such as steel, aluminum and cement in addition to plastics, paper, oil refining, petrochemicals and LNG among others providing an important opportunity to further sectoral approaches as soon as possible.

Conclusion

The ASEAN-Aust-NZ FTA is supported by the AWU if it is trade creating for Australian producers, limits the impacts of injurious dumping on the local market, is complemented by an industry policy which supports local suppliers servicing the expanded market and serves to progress respect for human rights in the region.

The FTA offers a number of opportunities for Australia which should be fully exploited including a more efficient and effective approach to dealing with dumping issues; the development of an industry policy to complement the FTA targeted at exploiting fully the opportunities in these markets; and the opportunity to develop sectoral agreements in a range of major exports of shared interest including energy intensive products which run the risk of experiencing leakage in the absence of a global carbon price.

However, the overriding consideration for the AWU is to ensure that trade and investment occurs on fair terms and that the national interest is front and centre in the application of the rights and obligations under the agreement. In this respect the AWU would insist the Government implement a compliance and monitoring framework which ensures that outcomes are fair and where they are not action is taken.

The development of a complementary industry policy to maximize benefits to local producers from the agreement is an obvious but neglected area of policy development which the AWU endorses wholeheartedly.

The AWU stands ready to assist the Committee in its deliberations and thanks the Committee for this opportunity to offer our submission for its consideration.

Endnotes

ⁱ The AANZFTA was signed by the governments of all Parties (Australia, Burma, Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, New Zealand, the Philippines, Singapore, Thailand and Vietnam) on 27 February 2009.

ⁱⁱ ASEAN member countries and New Zealand together account for 21 per cent of Australia's total trade in goods and services (total trade in goods and services between Australia, and ASEAN and New Zealand combined, was \$103 billion in 2007-08). AANZFTA will cover an area with a combined population of 600 million people and annual GDP of \$3.2 trillion.

ⁱⁱⁱ Under the AANZFTA's "regional rules of origin", ASEAN firms using Australian-produced inputs that comply with origin requirements will be able to access preferential tariff rates when exporting to other ASEAN member countries or New Zealand under the AANZFTA. This provides ASEAN member countries with a new incentive to use Australian inputs in their manufacturing processes. These incentives, and the opportunity they afford for Australian exporters to become more integrated into regional production chains, are not available in bilateral FTAs with individual ASEAN member countries. **DFAT National Interest Analysis [2009]**

^{iv} AWU: New Steel Plan – Our Vision for Australian Steel in the 21st Century

^v DFAT officials held regular consultations with relevant Commonwealth Agencies, State and Territory governments and other stakeholders, including industry, unions and public interest groups, to ensure that their views informed the development of the Australian Government's negotiating strategy. **DFAT National Interest Analysis [2009]**

^{vi} *Working to get the ETS right for Australian industry, exports, investment and jobs: AWU Response to Green Paper, July 2008.*
http://www.awu.net.au/working_to_get_the_ets_right_for_australian_industry_final.pdf

The Australian Workers' Union
Submission to the Joint Standing Committee on Treaties
Review of the Kyoto Protocol and beyond
August 2008, <http://www.aph.gov.au/house/committee/jsct/25june2008/subs/sub25.pdf>

The National Emissions Trading Scheme, AWU Position Paper, July 2008,
http://www.awu.net.au/emissions_trading_scheme_a1_22_july_2008.pdf

AWU Submission to the Opposition's review of the CPRS, January 2009

Exposure Draft of the Carbon Pollution Reduction Scheme Legislation
Submission to the Department of Climate Change Consultation
The Australian Workers' Union
April 2009

^{vii} **AWU takes fight to defend Australian steel industry to Global Climate Change meeting, 02 November 2008** http://www.awu.net.au/69_5.html?H|19|69|99535992

Steel unions agree to environmental global strategy : fight for international solutions to climate change, 13 November 2008, http://www.awu.net.au/165_5.html?H|19|165|71799031