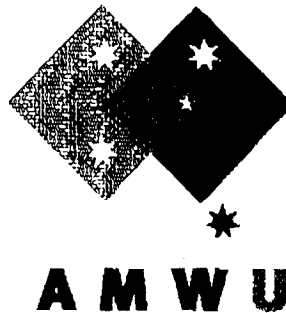


AUSTRALIAN MANUFACTURING WORKERS' UNION



**SUBMISSION TO THE
AUSTRALIA – MALAYSIA FTA SCOPING STUDY**

OCTOBER 2004

Introduction

1. The Australian Manufacturing Workers' Union (AMWU) welcomes the opportunity to make submissions to the Australia – Malaysia Free Trade Agreement Scoping Study.
2. The full name of the AMWU is the Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union. The AMWU represents approximately 140,000 workers in a broad range of sectors and occupations within Australia's manufacturing industry. The union has members in each of Australia's states and territories.
3. The AMWU supports and seeks to promote fair trade rather than free trade. Unlike free trade, fair trade is trade that is managed in the interests of working people and their families. To this end, the AMWU has recently campaigned strongly against the Australian government entering a number of bilateral preferential free trade agreements including the Australia – Thailand Free Trade Agreement and the Australia – United States of America Free Trade Agreement.
4. The following submission discusses a number of specific concerns the AMWU has in relation to a possible free trade agreement with Malaysia, including:
 - Australia's Trade Balance and the Potential Effects on Manufacturing
 - The Failure of Either Nation to Protect Core Labour Standards
 - Rules of Origin
 - Government Procurement
 - The Flawed Strategy of Negotiating Bilateral Agreements.
5. In addition to these matters the AMWU notes the concerns raised by the Australian Fair Trade and Investment Network (AFTINET) in AFTINET's submission to this study.
6. On balance, taking into account the matters of specific concern to the AMWU and given the recent outcomes of other bilateral trade negotiations, the AMWU does not support the Australian government pursuing a free trade agreement with Malaysia.

I Potential Effects On Australia's Trade Balance and Australian Manufacturing

Australia's Growing Trade Deficit

7. Recently released Australian Bureau of Statistics figures show that Australia had a \$2.1 billion trade deficit for the September quarter 2004. This is the 29th deficit in a row. Australia's trade imbalance with the rest of the world is simply not sustainable in the long term. In 2003 - 2004 Australia's merchandise trade deficit with Malaysia was \$2.4 billion. This bilateral deficit has been growing rapidly since 1997. The AMWU is concerned that a free trade agreement with Malaysia may have the effect of *further* deteriorating Australia's trade imbalance.
8. The AMWU submits that prior to any decision being made to enter the free trade agreement independent and credible studies must be undertaken into the likely effect of the free trade agreement on Australia's trade position.

Australian Manufacturing

9. The AMWU recognises that a free trade agreement with Malaysia is likely to require a further reduction to Australia's tariffs in the manufacturing sector. The Department of Foreign Affairs and Trade's "Industry Consultations" discussion paper suggests that the agreement is likely to lead to an increase in the exports to and imports from Malaysia in the motor cars and other motor vehicles sector. Given the global pressures facing many in the automotive sector the AMWU urges great caution when the Government considers further changes affecting the industry.
10. Partly to this end, the AMWU strongly submits that no free trade agreement with Malaysia be entered into without a comprehensive socio - economic analysis of the likely national, regional and sectorial effects of such an agreement. Any economic analysis and / or modelling should specifically deal with the likely employment and wage effects of the agreement in sub-sectors of the manufacturing industry both on a national and regional basis. In addition, the AMWU submits that it is important that studies be carried out before and after the negotiation of the agreement. Studies carried out prior to negotiations should establish a range of socio-economic outcomes which can be later benchmarked against the actual outcomes achieved in the negotiations.
11. The AMWU does not regard the recent flawed studies by the Centre for International Economics (CIE) as providing an adequate basis upon which to accurately assess the likely social or economic effects of the free trade agreement the studies examined. On past performance the AMWU is sceptical of the utility of the Government commissioning further studies of a similar kind from CIE.
12. The AMWU strongly submits that no agreement should be entered into which further risks jobs or production in the manufacturing sector.

(Core Labour Standards and Democratic Rights

C.1 Core Labour Standards

13. The AMWU submits that Australia should not enter trade agreements that do not guarantee that all parties subject to the agreement must observe the core labour standards contained in the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work. These standards include:

- the right of workers and employers to freedom of association and the effective right to collective bargaining (conventions 87 and 98);
- the elimination of all forms of forced or compulsory labour (conventions 29 and 105);
- the effective abolition of child labour (conventions 138 and 182); and
- the elimination of discrimination in respect of employment and occupation (conventions 100 and 111).

14. If enforceable core labour standards are not achievable in the context of negotiations for a free trade agreement with Malaysia, the AMWU submits that it is not in Australia's national interest, nor in the interests of Australian or Malaysian workers, for the two nations to have a bilateral free trade agreement.

C.1.1 Core Labour Standards In Malaysia

15. The AMWU notes with concern that the Malaysian government has currently ratified only 5 of the 8 International Labour Organisation (ILO) conventions containing core labour standards. The Malaysian government has not ratified either the Freedom of Association and Protection of the Right to Organise Convention, 1948 (Convention 87) nor the Discrimination (Employment and Occupation) Convention, 1958 (Convention 111). In 1990 Malaysia denounced the Abolition of Forced Labour Convention, 1957 (Convention 105).

16. Furthermore, the AMWU is concerned that core labour standards in Malaysia are not adequately observed as a matter of practice. For example, the U.S. Department of State's Country Report on Human Rights Practices 2003 recently found in relation to Malaysia that¹:

- Workers may only join enterprise unions in the electronic sector, the country's largest industry.²
- Collective bargaining is specifically restricted in companies which are designated "pioneer status".
- The government does not allow collective bargaining to deal with issues such as: transfer, dismissal or reinstatement.³

¹ U.S. Department of State, "Country Reports on Human Rights Practices - 2003: Malaysia", February 25 2004.

² *Ibid.*

³ *Ibid* at page 19.

- There is no minimum wage.⁴
- Foreign workers (who make up 20% of the workforce) typically do not have access to labour adjudication.⁵
- The Malaysian Immigration Department places conditions on foreign workers which effectively prevents them from joining a trade union.⁶
- The right to strike is severely restricted. Ministry of Human Resources statistics showed that there were 2 strikes and lockouts involving 57 workers for the year 2003.⁷

17. The International Confederation of Free Trade Unions has described the right to strike in Malaysia in this way:

“[L]egislative restrictions make it practically impossible for worker to hold a legal strike. Trade unions are not allowed to go on strike for disputes relating to trade union registration or illegal sackings. General strikes and sympathy strikes are not permitted either.

Pre-strike authorisation procedures are cumbersome. Two thirds of the members of a trade union must vote in favour of a strike in a secret ballot and the ballot must include a resolution that states “the nature of the acts to be carried out or to be avoided during the strike.” The results of the ballot are passed to the DGTU for verification. Should all procedures have been complied with, a seven day cooling off period is then imposed. During the cooling off period the Ministry of Human Resources’ Industrial Relations Department can attempt conciliation and, if this fails, refer the dispute to the Industrial Court. While the dispute is before the Industrial Court, strikes and lockouts are prohibited.

Trade unions in “essential services” face additional restrictions on their right to strike, including the requirement to give at least 21 days’ strike notice. Essential services are very broadly defined, but include medicine, education and transport.

It is almost impossible to strike in the public sector.”⁸

18. It is particularly important to note in this context that the denial of adequate core labour standards in Malaysia takes place in what is a comparatively low wage economy. A survey conducted by the Malaysian Employers’ Federation in 2003 found that in the manufacturing sector the average basic *monthly* salary was:

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid* at page 18.

⁷ *Ibid* at page 19.

⁸ International Confederation of Free Trade Unions, Malaysia: Annual Survey of Violations of Trade Union Rights, 2004 at page 2. The survey can be found be downloaded at the ICFTU’s website at www.icftu.org.

- \$173 for unskilled workers;
- \$231 for semi-skilled workers; and
- \$432 for skilled workers / craftsman.⁹

C.1.2 Core Labour Standards In Australia

19. The Australian Government also fails to meet its obligations with respect to core labour standards. Australia has ratified only 6 of 8 core labour standards conventions and has on a number of occasions been found not to be meeting its obligations in relation to those ILO conventions that it has ratified.¹⁰

C.1.3 Core Labour Standards and Trade Agreements

20. The AMWU submits that prior to entering a trade agreement all nations who are proposed to be party to the agreement should submit their industrial laws to the ILO for an assessment of the extent to which the nation upholds the ILO's Declaration on Fundamental Principles and Rights at Work.

21. As the ILO states in the Declaration:

“the guarantee of fundamental principles and rights at work is of particular significance in that it enables the persons concerned, to claim freely and on the basis of equality of opportunity, their fair share of the wealth which they have helped to generate, and to achieve fully their human potential”¹¹

22. Where workers are denied the core labour standards identified in the ILO's Declaration and are consequently unable to claim freely their fair share of wealth or to achieve fully their human potential, free trade agreements of any sort will inevitably be problematic.

23. In the specific circumstances of the proposed Australia – Malaysian Free Trade Agreement, unless the agreement contains provisions which provide core labour standard guarantees for both Australian and Malaysian workers there is a significant danger that multinational

⁹ The figures are taken from the website of the Malaysian Industrial Development Authority. The relevant page of the website can be found at www.mida.gov.my/costs_04.html

¹⁰ See for example the ILO's comments in CEACR: Individual Observation concerning Convention No. 87, Freedom of Association and Protection of the Right to Organise, 1948 Australia (ratification: 1973) Published: 2001; CEACR: Individual Observation concerning Convention No. 98, Right to Organise and Collective Bargaining, 1949 Australia (ratification: 1973) Published: 1998 - both of which can be found on the ILO website at www.ilo.org

¹¹ The Declaration can be downloaded at

http://www.ilo.org/dyn/declaris/DECLARATIONWEBB.static_jump?var_language=EN&var_pagename=DECLARATIONTEXT

companies will be further empowered to force workers into competing with one another by trading off the most basic of working conditions. The AMWU submits that this is not a form of globalisation that the Australian government should support.

24. The AMWU submits that Australia should not enter preferential free trade agreements where such agreements do not contain clauses which guarantee the observance of core labour standards.

C.2 Other Democratic Rights Restricted in Malaysia

25. The AMWU submits that a failure to meet core labour standards is not the only concern in relation to the observance of human rights in Malaysia. The U.S. State Department report referred to above also discusses problems concerning the exercise of democratic rights in Malaysia. In particular the report notes that in practice the Malaysian government actively restricts freedom of expression and intimidates the print and electronic media. There are also significant restrictions on the freedom of public assembly and the rights of minorities.¹²
26. It is the AMWU's view that trade agreements should be used to promote democratic principles within the parties entering the agreement. As a matter of principle, the AMWU would have concerns about Australia entering a free trade agreement with the Malaysian government without accompanying measures to ensure the Malaysian people are guaranteed a more open and participatory involvement in their society.

¹² US State Department at pages 7, 9 and 18.

Government Procurement

27. The AMWU opposes the inclusion of government procurement provisions in an Australia – Malaysia Free Trade Agreement. In particular the AMWU opposes the type of commitments Australia made to the United States in the Australia – United States Free Trade Agreement.
28. The data available on foreign access to US procurement market leads the AMWU to conclude:
- Better access to US Federal and State procurement markets is likely to lead to Australian firms winning less than \$100 million worth of procurement contracts (they already win \$50 million without the AUSFTA).
 - By 2010, or shortly thereafter, Australia will lose in the vicinity of \$400 million to imports as a result of changes to local procurement policies.¹³
29. In the AMWU's view, the government procurement provisions in the Australia – United States of America Free Trade Agreement are therefore likely to have a significant negative effect on local jobs and industries.
30. However, of perhaps even greater long term significance, Australia in the Australia – United States Free Trade Agreement is giving up its current capacity to promote growth in industries of the future such as: biotechnology and life sciences; information and communications technology; electronics; and advanced materials.
31. If Australia is to thrive in a global economy it is critical that our federal and state governments maintain enough policy levers to build and encourage industries of the future. The Australia United States of America Free Trade Agreement will severely limit the capacity of Australian governments to fulfill this vital role. It is important that any Australia – Malaysia Free Trade Agreement should not further damage the capacity of Australian governments in this regard.
32. The AMWU submits that any Australia – Malaysia free trade agreement should not include provisions on government procurement.

¹³ See the AMWU's submissions to the Senate Inquiry into the Australia – United States Free Trade Agreement. The submission can be downloaded at http://www.aph.gov.au/Senate/committee/freetrade_ctte/submissions/sublist.htm

Rules of Origin

33. The AMWU submits that the rules of origin in any free trade agreement between Malaysia and Australia must be sufficient to ensure that only products which are substantially produced in Australia or Malaysia obtain concessional treatment under the agreement.
34. The AMWU is concerned that the rules of origin provisions in recently negotiated free trade agreements between Australia and Singapore, Thailand and the United States allow concessional access to be granted to products for which a significant proportion of their manufacture took place in a third country that has:
- not granted reciprocal access; and/or
 - a very low commitment to labour and environmental standards.
35. The AMWU notes that the change in tariff classification approach used in some preferential trade agreements can lead to relatively arbitrary outcomes in terms of tariff treatment for some products. This arbitrary treatment arises in part because the Harmonised System was not designed for the identification of origin but for the presentation of trade statistics. As the Productivity Commission has noted when considering a proposal to change the rules of origin under the Australia - New Zealand CER Trade Agreement to a tariff classification approach, "the extent of transformation involved in a change in tariff classification would vary between classification levels and between categories at each level".¹⁴ Merely because a good may have changed (or may have not changed) tariff classification in a country does not mean that a product was (or was not) substantially produced in that country.
36. Furthermore, the AMWU is not satisfied that the additional requirements attached to some products will be sufficient to remedy this problem. In the view of the AMWU, regional content value requirements in recently negotiated agreements have been seriously inadequate.
37. The Australian government should not enter a free trade agreement with Malaysia if, like other recently negotiated rules of origin clauses, the rules of origin in the agreement do not operate to protect the integrity of the agreement.

¹⁴Productivity Commission, Rules of Origin under the Australia - New Zealand CER Trade Agreement, Interim Research Report, Canberra at page 133.

The Flawed Strategy of Negotiating Bilateral Agreements

38. The AMWU notes that there is a rapidly increasing body of research that suggests the strategy of negotiating bilateral trade agreements is not in Australia's national interest.
39. For example, the Productivity Commission has twice questioned the economic utility of bilateral agreements. Once in its Staff Working paper "The Trade and Investment Effects of Preferential Trading Arrangements - Old and New Evidence"¹⁵ and more recently in its 2003 Annual Report¹⁶.
40. While the AMWU believes the current multilateral trading system conducted under the auspices of the World Trade Organisation is in serious need of reform (particularly although not limited to the urgent need for inclusion of labour standards in trade agreements), the AMWU submits that Australia must focus its efforts on achieving multilateral trade outcomes.
41. As the ACTU has recently observed in its submissions to the Senate Select Committee Inquiry Into the Australia - United States Of America Free Trade Agreement, multilateral trade agreements have considerable advantages including that:
- The economic benefits of such agreements are available to both industrialised and developing countries.
 - The proliferation of bilateral trade agreements leads to different rules of origin and associated complexity and other costs for exporters.
 - There is a significant risk of trade diversion due to bilateral preferential trade agreements. This has been highlighted by the recent Productivity Commission evaluation of around 17 bilateral agreements.
 - The advantage of multilateral negotiations is that smaller countries are able to aggregate their bargaining power to negotiate on a more equal basis with major economies.
 - Multilateral negotiations are more appropriate for Australia given our diverse patterns of trade, with major export markets in Asia, Europe, the Middle East and North America.¹⁷
42. The AMWU submits Australia's long term interests are likely to be better served if the Government was to put greater effort into reforming and reinvigorating the multilateral trading system rather than pursuing a series of bilateral preferential free trade agreements.

¹⁵ Adams R, Dee P, Gali J and McGuire G, "The Trade and Investment Effects of Preferential Trading Arrangements - Old and New Evidence", Productivity Commission Staff Working Paper, Canberra, May 2003.

¹⁶ Productivity Commission Annual Report 2002-2003, page 14.

¹⁷ Australian Council of Trade Unions, Submission to the Senate Select Committee Inquiry into the Australia - United States of America Free Trade Agreement. A copy of the submission can be found at the Senate Select Committee's website at: http://www.aph.gov.au/Senate/committee/freetrade_ctte/submissions/sublist.htm.

Conclusion

43. The AMWU submits that there are a range of potential difficulties in negotiating a bilateral preferential free trade agreement with Malaysia. The AMWU does not believe that the outcomes of our recently concluded bilateral preferential free trade agreements suggest that these problems are likely to be overcome.

44. The AMWU would not support Australia entering a free trade agreement with Malaysia that was based on the type of models used in the Australia – Singapore; Australia – Thailand; or Australia – United States of America Free Trade Agreements.