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4 February 2009

Dear sir/ madam,

Please find attached the ACTU's comments in relation to a possible free trade agreement between Australia and the Republic of Korea.

Please do not hesitate to contact me on (03) 9664 7335 if you have any queries in relation to this submission.

Yours sincerely,

A handwritten signature in black ink that reads "Alison Tate".

Alison Tate  
International Officer

## **Towards a Possible Australia-Korea FTA**

### **ACTU Comments**

1. The ACTU welcomes the opportunity to comment on the economic and non-economic impacts that could be expected to arise from Australia's participation in a free trade agreement (FTA) with the Republic of Korea (South Korea). We note the Australian and South Korean Governments have agreed in principle to such an agreement and that preparatory talks between Australia and the Republic of Korea concluded in late 2008.<sup>1</sup> We take this opportunity to raise a number of concerns in relation to a proposed Australia-Korea FTA.
2. The ACTU recognises the importance of international trade in improving living standards and supports a system of fair trade. Fair trade means trade carried out in a manner which benefits civil society and delivers progress for all countries in terms of:
  - (i) Employment growth;
  - (ii) Improved social protections;
  - (iii) Implementation of core labour standards;
  - (iv) Sustainable environmental standards; and
  - (v) Adherence to human rights conventions and democratic values.<sup>2</sup>
3. We do not support FTAs that constrain government's ability to regulate in the public interest, to pursue legitimate social objectives through responsible procurement policies, and to provide affordable and high quality public services.
4. While ACTU believes that the World Trade Organisation (WTO) requires comprehensive reform, we nonetheless believe that Australia should pursue its trade objectives through multilateral rather than bilateral arrangements.

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<sup>1</sup> Prime Minister of Australia, Press Conference, Seoul, Republic of Korea, 11 August 2008; Simon Crean MP, 'Australia-Korea Free Trade Agreement Preparatory Talks Conclude', Media Release, 19 December 2008.

<sup>2</sup> ACTU Congress Policy 2003, *A Fair Australia – Trade Policy*.

5. The ACTU's support for multilateral rather than bilateral trade agreements is informed by a number of considerations. First, the economic benefits of such agreements are available to both developed and developing countries. Second, the proliferation of bilateral FTAs leads to different rules of origin and associated complexity and other costs for exports. Third, there is a significant risk of trade diversion due to bilateral preferential trade agreements.<sup>3</sup> Fourth, the advantage of multilateral negotiations is that developing countries can aggregate their bargaining power to negotiate on a more equal basis with larger economies. Finally, multilateral agreements are more appropriate for Australia given our diverse patterns of trade, with major export markets in Asia, Europe, the Middle East and North America.

### **Australia's bilateral FTAs in the Asia Pacific**

6. Australia has already signed bilateral FTAs with a number of countries in the Asia Pacific, including Thailand, Singapore, the US and Chile. FTAs with China, Japan, Malaysia, and ASEAN-New Zealand are currently under negotiation. In addition, FTAs are being considered with India and Indonesia.
7. In its 2007 election policy, the Australian Labor Party (ALP) recognised that "[t]he Howard Government has produced a spaghetti bowl of bilateral agreements with little regard for their compatibility with multilateral outcomes and little understanding of what constitutes a good deal for Australia."<sup>4</sup> It further noted that "[r]egional and bilateral agreements have their place but only insofar as they are consistent with, and enhance, multilateral outcomes."<sup>5</sup> The ALP undertook to pursue bilateral market access initiatives only where they deliver real benefits to the Australian economy and increased employment opportunities.
8. The ACTU notes that Australia has entered into a number of bilateral FTAs despite the lack of convincing evidence as to the benefits of such agreements to Australia. The Australia-Singapore FTA was signed, for example, despite a 2001 study commissioned by DFAT indicating that the agreement would not confer any

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<sup>3</sup> R Adams, P Dee, J Gali and G McGuire, *The Trade and Investment Effects of Preferential Trading Arrangements—Old and New Evidence*, Working Paper, Australia Productivity Commission, Canberra, 2003.

<sup>4</sup> Simon Crean MP, Australian Labor Party, 'A Strong Future for Australia's Exports', Election 2007, 20.

<sup>5</sup> Simon Crean MP, Australian Labor Party, 'A Strong Future for Australia's Exports', Election 2007, 3.

quantifiable net gain on Australia.<sup>6</sup> Similarly, prior to the signing the Australia-US FTA, four out of the five assessments made on the impact of the FTA found that the agreement would have little, no or a negative impact on the Australian economy.<sup>7</sup>

9. These agreements have yet to deliver significant economic benefits to Australia. To the contrary, the common outcome of existing Australian bilateral FTAs has been a surge in imports and increasing structural trade imbalances leading to higher trade deficits favouring the FTA partner country.<sup>8</sup>
10. Feasibility studies for bilateral FTAs in Australia – including the joint non-government feasibility study on a proposed Australia-Korea FTA - are based on flawed assumptions and unrealistic modeling. Moreover, these studies simply ignore the potential social and environmental impacts of FTAs. Any feasibility studies undertaken must present a realistic picture of the expected costs and benefits of any such agreement. They must take into account the potential social, cultural and environmental impacts of the proposed agreement.<sup>9</sup>

### **The potential for bilateral agreements to foster greater regional integration**

11. In the Asia-Pacific, bilateral FTAs are often viewed as precursors to, or foundations of, an Asia-Pacific free trade area.<sup>10</sup> We note that the use of economic bilateralism as a basis upon which to develop some form of economic regionalism has been questioned. There are a range of potential issues that require consideration so as to ensure that any bilateral arrangements entered into enhance rather than undermine

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<sup>6</sup> Access Economics, *The Costs and Benefits of a Free Trade Agreement With Singapore*, September 2001.

<sup>7</sup> See M Priestly, *Background Note – Australia's Free Trade Agreements*, Australian Parliamentary Library, 2 December 2008.

<sup>8</sup> M Priestly, *Background Note – Australia's Free Trade Agreements*, Australian Parliamentary Library, 2 December 2008; D Mortimer, *Winning in World Markets: Meeting the Competitive Challenge of the New Global Economy*, Review of Export Policies and Programs, 1 September 2008, 2008, 95.

<sup>9</sup> AFTINET, *Submission to the Department of Foreign Affairs and Trade Review of a Possible Australia/ Republic of Korea FTA on Behalf of the Australian Fair Trade and Investment Network*, January 2009.

<sup>10</sup> See C Dent, 'Bilateral Free Trade Agreements: Boon or Bane for Regionalism in East Asia and the Pacific?' (2005) 4 *European Journal of East Asian Studies*, 287, 299-300; P Tumbarello, 'Are Regional Trade Agreements in Asia Stumbling or Building Blocks? Implications for the Mekong-3 Countries,' IMF Working Paper No. 53, March 2007; and D Mortimer, *Winning in World Markets: Meeting the Competitive Challenge of the New Global Economy*, Review of Export Policies and Programs, 1 September 2008, 2008, 94.

multilateral initiatives.<sup>11</sup> This consideration should take place when assessing the prospective benefits and costs of entering into a bilateral FTA.

### **The likely effects of an Australia-Korean FTA**

12. We have serious concerns over the potential damaging effects of the agreement on a number of sectors of the Australian economy, including industries which are already under intense international pressure such as manufacturing and textiles. Any Australia-Korea FTA is likely to only increase the pressures on these sectors. This is suggested by the feasibility study on the proposed agreement commissioned by DFAT, which observes that “ROK exporters could be expected to gain from reductions in Australia’s tariff on textiles and garments, as well as automobiles and automotive parts where ROK exports are globally competitive.”<sup>12</sup>
13. The ACTU strongly believes that Australia should not enter into an FTA with Korea without first conducting comprehensive socio-economic analyses of the potential national, sectoral and regional impact of the agreement. Any modeling performed should specifically identify and explore the likely effects of the agreement on employment and wages in affected sectors.
14. We further that the potentially negative impacts of an FTA will not be limited to workers in Australia. Korea has recently signed FTAs with the United States and Canada. In both these cases, trade unions in the respective countries have made strong joint statements to the effect that workers in both countries will not benefit from the agreements.<sup>13</sup> They have voiced concerns over the weak protections for workers’ rights and the environment in these agreements, the undermining of government’s ability to regulate in the public interest and provide public services, and

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<sup>11</sup> See C Dent, ‘Bilateral Free Trade Agreements: Boon or Bane for Regionalism in East Asia and the Pacific? (2005) 4 *European Journal of East Asian Studies* 287.

<sup>12</sup> ITS Global and the Korea Institute for Economic Policy, *Australia-Republic of Korea Free Trade Agreement Feasibility Study*, 17 April 2008, 7.

<sup>13</sup> American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)/ Korean Confederation of Trade Unions (KCTU) and Federation of Korean Trade Unions (FKTU), *Joint Labour Declaration on the Proposed Korea-US FTA*, 6 June 2006, <http://www.gum.info/en/topics/bilateral-and-regional-trade-agreements/bilateral-and-regional-trade-agreements-1/trade-union-comments/afl-cio-fktu-kctu-declaration-on-the-proposed-korea-us-fta-jun-06> (last accessed 2 February 2009); Canadian Labor Congress (CLC)/ Korean Confederation of Trade Unions (KCTU), *Joint Statement on Korea-Canada Free Trade Agreements*, November 2007, [http://www.bilaterals.org/article.php3?id\\_article=14004](http://www.bilaterals.org/article.php3?id_article=14004) (last accessed 2 February 2009).

the strong protections for multinational corporate investments and profits. Also of concern has been the lack of adequate consultation over the proposed agreements with civil society, including unions. We note that whilst the details of any proposed Australian-Korea FTA are not yet known, it is not unreasonable to expect there to be similar areas of concern. Moreover, such concerns are only exacerbated by the current global financial crisis and consequent increases in job insecurity.

### **Exclusion of public services**

15. As in previous submissions to DFAT on possible FTAs, the ACTU reiterates its view that public services and 'public goods' social services, whether delivered by government agencies or private providers, should be clearly and unambiguously excluded from FTAs. FTAs should not place restrictions on the capacity of government to regulate services in the public interest.

### **Movement of natural persons**

16. The ACTU notes that Australia's bilateral FTAs with Singapore, Thailand and the US contain chapters regulating the temporary movement of natural persons.

17. We do not believe that it is appropriate or desirable for free trade agreements – directed at the regulation of goods and services – to regulate the movement of temporary workers. Workers are not commodities and should not be treated as such.

18. There is the real risk that including such arrangements in trade agreements will undermine the capacity of governments to reform their temporary migration policies as they see fit.

### **Labour rights and FTAs**

19. It is ACTU policy that bilateral and other free trade agreements should uphold and support the core labour standards, as identified by the International Labour Organisation (ILO). There standards are:

- (i) freedom of association and the right to organise and to bargain collectively;
- (ii) freedom from forced or compulsory labour;

(iii) freedom from discrimination in employment (including equal remuneration for work of equal value); and

(iv) freedom from harmful child labour.<sup>14</sup>

20. We note that the Australian Labor Party Policy platform commits the party to upholding core labour standards internationally:

*Labor recognises that economic growth and prosperity arising from increased international trade brings with it the responsibility to promote higher labour and environmental standards for Australia and internationally.*<sup>15</sup>

21. The ACTU believes that trade agreements should contain comprehensive and enforceable provisions on labour rights. We see little practical value in clauses of the kind contained in the Australia-US FTA, which do not oblige the parties to respect the fundamental rights of workers as established by the ILO. This FTA also contains no enforceable provisions preventing countries from waiving or weakening existing labour laws in order to increase trade.

22. If there is to be an Australia-Korea FTA, the ACTU urges the Government to ensure that the agreement contains a chapter requiring both parties to respect internationally-recognised labour rights and providing for this obligation to be monitored and enforced.<sup>16</sup>

23. We strongly object to the designation within the Australia-Korea FTA feasibility study of existing Korean legal protections directed at the environment and labour as 'general impediments' to foreign investment.<sup>17</sup>

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<sup>14</sup> ILO, *Declaration on Fundamental Principles and Rights at Work*, 1998. The eight ILO Conventions underpinning these four standards are the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No 87) and the Right to Organise and Collective Bargaining Convention, 1949 (No 98); the Forced Labour Convention, 1930 (No 29) and the Abolition of Forced Labour Convention, 1957 (No 105); the Minimum Age Convention, 1973 (No 138) and the Worst Forms of Child Labour Convention, 1999 (No 182); the Equal Remuneration Convention, 1951 (No 100) and the Discrimination (Employment and Occupation) Convention, 1958 (No 111).

<sup>15</sup> Platform, Chapter 3 – Engaging with the Global Economy, [9].

<sup>16</sup> See, e.g.,

[http://www.ustr.gov/assets/Trade\\_Agreements/Bilateral/Peru\\_TPA/Final\\_Texts/asset\\_upload\\_file73\\_9496.pdf](http://www.ustr.gov/assets/Trade_Agreements/Bilateral/Peru_TPA/Final_Texts/asset_upload_file73_9496.pdf) (last accessed 22 January 2009).

<sup>17</sup> ITS Global and the Korea Institute for Economic Policy, *Australia-Republic of Korea Free Trade Agreement Feasibility Study*, 17 April 2008. 90.

## **Workers' rights in Korea**

24. There is a common misconception that South Korea, as one of the most developed countries in the region, respects the fundamental rights of workers and trade unions.
25. When South Korea joined the Organization for Economic Cooperation and Development (OECD) in 1996, it was expected that the country would move quickly to reform the many laws and practices that undermined fundamental worker and trade union rights. At that time, the OECD Council mandated its Employment, Labour and Social Affairs (ELSA) Committee to regularly monitor Korea's progress in terms of labour law and industrial relations reforms. In 2006, the OECD Council decided to terminate this monitoring mandate and invited the Government to provide information on further developments in the spring of 2010.
26. Recent ILO reports on South Korea demonstrate that serious problems with respect to freedom of association persist. Korea has still not ratified either of the ILO's two core conventions on freedom of association.
27. While our following comments focus on problems concerning freedom of association in South Korea, we note that there are other areas in which South Korea also fails to adequately protect the fundamental rights of workers.<sup>18</sup>

## **Using Arrests and Lawsuits to Limit Trade Union Activity**

28. The ACTU is gravely concerned about the use by the Korean Government of arrests and lawsuits against trade union officials.<sup>19</sup>
29. On 5 December 2008, Lee Suk-haeng, President of the Korean Confederation of Trade Unions (KCTU), was arrested for 'obstruction of business' (Section 314 of the Penal Code) in connection with his role in organising a strike on 2 July 2008 and a solidarity action in support of the E-land Retail Precarious Workers' strike in 2007. The 2<sup>nd</sup> July strike was conducted to call for protection of people's right to health and

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<sup>18</sup> See International Trade Union Confederation (ITUC), *Internationally Recognised Core Labour Standards in the Republic of Korea: Report for the WTO General Council Review of the Trade Policies of Korea*, Geneva, 8-10 October 2008.

<sup>19</sup> See further Korean Council of Trade Unions, *KCTU Counter-Report on the South Korean Government's Report to the UN Human Rights Committee*, 10th October 2006, [http://www2.ohchr.org/english/bodies/hrc/docs88/HRC\\_KCTU\\_Report\\_Final.doc](http://www2.ohchr.org/english/bodies/hrc/docs88/HRC_KCTU_Report_Final.doc) (last accessed 30 January 2009).



for renegotiation of the April 18 Protocol on US beef imports to reflect food safety concerns. The ACTU understands that arrest warrants have been issued against other leaders of the KCTU, some of whom have been imprisoned.<sup>20</sup>

30. In June 2008, the Korean Metal Workers' Union (KMWU) organised a protest against the signing of an FTA between South Korea and the United States. The South Korean government responded by charging KMWU leaders and 67 union members with 'criminal obstruction of business' and issuing arrest warrants.<sup>21</sup>

31. We note that the ILO's Committee on Freedom of Association has expressed concern about the 'obstruction of business' provisions in Korean law and has, on several occasions, requested the Government bring the law into conformity with freedom of association principles.<sup>22</sup>

### **Restrictions on the right to freedom of association capacity of public servants to organise**

32. The Korean Act on the Establishment and Operation of Public Officials' Trade Unions recognizes the right of some public employees to organize, although important restrictions remain. There are a number of categories of public officials that are prohibited from joining or forming trade unions, including managers, human resources personnel, personnel dealing with trade unions or industrial relations, and special public servants such as military, police, fire-fighters, politically-appointed officials and high level public officials.<sup>23</sup> The ILO has repeatedly requested the Korean Government ensure that all public servants have the right to freedom of association.<sup>24</sup>

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<sup>20</sup> See Letter from the Trade Union Advisory Committee (TUAC) to President Lee Myun-Bak, 15 December 2008, [http://www.tuac.org/en/public/e-docs/00/00/03/9E/document\\_news.phtml](http://www.tuac.org/en/public/e-docs/00/00/03/9E/document_news.phtml)

<sup>21</sup> ITUC, *Annual Survey of Violations of Trade Union Rights 2008*, 205.

<sup>22</sup> Case No. 2602 (Interim Report), 350<sup>th</sup> Report of the Committee on Freedom of Association, ILO Governing Body, 302<sup>nd</sup> Session, June 2008, [687].

<sup>23</sup> ITUC, *Internationally Recognised Core Labour Standards in the Republic of Korea: Report for the WTO General Council Review of the Trade Policies of Korea*, Geneva, 8-10 October 2008, 3.

<sup>24</sup> ILO, 335<sup>th</sup> Report of the Committee on Freedom of Association, 291<sup>st</sup> Session of the Governing Body, November 2004.

### **Refusal to recognise genuine trade unions**

33. The South Korean Government continues to refuse to recognise the legal union status of the Seoul-Gyeonggi-Incheon Migrants Trade Union (MTU). The MTU was formed on 24 April 2005 for migrant workers regardless of their legal status. Most of its members are irregular migrant workers. The South Korean Ministry of Labour rejected MTU's notification of union establishment on the basis that irregular migrant workers do not have the same legally protected rights, including the right to freedom of association, guaranteed to other workers under South Korean law. However in 2007, the Seoul High Court ruled in favour of MTU, stating that the South Korean Constitution and the Trade Union Law protect the right to freedom of association of all those who enter into an employment relationship as workers, including irregular migrants.<sup>25</sup>

34. The Ministry of Labour has continued to deny MTU's legal union status and has appealed the ruling to the Supreme Court, where a decision still pending. The Government's refusal to recognise the MTU constitutes a denial of the right to freely form and join trade unions, a right protected in South Korean law and in international human rights law.<sup>26</sup>

### **Use of irregular employment relationship to deny workers basic rights**

35. Another area of particular concern in relation to workers' rights is the prevalence of 'irregular' or temporary workers in Korea. In 2005, the Korean Confederation of Trade Unions estimated that irregular workers constituted around 55 percent of the workforce, based on a 2004 survey by the Korean National Statistical Office. The Korean Government disputes that figure, claiming that 36.6 percent of workers are 'irregular'.<sup>27</sup>

36. In November 2006, a new law provided for the expanded use of temporary employment contracts for workers for up to two years. Workers under these contracts are denied certain rights under law, have lower wages and conditions and no job

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<sup>25</sup> Seoul High Court decision 2006 NU 6774.

<sup>26</sup> Amnesty International, 'Republic of Korea (South Korea): Government must respect the right to freedom of association of all migrant workers', 15 September 2008.

<sup>27</sup> See Thea M Lee, AFL-CIO, Testimony on the Proposed US-Korea Free Trade Agreement, 24 March 2006.

security. The capacity for employers to place a large number of workers on temporary contracts also undermines the leverage of unionised workforces to bargain effectively with their employer.<sup>28</sup>

## **Conclusion**

37. The ACTU reiterates its serious concerns with Australia's existing bilateral FTAs and urges DFAT to ensure that any future bilateral agreements are subject to rigorous assessment as to their potential economic, social, cultural and environmental impacts.

38. If Australia proceeds to negotiate an FTA with South Korea, the ACTU urges the Government to ensure that the process is conducted in an open, democratic and transparent manner and that community consultation occurs at all stages in the agreement-making process.

39. Finally, as the ACTU has emphasised in previous submissions on FTAs, there should be discussions within all relevant groups in Australia concerning how Australia intends to activate and resource a more sophisticated trade, investment and industry development policy as part of new forms of engagement with East Asian economies. We look forward to these discussions occurring parallel to any further studies on a proposed Australia-Korea FTA.

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<sup>28</sup> ITUC, *Annual Survey of Violations of Trade Union Rights 2008*, 205.