



State Public Services Federation
Group

CPSU-SPSF Submission

to

the Department of Foreign Affairs and Trade

on

a possible Free Trade Agreement between Australia
and India

16 September, 2011

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Summary of the SPSF group position on international trade

The SPSF group supports the development of international trading relationships and the international regulation of trade. We support the principle of multilateral trade negotiations and we believe that the following principles should underpin Australia's trading relations and agreements:

- Trade agreements should include human rights and environmental protection, based on United Nations and International Labour Organisation standards,
- Trade agreements should respect the right and ability of governments to regulate in the public interest,
- Trade agreements should allow developing countries the flexibility to make laws and policies which will allow them to direct their own development,
- Australia's trade negotiations with developing countries should be consistent with Australia's development goals,
- Trade negotiations should be undertaken through an open, democratic and transparent process with public consultation.

General Principles

The SPSF group welcomes the opportunity to make a submission to the Department of Foreign Affairs and Trade about the potential outcomes and impacts of a Comprehensive Economic Cooperation Agreement (CECA) with India.

We would like to begin by outlining the general principles and concerns about trade agreements for our union and its members. These are primarily but not exclusively:

- the importance of maintaining essential services in the public domain,
- the exclusion of migration and labour mobility from trade discussions and agreements,
- the inclusion of core labour, human rights and environmental standards in all trade agreements.

Public Services

The SPSF group is committed to the principles of a properly functioning public sector, both in Australia and for all our trading partners. There is a strong connection between the inability of governments to provide adequate services for its people and the decline into corruption, criminality and the inevitable breakdown of the state itself.

It is only governments which can deliver services in the public domain to guarantee fair and equitable access to all constituents including the poorest and the most marginalised of society. We are particularly concerned that for some countries there is the potential to experience such decreases in revenue that their governments will not be able to fund their services, utilities and infrastructure needs. Experience has demonstrated that this universal access will be threatened by private provision of these services.

Furthermore, we are concerned about the inclusion of services in any agreement which adopts the WTO GATS definition of public services

A service supplied in the exercise of governmental authority...which means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers. (Article I(3) of the GATS)

We reject this definition which could exclude areas of joint provision of many public and private services including education, health, water and correctional services as is the case in Australia.

We are also concerned about the possibility that trade agreements covering services could be defined under the negative list system meaning laws and policies of a country could be affected by the agreement unless specifically listed as excluded. This places significant restrictions on governments to regulate their own services and is a departure from the positive list system of the WTO GATS agreement. A positive list agreement would enable Australia to determine precisely which sectors to include thus protecting the government's rights and responsibilities to regulate.

Migration and Labour Mobility

Our position on labour mobility begins with the principle that people are not commodities and cannot be traded. There is no place for agreements about movement of natural persons and/or migration policy in trade agreements. Any policies governing labour mobility must remain in the jurisdiction of immigration policy.

We recognise that workers' remittances account for a large proportion of developing countries' revenue. However, we do not see this as a long-term solution which will contribute to the effective functioning of a country's social or economic development.

The long-standing, indeed permanent nature of signed free trade agreements means that they are inappropriate mechanisms for arrangements around temporary movement of labour and risk locking governments into agreements which may become redundant and even harmful over time.

Furthermore, we must recognise the lessons learned in Australia over the sometime abuse of the Temporary Business (Long Stay) Standard Business Sponsorship or Visa 457. Although the scheme was initially aimed at bringing skilled workers, it has often been misused by some employers as a source of cheap labour and sometimes with tragic consequences when proper and decent working conditions were ignored.

Core Labour, Human Rights and Environmental Standards

The Australia-US Free Trade Agreement contains labour and environmental chapters that refer to ILO and UN standards on labour rights and the environment. It would therefore be consistent with this for any agreement between Australia and any other country to examine these issues in detail.

Before signing any agreement with any other country, there should be an

analysis of the current state of compliance by the countries with human rights, labour and environment standards, including the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work.

Some specific concerns about the proposed Australia – India agreement

Movement of Natural Persons

As mentioned above, we do not support the inclusion of the temporary movement of workers in trade agreements. The Feasibility Study in Section 6.3.8 concludes

In an FTA both sides would need to address the issue of market access for the temporary movement of natural persons in various sectors in accordance with relevant provisions of the GATS, particularly in the categories often used by WTO members under GATS "Mode 4" (temporary movement) provisions, such as Intra Corporate Transferees, Business Visitors, Contractual Service Suppliers and Independent Professionals. Parties would also need to consider applying commitments on the temporary movement of business persons to non-services businesses, such as goods traders and investors. (p73)

We maintain our concerns about the potential for exploitation of temporary workers who have historically been known to experience low pay and unacceptable working conditions. We believe that any reference to employees who are not at the level of executive or senior management should not be included at all in trade agreements in particular as this group of workers is more likely to be vulnerable to mistreatment. Furthermore, it would inhibit the ability of Governments to make any necessary regulatory changes as labour market circumstances change over time.

Labour and Environment Standards

We note that there is no reference to the inclusion of Labour and Environmental Standards in the Feasibility Study. However we note that these are included in the *Gillard Government Trade Policy Statement: Trading our way to more jobs and prosperity*. We agree that

Trade policy might legitimately be deployed to help achieve labour, environmental, health and community safety objectives. (p13)

It is surprising to note there is no mention of Labour or Environmental Standards in the Feasibility Study, given that:

Australia has so far entered into two trade agreements that contain labour and environmental provisions. The Australia-United States Free Trade Agreement (AUSFTA) includes detailed provisions to enforce our labour laws and uphold the International Labour Organisation Declaration of Fundamental Principles and Rights at Work 1998, including special provisions on dispute settlement applicable to the labour and environment chapters. There is more limited reference to cooperation on labour and environment matters of mutual interest in the Australia-Chile Free Trade Agreement.

Australia is now involved in a number of other negotiations where the inclusion of labour and environment provisions is under active consideration, including with Korea, Malaysia and in the Trans-Pacific Partnership. (Trade Policy Statement, p14)

We therefore urge both Governments to include commitments to implement international standards on labour rights (including the International Labour Organisation's Declaration on Fundamental Principles and Rights at work) and United Nations environmental agreements.

Investor-State Disputes Process

We wholeheartedly endorse the Government's Trade Policy Statement about the exclusion of investor-state dispute resolution clauses from trade agreements (p14). We strongly urge the Government to resist any pressure from India, or indeed any other country, to include such clauses in any form of trade or economic cooperation agreement.

We applaud the decision of the Government to discontinue the practice of seeking

the inclusion of investor-state dispute resolution procedures with developing countries at the behest of Australian businesses. (p14)

This position supports our belief that all governments should retain the right to regulate investment in the public interest, such as the current examples in Australia of health warnings and plain packaging on tobacco products and the continuation of our Pharmaceutical Benefits Scheme without the fear of facing legal action from foreign corporations.

References

Australian Government, Department of Foreign Affairs and Trade and Government of India, Ministry of Commerce & Industry Department of Commerce *Australia-India Joint Free Trade Agreement (FTA) Feasibility Study*, 2010

Australian Government, Department of Foreign Affairs and Trade *Gillard Government Trade Policy Statement: Trading our way to more jobs and prosperity* April 2011

CPSU-SPSF GROUP – Background Information

The CPSU is one of the largest public sector unions in Australia with more than 180,000 members. There are two "**Groups**" in the Union, the **SPSF Group** and the **PSU Group**.

The State Public Services Federation (SPSF Group) primarily represents employees of State Governments such as State Government Administration, Education, Agriculture and Natural Resources, or their agencies like Universities, Electricity Authorities, Roads and Traffic or Water Resources bodies. We have branches in all six states.

The PSU Group's members are generally employed by the Commonwealth Government or its agencies, such as Tax, CentreLink, Defence, Immigration, and a significant number of private Telecommunications and Call Centre operators.

What we do

The Federal Union looks after nationwide industrial issues for Universities and also industrial matters that span more than one State. It handles industrial relations between other Federal unions and deals with other Peak Bodies, like the ACTU, on behalf of the rest of our Union Branches and the "Associated

Bodies". Also, it coordinates any issues that interest more than one Branch. These can include training standards, rights of women members, health and safety and so on.

Union policy on issues relevant to all the State Branches is made by the Federal Council, the SPSF Group committee of management under the Workplace Relations Act.

The CPSU-SPSF group is affiliated to the international trade union global federation, PSI (Public Services International). The Federal Secretary is a member of the Executive of PSI and is Chair of the Oceania region.

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