



**State Public Services Federation
Group**

CPSU-SPSF Submission
to the Department of Foreign Affairs and Trade
on a proposed
Malaysia - Australia Free Trade Agreement
21st October, 2004

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**.

Our Group is the State Public Services Federation (SPSF Group). We primarily represent employees of State Governments. For example, State Government Administration, Education, Agriculture and Natural Resources, or their agencies like Universities, Electricity Authorities, Roads and Traffic or Water Resources bodies.

The other part of the union is the PSU Group. Its 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.

State Branches

The basic parts of our section of the Union, the SPSF Group, are the five State registered Public Sector Unions and Branches.

The five State bodies are:

- Public Service Association of NSW
- Public Service Association of South Australia
- Civil Service Association of Western Australia
- State Public Services Federation Tasmania
- Queensland Public Sector Union of Employees

These unions are registered under relevant State industrial relations laws. They are known as "**associated bodies**".

In **Victoria**, there is a Branch of the Federal Union known as the **CPSU SPSF Group Victorian Branch**.

Although most industrial relations legislation is state based, our union members are members of both their state union (as listed above) and the state branch of our Federal Union.

In Victoria, industrial relations take place under Commonwealth industrial relations law, the Workplace Relations Act.

What do we do

Wages, salaries and conditions of work of members of the Associated bodies are mostly regulated by State awards and agreements made by judges or commissioners in State Industrial relations tribunals.

Also, employees and Union members in **Universities** and in the **Victorian Public Sector** are covered by the Federal AIRC.

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 might include such things as 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.

There is also a **Federal Executive** that manages the affairs of the union in between meetings of Federal Council.

The CPSU **National Officers Committee (NOC)** deals with issues that affect both the PSU Group and the SPSF Group. The senior officers of each Group, like the SPSF Group State Secretaries, or the PSU Group National Executive members make up the National Officers Committee.

David Carey is the Federal Secretary of the SPSF Group within the union and is also one of two Joint National Secretaries of the CPSU. He is a member of the ACTU Executive representing the CPSU.

Adrian O'Connell is the National Secretary of the PSU Group and the other Joint National Secretary of the CPSU.

In the CPSU-SPSF Group, each of the State Branches has a **Branch Executive and Council** elected by the Union Members in each State.

Some States also have an additional State union Executive and Council also to run the affairs of their **State** registered union.

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Summary of the SPSF group position on international trade

The SPSF group supports the development of trading relationships with all countries and recognises the need for regulation of trade through the negotiation of international rules. We support the principle of multilateral trade negotiations provided these are conducted within a framework which is transparent, provides protection to weaker countries and is founded upon respect for democracy, human rights and environmental protection.

We believe that the following principles should underpin trading relations, and should guide Australia's approach to any agreement with Malaysia:

- Trade agreements should not undermine human rights and environmental protection, based on United Nations and International Labour Organisation standards,
- Trade agreements should not undermine the 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,
- Trade negotiations should be undertaken through an open, democratic and transparent process which allows effective public consultation to take place,
- Australia's trade negotiations with developing countries should be consistent with Australia's development goals
- Before trade negotiations begin, comprehensive studies of the likely impacts should be undertaken and made public for debate and consultation. The issues studied should include the impacts on:
 - human rights and labour conditions
 - employment
 - environment
 - particular demographic groups, particular regions and particular industries
 - the ability of governments to regulate in the public interest

- the ability of developing countries to direct their development.

The DFAT industry consultations issues paper does not mention these issues. DFAT should produce a broader, public issues paper which gives an assessment of these issues and indicates how the government will take them into account in:

- (a) considering whether to begin negotiations, and
- (b) pursuing negotiations.

Key Issues

A number of issues need to be addressed before negotiations begin.

1. The relationship between the agreement and human rights, labour and environmental conditions

There should be an analysis of the current state of compliance by both Australia and Malaysia with human rights, labour and environment standards, including 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).

This should include an analysis of how the trade agreement would impact on the ability of Australia and Malaysia to ensure compliance with human rights, labour and environmental standards by investors, including effective monitoring mechanisms.

The right to organise and to bargain collectively is not universal in Malaysia. The **electronics sector** is effectively removed from national labour regulation. As part of the benefits granted to investors with 'pioneer status', any collective bargaining agreement that it signs may not contain conditions for workers that

are more favourable than the legal minimums. Furthermore, as a result of a series of administrative decisions there is no national union for workers in this sector.¹

While Malaysia's legislation governing lower-paid workers, the Employment Act 1955, sets out a number of minimum rights for Malaysian workers, Malaysian unions and human rights organisations continue to campaign for legislation providing for a minimum wage. The recent rejection by the Malaysian Human Resources Minister to consider a minimum wage regime has been strongly condemned by the Malaysian Trade Union Congress.²

In this context, the Australian government should conduct a thorough and public study, before any negotiations are commenced, into the matter of what impact a trade agreement will have on the conditions of low-income workers in both Australia and Malaysia.

2. Effective community consultation processes

The SPSF group believes that the Australian government must commit to effective and transparent community consultation about trade agreements, with sufficient time frames to allow public debate about the impact of particular agreements before negotiations begin. It would be appropriate for a clear structure and principles for consultation to be developed publicly.

The Senate Foreign Affairs, Defence and Trade Committee made detailed recommendations for legislative change in its November 2003 report *Voting on Trade* which, if adopted, would significantly improve the consultation, transparency and review processes of trade negotiations.³ The key elements of these recommendations are that:

¹ See Human Rights First, 'Electronics Workers in Malaysia and the Right to Organize' 24 July 2003 http://www.humanrightsfirst.org/workers_rights/wr_se_asia/wr_malaysia/wr_malaysia_01.htm).

² (MTUC strongly objects Minister's position on minimum wages, 23 June 2004, <http://www.mtuc.org.my/press%20zainal%2023jun04.htm>. Suaram, the leading Malaysian human rights NGO, has also called recently for the immediate implementation of minimum wage legislation *Don't betray the rights of workers: implement Minimum Wage Act Now!*, 8 September 2004 http://www.suaram.net/display_article.asp?ID=106).

³ Senate Foreign Affairs, Defence and Trade Committee, 2003 *Voting on trade: The General Agreement on Trade in Services and an Australia-US Free Trade Agreement*, 26 November 2003, Commonwealth of Australia, Recommendation 2, paragraph 3.91.

- Parliament will have the responsibility of granting negotiating authority for particular trade treaties, on the basis of agreed objectives
- Parliament will only decide this question after comprehensive studies are done about the economic, regional, social, cultural, regulatory and environmental impacts which are expected to arise, and after public hearings and examination and reporting by a Parliamentary Committee
- Parliament will be able to vote on any trade treaty that is negotiated.

Processes such as these should be established from the outset for any negotiations for a Malaysia-Australia FTA.

A further question is how the need for transparent, accountable and representative community consultation processes will be met by both the Australian and Malaysian governments.

3. Ensuring that there are sufficient modelling and impact studies on regional areas and particular demographic groups

It is critical that any decision to commence negotiations for a Malaysia-Australia FTA be based on comprehensive and inclusive studies, including input from particular regional and demographic groups which will be affected by the agreement. This should include impacts on the environment, human rights, regulatory powers of government, and any restrictions on the ability of future governments at all levels to take actions in the public interest.

In Australia manufacturing industries are likely to be affected by an FTA with Malaysia. These industries employ large numbers of non-English speaking background workers in regional areas of high unemployment. Regional employment studies are needed to show the impact of tariff reductions.

In previous agreements, such as the Thai-Australia FTA, DFAT's Regulatory Impact Statement made extensive mention of DFAT's efforts to ascertain the views of industry bodies and manufacturers throughout the negotiations. It is important to recognise that workers also have legitimate interests in negotiations such as these, and that their representative bodies should be entitled to an equal level of consultation. DFAT should consult with unions

before and during the negotiations regarding the impacts of the agreement.

Regional employment studies should be publicly available in time for effective input by members of the public.

4. Ensuring consistency between Australia's development goals and trade goals

Australia's trade negotiations with developing countries should be consistent with the development goals within Australia's foreign and trade policy.

DFAT formulates and disseminates development policies as a function of AusAID's work. AusAID defines its objectives as 'advancing Australia's interests by assisting developing countries to reduce poverty and achieve sustainable development'.⁴

However it is notable that when trade agreements are proposed, are being negotiated or have been completed, there is no discussion in DFAT and Ministerial documents of how any given trade agreement will promote or otherwise affect these development goals.

It is important for the public and parliament to be able to assess whether Australia's trade and development policies are complementing or undermining each other.

Other countries have incorporated their development goals into their trade policies. For example Canada and New Zealand have adopted particular measures within their GATS strategies to take account of the impact of trade negotiations on least developed countries. Such an approach offers a more internally consistent approach to foreign policy, and ensures that development issues are not confined to questions of aid provision.

5. Ensure that the ability of the Malaysian and Australian governments to regulate public services and investment is protected

It is important that trade agreements not undermine the capacity of

⁴ AusAID (2001) 'AusAID Strategic Plan: Improving effectiveness in a changing environment', AusAID, Canberra.

government's to make laws and policies in the public interest, particularly in regard to public services. These services should be exempt from any trade agreement. To do so, it is important that they are defined clearly. The SPSF group believes the definition of public services used in the USFTA, Thai and GATS agreements is inadequate. This definition seeks to exempt "*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*".

This definition leads to ambiguity about which services are covered by the exemption. In Australia, as in many other countries, public and private services are provided side by side. This includes education, health, water, prisons, telecommunications, energy and many more.

The government has given assurances in other negotiations that it does not intend that public services or government's capacity to regulate services be diminished. If this is the case, public services should be formally and unambiguously exempted from trade agreements, including any agreement with Malaysia. If not, the likely resolution of this ambiguity will be through rulings of Dispute Panels, deciding on challenges by a government or an investor to a government's public service arrangements.

To the extent that services and investment are included in any trade agreement, it should be under a positive list rather than a negative list. A positive list allows parties and the community to know clearly what is included in the agreement. It also avoids the problem of inadvertently including in the agreement future service or investment areas which are yet to be developed. A positive list means that only that which is specifically intended to be included is included.

6. Investment regulation

Developing countries have argued strongly that it is critical for them to be able to maintain the capacity to regulate foreign investment to ensure that it delivers development benefits. This is important for all countries, but particularly developing countries.

The DFAT issues paper notes a number of regulations that Malaysia has in place placing conditions on foreign investment to achieve social policy goals (DFAT issues paper p 14). The issues paper suggests that Australia will be targeting Malaysia's capacity to have such regulations (p 16). Australia should support the right of Malaysia to continue to have such regulations, and not seek to limit this capacity.

7. No Investor-State complaints process

There should be no investor-state complaints process giving corporations the right to complain to a trade tribunal and seek damages if their investments are harmed by a government law or policy. This process gives corporations unreasonable legal powers to challenge government law and policy.

Summary of Recommendations

1. DFAT should produce a broader, public issues paper which gives an assessment of the above issues and indicates how the government will take them into account in:

- considering whether to begin negotiations, and
- pursuing negotiations.

2. This should include analysis of:

- the current state of compliance by both Australia and Malaysia with human rights, labour and environment standards, including the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work.
- the impact of a trade agreement on the ability of Australia and Malaysia to ensure compliance with human rights, labour and environmental standards by investors, including effective monitoring mechanisms.
- the impact of a trade agreement on the regulatory powers of government, and any restrictions on the ability of future governments at any level to take actions in the public interest
- the impact on particular regional and demographic groups which will be affected by the agreement

- how the proposed trade negotiations relate to Australia's development goals.

3. The government should establish parliamentary review processes (as set out in the Senate Foreign Affairs, Defence and Trade Committee report) for all trade agreements, including from the outset of any negotiations for a Malaysia-Australia FTA.

4. The government should set out the principles and objectives that will guide Australia's consultation processes for this proposed agreement, and should include unions and community organisations in its consultation processes.

5. The government should clearly and unambiguously exempt public services from this trade agreement.

6. The government should commit to putting services and investment under a positive list, not a negative list, should this agreement proceed.

7. Australia should not seek to limit Malaysia's capacity to regulate foreign investment to achieve social policy.

8. The government should commit to excluding any investor-state dispute process from this agreement.