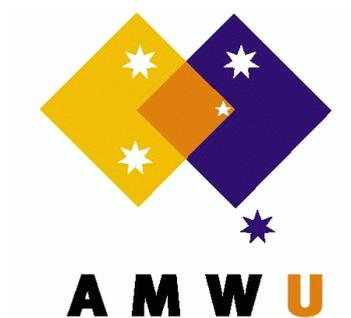


AUSTRALIAN MANUFACTURING WORKERS' UNION



**SUBMISSION ON THE
AUSTRALIA – MALAYSIA FTA NEGOTIATIONS**

MAY 2005

A. Introduction

1. The Australian Manufacturing Workers' Union (AMWU) welcomes the opportunity to make a further submission on the Australia – Malaysia Free Trade Agreement.
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.

B. Potential Effects On Australia's Trade Balance and Australian Manufacturing

Australia's Growing Trade Deficit With Malaysia

7. Recently released Australian Bureau of Statistics figures show that Australia had a \$2.7 billion trade deficit for the March quarter 2005. This is the 41st 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.
9. In 2003-2004 Australia had a deficit in merchandise trade with Malaysia of over \$2.48 billion. This bilateral deficit made up approximately 10% of Australia's total annual deficit in merchandise trade and was Australia's sixth largest deficit with any country.¹
10. The trend for increasingly large bilateral deficits with Malaysia has been growing at a high rate for a number of years. As Table 1 illustrates, between 1999-00 and 2003-04, the trade deficit with Malaysia grew on average by over 13% each year.

Table 1 Australia's Trade with Malaysia

	1990-00	2000-01	2001-02	2002-03	2003-04	Rank	Percentage Growth 2002-03 to 2003-04	5 year trend growth
Total Exports	2,140,681	2,499,531	2,520,251	2,146,281	2,224,946	11	3.7%	2.7%
Total Imports	3,765,397	4,176,610	3,856,965	4,261,406	4,705,026	9	10.4%	8.4%
Balance on Merchandise Trade	-1,624,716	-1,677,079	-1,336,714	-2,115,125	-2,480,080		17.3%	13.2%

Source: DFAT-Composition of Trade Australia 2003-04

11. A comparison of the 7 months ended January 2004 to the 7 months ended January 2005 shows that while exports to Malaysia grew by 25.3%, imports increased by 32.3% over the same period. This has led to a trade deficit 38.7% larger than the one for the corresponding 7 months to January 2004. Australia's trade deficit with Malaysia is therefore having a growing impact on Australia's rapidly deteriorating and unsustainable current account deficit.²
12. However, not only is the rate of growth of Australia's trade deficit with Malaysia an increasing cause for concern, so too is the composition of the trade deficit. As Table 2 shows, Australia's exports to Malaysia are overwhelmingly dominated by primary products. Of Australia's top ten

¹ DFAT-Composition of Trade Australia 2003-04. Australia's total trade deficit for 2003-2004 was \$24.1 billion.

² ABS 5368.0 "International Trade in Goods and Services", January 2005 (released 28 February 2005)

exports to Malaysia, five of them (ranks 3,5,7,8,10) are primary products. Three of the remaining exports inside the top ten (copper [1st], aluminium[2nd] and zinc [6th]) are simply transformed manufactures with little value added.

Table 2 Australia's Top Ten Exports to Malaysia³

Principal Exports	1990-00	2000-01	2001-02	2002-03	2003-04	Rank	5 Year Average Growth
Copper	184,846	298,438	259,498	238,112	238,076	1	28.80%
Aluminium	117,144	158,322	201,841	151,208	187,618	2	60.16%
Milk & cream	147,756	170,494	181,376	135,810	164,283	3	11.19%
Medicaments	53,272	82,686	66,978	89,369	114,798	4	115.49%
Coal	50,278	47,097	77,676	115,445	93,677	5	86.32%
Zinc	63,367	65,864	51,231	47,034	59,905	6	-5.46%
Food and live animals	43,497	48,999	55,643	53,220	50,131	7	15.25%
Meat (excl. bovine)	29,515	39,195	44,078	37,560	42,049	8	42.47%
Chemicals & related products	36,528	41,136	47,545	42,849	37,441	9	2.50%
Fruit & nuts	44,709	66,260	69,982	60,147	36,200	10	-19.03%

Source: DFAT-Composition of Trade Australia 2003-04

13. In contrast, while Australian exports to Malaysia remain overwhelmingly dominated by primary products, Australian imports from Malaysia are equally dominated by manufactured goods. As shown in Table 3, nine of Australia's top ten imports from Malaysia are elaborately transformed manufactures (or ETMs).

³ Note that DFAT data reveals a very large contribution from "Confidential items" that are not included in this table.

Table 3 Australia's Top Ten Imports From Malaysia

Principal Imports	1990-00	2000-01	2001-02	2002-03	2003-04	Rank	5 Year Average Growth
Petroleum (both crude and refined)	683,166	771,564	657,360	751,943	1,232,276	1	80.38%
Computers	743,442	852,594	682,304	696,322	806,248	2	8.45%
Integrated circuits	274,494	252,542	209,090	266,669	308,075	3	12.23%
Telecommunication equipment	216,754	318,484	218,095	196,003	189,622	4	-12.52%
Furniture	173,512	153,425	166,930	185,659	189,376	5	9.14%
Radio receivers	121,748	147,774	144,129	1,666,379	131,507	6	8.02%
Electrical machinery & appliances	43,594	54,818	63,792	80,272	101,657	7	133.19%
Sound & video recorders	116,253	143,799	133,961	128,006	100,743	8	-13.34%
Televisions	77,532	108,851	84,940	114,632	93,845	9	21.04%
Computer parts	129,163	120,429	85,323	155,167	91,950	10	-28.81%

Source: DFAT-Composition of Trade Australia 2003-04

14. The AMWU submits that this is an unacceptable state of affairs. Malaysia's hunger for primary products may indeed be a boon for some parts of the Australian economy however, the successful economies of the future will not be sustained by concentrating on commodity exports. In the face of increasing competition from the Asian economies, Australia can and must do more to encourage the growth of strategic, high value added manufacturing. This task is made all the more urgent not only because the current resources boom will not last forever, but because at the very height of it, our current account deficit and foreign debt are blowing out to record levels.⁴
15. If Australia is to maintain a high standard of living and acceptable levels of medium to long term economic growth it is imperative that more is done to promote strategic high value added manufacturing industries.
16. Strategic high value added manufacturing industries are those industries that produce products which are skill, knowledge and innovation intensive. Such industries:
- have strong linkages, both upstream and downstream, with other industries in the economy; and
 - are the industries that transfer leading edge technologies to the local economy, through the development of skills, organisation and management techniques which in turn spill over to the rest of the economy through labour turnover and supply chain networks.

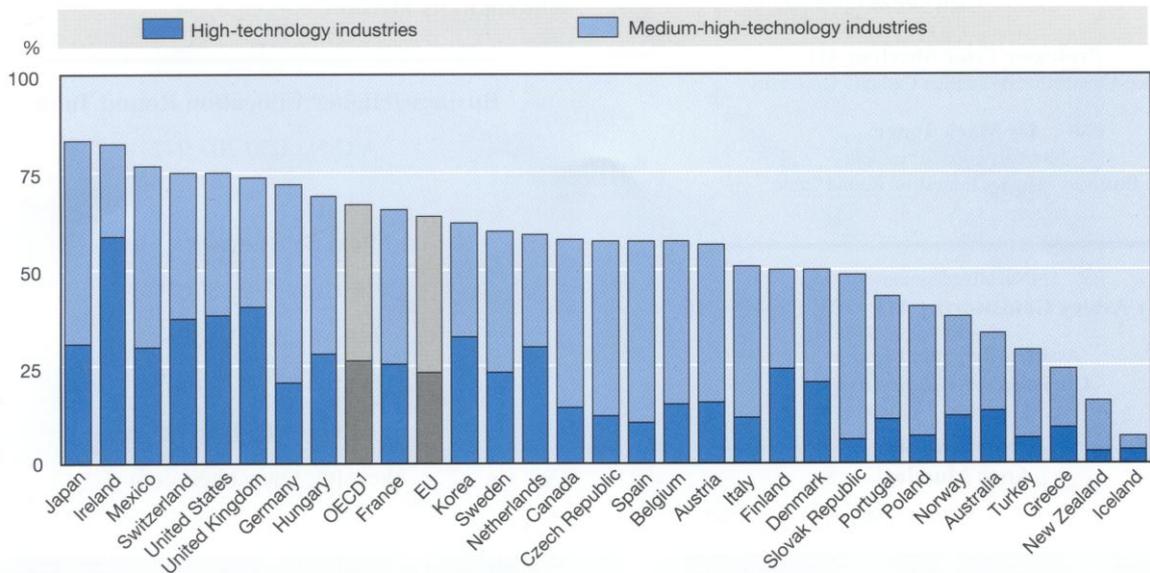
⁴ Despite the terms of trade the best it has been for 30 years, the current account deficit for the December quarter 2004 was \$15,187 million and our foreign debt a record \$422 billion - ABS Catalogue 5302.0 Balance of Payments and International Investment Position, Australia.

17. Manufacturing is the only industry which can be used to create technology. A strong high value added manufacturing industry is an investment in an economy's future.
18. The opportunities for stable and sustained growth that manufacturing industries bring is the reason why most fast growing economies over the last 20 years, including Malaysia, have actively sought to maintain and grow their manufacturing industries. In contrast, over at least the last decade Australia is one of the few countries in the world who has neglected the strategic role of manufacturing. During this time there has been a precipitous decline in the export growth of our elaborately transformed manufactures. From 1984 to 1994 Australia averaged an annual growth rate of 17.7% in elaborately transformed manufactured exports – this fell to an annual average of 1.8% between 1997 and 2003.
19. Over the past two financial years, the value of elaborately transformed manufactured exports declined by 10.4% from the 2000-01 level. Over the same period, elaborately transformed manufactured imports increased by 10.6% to \$98.6 billion, resulting in a record elaborately transformed manufactured trade deficit of \$75.4 billion in 2003-04⁵.
20. While the Treasurer Peter Costello recognises Australia's current account deficit as "Australia's No. 1 economic problem", his answer to this problem, and that of the federal government more generally, seems to be only to point to failures of Australia's infrastructure.⁶ Improvements in infrastructure, are clearly necessary but equally clearly, are not enough.
21. In this context, it is worthwhile to consider that in 2003 prices for every plasma television Australia imported, Australia had to export in the vicinity of 150 tonnes of iron ore. If Australia is to maintain and improve its standard of living, a trade and industry policy built on the 19th and early 20th century view of Australia as an agricultural and mineral supplier for the rest of the world is clearly neither economically nor environmentally viable.
22. At a time when developing nations are building information technology industries from the ground up, Australia must do better than relying on trade and industry policies aimed at encouraging the exportation of low value added products. In terms of exporting high and medium-high technology goods the only OECD economies Australia performs better than are Turkey, Greece, New Zealand and Iceland (as the figure below illustrates). This is not a formula for a high wage – high growth economy of the future.

⁵ Toner, P., "Lies and Statistics", *Australian Financial Review*, 21 August 2004.

⁶ Gordon J, "Rates to Rise as deficit hits 50 years high", *the Age*, 2 March 2005. Article can be downloaded at <http://www.theage.com.au/text/articles/2005/03/01/1109546868233.html>.

Share of high-and medium-high-technology in manufacturing exports, 2001



Source: OECD, STAN database, May 2003.



Source: *The Knowledge Based Economy: Some Facts and Figures, B-HERT Paper No.7 February 2004*

23. Australia's trade relationship with Malaysia well illustrates, and is a growing cause of, both Australia's growing trade imbalance with the rest of the world and the serious medium to long-term problems that will inevitably face the economy if urgent action is not taken to develop and grow Australia's high value added manufacturing industries.

The Likely Economic Effects Of An Australia – Malaysia Free Trade Agreement

24. The AMWU is concerned that Australia's trade imbalance with Malaysia will get worse rather than better under a free trade or preferential trade agreement with Malaysia. As Marceau *et al* have observed, liberalising trade will often have the effect of cementing existing industrial structures.⁷ In the context of an Australia - Malaysia free trade agreement it is reasonable to assume therefore that if trade barriers are reduced, Australia will supply more primary products to Malaysia and Malaysia will supply Australia with more elaborately transformed manufactures. Such a result would have significant (and negative) consequences for Australia, particularly those communities who rely on manufacturing.
25. In global terms, Australia's manufacturing industry operates on a small scale and occupies a relatively vulnerable position in global supply chains. However, within Australia, the survival and growth of the manufacturing sector is critical to the nation's economy. In trade debates it is all too often overlooked that Australia's manufacturing industry is the nation's second highest employer and the highest employer of full-time permanent employees. The manufacturing industry has far greater investment in research and development than any other industry in Australia and is responsible for about 45% of Australia's total investment in research and development. Even allowing for the low growth in recent years, just under 60% of Australia's total exports are from the manufacturing industry.⁸
26. These figures must be kept in mind when advocates of a free trade agreement with Malaysia describe the two economies as largely "complementary". Malaysia needs resources to continue to fuel its high rates of growth. Notwithstanding some inadequacies in Australia's infrastructure, Australia is generally speaking in a position to supply the Malaysian economy with resources (and in fact is presently doing so even without a free trade agreement). However, as Table 4 shows, even during a resources boom, Australia's manufacturing sector is vastly more important to the Australian economy in terms of jobs and contribution to GDP than the mining, agriculture, forestry and fishing sectors combined.

⁷ See J. Marceau, K Manly and D Sicklen, "The High Road or the Low Road? Alternatives for Australia's Future: A Report on Australia's Industrial Structure for Australian Business Foundation Limited", August 1997.

⁸ For 2003-2004 the manufacturing industry made up 57% of Australia's exports. ABS Year Book 2005, Australian Bureau of Statistics, Canberra, ABS Catalogue 1301.0. at page 545 and 558.

Table 4 A Comparison of Industries

	Mining	Agriculture, Forestry & Fishing	Manufacturing
Employment February 2005⁹	111,600	379,800	1,085,200
Industry Gross Value Added, chain volume measure, at basic prices 03-04¹⁰	\$33,106 million	\$27,893 million	\$83,376 million
R & D Expenditure 02-03¹¹	\$536 million	\$61.761 million ¹²	\$2,829 million

27. An Australia – Malaysia free trade agreement that contained wins for Australia’s miners and farmers while leading to the destruction of large parts of our manufacturing industry would therefore have significant, negative consequences not only for those communities particularly reliant upon manufacturing, but for the Australian economy as a whole.
28. The AMWU is deeply concerned that an Australia – Malaysia free trade agreement will do permanent damage to Australia’s manufacturing industry while providing little in the way of additional benefits to Australia’s primary industries. Even if gains are achieved in some areas, this will not match the potential employment losses in some areas of manufacturing.
29. 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.
30. 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

⁹ ABS Space-Time Research

¹⁰ ABS 5206.0 National Income, Expenditure and Product, 2 March 2005.

¹¹ ABS 8104.0 Research and Experimental Development, Businesses, Australia, 6 September 2004.

¹² The figures for Mining and Manufacturing are drawn from Table 3 – Expenditure by Industry. This table does not list Agriculture, Forestry & Fishing. The figure for Agriculture, Forestry & Fishing is drawn from Table 7 – Resources devoted to R&D by socioeconomic objective.

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.

31. 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.
32. The AMWU notes that the CIE analysis is based upon implementation of the free trade agreement in 2007 and that the FTA comprises the complete removal of tariffs on bilateral trade, liberalisation of service trade, and dynamic productivity gains associated with the trade liberalisation¹³. In addition the report intentionally ignored the potential impact of rules of origin regimes.¹⁴ The AMWU submits that these assumptions are highly unrealistic and undermine the entire basis of the economic modelling.
33. The CIE analysis admits that over the long term there will be no extra employment growth as a result of an Australia-Malaysia FTA¹⁵. In fact the modelling predicts that employment will fall below the baseline figure around 2023¹⁶. It is the AMWU's view that given that the most optimistic modelling of the FTA admit there will be no employment gains, it would be extremely fool-hardy of the government to support this FTA with its known risk to Australian manufacturing.
34. As discussed above this agreement will privilege primary producers and service sectors above manufacturing. The CIE analysis corroborates this. The CIE analysis predicts that the agreement will have a detrimental impact on output and employment in some key manufacturing sectors¹⁷. This will reduce our long term growth prospects and undermine our ability to develop strategic manufacturing sectors, which are the key for the long term future of the Australian economy.
35. The CIE modelling predicts that the gains to Malaysian imports to Australia will greatly exceed the increase in Australian exports to Malaysia. This will lead to a deterioration in the current account deficit and put upward pressure on the Australian currency, placing more pressure on Australian manufacturers¹⁸. This leads the AMWU to yet again question the motivation for this agreement, given that the costs to Australia appear to exceed any gains.
36. The AMWU strongly submits that no agreement should be entered into which further risks jobs or production in the manufacturing sector.

¹³ Centre for International Economics, "Measuring the possible impacts of MAFTA", February 2005, p.vi

¹⁴ Ibid., p.2

¹⁵ Ibid., p.ix

¹⁶ Ibid., p.9

¹⁷ Ibid., p.23

¹⁸ Ibid., p.6

C. Core Labour Standards and Democratic Rights

C.1 Core Labour Standards

37. 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).

38. 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

39. 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).

40. 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 that¹⁹:

- Workers may only join enterprise unions in the electronic sector, the country's largest industry.²⁰
- 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.²¹

¹⁹ U.S. Department of State, "Country Reports on Human Rights Practices – 2003: Malaysia", February 25 2004.

²⁰ *Ibid.*

²¹ *Ibid* at page 19.

- There is no minimum wage.²²
- Foreign workers (who make up 20% of the workforce) typically do not have access to labour adjudication.²³
- The Malaysian Immigration Department places conditions on foreign workers which effectively prevents them from joining a trade union.²⁴
- 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 2003.²⁵

41. 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.”²⁶

42. 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:

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid* at page 18.

²⁵ *Ibid* at page 19.

²⁶ 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.²⁷

C.1.2 Core Labour Standards In Australia

43. 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.²⁸

C.1.3 Core Labour Standards and Trade Agreements

44. 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.

45. 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”²⁹

46. 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.

47. 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

²⁷ 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

²⁸ 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

²⁹ The Declaration can be downloaded at http://www.ilo.org/dyn/declaris/DECLARATIONWEB.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.

48. 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

49. 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.³⁰
50. 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.

³⁰ US State Department at pages 7, 9 and 18.

D. Government Procurement

51. 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.
52. 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.³¹
53. 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.
54. 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.
55. 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.
56. The AMWU submits that any Australia – Malaysia free trade agreement should not include provisions on government procurement.

³¹ 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

E. Rules of Origin

57. 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.
58. 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.
59. 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”.³² 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.
60. 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.
61. 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.

³²Productivity Commission, Rules of Origin under the Australia - New Zealand CER Trade Agreement, Interim Research Report, Canberra at page 133.

F. The Flawed Strategy of Negotiating Bilateral Agreements

62. 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.
63. 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"³³ and more recently in its 2003 Annual Report³⁴.
64. 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.
65. 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.³⁵
66. 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.

³³Adams 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.

³⁴Productivity Commission Annual Report 2002-2003, page 14.

³⁵Australian 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.

The Likelihood of Trade Diversion

67. A further likely outcome of a preferential trade agreement with Malaysia is that the trade diversion effects of the agreement could outweigh the trade creation effects, creating an overall negative effect for Australia.³⁶ As the Productivity Commission observed in its working paper entitled “The Trade and Investment Effects of Preferential Trading Arrangements – Old and New Evidence”:

“Theoretical work has always highlighted that while the merchandise trade provisions of PTAs [preferential trade agreements] can boost trade among members, this is often at the expense of non-members. So whether it benefits a country to join a PTA depends on the cost structures in partner countries, compared with the cost structures in third parties. If a preferential trade arrangement diverts a country’s imports from a low cost third party to a higher cost preferential trade partner, it can be made worse off. Conversely, the opportunity for benefits is greater where the PTA partner is at world’s best competitiveness, and where liberalisation under the PTA encourages imports from that source.”³⁷

68. The possibility of an Malaysia FTA diverting more trade than it creates is not at all remote. The Productivity Commission paper quoted above went on to find that 12 out of the 18 preferential trade agreements the authors subjected to econometric analysis diverted more trade from non-members than it created amongst members.

69. The AMWU submits that it would be appropriate in the circumstances that prior to the government entering negotiations concerning an Malaysia FTA that the Department conduct and release an econometric study of the proposed agreement which includes an examination of the potentially trade diversionary effects of the agreement.

The Possibility of Clauses Restricting Australia’s Ability To Implement Active Industry Policy

70. In addition, to the above matters, the AMWU is concerned that – depending on the outcome of any negotiations – an Malaysia FTA could hinder current and future efforts to move the economy up the value chain. As Dr. Peter Brain, Director of the National Institute of Economic and Industry Research has recently stated in relation to the Australia – United State of America Free Trade Agreement:

“This government, as with all high-income governments, would say their key objectives were to create high value-added, knowledge-intensive, innovation-intensive economic structures. The reason why governments state this so vehemently these days is that, if an economy stands still in the value-added chain and freezes the economic structure, it will be forced increasingly to compete with developing economies on cost. If a high-income economy stands still, a \$5,000 or \$10,000 Indian or Chinese worker’s wage rate will become the benchmark determining the outcomes for an increasingly large percentage of its work force.

³⁶ 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.

³⁷ Ibid, at page xi.

Most high-income governments know that it is impossible to move up the value-added chain while sticking to the pure economic free trade model as enshrined in the FTA. Successful governments in Asia or Europe, which have successfully moved their economies up the value added chain in the last couple of decades, have aggressively used the power of the state, or the collective states in the case of the EU, to: (1) pick winning industries to participate in the supply chains of the emerging technologies of the future by accumulating resources including all capital knowledge and skill; (2) use the full sovereignty of the state via offset policies, government procurement policies and control over the financial system to nurture the development of the emerging industries; and (3) build institutional protection, including direct government ownership of enterprises, controls over foreign ownership and devolution of power to regional governments to reduce the risk of the intellectual property which is essential to these types of industries being transferred to the dominant economic power or to other competitors. These governments have learnt to use the sovereignty of the state to create critical masses of complementary activity with strong links to the institutions of the state.”³⁸

71. To the extent that an Malaysia FTA would include the type of provisions that the Australia – United State of America Free Trade Agreement contains in terms of foreign investment, government procurement and intellectual property, an Malaysia FTA would constrain the ability of Australian business to compete effectively in high value added industries in the global economy of the future.³⁹

Bilateral and Regional Preferential Trade Strategies

72. 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 should be focusing its efforts on achieving broad multilateral trade outcomes.

73. In particular the AMWU is concerned about the growing number of bilateral and regional preferential trade agreements. As compared to the successful negotiation of multilateral outcomes, such a trend toward preferential trade has at least two important negative consequences for Australia:

- Firstly, the trend raises a significant risk of trade diversion as was mentioned earlier in this submission.
- Secondly, the trend is leading to a multitude of conflicting rules of origin clauses with the associated complexity and costs for exporters. High transaction costs disproportionately

³⁸ Senate Hansard, Select Committee On The Free Trade Agreement Between Australia And The United States Of America, Reference: Free Trade Agreement Between Australia And The USA, Monday, 7 June 2004, Melbourne, p.79.

³⁹ The AMWU analysis of the Australia – United States of America Free Trade Agreement can be found in the AMWU’s submission to the Senate Inquiry into the agreement: see http://www.apf.gov.au/Senate/committee/freetrade_ctte/submissions/sublist.htm

discriminate against smaller businesses and smaller economies who have lower economies of scale.

74. The AMWU believes Australia's long term interests and the interests of Australian manufacturing in particular, 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 and regional preferential free trade agreements such as the Malaysia FTA.

G. Conclusion

75. 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.

76. 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.