



Address to the
Australia-United States Free Trade Agreement Conference on
“New Opportunities and Impacts”

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“Environment and Labour under the FTA”

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Mr Chairman, distinguished guests, ladies and gentlemen

After this Forum's day and a half of examining this historic Free Trade Agreement (FTA) with the United States, I have no intention of revisiting the general aspects of the Agreement, or of its general benefits.

Suffice to say, for the record, that the Minerals Council of Australia are strong supporters of this Free Trade Agreement and consider that it stands to benefit the national interest in terms of:

- an unprecedented opportunity for Australia to achieve closer economic integration with the world's largest economy and achieve a significant increase in trade and investment;
- establishes an imperative for Australia's other major trading partners and for the WTO "Doha Round" multilateral trade liberalisation negotiations;
- an enhanced capacity to improve and maintain our international competitiveness through access to US technology and innovation and adoption of US models of efficiency;
- the elimination of the already low barriers to trade in goods and services;
- protection from the misuse of US trade safeguards actions.

My purpose here today is to address the specific interests of the minerals sector with particular emphasis on the critical intersection of trade and environment and trade and labour policies and how these are addressed to our satisfaction in the respective chapters of the Australia-United States Free Trade Agreement.

Firstly, the key benefits to the minerals industry. We consider the top five to be:

- enhance Australia's attractiveness as a favourable destination for US investment, increasing the opportunity for new resource projects to proceed. Specific benefits in relation to investment include:
 - legal right of national treatment for foreign investors;
 - national treatment should apply unless exemptions are prescribed;
 - increased threshold to \$800m (market cap value of target enterprise) over which prior FIRB approval is required;
 - FIRB requirements will not apply to investment in novel enterprises.
- flow on effects to other major trading partners such as China, Japan and India – expected to enhance both trade and investment opportunities as closer economic and trade relationships are developed with those countries:
 - the higher threshold of \$800m in relation to FIRB approval may also be extended to other countries;
 - increase pressure on these major trading partners and other countries to liberalise their foreign investment policies and Australia to extend the investment provisions of this Agreement on an MFN basis to other countries (at least to CER and Nara).
- the elimination of tariffs:
 - on products will increase access and competitiveness for mineral ores and concentrates and refined metals such as aluminium, iron ore, lead and zinc sold into US markets
 - the total value of current Australian minerals exports to the US (including iron and steel) is estimated at \$450m or around 1% of Australia's total minerals exports;
 - with tariffs for these products at less than 5%, the benefits to US consumers will at most be in the order of \$20m.

- on imported capital equipment will deliver immediate savings for mining and mineral processing companies
 - in the event there is an Australian alternative product to the imported capital equipment a customs duty of 3% applies – this will be eliminated reducing the costs of US imports for Australian resource companies;
 - it is difficult to quantify this benefit to the resources sector, as mining related capital equipment is not identified separately in available statistics;
 - on automotive products, including the 25% US customs duty on utilities has the potential to increase the demand for minerals used by Australian car and component manufacturers.
- enhanced potential for Australian mining technology and service industries to build partnerships with US technology firms in servicing what is a global industry.
 - achieving exports of \$6 billion by 2010 from the current level of \$3billion is an achievable goal.
 - **does not introduce trade related measures to restrict trade for environmental, labour, or other non-trade objectives, but includes commitments not to fail to enforce domestic environmental and labour laws in a manner affecting trade between the parties.**

It is this last aspect of the FTA that I have been asked to address specifically.

Our objective, in this regard, was **to ensure that this bilateral free trade agreement did not give rise to adverse trade intersections with environment and labour policies that would simply be unachievable through the multilateral forum and, worse still, serve to undermine the integrity of the key foundation principles of the WTO trading system**, vis:

- non-discrimination in like products irrespective of the processes and production methods (PPMs);
- respect for the principle of national sovereignty;
- sound science as the foundation to proper risk analysis and risk management in determining trade restrictions legitimately provided for in WTO agreements; and
- the legitimate exploitation of comparative advantage in forming competitive strength in international trade of goods and services.

Those who seek to serve the cause of multilateral trade reform by diminishing bilateral trade agreements essentially found their arguments in inefficient trade distortion.

I don't have any real fear of bilateral free trade agreements diminishing the significance of the multilateral trade framework **provided each reinforces the other**.

Indeed, in simplistic terms, if you start adding up all the FTAs, one should logically come to multilateral trade reform. Before you deride this simple concept, reflect on the fact that there are now 200 bilateral and regional free trade agreements, which have been notified to the WTO since 1990, of which there have been 100 since 1995.

All are considered to have achieved deeper economic integration and expanded trade and investment than would have otherwise been the case.

However, fundamental to the success of these bilateral agreements in adding to global trade reform, is their conformance with the foundation principles and Agreements of the WTO rules based trading system.

This, as I indicated, is where our real fear lies.

There is a significant risk that bilateral trade agreements will provide for coercion in the form of trade sanctions or restrictive measures, beyond a country's general obligations, for non-trade social and environmental objectives that are inconsistent with WTO principles and agreements.

These measures affect trade by requiring exporters to adopt the importing countries' social and environmental standards, both of the product itself and the way in which it is produced and processed in the country of origin, as a condition of access to the market, or in banning access of products to the market.

This then becomes the neo-classical protectionism.

It is a new form of extra-territorialism imposed without legal redress, or due and proper regard for the sovereignty of the exporting nation state.

Under the political guise of altruism, those intent on such measures are endeavouring to neutralise the competitive disadvantage of their own domestic social and environmental standards.

If they can externalise their domestic comparative disadvantage to the competitive disadvantage of exporting countries, they are able to compensate for the loss of competitiveness which results from measures specific to their own environmental and/or social circumstances, invariably the result of domestic political and socio-economic pressures.

To underscore the point, we reject the intersection of trade with environment and labour policies where that undermines the integrity of the WTO system, sponsor an alternative form of protectionism, impose one country's environmental and social standards on another, and/or compromises the legitimate objectives of increased trade, protection of the environment and improved welfare of the workforce.

When considering this scenario, one automatically turns to Europe, for they are unquestionably the 'leaders of the pack':

- their track record in unilaterally instigating policies or regulations which give rise to trade restrictions is without parallel,
- they are the principal *demandeurs* for the WTO to permit trade restrictions to protect the environment of the country of origin,
- the EU is now concentrating its efforts on securing WTO comparable standing for UN Multilateral Environment Agreements, which do contain such trade restrictive measures
- the EU is developing a capability for import preferences for certified sustainable development products through their General System of Preferences
- the EU has developed a Green Paper which sets out the goal of making producers responsible for their products for the whole of their life cycle on an "extended producer responsibility" basis. This shifts the responsibility for managing post-consumer stage of the value chain from the consumer and local government to the producer and, more particularly, the brand owner,
- the EU is enthusiastically promoting their proposed new chemicals policy for the authorisation and registration of chemicals as a model for a harmonised, global chemicals management system [which would be of little consequence to Australia if it were confined to Europe], and
- the EU are enthusiastically committed to the Kyoto Protocol which has little to do with managing climate change and more to do with the EU's propensity for externalising its comparative disadvantages to the competitive disadvantage of other, notably net exports of energy, such as Australia – I suspect, Europeans would have a very different view about the merit of the Protocol if the timelines were substantially different ie. a pre-1990 base period.

But Europe is not alone.

The United States too has form in both environment and labour, trade policy linkages.

On environment, that form is bilateral. On labour, it is more multilateral focused.

Even a cursory examination of recent United States bilateral FTAs should raise cause for concern re the progression towards linkages between trade and environment policy in US FTA, which are consistent with the parameters of the enabling legislation of the US Congress for such trade deals – the Trade Promotion Authority.

In the North American Free Trade Agreement (NAFTA) there are no enforceable obligations for environmental standards. An unrelated, separate side agreement imposes some environmental obligations but they do not include trade or affect any of the other obligations in NAFTA. This agreement, however, separately stipulates that trade provisions in MEAs (some of which are discriminatory) are not to be subordinated to any other obligations (specifically therefore covering those in the WTO). This is very regrettable. We oppose such provisions vigorously in the WTO negotiations.

The US-Jordan FTA goes further. It obligates each party to ensure its domestic environmental laws are of a high standard and to enforce them as an integral part of the Agreement, including through actions that might affect trade. It allows members to take “any appropriate or commensurate action” as remedies for non-compliance. It overtly links compliance trade obligations with compliance with environment obligations. We are aware that the US and Jordanian Governments exchanged letters agreeing not to exercise that linkage, but the precedent still stands. This is profoundly regrettable.

The provisions of the US-Singapore FTA, pulled back somewhat from the Jordan agreement, but retained linkages between trade and environment. The Singapore deal requires each party to ensure its own domestic laws provide for high levels of protection. Enforcement of that is an integral part of the FTA and remedies for non-compliance are now principally monetary fines. However, in the event of non-payment, a surcharge on imports will be used to collect the fine. This is the platform upon which the Australia-US FTA is derived.

The US-Chile FTA reportedly follows the same formula as the US-Singapore FTA. Recent reports also note that laws aimed at managing the extraction of natural resources, such as mining and forestry, have been carved out of the obligation, provided that they do not have environmental goals as their primary purpose. We are not really sure what that means.

Our Agreement, as I indicated, is modelled on Singapore, but clearer on the role of the sovereign state. The primary obligation on both parties is not to fail to enforce national environmental law through sustained action in a manner affecting trade between the parties. It does not allow for either party to challenge the domestic environmental laws of the other.

The Agreement is silent on the nature of environment law, quite properly leaving that for the determination of the sovereign state – except for what I consider to be an aspirational clause - that each party shall strive to ensure that its laws and policies provide for, and encourage, high levels of environmental protection with regard to continuous improvement.

Further, the Agreement does not attempt to define “enforcement” nor make provision, aside of trade affects, for any recourse for either party given that the commitments centre on the exercise of the sovereign state’s right to determine and enforce its own levels of domestic environmental protection.

When it can be determined that domestic environmental laws are compromised for trade advantage [failure to enforce, failure to maintain sustained, recurring action and affects trade], there is capacity to seek remedies for non-compliance. These are principally self-imposed fines [with a limited up to \$US15 million], with a latent capacity to impose tariffs to imports – similar to the US-Singapore Agreement.

To the extent that a bilateral FTA between two developed economies evens needs a chapter on environment, these are quite appropriate provisions in rendering determination of the nature and enforcement of environmental laws, the responsibility of the nation state.

I acknowledge the concerns of some that the very existence of this Chapter provides a platform for those who would seek to use trade as a means of coercing environmental objectives. I consider it neither adds nor detracts from the platform that already exists for consideration of this debate.

Now, turning to intersections between trade and labour policies.

The US are the primary *demandeurs* for linking trade and labour standards under the WTO. It emerged as a real issue in the 1999 Ministerial Conference in Seattle. Indeed, the move by the US to

incorporate core labour standards in trade agreements leading to the eventual use of trade sanctions to enforce them was pivotal in Seattle's collapse.

Some developed countries have continued to pursue the issues within the WTO arguing that the International Labour Organisation (ILO) is failing to enforce standards and that the more rigorous disciplines available under the WTO would provide a more powerful incentive for Members, particularly developing countries, to improve workplace conditions.

The public face of this push for attaching labour standards to WTO trade agreements is to address labour equity and human rights considerations. In particular, it is alleged that the non-adherence to core labour standards by some developing countries may give them an unfair competitive advantage in international markets.

One of the few comparative advantages available to many poorer developing countries is labour. Their capacity to sell their labour and accumulate capital for further economic growth is fundamental to their long-term prosperity.

The MCA supports adherence to core labour standards defined to include freedom of association; the right to organise and bargain collectively; non-discrimination in respect of employment and occupation; freedom from forced or compulsory labour; and freedom from exploitation of child labour.

We also consider the ILO, not the WTO or bilateral trade agreements, is best placed to deal with these issues.

Utilising trade sanctions to address labour standards issues is a blunt tool. Consistent with my earlier comments, conditioning international trade on non-trade related matters, in this case, core labour standards, is detrimental to the welfare of both employees and free trade.

Even so, setting labour standards at an international level is complex. It engages conflicting social, moral and economic issues.

Again, to the extent that it was necessary to even have a Chapter on Labour on this bilateral free trade agreement, to appease the requirements of the US Congress manifest in the Trade Promotion Authority, we are comfortable with the statement of shared commitment to the ILO Declaration on the Fundamental Principles and Rights at Work and its Follow-up, which includes a declaration that labour standards should not be used for protectionist trade purposes.

Furthermore, consistent with my earlier comments on the Environment Chapter, we see no adversity in the commitments of parties to not fail to effectively enforce domestic labour laws, and in a manner affecting trade, and recognition that it is inappropriate to encourage trade or investment by weakening or reducing the protections afforded in domestic labour laws.

But, the US position on this is kind of cute when you consider that Australia's record in the ILO outstrips the US significantly.

- Australia has been a member of the ILO since 1919, has ratified 57 conventions, of which 47 are in force.
- The US has been a member from 1934 to 1977 and again since 1980, and has ratified only 14 conventions of which are in force.

And, a key area of difference between the two countries in the commitment to the ILO is that Australia has ratified a number of Conventions which are considered to be related to quality of employment, preservation of workplace conditions and the implementation of family friendly work policies.

Mr Chairman, in conclusion, this bilateral trade deal is unambiguously in Australia's national interest.

There will be many who will despair "what if"; there will be those who will bemoan their shattered cocoons of privilege protection; and there will be those who will agonise over quantifying the benefits, some even to the point of promoting even more research work through even more dubious econometric modelling.

But cast your minds back to the similar cacophony of protest over the conclusion of the Uruguay Round of Multilateral Trade Negotiations, and that even though that Round delivered “zip” in terms of improved agricultural market access and reduced domestic support, and other less than desirable trade and investment outcomes, tell me that the world trading system and Australia as an integral part of it, are not unambiguously better off for its conclusions.

And a bottle of rum to anybody who can quote me the figures of the quantified econometric modelling, at that time, of the conclusion of those negotiations – but I won’t take any bets from any of you in qualifying the fundamental outcomes.

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