

# Joint Statement on the Proposed U.S.- Australia Free Trade Agreement

The Australian Council of Trade Unions (ACTU) and the American Confederation of Labour and Congress of Industrial Organisations (AFL-CIO)  
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The ACTU and AFL-CIO are united in the belief that increased trade can benefit workers only if it is governed by rules that protect workers' rights, the environment, and the right of governments to safeguard the public interest. Too often, trade agreements have instead protected corporate rights at the expense of workers and their communities. These trade agreements are routinely negotiated and administered in secret, denying the public the right to have informed input into the making of trade policy. The result is flawed trade agreements that fail to create robust, equitable growth and decent employment, and thus face widespread opposition by workers and their allies.

Unfortunately, by every indication the bilateral free trade agreement (FTA) now being negotiated between Australia and the U.S. follows this failed free trade model. The ACTU and AFL-CIO call upon their two governments to stake out a new path. Australia and the U.S. must use the current negotiations not to repeat the mistakes of the past, but to set a new standard for trade agreements by meeting each of the benchmarks outlined below.

**Workers' Rights:** The FTA must include meaningful and enforceable commitments to the core workers' rights outlined in the International Labour Organisation (ILO) 1998 Declaration on Fundamental Principles and Rights at Work. These obligations must be in the core of the agreement, and be subject to the same enforcement mechanisms as the agreement's commercial provisions. The ACTU and AFL-CIO note that the current U.S. proposal on labour standards only allows a party to initiate disputes over the other party's failure to enforce domestic labour standards in order to achieve a trade advantage. No enforcement action is available if a party's labour laws are weakened or fall far short of international standards. The U.S. proposal is completely inadequate. Notwithstanding the Australian government's reluctance to accept any labour standards clause, the ACTU and AFL-CIO will not support an FTA that does not include the core ILO labour standards as an enforceable provision of the agreement.

**Services:** The FTA must include a broad, explicit carve-out for public services and for private services with an inherently social component, including education, employment services, health care, post, sanitation, social services, transport and utilities. Public services should be excluded regardless of whether or not the public provider competes with private providers. In addition, governments must retain their ability to regulate foreign service providers in order to enact and enforce certification and licensing standards, consumer protections, and other public interest laws.

**Investment:** Under the North American Free Trade Agreement (NAFTA) system of individually enforceable investor rights, investors have used rules on expropriations and the minimum standard of treatment to challenge environmental laws, public health and safety protections, and the domestic judicial system. The U.S.-Australia FTA must reject this model and preserve each country's authority to regulate foreign investment in the public interest. Foreign investors must not be given greater rights than those enjoyed by domestic investors, and must not be given the right to individually initiate disputes against governments before international tribunals.

**Procurement:** Procurement rules in NAFTA prevent governments from using tax dollars to support responsible purchasing and contracting practices that favour local suppliers or contain other non-commercial criteria. Under the U.S.-Australia FTA, national and sub-national governments must retain the ability to use government procurement policies to promote local employment, assist small and medium-sized businesses, safeguard workers' rights and human rights, and achieve other legitimate social and environmental goals.

**Public Health:** The U.S.-Australia FTA must uphold the right of governments to take measures designed to optimise public health outcomes, such as comprehensive health insurance, standards for food, therapeutic goods, and drugs, and price regulation of pharmaceutical products. Decisions about public health and safety belong in the hands of democratically elected representatives, not tribunals of trade lawyers.

**Culture:** The ACTU and AFL-CIO recognise that access to cultural products and services that emanate from and reflect a person's own culture is a basic human right. Therefore, to the extent that a government's support is limited to products and services that emanate from a nation's cultural perspective, the FTA may include an explicit carve-out that ensures each government the unfettered ability to foster and support their own industries and to give effect to their social and cultural policy objectives.

**Manufacturing:** A vibrant manufacturing sector is the backbone of a healthy economy. Poorly formulated trade policies can debilitate manufacturing – in the U.S., nearly 3 million manufacturing jobs have been lost since 1998. The U.S.–Australia FTA must preserve scope for domestic policies aimed at ensuring that each country retains a diversified and high value-added manufacturing sector.

**Transparency:** The ACTU and AFL-CIO note with concern the secrecy surrounding negotiations over the proposed bilateral FTA. Initial negotiating proposals and requests and offers on trade liberalisation have been submitted by the two governments to one another without prior release in draft form for public scrutiny and consultation. No draft negotiating text or structure for the FTA has been made available. The two governments must take steps to release draft texts and consult with the public in order to meet the basic tests of transparency and accountability in the negotiations. The final draft should be released for public consultation and submitted to the U.S. Congress and the Australian Parliament for full debate and consideration, along with a report from a Congressional or parliamentary Committee on issues raised in the consultation process. Australia should adopt the requirement

for a vote of Parliament for the FTA to be approved. The same standards on transparency and accountability must be met in the final FTA itself: governments must consult with their respective publics before initiating disputes under the agreement, dispute resolution proceedings must be fully transparent, and interested non-governmental parties must have the right to make submissions to these proceedings.

The ACTU and AFL-CIO will work together to press for a trade agreement that meets the goals set out above and thus benefits workers in Australia and the U.S. Both organisations will join together to oppose any agreement that falls short of these key objectives.