



**Department of Foreign Affairs and Trade**  
**Australia's accession to the WTO Government**  
**Procurement Agreement.**

**AMWU Submission, January 2015.**

## ***Introduction***

The Australian Manufacturing Workers' Union welcomes the opportunity to make a submission to the Department of Foreign Affairs and Trade on the Government's possible accession to the World Trade Organisation (WTO) Government Procurement Agreement (GPA).

The Australian Manufacturing Workers' Union (AMWU) represents approximately 100,000 members working across major sectors of the Australian economy. AMWU members are primarily based in manufacturing industries, in particular; metal, vehicle, and food manufacturing, but also in the industries of mining, building and construction, printing and graphic arts, repair and service and laboratory and technical services.

The AMWU has a long and proud history of engagement on trade policy issues. This is largely a result of the significant impacts of trade policy on our members as the vast majority of businesses operating in the manufacturing industry are trade exposed, either through import competition or through export markets.

In addition, as a major trade union representing the interests and values of Australian workers for over 150 years, the AMWU has long played a role in economic policy debates that extends past issues directly concerning industries in which we have members. In the AMWU's view this engagement has led to a more informed and broad based policy discussion in Australia and the AMWU remains committed to playing this role in future.

The AMWU supports the submission lodged by the Australian Fair Trade and Investment Network (AFTINET) of which we are a member.

This submission provides some additional input to that provided by AFTINET, specifically on areas of interest to manufacturing workers.

## ***The importance of Government Procurement***

Australia's Commonwealth Government spends roughly \$40 billion per year on government procurement, with almost half of this for non-defence procurement. That equates to roughly 2.5% of the national economy, supports almost 300,000 jobs and is greater than the value added for the entire utilities sector, including electricity, waste and water services.

This highlights how significant the government's role in the economy as purchaser of goods and services is. It also highlights why the AMWU and others view it as essential that this

procurement budget be used wisely, not just to source the various goods the government needs to function, but also to promote Australian industry capabilities, skills, jobs and growth.

Unlike other economic actors the government (when acting according to its rightful role) is not motivated by the pursuit of profits or the interests of one stakeholder over others. The government should always be motivated by the interests of the entire Australian community and the entire Australian economy. As such, it should act in accordance with good principles of value for money and it should act in accordance with the highest social welfare standards. But in addition, it should act to promote Australia's economy including industry capabilities, jobs, skills and innovation.

This industry promotion role is particularly important in the defence industry, where our defence industry rests on supply and sustainment of the Australian Defence Force. However, it is also important for industry more broadly, especially for Small to Medium Enterprises (SME) businesses, for whom access to government contracts is a path to innovation, investment, and growth.

### ***Procurement policy and the WTO GPA***

In practise if not on paper, Australia's current procurement policies emphasise a narrow definition of value for money at the expense of broader industry development and economic goals. Specifically, contract cost is seen as the paramount factor when deciding on procurement outcomes, with little consideration given to explicit jobs, skills and industry capability impacts. The AMWU sees this as an abrogation of the government's responsibility to support and promote a strong, diversified and advanced economy. In our view, a procurement decision that does not take explicit and if possible quantified economic benefits into account, as well as explicit contract costs, cannot achieve real value for money.

As a response to this policy failure, the AMWU has advocated for a procurement policy that incorporates a broader definition of 'value for money' than contract price, in particular, an explicit and if possible quantitative assessment of the benefits of contract options.<sup>1</sup>

### ***General procurement policy***

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<sup>1</sup> A detailed exposition of current procurement processes and how they can and should be improved can be found in the AMWU submission into the Senate Standing Committee on Finance and Administration's inquiry into procurement processes. Available at: [http://www.apf.gov.au/Parliamentary\\_Business/Committees/Senate/Finance\\_and\\_Public\\_Administrati on/Commonwealth\\_procurement\\_procedures/Submissions](http://www.apf.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administrati on/Commonwealth_procurement_procedures/Submissions)

The AMWU is concerned that accession to the WTO GPA agreement will place restrictions on the policies of future governments that will prohibit those governments from implementing procurement policies that better take into account the benefits of contracts, as well as the costs.

The WTO GPA should not place any restrictions on governments that would limit their ability to make decisions based on a genuine assessment of value for money, which would include the consideration of the full cost and benefits of procurement options, including:

- Jobs impacts,
  - How many jobs of what quality and duration will be created under the options being considered?
- Skills impacts,
  - How will options impact the skills of the labour force?
- Innovation and technology impacts,
  - How do options impact the development and deployment of new technologies?
- Industrial capacity impacts,
  - How do options impact industrial capacity through investments that are longer lived than the contract being considered?
- Flow on economic impacts,
  - How do options impact down stream industries, jobs and capabilities: supply chain impacts?
- Flow on tax impacts,
  - How do options impact future tax revenues?

Even though the current Government does not explicitly (over even implicitly) take into account such factors in procurement decisions, it would be inappropriate for the current Government to negotiate away a future government's ability to do so. In fact, in the AMWU's view, it would represent the current government forcing future governments into abrogating their responsibility to seek real value for money in procurement.

### ***Exemptions***

For similar reasons, the AMWU believes it is crucial for any accession to the WTO GPA to include 'carve-outs' or areas of exemption.

The AMWU has long advocated for an Australian SME procurement policy, whereby contracts that are awarded to SME businesses are required to go to Australian SMEs if possible. Such a policy is consistent with our current trade obligations due to the carve-out that shields SMEs from restrictions under the AUSFTA and other agreements.

This exemption exists in recognition of the central role SMEs play in economic development around the world. In Australia they are not only large employers responsible for 70% of employment, they are also the largest business segment in the economy responsible for 55% of all business output. Perhaps most importantly, SME are responsible for over a third of private business R&D spending, developing, deploying and bringing to market a huge portion of Australia's innovation effort. If our economy is to modernize, diversify, tap into new markets, global supply chains and full realise its potential, it will be SMEs that lead the charge.

Growing SMEs by providing them with stable government business and support for innovation has been an explicit policy goal both in Australia and overseas. For example, in 2012 the then government announced the establishment of the \$27 million Enterprise Solutions program, which sought to assist SMEs involved in government procurement work to innovate, invest and grow.<sup>2</sup> The USA has a similar program, the Small Business Innovation Research program, which applies to agencies across the whole US government sector (including Defence) and provides USD \$2.5 billion in direct support per year.

The carving out of defence procurement is assumed for the purposes of this submission. It goes without saying that applying principles of equal treatment to defence procurement makes little sense, especially with regards to significant asset purchases.<sup>3</sup>

AFTINET and other stakeholders will present the case for other 'carve-outs' based on reasons such as access to an affordable and high quality healthcare system and cultural promotion and protection. The AMWU shares these concerns and generally notes that the aim of attaining economic goals (through such reforms as the WTO GPA) should not be blindly pursued at the expense of other important societal and government goals, such as

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<sup>2</sup> Unfortunately, this program was abolished by the current government in mid 2014, as part of their industry policy reset which saw the majority of industry policy programs abolished.

<sup>3</sup> Although we do note that technically, defence procurement is currently subject to rule 5.3 in the Commonwealth procurement guidelines, which specifies equality of treatment irrespective of country of origin.

health, education, sustainability, cultural expression and identity and other drivers of wellbeing.

### ***The benefits of the WTO GPA***

The AMWU is very sceptical that significant benefits will flow to Australian business and the Australian economy as a result of signing the WTO GPA.

It seems a significant impetus behind the current consideration of WTO GPA membership is the possible accession of China to the GPA. While China's government procurement market is massive, at \$1.5 trillion dollars annually, it is inconceivable that the Chinese state will remove all domestic preference arrangements in their procurement system as a result of GPA membership.

The requirement on signatories of the WTO GPA to implement a dispute settlement mechanism that will allow foreign companies to seek redress if they believe procurement processes fail to comply with GPA requirements also fails to reassure. In a country like China, where there is no separation between executive, party and judiciary authority and there is no judicial independence,<sup>4</sup> it would be extremely naive to believe a domestically designed and implemented dispute mechanism will provide real legal protections for foreign companies. Indeed, we fail to understand how anyone can expect the Chinese authorities to protect the rights of foreign corporations granted to them by a WTO agreement when the same authorities fail to provide for basic universal judicial rights for their own citizens.

In addition, while the argument that the current Chinese leadership wishes to use the WTO GPA as a mechanism to fight corruption has some appeal, the AMWU remains sceptical as to how effective this would be in practice. In particular, we note that the problem of corruption in China is systemic and endemic and as is always the case in countries with such problems, anti-corruption campaigns inevitably target one political faction over another as no official or faction is immune from corruption in such a system. As a result, the WTO GPA may be used in isolated cases to target particular officials, regions or State Owned Enterprises (SOE) for their corrupt activities, but to think the Chinese government will be generally indifferent between SOEs and foreign firms winning procurement work once the GPA is signed is naive.

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<sup>4</sup> In 2013, Chinese prosecutors secured a conviction rate of 99.93% while international organizations, other countries and even Chinese experts and lawmakers criticize the Chinese judicial system for gross violations of basic principles of judicial fairness. For example, see: <http://www.washingtonpost.com/news/morning-mix/wp/2014/03/11/china-scored-99-9-percent-conviction-rate-last-year/>

Not only will the government not be indifferent, it will give policy affect to its preference, regardless of WTO obligations.

### ***Conclusion***

While the concerns expressed above present reasons to believe the benefits of accession will be limited, if implemented/negotiated carefully, the costs of accession could also be kept to a minimum. However, for this to happen, DFAT and the Government more broadly would need to act on the views expressed above and maintain exemptions under the GPA for SMEs (and others) as well as more broad policy freedom to ensure a future government can implement a pro-industry development procurement policy without violating the WTO GPA. In the AMWU's view, failure to secure these guarantees makes it much more likely the costs of GPA accession will be greater than the benefits.

In addition, the AMWU supports a rigorous, detailed and transparent cost benefit assessment of GPA accession, which incorporates the final negotiated terms of accession, prior to any final decision being made. Along with the release of the full text of the agreement, such a cost benefit analysis would inform community and stakeholder engagement and provide a rigorous basis for an informed decision and would represent a significant improvement over the current treaty approval process.

On balance, the AMWU does not support Australia joining the WTO GPA. In our view the potential risks, both to Australian industry and future government policy freedom, outweigh the potential benefits to Australian industry.