



NICK XENOPHON
Independent Senator for South Australia
AUSTRALIAN SENATE

Our ref: NC-A/SKM

Mr Grant Hehir
Auditor-General
Australian National Audit Office
GPO Box 707
Canberra ACT 2600

URGENT BY EMAIL

Dear Mr Hehir

RE: Free Trade Agreement advertising

I refer to my previous correspondence to you in relation to recent advertising of Free Trade Agreements.

I am seeking an investigation into the Independent Communications Committee's recent approval of an application by Austrade for advertising worth approximately \$9 million pertaining to Free Trade Agreements.

As you would be aware, the Guidelines on Information and Advertising Campaigns by non-corporate Commonwealth entities ('the Guidelines') stipulate that all advertising campaigns of \$250,000 or more must be considered by the Independent Communications Committee ('ICC'). The ICC is responsible for assessing the proposed campaign against four of the five principles contained in the Guidelines and formulates a report for the Chief Executive based on its assessment. The Chief Executive is then responsible for assessing the campaign against the fifth principle.

The five principles contained in the Guidelines are:

- **Principle 1:** Campaigns should be relevant to government responsibilities
- **Principle 2:** Campaigns should be presented in an objective, fair and accessible manner and be designed to meet the objectives of the campaign
- **Principle 3:** Campaigns should be objective and not directed at promoting party political interests
- **Principle 4:** Campaigns should be justified and undertaken in an efficient, effective and relevant manner
- **Principle 5:** Campaigns must comply with legal requirements and procurement policies and procedures

On 30 July 2015, Mr Greg Williams, Chair of the ICC wrote to Mr Bruce Gosper, Chief Executive Officer of Austrade providing the ICC's report into Austrade's proposed Free Trade Agreement advertising campaign. No specific details of the campaign were outlined in Mr Williams' report, however he concluded that the proposed campaign complied with principles 1 to 4 of the Guidelines.

One element of this advertising campaign is a video clip found at <https://www.youtube.com/watch?v=NUK8gs42Zf8&app=desktop>

The text of the video clip is as follows:

Trade has always been our shopfront to the world. Now that we've signed free trade export agreements with China, South Korea and Japan....

...We can grow our business into these markets...

As we are more competitive. It also means more Aussie jobs are safeguarded to protect local workers....

....So we can hire more locals.

When we open up markets, we open up job opportunities, and that's everyone's business.

At the conclusion of the advert a sign with 'AUSTRALIA OPEN FOR BUSINESS' is turned over on a glass shopfront door.

I have serious concerns this advertisement may breach Principle 3 of the Guidelines, which states 'Campaigns should be objective and not directed at promoting party political interests'. Paragraph 28(c) of the Guidelines (which relates to Principle 3) states that 'Campaigns must not... include party political slogans or images'.

"Open for business" is a phrase that has been used repeatedly by the Liberal Party to describe their policy position in relation to business and trade. I submit that this phrase has become a Liberal Party slogan and as a result should not be used in tax payer funded Austrade advertising.

A previous advertisement promoting free trade export agreements was aired over radio during early October. This advertisement stated:

So, what do the Free Trade Export Agreements with Asia mean to you?

Well, my name's Bernard Gouche and I've worked at Fletcher's for 23 years. We export sheep and lamb products to the Asian market. Signing of these FTAs really gives us a chance to employ more people, to do more business into the China market, that helps us to create jobs within the Dubbo community.

Find out more about the opportunities for Australian jobs and businesses in your local community. Search 'Open for Business'. Authorised by the Australian Government, Canberra

I have serious concerns the radio advertisement described above also uses the Liberal Party slogan 'Open for business'. Furthermore, I believe it does not comply with another of the principles contained in the guidelines:

Principle 2: Campaigns should be presented in an objective, fair and accessible manner and be designed to meet the objectives of the campaign

I am concerned that this radio advert is not objective due to the bias displayed by the worker selected by the Government to talk about the FTAs. In relation to Principle 2 the Guidelines state 'Campaigns should enable the recipients of the information to distinguish between facts, comment, opinion and analysis'. I am concerned that the worker's words may be construed as fact, rather than comment or opinion.

Furthermore I question the accuracy of this campaign given that experience with previous free trade agreements have not delivered the purported benefits. I enclose copies of media releases I have put out on this issue including statistical information about increased trade imbalances following the entering into free trade agreements with various countries.

Also enclosed are:

- Research conducted by the Parliamentary Library on mentions of 'Open for business' by Australian politicians;
- An opinion piece by Dr Joanna Howe (Senior Lecturer at the University of Adelaide Law School,) 'Labor improved ChAFTA but gaping holes remain in the agreement', published in *The Age* on 22 October 2015.

I request an urgent investigation into the ICC's approval of the two advertisements specified in this letter and also any other Austrade advertising promoting free trade export agreements that were authorised by the ICC.

Should you have any questions in relation to this request please do not hesitate to my office on (08) 8232 1144.

Yours sincerely



NICK XENOPHON

5 / 11 / 2015

22 / 10 / 2015

CHAFTA: ANOTHER FREE TRADE DEAL THAT WILL DUD AUSTRALIA

Independent Senator for South Australia, Nick Xenophon, says the deal between Labor and the Coalition to seal the China-Australia Free Trade Agreement (ChAFTA) still leaves many Australians vulnerable to being undercut by imported Chinese labour on lower pay and conditions.

Senator Xenophon said the deal left "gaping holes" through which Chinese companies could import Chinese workers on lower wages and replace Australian tradies and other employees deemed to be working in 'contractual service' positions or as 'servicers and installers'.

"It also sees a weakening of skills testing requirements in certain key occupations such as automotive trades, leaving thousands of Australians vulnerable to losing their jobs, while opening the way to exploitation of imported Chinese workers," said Nick.

"I understand that Labor was between the devil and the deep blue sea on this issue, but the concessions they achieved, whilst welcome, don't go far enough."

Senator Xenophon said the key concerns remaining on ChAFTA include:

- ChAFTA still prevents labour market testing from applying to all Chinese workers coming into Australia as 'contractual service suppliers', which applies to most trade occupations - such as welders, electricians, plumbers and nurses.
- Labor's changes to ChAFTA are not amendments to the Migration Act, but to regulations. However, it has not released the wording of these changes so it's impossible to judge how effective they may be.
- There's no guarantee that Chinese workers employed in Australia under subclass 400 visas will receive the same wages and conditions as local workers. Under ChAFTA employers can legally bring in Chinese workers as 'servicers and installers' and can legally pay them at the award rate, rather than the same pay and conditions as equivalent Australian workers on an enterprise agreement, effectively undercutting Australian wages and conditions.

Senator Xenophon said all details of work agreements between Chinese companies and the Immigration Department must be transparent and publicly available, just as enterprise bargaining agreements are made public on the Fair Work Commission website.

Senator Xenophon also expressed concerns that ChAFTA will again, like previous bilateral trade deals, lead to a worsening trade balances with partner countries, rather than improved trade conditions. Analysis of Australian Bureau of Statistics figures shows imports have risen faster than exports for FTAs signed in the past decade.

See the analysis here - <http://www.nickxenophon.com.au/media/releases/show/unbalanced-trade/>

6 / 10 / 2015

Rising prices for medicines, loss of sovereignty and blanket secrecy surrounding the TPP deal being trumpeted by our Government:

TRANS PACIFIC DUD

Independent Senator for South Australia, Nick Xenophon, said serious concerns remained over medicine prices, an Investor-State Dispute Resolution (ISDS) clause and blanket secrecy over the text of the Trans Pacific Partnership, despite the Government furiously selling the agreement today.

Senator Xenophon said that Government's self-congratulations over the end of secret, protracted negotiations for the deal were misplaced given Australians won't see the agreement for about a month.

"If this is such a good agreement for Australia then why all the secrecy? Despite the Government's denials and furious sales job this morning, serious issues remain to be resolved for most Australians," said Nick. These include:

- The inclusion of an Investor-State Dispute Resolution (ISDS) clause would damage Australia's sovereignty, allowing foreign firms to sue Australian governments if policy decisions harm their bottom line. So-called 'safeguards' have not prevented US firms bringing cases against partner countries in the past, including Canada and Costa Rica.
- US pharmaceutical companies appear to have won an 'option' to impose the US's preferred eight-year protection period for biologics medicines, instead of Australia's preferred five-year protection period. This opens the way to more expensive medicines in Australia as cheaper generic drugs remain locked out for longer.
- The secrecy of the drawn-out negotiations, the failure to produce a text of the agreement today, despite the huge sales effort from the Government, and the lack of a real oversight role by the Australian Parliament, means the agreement lacks transparency and accountability.

Senator Xenophon said the Government had failed to show how the TPP was in the Australian national interest, coming after more than a decade of bilateral free trade deals that have led to much worse trade imbalances with partner countries, including:

- Singapore (signed in 2003) \$8.9 billion trade deficit growing at 15 per cent a year
- Thailand (signed in 2005) \$7.8 billion trade deficit growing at 14 per cent a year
- Chile (signed in 2009) \$954 million trade deficit growing at 15 per cent a year
- United States (signed in 2005) \$22 billion trade deficit growing at 4 per cent a year

Senator Xenophon also pointed to criticisms by the Productivity Commission that FTAs were largely ineffective and not beneficial to Australia as a whole.

"If the Trans Pacific Partnership is the 'big kahuna' of free trade deals, that just makes it a bigger mistake for Australia. We have become known internationally as the 'free trade Taliban' due to our blind devotion in the face of the damage done to Australian national trade figures," said Nick.

18 / 11 / 2014

REVEALED: ABS figures show past FTAs leave Australia relatively worse off, posing questions as to whether the Australia-China deal will lead to more:

UNBALANCED TRADE

Independent Senator for South Australia, Nick Xenophon, has questioned the benefits of the China-Australia free trade agreement, pointing to Australian Bureau of Statistics figures he has collated showing past FTAs have led to relatively worse trade deficits with partner countries.

Senator Xenophon called for an open FTA negotiation process and real oversight by Parliament, challenging the Government to "show us the copy" of the agreement, which remains secret.

"These agreements have not lived up to expectations in the past," said Nick. "No realistic assessment can be made until the full text of the agreement is made public."

Senator Xenophon revealed figures and charts (see attached) of two-way trade for four nations with which Australia had signed FTAs: Singapore (2003), Thailand (2005), the United States (2005) and Chile (2009).

"It's clear from these figures that FTAs make our relative trading relationships worse overall, accentuating imbalances," said Nick.

The figures reveal that where trade deficits were manageable prior to, and at the time of the signing of FTAs, the deficits have since accelerated, not contracted. At best, the figures reveal that these FTAs did not improve our trade performance with these nations, he said.

"This is not free trade, it is unbalanced trade that gives greater benefits to the other nation," said Nick.

Senator Xenophon said Australian FTAs needed:

- Transparency: objectives must be openly agreed, negotiations more open
- Oversight: Parliament to have true oversight of FTAs, as for the US Congress
- Verification: Government predictions, cost-benefits to be independently tested
- Confirmation: performance of FTAs to be tracked to compare with predictions

Senator Xenophon was deeply concerned that China will take advantage of non-tariff barriers such as manipulating quarantine, customs, labelling and tax requirements to impede Australian imports.

"This agreement potentially will lead to more job losses in Australian manufacturing, which has already seen huge job losses in the past decade. Chinese manufacturing enjoys structural advantages over Australia, and the proposed freeing-up of guest worker provisions potentially puts Australian manufacturing jobs at risk," Nick said.

The Productivity Commission heavily criticised Australia's pursuit of FTAs in a 2012 report that recommended future agreements first undergo independent cost-benefit analysis and verification of the predictions produced by the Department of Foreign Affairs and Trade. The PC found that overall national benefits from FTAs were hard to find, and unilateral or multi-lateral agreements produced clearer improvements for Australia.

Senator Xenophon also flagged the presence of an Investor-State Dispute Resolution (ISDS) clause, which could see a Chinese company sue an Australian government for making laws that limit its profits.

"The Government appears to be playing 'Russian Roulette' with ISDSs, hoping that we never get sued. This ISDS clause was speculated about and has now been confirmed. It is an attack on Australia's sovereignty and should not have been agreed to," said Nick.

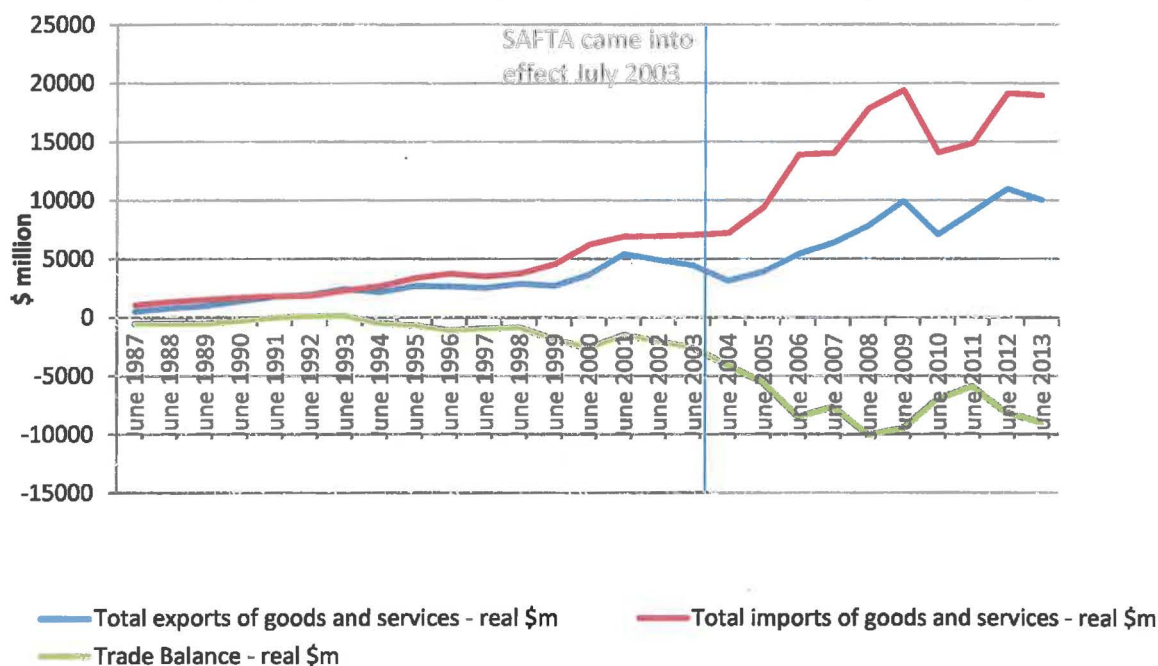
The figures released today show Australia's trade performance with four countries before and since the signing of FTAs. Australia's other free trade agreements were not included in the figures. The Malaysian agreement was considered too recent (2013) and the New Zealand agreement not a typical FTA.

"We have been at this game since 2003 and the results are in – bilateral free trade deals have led to relatively poor trade outcomes for Australia," Nick said.

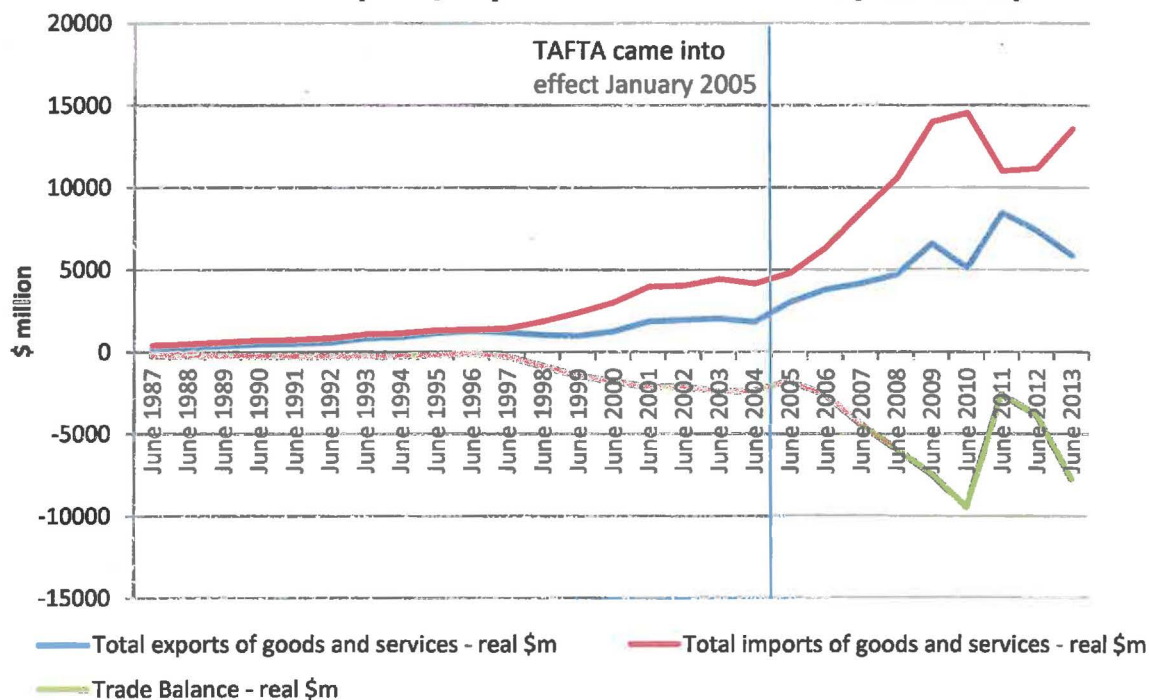
Senator Xenophon highlighted the 2005 Thailand-Australia free trade deal, which saw a massive expansion of Thai car imports with zero tariffs; while subsequently Thailand continued to impose massive non-tariff barriers on Australian-made cars (eg a \$57,000 Ford Territory sells for well over \$100,000 in Thailand).

"We are known overseas as the Free Trade Taliban because of successive Australian government and bureaucrats having a fundamentalist, literalist approach to free trade – something about which other countries laugh at us," said Nick.

Singapore: Exports, imports and trade balance (real terms)

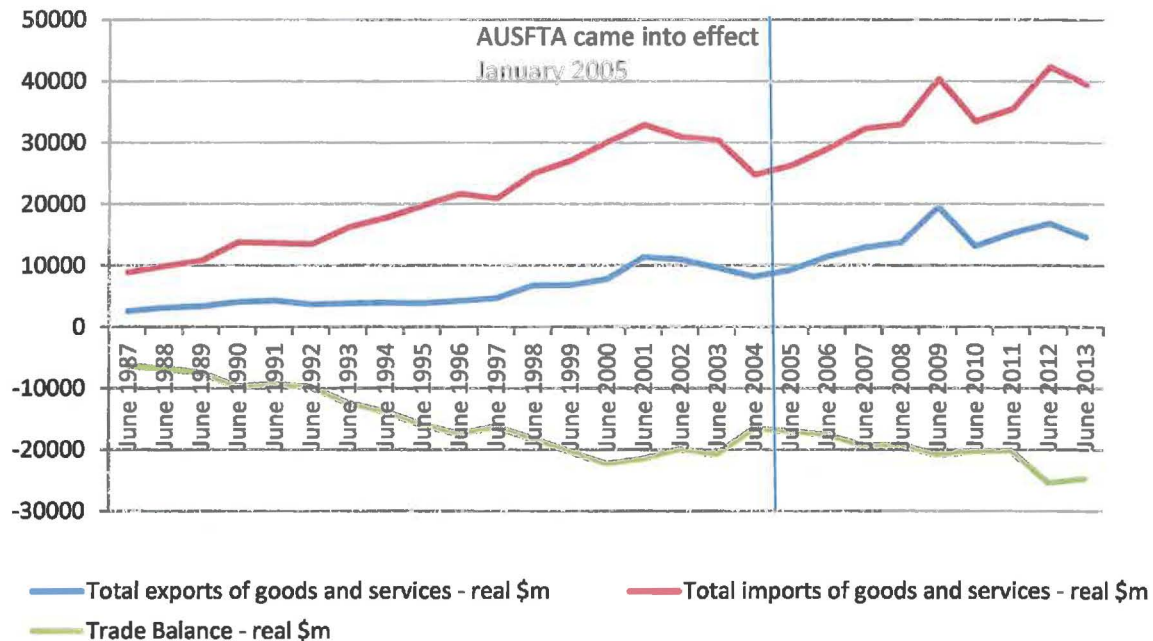


Thailand: Exports, imports and trade balance (real terms)

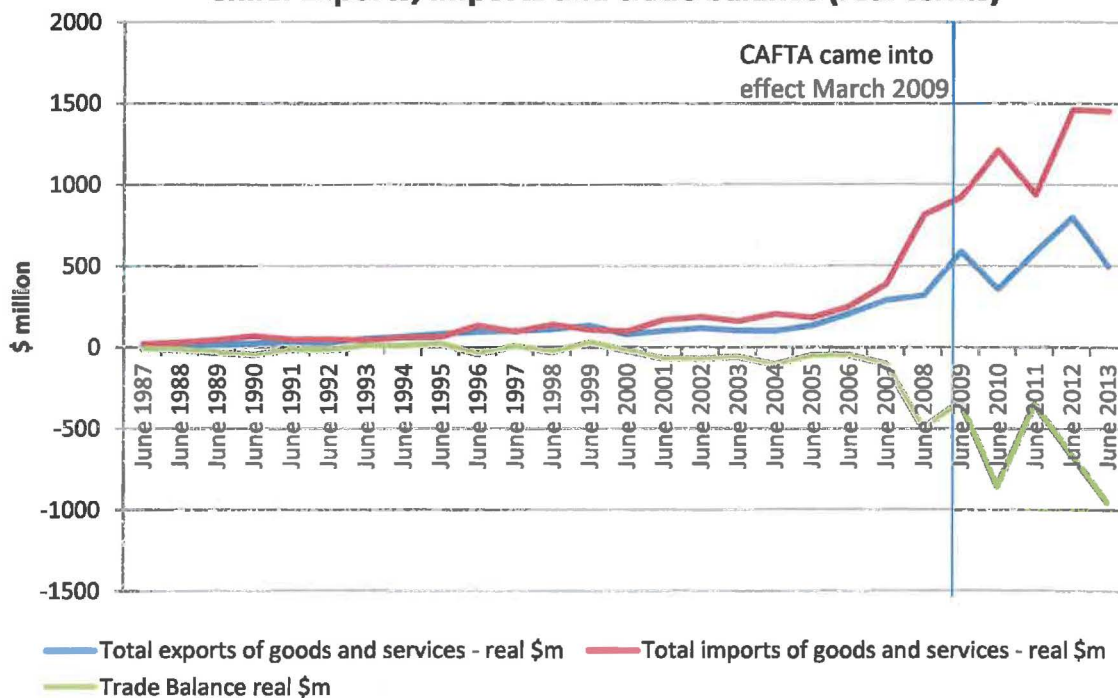


Source: Australian Bureau of Statistics

United States: Exports, imports and trade balance (real terms)



Chile: Exports, imports and trade balance (real terms)



Source: Australian Bureau of Statistics

PARLIAMENTARY LIBRARY

INFORMATION ANALYSIS ADVICE

CLIENT ADVICE

3 NOVEMBER 2015

TO

Client: Senator Nick Xenophon
Attention: Jeremy Roberts
Tel:
Email: Jeremy.Roberts@aph.gov.au

FROM

Name: Simon Speldewinde
Section: Politics and Public Administration
Tel: (02) 6277 2527
Email: Simon.Speldewinde@aph.gov.au
TRIM Reference:

Mentions of Australia Being "Open For Business"

On 3 November 2015 you requested information on the origins, frequency, examples and further details on the use of the phrase "open for business" by Australian politicians in reference to Australia's current economic situation.

- The Hon Tony Abbott's victory speech on the night of the [2013 Federal Election](#).
- [The Governor General's speech at the swearing in of the Abbott Government](#).
- The Hon Joe Hockey: October 2013 speech to the [American Australian Association](#); a 2015 media release entitled ["Open for Business"](#); and his 2015 budget night [speech](#).
- A list of all mentions recorded in the House of Representatives [Hansard in the 2010s](#) (a significant majority fall between 2013 -2015). As you can see of the 221 occurrences during this time 93 occurred during the debate of a bill (the next highest being 37 times during questions without notice), 77 of which are by Coalition MPs.
- A list of [occasions where Liberal Politicians and National Party Politicians mentioned Australia as being "open for business" during debate of a bill](#). As you can see the largest concentration of occurrences is in 2014. As requested here are some examples:
 - [Corporations Legislation Amendment Bill \(Deregulatory and Other Measures\) Bill 2014- Craig Laundy](#)
 - [Treasury Legislation Amendment \(Repeal Day\) Bill 2014 – John Alexander](#)
 - [Fair Work Amendment Bill 2014 – Ewen Jones](#)

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- Appropriation Bill No.1 2014-2015 – Julie Bishop
- Fair Work Amendment Bill 2014 – Christopher Pyne
- Shipping Legislation Amendment Bill 2015- Warren Truss

- Four Liberal Party Politicians have also mentioned the phrase whilst speaking on Matters of Public Importance, for example the following from Eric Hutchinson.
- Occasions in which ALP MPs mentioned the phrase during debate on bills in the House of Representatives Hansard. As you suggest each mention appears to be used sarcastically. This is the same for the Senate. This is the same for the Greens in the House of Representatives as well as the Senate.
- In the Senate the pattern is the same with the greatest frequency occurring between 2013 and 2015 – although the numbers are smaller than for the House of Representatives. The following is a list of times Liberal Party Senators used the phrase whilst debating bills. By way of example Senator Edwards mentions it twice during one speech.

Labor improved ChAFTA but gaping holes remain in the agreement

Joanna Howe

Published: October 22, 2015 - 2:26PM

Labor's deal with the government on the China-Australia free trade agreement is a step in the right direction, but much more needs to be done to safeguard Australian job opportunities, wages and conditions.

The deal means labour market testing will now be mandatory for investment facilitation arrangements. This positive reform will ensure that the Migration Act requires employers to advertise locally before recruiting Chinese workers. It will now be harder for the government to change on a whim or because of pressure from lobbyists.

Labor's development of greater accountability in relation to work agreements is another constructive reform, but it needs further work if it's going to be meaningful.

Labor should have pushed harder here. The Coalition has agreed that the Department of Immigration's annual report will provide data on the number of work agreements, the number of overseas workers employed on these agreements, and the industries and occupations to which they apply.

Given the potential of these agreements to erode local wages, conditions and opportunities, it is vital that other information should be provided.

The public has a right to know the names of employers who have negotiated work agreements with the department, the number of overseas workers on these agreements, the wage and other concessions granted by the Department of Immigration, and the region affected by the work agreement.

After all, enterprise bargaining agreements are on the Fair Work Commission website. If Australian employers have to comply with this principle of full disclosure, surely Chinese employers seeking to operate within Australia using work agreements should do the same.

Labor's third fix relates to increasing the base salary for temporary migrant workers to \$57,000 and ensuring it is indexed to inflation. Labor is correct that this base salary helps protect temporary migrant workers from exploitation by ensuring they have the economic means to support themselves while in Australia and ensuring that the 457 visa program is only used for skilled jobs that tend to receive a higher pay than this base salary.

The fourth aspect of Labor's deal is to require 457 visa holders in trade occupations to obtain the relevant trade and occupational licenses. This means electrical workers from China and other countries are required to obtain a licence from their state regulatory body and that this needs to be provided to the department within 60 days.

But where the Labor-Coalition deal falls down is in protecting Australian job opportunities for trade occupations. Under the 457 visa scheme most trades currently require labour market testing. This means the job vacancy must be offered to a local worker before an employer can seek to fill the vacancy with an overseas worker. The China-Australia free trade agreement goes further than any other agreement Australia has negotiated by allowing Chinese contractors to come into Australia for four years in most trade occupations and without labour market testing.

Although politically explosive here, the role and importance of labour market testing is not controversial internationally. The migration policies of Britain, Canada, Germany, Ireland and Austria each require some form of labour market testing that ensure local workers have preferential access to jobs.

Yet both the government and its main media cheerleader for the China-Australia free trade agreement continue to misleadingly assert that labour market testing will apply to all Chinese workers. *The Australian* newspaper

confidently asserts, "All employers seeking to sponsor 457 visa workers must first demonstrate they have made recent and genuine efforts to recruit Australians workers". This is completely untrue. The China-Australia free trade agreement prevents labour market testing from applying to all Chinese workers coming into Australia as "contractual service suppliers", which applies to most trade occupations. This means, in many jobs – such as electricians, plumbers, welders, engineers and nurses – Chinese workers can replace Australians in our labour market. This is a significant break with the past and the risks around it need to be addressed.

The other issue of critical importance is to ensure that Chinese workers employed as "servicers and installers" on subclass 400 visas receive the same wages and conditions that a local worker would receive. The China-Australia free trade agreement only requires that Chinese workers be employed in accordance with Australian law. It does not require they receive equivalent wages to a local worker.

This means an employer can legally use Chinese workers on subclass 400 visas to undercut Australian wages and conditions by hiring Chinese workers on the award rate rather than the rate an Australian worker would expect to receive under an enterprise agreement. This loophole needs to be shut down.

Undoubtedly Penny Wong and Bill Shorten have improved the impact of the free trade agreement on Australian workers. They have introduced measures that mitigate against some of its harshest effects. Because of the extreme politicisation of the debate around the agreement, Labor was stuck between a rock and a hard place in seeking to develop proposals to improve the agreement's impact on Australian workers without having to reject the agreement. But there is still more to do to ensure the China-Australia free trade agreement does not erode Australian wages, jobs and opportunities.

Labor needs to develop a solid policy on temporary labour migration to take to the next election that addresses the deficiencies in its deal.

Joanna Howe is a senior lecturer at the University of Adelaide Law School and an expert in temporary labour migration.

This story was found at: <http://www.theage.com.au/comment/labor-improved-chafta-but-gaping-holes-remain-in-the-agreement-20151022-gkfbqh.html>