解放不自由的貿易協定：法國、台灣、印度與澳洲的鈾防衛措施

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中文摘要

過去 20 年來，澳洲貿易政策都一直偏好關稅減讓以及儘可能地自由貿易。然而在一些限制範圍的情況下仍可發現澳洲政府介入其常態的な自由市場的理論。最常見的這種介入的例子是在對那些在政治上令人憎惡的貿易伙伴進行反應，如澳洲對南非所實施的經濟制裁。比較不常見的澳洲政府介入自由貿易的例子則是擔心正在擴張中的澳洲經濟部門可能因全球大企業的戰略而受限，如 2001 年 4 月澳洲財政部阻止荷蘭皇家殼牌公司（Royal Dutch Shell）購併 Woodside Petroleum。

本文主旨是試圖精簡地剖析澳洲貿易政策所存在的衝突，即一面大體上希望促進自由貿易，一面又明確地企圖監控國際貿易，如事先被歸類為戰略商品的鈾的出口。此一衝突史始於 20 多年前霍克（Hawke）第二任政府執政即將結束之時禁售鈾給法國以表示澳洲對法國在南太平洋進行核試爆無法接受，結果導致澳洲陷入自我定義的目前禁售鈾給印度的困境。而在這兩個案例之間則是澳洲迂迴售鈾給台灣一事。
The Redeeming of Unfree Trade Agreements: France, Taiwan, India and Australian Uranium Safeguards

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For the last two decades, Australian trade policy has strongly favoured tariff reductions, and favoured free trade by just about any possible means. But in a restricted range of circumstances, however, rationales can still be found for Canberra's intervention in the free markets it normally favours. The most common class of such interventions reflects larger assessments of the politically odious nature of trading partners (as in, for example, the economic sanctions implemented by Australia against South Africa). Less commonly, government interventions speak to fears that expanding sectors of the Australian economy might be restrained by the collusive stratagems of global corporations (as in, it seems, the Treasurer's April 2001 prohibition of Royal Dutch/Shell's proposed takeover of Woodside Petroleum). And in one modern case, intervention reflects a social assessment that the goods being transacted over borders have an inherent strategic quality. Although there have historically been other Australian examples, during the last fifty years, uranium has been major commodity to be so regarded. Since 1977, those who wish to buy uranium from Australian mines have had to sign an agreement with Canberra to accept Australian safeguards over that uranium. Since Australian uranium is never unencumbered, we might well say that its sale has been subject to an ‘unfree trade agreement’.

This paper provides a concise account of the conflict within Australian policy between the general desire to promote free trade on the one hand and the apparent desire to monitor it in the case of uranium, pre-categorised as a strategic commodity. The public history of this conflict begins more than two decades ago with the Australian embargo on uranium sales to France, and ends with the current dilemma of the Australia’s self-defined prohibition against uranium sales to India. And in between, as we will see, the story takes an absolutely critical detour through Taiwan. Hence, also, my deliberately provocative title.

The French connection

The first sign that there was any practical tension


between the national regulation of trade in this unique strategic commodity and the principle of free trade emerged towards the end of the second Hawke government. One of the things that had cleared Hawke’s pathway to office had been ‘the Hogg Amendment’ that qualified Labor’s traditional support for a moratorium on uranium sales; this meant the ‘three mines policy’, but also an outright prohibition on uranium sales to France, a policy that was meant to signal the unacceptable nature of France’s nuclear testing in the Pacific. But this second initiative soon fell into open conflict with the internal free market arrangements of the European Community in relation to nuclear materials, arrangements central to the Euratom system that partly defined the EC. In 1986 it emerged that the French electricity utility EdF could, had it so desired, have accessed Australian uranium purchased by other agencies in other European countries. Indeed, according to the subsequent Labor Trade Minister, EdF had not done so – but only because the French had chosen to enforce Canberra’s sales prohibition on its behalf.

In this case, the Hawke government’s prohibition appeared to be woefully ignorant of the acute difficulties that the Fraser government had experienced in its earlier dealings with the Europeans. In its Model Safeguards Agreement of 1977, the Fraser government sought to (amongst other things) reserve the right to approve all re-transfers of Australian-origin uranium to third parties. However, in order to blaze the path for commercially important sales into Europe, the safeguards agreements

that Fraser concluded with first with Britain and later with Euratom had both signed away its right to prior consent over re-transfers.\(^3\) So exactly how an Australian embargo could ever be enforced against any single European nation within this regional environment of free trade in uranium was, from the very beginning, a moot point.

In the event, Hawke, and even more so Treasurer Keating, were quick to bow down before apparent necessity. In August 1986, they took the issue to Cabinet, and succeeded in lifting their own policy. The clearing away was helped along quite considerably by the ‘banana republic’ scare that was front and centre at the time – so much so that Keating, according to some accounts, placed a digital read-out of the level of the Australian dollar in the middle of the Cabinet table as a means of focusing attentions. In the wake, there was serious political splintering on the left of the ALP with some high-profile resignations – but the beginnings, also, of a decade where macro-deals with left-wing single-issue parties would keep returning Labor to office.

To disinterested third party analysts, the three-year uranium embargo looked so misconceived as to be

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\(^3\) For the best investigative reportage of this conflict as it was unfolding, see John Edwards, ‘US uranium compromise may clear way to Europe’, The National Times, 14th October 1978 and also ‘Forget about uranium for this was election and probably the next ...’; The National Times, 7th – 12th November 1977. More recently, see Richard Bronowksi, Fact or Fission? the truth about Australia’s nuclear ambitions, Scribe, Melbourne, 2003, esp. chapter 6.
laughable, even farcical. But perhaps there is an alternative interpretation. Given the acute difficulty that all Australian governments experienced in obtaining even a slim margin of public support for any renewed uranium sales to any country, perhaps the Hogg Amendment's embargo on sales to France was more in the nature of a deliberate mistake. The first step in the game of mistake would be to over-burden the uranium embargo with heavy expectations – to wit, the end of France's programme of nuclear tests in the Pacific. The next step would be to wait for the ticking time bomb of under-engineered policy to fail in a very public and spectacular way. The final step would be to use that failure as a means to clear the way for something that could not otherwise have been achieved – namely, the passage of Australian uranium to France, a non-signatory to the NPT at that time. Perhaps this three-step game was the only way to cut through the Gordian knot of domestic approval for uranium sales to France. The idea that the embargo was a policy of irony, a policy of deliberate mistake, is certainly worth entertaining – and then putting on the shelf for the moment. The game will, however, make a later reappearance.

From France to Taiwan

The end of the 1983 embargo was not the end of the French connection. Immediately after the embargo was lifted, letters of intent recognised as authentic were leaked from inside BP, the minority shareholder in the new Roxby Downs mine. They suggested that France might serve as an intermediary to launder Roxby output that would ultimately end up in Taiwan. Taiwan was, like France, a country outside the NPT, albeit a country that fell outside the treaty by virtue of not being a UN member (rather than, in France's case, an outsider by active choice). Despite this unique reason, Taiwan was nonetheless a country that was, according to the letter of Australian safeguards policy, not eligible to receive Australian uranium.

Taiwan in 1986 was still struggling to escape from the poor image created by its highly suspicious dealings of a decade earlier. These had centred around the proposed purchase of a nuclear reprocessing plant, which had stalled US license applications for the first two of its four planned nuclear power reactors. By the mid-1980s, those reactors were going ahead, and although doubts persisted about the legacies of the black programme, US inspections

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6 For arguments about Taiwan developments in the 1980s and
were providing some measure of assurance about the civil course of Taiwan’s nuclear fuel cycle. The measure of assurance was unique if not quite complete. A one-off form of safeguards (so-called INFCIRC/158 safeguards) had been created by the IAEA, and their central feature was that they established the US as their custodian.

Two years later, the possibility of intermediation first hinted at in the BP letter would emerge as a big issue in its own right when the re-flagging practices of the Euratom system were seen to be playing havoc with Australian government assurances that no Australian obligated nuclear material was entering military fuel cycles. But to all intents and purposes, the matter revealed by the 1986 BP letter seemed considerably less significant. Taiwan did indeed have a legitimate concern with supply diversification that grew out of its expanding nuclear energy programme. Prior to the advent of that programme, its needs for nuclear fuel had been small, with the bulk of its requirements being purchased from South Africa (and enriched in the US). But its civil needs were now expanding and, like many others, Taipower feared that the rising tide of anti-apartheid measures in the US would eventually extend over these South African exports. In any case, most South African uranium was sold on the spot rather than the contract market, and Taipower was probably interested in lowering its medium-term exposure to spot market volatility by making more contract purchases. Canadian miners seemed a likely first port of call, with Australian ones a close second. And Roxby, the new and large kid on the Australian block, would have been particularly interested, since it was struggling to reach anything like the projected sales volumes in the glutted market that its birth had helped create.

In Canberra, the Labor government moved quickly to deny the possibility of this kind of pea and thimble transaction on French territory. Although Taiwan had

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8 This fear eventually proved unwarranted, since Reagan and Bush provided a general exemption for South African exports of strategic minerals right through to the end of apartheid.


10 Prior to the passage of the 1982 Indenture Bill that brought it into existence, Roxby production was projected over 4,500 tonnes of uranium oxide per annum. This figure was instantly halved upon the Bill’s passage, with planned capacity ultimately marked down to 1,900 tonnes per annum. However, at the end of the decade, the mine was still struggling to find the customers to justify this figure. This failure, by the way, offered plenty of unclaimed vindication for Labor’s much-berated three mines policy.

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signed and ratified the NPT by early 1970, it had subsequently dropped out of the UN system when the ‘normalisation’ of relations with the PRC became the norm for western policy. But even during the two decades when it held China’s UN seat, Australia had never established full diplomatic relations with Taipei, and uranium sales would seem to require recognition as a prelude to a bilateral safeguards agreement. In spite of all these obvious obstacles, it was somewhat disturbing to see that the 1986 proposal to flout Australia’s declared non-proliferation policy had the support of the Department of Trade.\footnote{See ‘Taiwan linked to sale of Roxby uranium’, \textit{Canberra Times}, 25\textsuperscript{th} October 1986.}

But after Labor’s denial, Taipower did not entirely go away, and industry publications continued to mention Australia as a possible future supplier to Taiwan. Taiwan’s greatest immediate success was, however, in Canada, where the government created a mechanism that enabled its miners to sell indirectly to Taiwan through the US, the place where most Canadian uranium was enriched. As in many other respects, Canada’s post-1974 policy of refusing to sell to non-NPT members had once been the model for Australian safeguards. Now, in effect, the Canadians were granting US bilateral safeguards with Taiwan equivalent status to IAEA measures. This begged the obvious question of the circumstances in which Australia might follow suit. The Vice President of Marketing for Cameco, the giant Canadian conglomerate, was in little doubt: Australia would ‘be next in line’ to get a similar agreement with Washington.\footnote{Alan Freeman, ‘New treaty lets Canada sell uranium to Taiwan: U.S. would handle nuclear fuel’, \textit{The Globe and Mail}, 8\textsuperscript{th} March 1993.}

And duly, by the end of that year, there were signs that this prediction was about to be realised. Keeping up with the Canadians in a competitive market environment became the new catchcry of Australian producers. The mantra obtained the support of the Department of Resources and its minister, and eventually secured the willingness of DFAT’s Gareth Evans to commence talks with the US about creating an American backdoor.\footnote{Martin Daly, ‘Canberra In Taiwan Uranium Bid’, \textit{The Age}, 23\textsuperscript{rd} October 1993.} By this stage, however, three other issues were raising the stakes. First, fullscope safeguards (that is, safeguards over the totality of the nuclear fuel cycle) had been accepted as a condition of supply in the most recent NPT review conference, after having been a major objective of Australian diplomacy for a much longer period of time. Taiwan’s terribly convenient backdoor through the US would struggle to satisfy this more demanding international criterion. Perhaps more importantly, Canberra had insisted upon retro-fitting fullscope safeguards clauses back into the South Pacific Nuclear Free Zone Treaty during 1992. Hence the question of whether Canberra was willing to live with a diminished standard for Taiwan raised questions about the
consistency and credibility of broader regional policy. Second, tough opposition from China was expected – and all the tougher as the PRC had taken up its seat at the top table of the NPT around the time that Canada’s created its US backdoor. As with other aspects of its multilateral diplomacy, China was proving to be something of a literalist on NPT matters: rules were rules. And third, commercial returns in the uranium market were coming under sustained downward pressure with the end of the Cold War. Although uranium prices had already fallen some eighty per cent in the last decade, Russia’s sales of unwanted bomb-grade High Enriched Uranium to the US threatened to drive prices of Low Enriched Uranium down even further. Indeed, Australia’s ERA mine would soon see fit to service a portion of its foreign contracts with spot purchases from Kazakhstan rather than new production from Kakadu.14

By virtue of a combination of all these reasons, the Labor government baulked at the final hurdle. As always, the left of the party was never going to lie down quietly on non-proliferation policy, and when the whole matter was sent up before the 1994 National Conference, the right’s desire for publicly verifiable party unity made the question of Taiwan sales into a sacrificial lamb. Having swept the question under the carpet, nothing more was heard of the matter from a government that was henceforth preoccupied

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14 On this, see Barry Fitzgerald, ‘ERA In Deal To Take Uranium From Kazakhstan’, The Age, 31st October 1992.

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in nuclear affairs with preparations for the 1995 NPT extension. Taipower contacts with both Australian producers persisted – as, no doubt, did their pressure on relevant departments. But none of this was going to rise to the top as government policy in the interim. Later reports had Evans agreeing in November 1995 to ‘leave things as they are’ in relation to Taiwan.15

regime change in Canberra (and other places)

The rise to office of Howard’s coalition government in March 1996 brought an old rather than a new brush to policy. As far back as 1991, opposition leader John Hewson had argued that a Coalition government would reconsider the question of uranium sales to Taiwan.16 And within a month, foreign minister Downer began picking up where Hewson left off by instructing DFAT officers to begin safeguard negotiations with Taipei. Given the absence of official diplomatic contact, this direction predictably fell in upon itself, and Downer quickly turned to the US backdoor route blazed by the Canadians.17 Within another three months, Downer was able say that Australia was considering selling to Taiwan.

17 Lindsay Murdoch, ‘Plan To Sell Uranium To Taiwan’, The Age, 16th August 1996.
Although Downer had acted quickly, time had also moved on. The heat in the uranium-to-Taiwan issue was being pushed up very considerably by the recent bout of Chinese missile tests in Taiwan's vicinity. And matters that were not related – approval for the visit to Australia by the Dalai Lama; the planned visit to Taiwan by the Minister for Primary Industries; the abolition of the DIFF scheme – were adding further fuel to that fire. Meanwhile, other nuclear expansion plans exercised even greater attractions to the Howard government – most especially, Technology Minister Habibie's visions of a dozen reactors in Indonesia. Australian producers and the Howard government alike were very keen to corner this more neighbourly trade, and in conjunction with the support of liberal governments in critical states, looked set to liberalize the domestic uranium industry. The Democrats, however, used their balance of power in the Senate to shunt the whole issue sideways into a Committee investigation. By the time it re-emerged, Habibie had become interim president, but the New Order was gone – along with the Indonesian economy, and Habibie's plans of nuclear expansion.

While the Indonesian drama was front and centre, it seemed that Taipower progressively cooled down its Australian connections. When in August Downer was talking things up, Taipower headed off in the other direction, noting that there had been 'no substantive progress' on the issue. And in early 1997, when releasing tender documents for three years of fuel supply, it somewhat gratuitously noted that it did not expect any Australian bids. And when, in 2001, Taipower issued its subsequent fuel tender, the best-informed industry source noted that three countries need not bother applying – China, Mongolia and Australia. This rather derogatory grouping was then repeated verbatim for a number of years.

In the event, this removal of the issue from the public arena proved to be the mechanism that progressed it. With Taipower playing dead in public, the idea of an American connection kept cropping up rather unobtrusively in bilateral and regional meetings, albeit without any of the earlier urgency. In 2002, however, the Howard government struck a Canadian-style agreement with the US. Australian origin nuclear material bound for Taiwan would travel first to the US for enrichment, with coverage provided by Australia's safeguards agreement with the US. After enrichment, the uranium would proceed on to Taiwan, with

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18 For one of the best explorations of Habibie’s programme, see August Schiapfer, ‘Reactors on the Ring of Fire: Implications for Indonesia’s Nuclear Program’, Working Paper, no. 65, Asia Research Centre, Murdoch University, Perth, 1996.


coverage on that leg provided by the collate of agreements between the US, Taiwan and the IAEA – something that was collectively less than fullscope. Even though the Memorandum of Understanding passed through both houses of parliament, including the Joint Standing Committee on Treaties, there was no public gallery of any size, and no mention at all in the press. Equally, no one bore witness to the 2005 contracts signed in secret between Taipower, ERA and BHP (which assumed control of Roxby from WMC in mid-year). It seemed as though the tactic of heavily discounting the prospects of a direct transfer had succeeded in diverting attentions away Taiwan in general, including the always more likely backdoor route.

The Taiwanese road to India?

The Taiwan contracts of the two Australian uranium miners were held back from the public until the day after Canberra had concluded a bilateral safeguards agreement with China. China, the public was then told, had been kept in the loop about the backdoor developments, and had raised no objection. The political tensions associated with the Taiwan deal in 1996 had, it seemed, been defused by two things – the general improvement of relations inside the Australia-Washington-Beijing triangle under the Global War on Terror, and the bringing of Beijing into the fold of the Australian suppliers. If anyone was put out at all by the new and expanded order of new things, it was, strangely enough, the Taiwanese, although their warnings about sending uranium to Beijing were boilerplate standard.

By this stage, the low profile road to Taiwan through Washington was beginning to look like a model for getting Australian uranium into India. Like Taiwan, India is not an NPT member, and Australian safeguards policy therefore seems to preclude sales to it. While Howard has blown both hot and cold about the prospect of sales, Downer has repeatedly been firm and correct about this. However, his legal correctness needs to be cast against the correct background. For like the French embargo of earlier times, there is already an air of considerable unreality about Australian policy on India – manifest in this instance by Canberra’s repeated demand that New Delhi join the NPT. Since the NPT contains no provisions for recognising the fact of new nuclear weapons states, the demand effectively requests that India renounce its nuclear weapons so that it can sign on to the NPT as a non-nuclear weapon state. This is a wilful head-in-the-sand posture that may be designed to fail. It denies the reality of India’s nuclear achievements, and shows a dangerous and unprofessional preference for the world as it might have been – a preference that writes down the value of the NPT in defence communities in particular.²² When it is seen to

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²² For a more complete argument on this point, see my ‘The impact of the self-declared nuclear weapon states upon the NPT Review process’, in Carl Ungerer and Marianne Hanson (eds.), The Politics of Nuclear Non-Proliferation, Canberra Studies in World Affairs, Allen
fail – for it has no chance of success – then, as with the French embargo before it, the first victim might well be Australia’s own over-extended safeguards policy.

Not everyone agrees that there is a road to India through Taiwan and Washington. Robert Ayson, for one, draws attention to an important difference – that Taiwan would sign the NPT if it could, whereas India never will. 23 His difference is real enough, but perhaps not so significant. For in order to achieve nuclear cooperation with Washington, it is already clear that India is separating its military and civilian fuel cycles, and establishing the modalities for IAEA inspections over the latter. As with Taiwan, a new set of unique safeguards – similar to, but different from, those written down in INFCIRC/158 – will have to be agreed, and these will almost certainly install the US as their custodian.

The backdoor route appears to represent the end of the road for Australian safeguards in the sense that the transformation of Australian obligated yellowcake effected by the United States Enrichment Corporation seems to make the enriched materials subject to American rather than Australian obligations. Prior to the discovery of the backdoor route described above, there was something of a schism within the western world about questions of ownership in fuel cycle matters. As the Europeans saw it, both Canada and Australia did not regard the enrichment of uranium as an origin-conferring process, while both the US and the USSR did. 24 The routinised out-sourcing of the enrichment of Australian uranium in the US now appears to have closed that schism – and with it, the pretence in Australian safeguards obligations continued to attach themselves not just to the exported raw materials but also to the substantially transformed products produced from it. Perhaps, then, the real meaning of the Taiwan backdoor will be manifest in India where, it now appears, Howard and Downer enjoy the possibility of having their yellowcake and eating it, too.

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23 See his argument, as reported in ‘Australian Uranium To Be Exported To Taiwan’, Dow Jones Commodities Service, 4th April 2006.

24 This, at any rate, was the judgement of the Advisory Committee to the Euratom Supply Agency. Their assessment came to light in the documents associated with the Nukem affair where, inevitably, there was extensive discussion of the legal and practical definitions that guided the conferring of origin. For analysis of the documents that backed up the ESA judgement, see my ‘The Nukem Scandal…’, esp. pp. 24-27.