

ActionAid Australia submission to the Senate Legal and Constitutional Affairs Legislation Committee Inquiry into the Comprehensive and Progressive Trans Pacific Partnership Agreement

ActionAid Australia welcomes the opportunity to make a submission to the Senate Legal and Constitutional Affairs Legislation Committee Inquiry into the Comprehensive and Progressive Trans Pacific Partnership (CPTPP).

ActionAid is a global federation that supports women living in poverty and exclusion to understand their rights, reflect on the people and systems that affect them and act with others to change their lives and positions in society. ActionAid Australia works with local partners in over 45 countries, and this work is supported by the Australian Aid Program and the Australian public in 10 of these countries. Women's economic justice is a core priority for ActionAid, and influencing more just and equitable trade policies is an important strategy in this work.

In DFAT's *Gender Equality and Women's Empowerment Strategy*, the Australian Government has committed to advancing equality and economic empowerment for women across all aspects of Australia's foreign policy, including trade and aid programs.¹ Supporting the empowerment of women and girls is a cornerstone of Australia's engagement our region, including through our Overseas Development Assistance (ODA), and DFAT has committed to a target of 80 percent of all investment to "effectively address gender issues in their implementation."² Australia is also part of several international agreements that promote women's rights and gender equality, including the UN Convention on the Elimination of All Forms of Discrimination against Women (1979) and the Sustainable Development Goals (2015).

Despite modifications made since the collapse of the original Trans-Pacific Partnership (TPP) in 2016, ActionAid is concerned that in its current form the CPTPP poses a significant risk to women's rights and economic empowerment in the region, and is therefore inconsistent with the Australian Government's stated commitment to gender equality. These concerns are outlined in this submission.

On this basis, ActionAid Australia recommends that:

1. The CPTPP Agreement should not be implemented in its current form.
2. The Australian Government should resource a full gender impact assessment of the Agreement, both in Australia and in other signatory countries, which includes consultation with women's organisations at national and local levels.
3. Targeted strategies should be introduced to ensure women's increased representation in all trade negotiations and related decision-making at local, national and regional levels.
4. The Australian Government should commit to improving transparency during free trade negotiations, including, but not limited to: publicly releasing proposals and discussion papers during negotiations; commissioning of independent analysis of potential economic, health, environmental and gender impacts made publicly available for debate and discussion; and releasing the final text of the agreement with adequate notice *prior* to its signing.

¹ DFAT (2016), *Gender Equality and Women's Empowerment Strategy*, <http://dfat.gov.au/about-us/publications/documents/gender-equality-and-womens-empowerment-strategy.pdf>
² *ibid.*

1. Gender and free trade

There is growing recognition in the international community that the trade liberalisation agenda being pursued through multilateral trade agreements such as the CPTPP is having negative impacts on women's rights and gender equality. The United Nations Conference on Trade and Development, for example, has stated that the effects of trade are not "clear-cut" and are often "double-edged".³ While some women may see increased access to global markets or more employment opportunities in manufacturing and services sectors under trade liberalisation, any benefits are undermined by the myriad ways in which free trade agreements undermine women's rights at work, access to justice, public services such as healthcare, and access to sustainable livelihoods.

For many women in lower income countries, free trade and integration into global supply chains has exacerbated gender inequalities. While organisations like the World Bank and the World Trade Organization suggest that free trade can "add significant momentum to our efforts to end poverty,"⁴ their failure to recognise the gender-specific impacts of trade liberalisation is particularly concerning given its potential to significantly impede progress on women's empowerment and gender equality globally. The OECD concluded in 2014 that the "[p]ossible differential effects and impacts on men and women resulting from trade openness and related trade agreements might... exacerbate existing inequalities."⁵ Evidence emerging globally from other multilateral and bilateral free trade agreements suggests that this is certainly the case, which is discussed in further detail below.

With trade liberalisation stipulated in multilateral trade agreements such as the CPTPP fuelling gender inequality and increasing the power of large corporations, more needs to be done to not only acknowledge the gender specific impacts of free trade but to also put measures in place to adequately address them. Mainstreaming gender considerations in trade and incorporating in-depth gender impact assessments into existing and future free trade agreements are two such measures that the Australian Government could implement immediately to tackle these issues. The United Nations 2011 resource paper on Gender Equality and Trade Policy, for example, points out that "[i]ncorporating (mainstreaming) gender considerations in trade policy means assessing the impacts of such policy on the wellbeing of men and women, evaluating how trade policies affect gender relations."⁶ Chile is one country which has made efforts to specifically include references to gendered impacts in its recent bilateral trade agreements with Uruguay and Canada; the latter's [Trade and Gender Annex](#), while still inadequate in the depth of its analysis, nonetheless highlights the importance of recognising the differentiated impacts of trade on women and men. Following our submission to the parliamentary inquiry into the Pacific Agreement on Closer Economic Relations Plus (PACER Plus), the Joint Standing Committee on Treaties recommended "that part of the development assistance allocated to implementing PACER Plus be specifically used to monitor the revenue of Pacific Island Governments, the public health, and gender equality impact of the

³ UNCTAD (2016) *Trade, Gender and Development: advocating inclusive and gender-sensitive development on a global level*, http://unctad.org/en/PublicationsLibrary/ditcmisc2016d6_en.pdf, pg. 5.

⁴ World Bank and World Trade Organisation (2015) *The Role of trade in Ending Poverty*, https://www.wto.org/english/res_e/booksp_e/worldbankandwto15_e.pdf

⁵ OECD (2014) *Trade and Gender – exploring a reciprocal relationship*, https://www.oecd.org/dac/gender-development/GIZ_Trade%20and%20Gender_Exploring%20a%20reciprocal%20relationship.pdf

⁶ UN (2011) *Gender Equality and Trade Policy resource paper*, http://www.un.org/womenwatch/feature/trade/gender_equality_and_trade_policy.pdf, pg. 4.

Agreement”.⁷ ActionAid Australia strongly recommends Australia adopts this practice in relation to current and future free trade agreements.

2. ActionAid Australia’s concerns with the CPTPP in its current form

Australia’s signing of the CPTPP on March 8, 2018, along with the 10 other signatories is regarded as a significant setback for the Australian Government’s commitment to empowering women throughout the region and the achievement of gender equality and women’s rights more broadly. The signing, which coincided with International Women’s Day, was met with opposition from many women’s rights organisations in Australia and other signatory nations. ActionAid Australia was one of the signatories to the statement “Feminist Organizations and Allies Offended by CPTPP Takeover of IWD” (hereafter referred to as the Feminist Statement), which was backed by 51 different organisations from across the region. This Statement is included in the annex to this submission.

The central message of the Feminist Statement is as applicable today as it was on International Women’s Day: the CPTPP in its current form threatens women’s rights in a multitude of ways. The inclusion of tariff elimination measures, the promotion of cross-border trade in services and temporary mobility schemes, tighter intellectual property restrictions, the National Treatment principle and the Investor-State Settlement Dispute mechanism all contribute to making this partnership a bad deal for women across the region.

Since signing this statement, ActionAid Australia is also concerned about the potential reinstatement of clauses suspended following the withdrawal of the United States from the TPP deal. The continued suspension of these clauses, particularly those in the Intellectual Property chapter relating to biologics and extension of copyright periods, is now in doubt, with media reports that the United States is interested in rejoining the partnership. Minister for Trade and Investment Steven Ciobo has already flagged the possibility of these suspensions being lifted,⁸ which will likely have further negative consequences for women’s rights in partner countries.

Notwithstanding the suspended clauses, the deal that Australia signed on the 8th of March already poses a significant threat to gender equality and women’s rights across the region. An analysis of the relevant CPTPP provisions and their impact on women follows.

Cross-Border Trade in Services

The provision of public services is undermined by the Services chapter of the CPTPP. Gender-responsive public services are widely acknowledged as a critical step towards achieving women’s empowerment and gender equality. Inadequate or non-existent public services not only increase women’s vulnerability to violence and exploitation, but also increase their unpaid care work due to gender roles that posit care for children, the sick, those with a disability, and the elderly in women’s hands. ActionAid research has found that women currently spend between two and ten times more time on care work than men.⁹ This in turn impacts on women’s ability to participate in paid work and

⁷ Joint Standing Committee on Treaties, Report 179 (May 2018), https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/PACERPlus-Agreement/Report_179

⁸ Steven Ciobo (23 February 2018), *Bloomberg Interview*, http://trademinister.gov.au/transcripts/Pages/2018/sc_tr_180223.aspx?w=tb1CaGpkPX%2FISOK%2Bg9ZKEg%3D%3D

⁹ ActionAid India (2017) *Invisible Work, Invisible Workers*, https://9dd22cecb57cc7c49673951a-f40fpgic7vvq2ruqx.netdna-ssl.com/wp-content/uploads/2017/11/Invisible-Work-Invisible-Workers-correction_e-book.pdf

public life, and the contribution that women make to the formal economy. This is most profound for women living in poverty who are more reliant on public services such as transport, water, healthcare and education without the means to pay for privatised services.

The Services Chapter is designed to encourage privatisation and deregulation. The CPTPP, by increasing access to new markets for multinational corporations, may result in women having less opportunities to access to these goods and services and/or their being required to pay for them. Privatisation policies in a number of countries where ActionAid works have already resulted in women spending more time collecting wood and water - women already spend 1.7 fold more time completing this activity than men.¹⁰ Also, when healthcare costs rise, it is often women and girls who inevitably face reduced access to these services.¹¹ Often, this includes access to reproductive health care, which is essential in reducing maternal and infant mortality rates in low income countries.¹²

The public services sector is also an extremely important area of employment for many women. While securing formal employment is already often a challenge for women, particularly in low and middle income countries, many of those who do secure such employment manage to do so in the public services sector. In Mexico, for example, women represent 49 percent of public service employment compared with less than 38 percent of total employment. Similarly, in Canada, women fill 63 percent of public service jobs compared with 49 percent overall.¹³ What these statistics tell us is that the public services sector is an incredibly important source of formal employment for women, regardless of the income classification of the country. ActionAid Australia is therefore deeply concerned that the pressure to privatise public services occasioned by free trade agreements like the CPTPP will disproportionately impact women by endangering one of the most important sources of formal employment for women globally. Given the importance of women securing sustainable livelihoods to address gender inequality, the likely impacts of the CPTPP on the services sector presents an unacceptable threat to women's empowerment in all signatory countries.

Temporary Entry for Business Persons

The CPTPP's extremely broad definition of 'business persons' raises concerns that this chapter of the agreement will in reality increase the numbers of temporary workers engaged in occupations other than what is traditionally considered business. Annex 12-A sets out a number of categories which Australia would be obliged to consider 'business persons' under the CPTPP, including contractual services suppliers or people with "trade, technical or professional skills and experience."¹⁴ ActionAid Australia is concerned that this definition will be interpreted to increase temporary migrant worker flows into Australia.

While temporary labour migration has the potential to increase women's participation in the global economy, without proper regulation and oversight it can also lead to the exploitation of women, often from low- and middle-income countries, who face increased vulnerability due to a lack of awareness of rights, language barriers and limited legal protection. The exploitation of migrant

¹⁰ ActionAid (2013) *Making Care Visible: Women's unpaid care work in Nepal, Nigeria, Uganda and Kenya*, http://actionaid.org/sites/files/actionaid/making_care_visible.pdf

¹¹ Third World Network (2011) *Trade, Intellectual Property Rights (IPRs) and Gender Issues in India*, http://www.twn.my/title2/women/2011/a.economic/HBF-TWN/Trade_and_Gender_Brief_India_TWN-HBF_Vol_III_IPRs.pdf

¹² Lappin, K. (2018) 'Free Trade or Women's Rights?', *The Indonesian Journal of Leadership, Policy and World Affairs*, <http://www.sr-indonesia.com/in-the-journal/view/free-trade-or-women-s-rights>

¹³ OECD (2015) *OECD Stat*, <http://stats.oecd.org/index.aspx?queryid=78408>

¹⁴ CPTPP text, available from DFAT, accessed 17 April 2018, <http://dfat.gov.au/trade/agreements/not-yet-in-force/tpp-11/official-documents/Documents/12-a-australia-temporary-entry-for-business-persons.pdf>

women workers in Australia has been well-documented by community organisations such as Asian Women at Work. Their 2010 report, *Women Raising Our Voices*, found that migrant and refugee women working in Australia were frequently underpaid, received incorrect leave entitlements, were unfairly dismissed, bullied and harassed and suffered from bad health due to their work.¹⁵ These women also felt they had no option but to work under such poor conditions because they feared losing their jobs or being deported if their sponsors revoked their visa support. ActionAid Australia is concerned that without proper regulation and regular monitoring, increasing migrant worker flows will lead to more women being exploited by individuals and businesses willing take advantage of female migrant workers who feel they have no choice but to accept such treatment.

Elimination of customs duties

Tariffs are an important source of revenue for low to middle-income economies and they also play a critical role in protecting a country's small and medium-sized enterprises (SMEs), which are otherwise unable to compete against large multinational corporations. SMEs give women access to livelihoods which are more sustainable and more likely to lift them out of poverty in the long term. Given the CPTPP's commitment to eliminating customs duties and the strict tariff reduction schedules set out in the relevant annexes, ActionAid Australia is concerned that the two-fold impacts of reducing public revenue and encouraging imports at the expense of small to medium scale local industries and agriculture will impede women's empowerment in signatory countries.

Firstly, ActionAid Australia is concerned that the decrease in public revenue occasioned by the elimination of tariffs by CPTPP signatories will impair governments' ability to fund basic public services like healthcare, education and transport. The ability of signatory governments to provide these public services, as explained in the previous section, is essential for achieving gender equality. Tariffs form an important part of public revenue in low-income countries, accounting for over 5 percent of total GDP in the least developed countries compared to less than 0.5 percent in developed countries.¹⁶ ActionAid Vietnam, in their 2016 analysis of the current and potential impacts of free-trade agreements on Vietnam's food processing sector, identified that the reduction in public revenue caused by tariff elimination will lead to "smaller budgetary capacity to support domestic industries and provision of public services and social protection to citizens."¹⁷ Public revenue to pay for healthcare, education, and other essential public services are critical for achieving gender equality, as women rely on them to redistribute their unpaid labour to allow for their economic empowerment. While reducing customs duties may benefit large multinational corporations, reductions in public revenue and the potential implications for the provision of public services is likely to have a disproportionate impact on women.

The second issue arising from eliminating customs duties relates to the vulnerability of local industry and agriculture when exposed to international competition from large corporations. Tariffs currently play an important role in protecting local businesses, including SMEs and small-holdings farmers, from competition from large, globalised corporations that enjoy numerous advantages in terms of lower production costs over local industries. Globally, a large portion of women are employed in SMEs in the agricultural, services and manufacturing sectors. Modelling by the International Labor

¹⁵ Asian Women at Work (2011) *Women Raising Our Voices*, pg. 2.

¹⁶ UNCTAD (2014) *The Role of Trade in Financing for Sustainable Development*, <http://www.un.org/esa/ffd/wp-content/uploads/2014/12/10Dec14-UNCTAD-input.pdf>, pg. 3.

¹⁷ ActionAid Vietnam (2016) *Policy Brief: Impact of Current & Proposed FTAs and BITs on Vietnam's Food Processing Sector*, <http://www.actionaid.org/vietnam/publications/impact-current-proposed-ftas-and-bits-vietnams-food-processing-sector-policy-br>

Organisation, for example, estimated that in 2017 the services sector would have employed 55.9 per cent of women in the paid workforce while agriculture employs 30.5 per cent.¹⁸ The Food and Agricultural Organisation of the United Nations estimates that in the developing world, female employment in agriculture is actually more than 40 percent.¹⁹

By forcing SMEs in these sectors to compete with multinational corporations, the CPTPP will potentially impact on women's ability to secure sustainable employment in these sectors. The United Nations, for example, recognises that "international competition tends to disproportionately affect women-owned or operated enterprises" and that "women entrepreneurs in developing countries often have less access to marketing networks, capital, credit and technical knowledge, all of which are essential to improving production competitiveness."²⁰ ActionAid Australia is thus particularly concerned that women's ability to secure meaningful employment will be adversely affected by the elimination of the protection that tariffs currently afford to feminised sectors such as agriculture and services.

Intellectual Property

Despite the suspension of twenty-two clauses from the original TPP, the majority of which are located in the Intellectual Property chapter, concerns remain about the impact of the intellectual property provisions of the CPTPP, particularly in the areas of seed sharing and the cost of medicine. As noted above, given recent developments which suggest that the United States may be considering rejoining the TPP, it also seems increasingly likely that the suspended clauses, which should never have been included in the first place, could be reinstated at any point.

Women have not only traditionally acted as custodians of seeds, they have also held knowledge about the different uses of traditional crops, including in traditional medicines. These practices have guaranteed genetic diversity, guarded crops from disease and increased food security while also helping to safeguard the health of entire communities for generations. This knowledge has furthermore contributed to the resilience of women and their families around the world.

The CPTPP, while greatly benefitting large, high-polluting agribusinesses with extensive seed patents and complementary fertilizer and pesticide patents, will likely inhibit the ability of women to continue in their role as custodians of genetic diversity and sustainability. The CPTPP will oblige all signatories to adhere to the International Union of the Protection New Plant Varieties (UPOV91), setting a dangerous precedent which will pressure non-member countries to adhere to this fundamentally flawed international agreement. UPOV91 essentially prohibits the saving and sharing seed among farmers.

The impacts of these restrictions on small-scale farmers is of particular concern for women living in rural areas who are more likely to struggle with the cost of purchasing seed on a year-by-year basis. Furthermore, these women, due to structural constraints such as access to education and markets, often have limited employment opportunities outside of agriculture. Conversely, research has found that in communities threatened by food insecurity, allowing women to act in their traditional role as custodians of seed not only improves crop yields in periods of drought, it also enhances the status of

¹⁸ World Bank (2017) *The World Bank: Data*,

<https://data.worldbank.org/indicator/SL.IND.EMPL.FE.ZS?end=2017&start=2017&view=chart>

¹⁹ The Food and Agricultural Organisation of the United Nations (2011) *The role of women in agriculture: ESA Working Paper No. 11-02*, <http://www.fao.org/docrep/013/am307e/am307e00.pdf>

²⁰ UN (2011) *Gender Equality and Trade Policy resource paper*,

http://www.un.org/womenwatch/feature/trade/gender_equality_and_trade_policy.pdf, pg. 7.

women in these communities.²¹ The CPTPP therefore not only threatens women's livelihoods and food security, it also threatens to undermine the contribution women have traditionally made to their communities.

Furthermore, access to affordable medicines, particularly in low-income countries, will be threatened by the CPTPP. Vietnam, for example, will still be obliged to adopt medicine monopoly provisions on top of the current Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) under the current form of the agreement. One study has found that the percentage of Vietnamese with access to certain medications used to treat HIV will fall from 68 to 30 percent.²² Bearing in mind that care of ill adults and children often falls to women (women spend 1.5 more times in caring for adults than men and threefold more time caring for children)²³, these extra costs will unfairly increase women's burden of unpaid labour. Access to medicines will be further eroded if the currently suspended provisions relating to biologics are reinstated if the United States' rejoins the agreement.

National Treatment

The implications of the CPTPP's inclusion of a National Treatment provision are also problematic due to their likely impacts on women's access to decent work and land. The inclusion will reinforce Article III of the World Trade Organisation's 1994 General Agreement on Tariffs and Trade, obliging governments to treat foreign investors equally to how they would local investors. The significant power imbalances that exist between multinational corporations and SMEs and small-scale farmers makes this extremely problematic for women's economic empowerment. As referenced in the Feminist Statement, the significant proportion of women who work as small-scale farmers will likely be squeezed out of the market by larger, more carbon-intensive multinational corporations that enjoy significant advantages in the global market.

National treatment also extends to property dealings, leading to concerns that it will enable large multinational corporations to buy up land at the expense of smaller landholders, who are predominately women. This impact also relates to the issue of land tenure, with research finding that women in the Global South are much less likely to own land due to socio-cultural factors, suggesting the gendered aspects of tenure insecurity.²⁴ The acquisition of large tracts of land by large corporations is therefore more likely to negatively affect women's access to land.

The CPTPP's inclusion of the national treatment principle will also discourage governments from initiating affirmative action programs designed to support women-led farms and businesses. Affirmative action policies have been widely used by governments around the world in an effort to address gender inequalities by shifting power back to women, particularly women living in rural areas. Indeed, Article 4 of CEDAW obliges signatories to undertake "temporary special measures" to ensure that women are afforded advantages which help them to overcome gender inequalities.²⁵

²¹ Anderson, T. (2013) 'Seeds for Life: Scaling Up Agro-Biodiversity', *Ecumenical Advocacy Alliance*.

²² Lappin, K. (2018) 'Free Trade or Women's Rights?', *The Indonesian Journal of Leadership, Policy and World Affairs*, <http://www.sr-indonesia.com/in-the-journal/view/free-trade-or-women-s-rights>

²³ ActionAid (2013) *Making Care Visible: Women's unpaid care work in Nepal, Nigeria, Uganda and Kenya*, http://actionaid.org/sites/files/actionaid/making_care_visible.pdf

²⁴ USAID (2016) *Land Tenure and Gender brief*, https://usaidlandtenure.net/wp-content/uploads/2016/09/USAID_Land_Tenure_Gender_Brief_061214-1.pdf

²⁵ UN Women *What are special measures and temporary special measures?* <http://asiapacific.unwomen.org/en/focus-areas/cedaw-human-rights/faq#specilameasure>

National treatment essentially prohibits governments from undertaking these positive initiatives, thereby derailing global efforts to create a fairer playing field for women around the world. ActionAid Australia therefore opposes the inclusion of the National Treatment provision in the CPTPP due to its likely impacts on women's access to decent work and economic empowerment, its exacerbation of land tenure issues, as well as the fact that it will discourage governments from pursuing gender-responsive policy. While certainly positive for multinational corporations looking to break into new markets, national treatment will ultimately compromise the ability of signatory governments to protect women-led, small-scale initiatives.

Investor-State Dispute Settlement

The Investor-State Dispute Settlement (ISDS) will likely impair the ability and willingness of governments to act to regulate in the interests of their citizens. The inclusion of this mechanism in the CPTPP, which gives corporations the right to sue governments should any laws or regulations interfere with the profit-making capacity of the corporation, fundamentally shifts power to corporations at the expense of the greater wellbeing of the population and particularly women's rights and gender empowerment.

Previous instances where the ISDS mechanism has been used demonstrate the adverse consequences that will result if the mechanism is included in the CPTPP. Canadian mining company, Bear Creek Mining Corporation, for example, sued the Peruvian government in 2014 when its permits were cancelled when it failed to obtain consent from the indigenous land owners, leading to a \$24 million award to Bear Mining. Awards have ranged up to an unprecedented \$1.77 billion USD (this figure was later negotiated down to \$1 billion USD) in a case brought against the Ecuadorian government by oil-extractives company, Occidental Petroleum Corporation, in 2012.²⁶

Quite apart from the immediate and often substantial hit to public revenue as a result of these awards, ISDS is impacting on the willingness with which governments are able to regulate in the interest of the public good. A group of concerned United Nations experts released a statement in 2015 declaring that "[w]e believe the problem has been aggravated by the "chilling effect" that intrusive ISDS awards have had, when States have been penalized for adopting regulations, for example to protect the environment, food security, access to generic and essential medicines, and reduction of smoking."²⁷

Given that ISDS has been sought in areas as diverse as workers' wages, public health, the environment, land rights and nationalization and privatization to name a few, the potential for this chilling effect to affect all aspects of government regulation is stark and deeply troubling. Women often benefit, and indeed rely, on government regulation as a means by which gender inequalities are addressed, whether this be, for example, raising minimum wages or protecting the environment and access to natural resources. Should the CPTPP be ratified by Australia with ISDS included in its current form, governments will be actively discouraged, and indeed heavily penalized, for introducing regulations which would benefit women, protect women's rights and promote gender equality. The inclusion of ISDS represents a fundamental power shift in favour of large multinational corporations at the expense of the rights of women.

²⁶ Reuters (14 January 2016) 'Ecuador to pay \$980 million to Occidental for asset seizure', *Reuters*, <https://www.reuters.com/article/ecuador-occidental/ecuador-to-pay-980-million-to-occidental-for-asset-seizure-idUSL2N14X0U420160113>

²⁷ OHCHR (2015) *UN experts voices concern over adverse impact of free trade and investment agreements on human rights*, <http://www.ohchr.org/RU/NewsEvents/Pages/DisplayNews.aspx?NewsID=16031&LangID=E>

3. Conclusion and Recommendations

Given the Australian Government's commitment to achieving gender equality and women's empowerment across the region, it is deeply troubling that an agreement which threatens progress in these areas is being considered, and particularly without any gender assessment of its impacts. In its current form, the CPTPP will reduce women's access to public services and vital goods such as medicine; it will limit women's ability to share seeds with one another; it will expose small-scale, women-led livelihood initiatives, particularly in the important areas of services and agriculture, to potentially catastrophic competition from large, foreign corporations; it will discourage governments from developing policy which could address gender inequality; and it will expose migrant women workers to even worse labour conditions.

Through this Inquiry process, the Australian Government now has an opportunity to conduct a comprehensive assessment of the impacts on women's rights and gender equality of the CPTPP.

ActionAid Australia therefore recommends that:

1. The CPTPP Agreement should not be implemented in its current form.
2. The Australian Government should resource a full gender impact assessment of the Agreement, both in Australia and in other signatory countries, including consultation with women's groups at a national and local level.
3. Targeted strategies should be introduced to increase women's representation in all trade negotiations and related decision-making at local, national and regional levels.
4. The Australian Government should commit to improving transparency during free trade negotiations, including, but not limited to: publicly releasing proposals and discussion papers during negotiations; commissioning of independent analysis of any potential economic, health, environmental and gender impacts made public available for debate and discussion and releasing the final text of the agreement with adequate notice *prior* to its signing.

Submitted by:

Michelle Higelin, Executive Director, ActionAid Australia

Website: www.actionaid.org/australia

Annex 1:

Original publication can be assessed at: <http://apwld.org/statement-feminist-organizations-and-allies-offended-by-cptpp-takeover-of-iwd/>

Statement: Feminist Organizations and Allies Offended by CPTPP Takeover of IWD

26 February 2018

Chiang Mai, Thailand

Every 8th of March, women across the world remember and celebrate the struggles of women in the past and in the present against patriarchy, against authoritarian regimes, against violence, against neo-liberal market fundamentalism that exploits our labour, silences our voices, privatises our public services and deregulates our market. The International Women's Day celebrates the power of women's movements in advancing progressive policy changes and the solidarity actions that women have taken, from when women took to the streets for the right to vote and hold public office, when women went on strike to demand equal pay and to when women have celebrated other inspirational women in their lives.

Determined to humiliate women's struggles and movements, the governments of Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam will gather on the very 8th of March 2018 in Santiago, Chile to ink the so-called Comprehensive and Progressive Trans Pacific Partnership (CPTPP) Agreement that is neither progressive nor feminist. The CPTPP, just like its predecessor the TPP, will drive a race to the bottom, with women at the bottom. It will promote labour competition and women's low wages as a source of competitive advantage for corporations. It will threaten women's access to public services through the reduction of tariffs that deprives governments of important revenue, the requirement that foreign corporations should be able to compete for public services, and the existence of investor protection mechanisms that discourage governments from reversing failed privatisation to introducing new regulations to increase public access or benefits to essential, basic public services. When governments cuts public social services such as healthcare, women's health is usually deemed expendable while they are expected to provide the unpaid care work to make up for it. Based on the 'national treatment' principle, CPTPP also require countries to treat foreign companies in the same way they treat local ones, pushing women, who are the majority of small scale, subsistence farmers, to compete against huge agro-businesses. With the tightened intellectual property rights, it will be a "big wins" only for

the large seed companies with legal power to prohibit seed sharing amongst farmers and require farmers to pay royalties for seeds for up to 20 or 25 years. Women, the custodian of seed, food and traditional knowledge who depends on the sharing of seed and other inputs from each other will be greatly harmed by the CPTPP, forced out of their farms and the local economy.

More outrageously, the CPTPP maintains the Investor State Dispute Settlement (ISDS), a mechanism that allows for foreign corporations to reach across border and sue governments in unaccountable international tribunals if governments pass any laws, policies and practices that infringes on the corporations rights to profit. Corporations have used ISDS to avoid paying taxes, to undermine policies made in public interests such as health policy, to reverse affirmative action policies, to avoid obligations to protect the environment, to punish governments that introduces clean energy or to reverse failed privatisation.

We, women's rights organisations and allies are outraged that governments have decided to not only proceed with the CPTPP despite all its criticism and fundamental lack of public, citizen's review, but to sign away women's human rights on the same day that we celebrate it. The very same hard-fought rights that women's organisations and activists have fought for centuries, only to put powers and privilege in the hands of large multinational corporations and the wealthiest few. It is a breach to the very fundamental principle of social contract that sovereignty comes from the people.

So many of the governments which are part of the CPTPP have talked the rhetoric of women's human rights and gender equality, and some of them still do. The preambular mention of gender equality in the CPTPP was another such rhetoric meant to disguise the glaring absence of even a symbolic and ineffectual gender chapter and the unabashed entrenchment of corporate power and privilege. If countries in the CPTPP are genuinely committed to women's human rights and gender equality they must not proceed with the CPTPP.

We urge the governments of CPTPP to break the disguised assumption that opposition to trade agreements equates to nationalism and a rejection of accountable multilateralism. Instead, our time requires the global community to urgently envision and chart out a different trade model that is based on solidarity economy and human rights, to protect the people and the planet, redistribute power, resources and wealth between men and women, and between rich and poor and between countries.

List of signatories

No.	Name of Organisation
1	ACCIÓN, Asociación Chilena de ONG
2	ActionAid Australia
3	AFTINET (Australian Fair Trade and Investment Network)
4	Asia Indigenous Peoples Pact
5	Asia Pacific Forum on Women, Law & Development (APWLD)
6	Asian Women for Equality (Canada)
7	Asociación Latinoamericana de Medicina Social – Chile
8	Association of Indigenous Peoples in the Ryukyus (Japan)
9	Australian Manufacturing Workers Union
10	Casa Ti Fen (Chile)
11	Center for Sustainable Development in Mountainous Areas (Vietnam)
12	CIEDIS AC (Mexico)
13	Comunal Frente Amplio Quilpué
14	Comunidad Ecuémica Martin Luther King
15	Consejo Ecológico de Molina
16	Coordinadora Barrio lo Errazuriz
17	DECA, Equipo Pueblo (Mexico)
18	Equidad de Género, Ciudadanía, Trabajo y Familia
19	GABRIELA New South Wales (Australia)
20	Immigrant Women’s Speakout Association (Australia)
21	International Women’s Rights Action Watch Asia Pacific (IWRAP AP)
22	Izquierda Cristiana de Chile
23	Izquierda Libertaria
24	Jaringan Orang Asal SeMalaysia (JOAS)
25	Malaysian Trades Union Congress
26	Movimiento Democrático Progresista Araucanía, Wallmapu
27	Observatorio de Equidad de Género en Salud y Red de Género ALAMES; Chile
28	People’s Health Movement (Chile)
29	People Over Profit
30	Persatuan Kesedaran Komuniti Selangor (EMPOWER)
31	Project on Organization, Development, Education and Research (PODER) (Mexico)
32	Red Chilena contra la violencia hacia las Mujeres
33	Red de abastecimiento feminista La Uslera

34	Red de Acción por los Derechos Ambientales RADA
35	Red de Defensa de los Territorios
36	Red de Educacion Popular entre Mujeres America Latina y el Caribe (REPEM-LAC)
37	René Muñoz Córdova
38	Research Centre for Gender, Family and Environment in Development (CGFED) Vietnam
39	Sindicato de Telefonistas de la República Mexicana
40	Singapore Anti-Death Penalty Campaign
41	Sisters of Charity (Australia)
42	Sisters in Islam (Malaysia)
43	Sustainable Development Network, Malaysia (SUSDEN MALAYSIA)
44	Tenaganita Women’s Force
45	Think Centre (Singapore)
46	Union Aid Abroad – APHEDA (Australia)
47	WECF International (Women Engage for a Common Future)
48	The Weaving House (New Zealand)
49	Werken Rojo (Chile)
50	Widows for Peace Through Democracy
51	Women’s UN Report Network (WUNRN)
52	Peruvian Network for Globalization with Equity
53	LATINDADD

Annex 2: Additional evidence provided to the Senate Foreign Affairs, Defence and Trade Committee Inquiry into the CPTPP

South Africa, affirmative action and ISDS

The Investor-State Dispute Mechanism (ISDS) has been used by corporations to challenge governments seeking to introduce affirmative action policies. The South African government, for example, was sued in 2007 by Italian investors who claimed that the introduction of Black Economic Empowerment legislation, which required 50 per cent of mining shares to be sold to black South Africans, was unfairly discriminatory. The ISDS tribunal required the South African government to reduce the obligation to 26 per cent.²⁸ This subsequently led to a South African government review of its investment treaties in 2010 that recommended the renegotiate or withdrawal from trade agreements that limited the government's ability to legislate for affirmative action policies. The South African government subsequently terminated bilateral free trade agreements with Belgium, Luxembourg, Germany, Switzerland and the Netherlands.²⁹ These agreements are set to be replaced by the Promotion and Protection of Investment Act which is rooted in South Africa's human-rights based constitution rather than corporate and foreign country priorities. The removal of the ISDS clause will also limit burdensome international arbitration costs brought on the South African government by foreign-owned corporations that seek to restrict public policies that address the social and economic needs of its citizens.³⁰

This case shows not only the real harms of including ISDS clauses in trade agreements, but also the potential for a national government to remain open to foreign investment while maintaining its sovereign right to pursue its policy objectives.

Vietnam and medicine monopolies

Access to affordable medicines is threatened by TPP provisions which strengthen monopoly protections for large pharmaceutical companies. Academics have warned that the provisions, which will likely increase the number of patents by lowering the requirements for new patent applications and lengthen 'data protection' (i.e. monopoly) periods, will significantly increase the cost of medicine and delay market entry for generic medicines.³¹ One study has found that the associated price rises will decrease access to anti-retroviral therapy from 68 to 30 per cent of Vietnamese people living with HIV.³²

While a number of articles analysed in the TPP have since been suspended following the withdrawal of the United States in 2017, ActionAid Australia is concerned that the failure to completely remove the articles from the deal leaves open the opportunity for them to be reinstated.

²⁸ Kate Lappin (2018) Free Trade or Women's Rights, Indonesian Journal of Leadership, Policy and World Affairs <http://www.sr-indonesia.com/in-the-journal/view/free-trade-or-women-s-rights>

²⁹ GIZ (2015) Developing countries and the future of the international investment regime', p23 https://www.die-gdi.de/uploads/media/giz2015-en-Study_Developing_countries_and_the_future_of_the_international_investment_regime.pdf

³⁰ Mills Soko & Mzukisi Qobo (2017) Economic, trade and development relations between South Africa and the European Union: The end of a strategic partnership? A South African perspective, South African Journal of International Affairs, 24:2, 137-157, DOI: 10.1080/10220461.2017.1338162

³¹ Hazel V. J. Moir, Brigitte Tenni, Deborah Gleeson & Ruth Lopert (2018) The Trans Pacific Partnership Agreement and access to HIV treatment in Vietnam, Global Public Health, 13:4, 400-413.

³² *ibid.*

Gender impact assessments of trade agreements

To ensure the gendered impacts of trade agreements are identified, acknowledged and mitigated both prior to signing and throughout the life of the agreement a gender chapter detailing ongoing monitoring procedures and mechanisms for redress should be included in each agreement, and transparent, independent gender impact assessments should be conducted at all stages of the process, pre-signing, pre-implementation and ongoing. ActionAid Australia recommends, as a first step, the following:

Recommendations:

- Gender Impact Assessments should occur prior to signing, as part of the negotiation process; prior to passing implementation legislation; and at set periods throughout the life of the trade agreement
- Assessments should be well-resourced and conducted by an independent expert panel
- Assessments should engage with civil society and workers' unions, and women's groups in particular
- Assessment processes must be transparent; outcome documents, and governments' response to them, should be publicly available

International examples

The Canada-Chile Free Trade Agreement is one of the first trade agreements to specifically address the implications arising from the intersections between gender and deregulation. Recognising the importance of inclusive, gender-sensitive policy and analysis for achieving sustainable economic growth, Appendix II Chapter N *bis* paves the way for the establishment of a gender and trade committee to monitor, investigate and develop policy to support women's participation and empowerment in the two countries.

The committee is responsible for coordinating cooperation activities including workshops and seminars, internships, collaborative research and other activities focused on promoting women's rights and economic inclusion. The agreement specifies that such activities are to be undertaken with the participation of a range of stakeholders including business, unions, education institutions and civil society organisations.³³ Further information as to the gender impact assessment methodology undertaken by the committee is not yet available.

Chile first introduced a gender chapter in its trade agreement with Uruguay in 2016 and currently have four other trade agreements which include gender chapters under negotiation, including with the European Union and the Pacific. The North American Free Trade Agreement, between Canada, the United States and Mexico, is currently undergoing negotiations and a gender chapter has been included in draft text.³⁴

³³ Government of Canada (2017) Highlighting gender in trade http://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/chile-chili/fta-ale/2017_Amend_Modif-App2-Chap-N.aspx?lang=eng

³⁴ Frohmann (2017) Gender Equality and Trade Policy, World Trade Institute working paper https://www.wti.org/media/filer_public/8b/a8/8ba88d03-1a2b-4311-af6a-629d9997c54c/working_paper_no_24_2017_frohmann.pdf