australian council of trade unions

Submission to the Joint Standing Committee on Treaties

The Peru-Australia Free Trade Agreement (PAFTA)

ACTU Submission, 30 October 2018
ACTU D. No 195/2018

Introduction

The Australian Council of Trade Unions (ACTU) is the peak body for Australian unions, made up of 46 affiliated unions. We represent more than 1.8 million working Australians and their families. The ACTU and affiliated unions have had a long and significant interest in so-called free trade agreements on behalf of our members and workers generally. We appreciate the opportunity to make a submission to this Inquiry into the Peru-Australia Free Trade Agreement (PAFTA).

1. Investor-State Dispute Settlement (ISDS)

The Peru-Australia FTA includes ISDS provisions which the ACTU rejects on principle. Corporations should never be allowed to sue states in extra-jurisdictional courts. The ISDS model allows foreign investors to bypass national courts and sue governments in international tribunals if they argue that a change in domestic law or policy at a local, state, or national level will 'harm' their investment. This includes law and policy such as minimum wages, occupational health and safety, public health and environmental regulations. These clauses put corporate interests over public interests and prevent Governments from governing in the best interests of citizens.

Recommendation 1

If PAFTA is to be pursued, ISDS provisions must be removed.

2. No evaluation of the costs and benefits

The Government has refused to undertake independent studies of the economic, health, environmental and other impacts of PAFTA despite advice from key bodies like the Productivity Commission, the Australian Competition and Consumer Commission, environment and public health experts. Since Peru is already covered by the Trans-Pacific Partnership (TPP), the Government should be providing evidence as to how the PAFTA provides distinguishable benefits over the TPP. DFAT has asserted in its National Interest Analysis that the costs would be 'negligible'. However, an absence of cost is not the same as a tangible benefit.

Recommendation 2

Since no evidence of benefits to Australian businesses or workers have been provided, the government should desist from wasting Parliamentary time with the enabling legislation for PAFTA.

3. Adding to the noodle bowl

Australia already has a free trade agreement with Peru via the TPP11, and is working on the Pacific Alliance regional free trade agreement which would take the proposed number of FTAs between Australia and Peru to three. This is clearly unsustainable and does not add to the wealth of the nation. Research[1] has shown that fewer than one in 5 Australian exporters use FTAs, due to the sheer complexity of the agreements. Even the Australian Council of Commerce and Industry has complained repeatedly about the poor drafting of FTAs which makes them effectively useless. Adding another layer of export red tape will not enable our export businesses to grow overall or provide better employment conditions for our workers.

Recommendation 3

Since the PAFTA will only make the export process more complex, and duplicates an already existing agreement, it should be abandoned.

4. Negative trade in services list

The chapter on trade in services treats the regulation of services, including essential services, as if it were a tariff; to be frozen at existing levels or reduced over time, and not to be increased in future, known as the "ratchet" structure. The negative list structure means that all services are included, unless specifically exempted in Annex 2 of the agreement. Exemptions are intended to be reduced over time.

The negative list and ratchet structure are specifically intended to prevent governments from introducing new forms of regulation, which are seen as potential barriers to trade. But this structure ignores the need for democratic governments to respond to changed circumstances, like the reregulation of the financial sector following the Global Financial Crisis, and the need for new regulation of carbon emission levels and energy markets in response to climate change. The structure can also prevent governments from responding failures of privatisation and deregulation, as occurred with the need to re-regulate the provision of Australian vocational education services.

[1] https://www.macrobusiness.com.au/2018/03/ftas-failing-deliver-australian-businesses/

Australian unions remain deeply opposed to these highly undemocratic and short-sighted negative list and ratchet provisions in trade agreements. We are pleased to note that the Australian Labour Party has committed to prohibiting the privatisation of public services through trade deals in the "A Fair Go for Australians in Trade" bill (2018).

Recommendation 4

Negative lists are a threat to our essential services. No trade agreement containing a negative list should be passed into law. The PAFTA should be abandoned.

ACTU Trade Policy

The ACTU believes that trade policy should be informed by unwavering principles which themselves draw on fundamental Australian values of human dignity, egalitarianism, community, fairness and democracy. These should act as minimum standards upon which we as a country make decisions about whether or not we want to sign on to an agreement. These principles must result in the following priorities being at the forefront of activity resulting from trade policy:

a) Incorporation of a labour chapter in trade agreements that includes direct reference to the eight ILO Core Conventions and the work of ILO's Governing Body on the Freedom of Association, with agreed arbitration processes and binding trade or economic sanctions in cases of abuse with provision of capacity building support to strengthen industrial relations regimes;

b) Commitment in trade deals to protect workers' rights, raise wages and improve living standards in all signatory countries by defining "acceptable conditions of work" to include a living wage, social protection, OHS, licensing and other regulatory standards;

c) Recognition of the right of sovereign governments to implement rules that preserve and protect the place of domestic political, legal and judicial systems including collective bargaining;

d) Preservation of the ability of governments at all levels to favour domestic producers in government or government-funded procurement particularly to promote local small and medium enterprise and local defence suppliers. This should include existing exemptions for Australian SMEs to give preference to local businesses where possible and to allow full, fair and reasonable right for domestic producers to participate in government projects and procurement.

Governments should actively support Australian businesses by seeking access to the supply chains of overseas investors and participants in the local economy;

e) Refrain from making commitments on the temporary movement of people as this is the remit of migration policy;

f) If commitments on the temporary movement of people are to be included, or if they exist in current agreements, safeguards must exist to ensure:
   i. The maintenance of skills testing requirements for industries and professions. Public interest and recognition of our high worker standards requires stringent skills testing;
   ii. Workers' rights are protected through ensuring pre-departure and postarrival briefings regarding workers' rights and entitlements in Australia, including the right to belong to and access support from a union
   iii. The establishment of a tri-partite body, modelled on the ILO, to monitor and recommend policy approaches
   iv. The right for local workers to have preference over local jobs and legitimate cases of skills shortages being primarily met by training and permanent migration rather than employer driven temporary migration.

g) Preservation of the ability of government to protect Australian industry from illegal anti-competitive behaviour through a properly resourced anti-dumping commission. The commission must assist Australian industry to identify and stamp out this illegal activity. It should also have responsibility for safeguard investigations and assurance that imported goods comply with Australian safety, quality, quarantine and sustainability standards;

h) Reciprocity in tariff reduction, quotas and market access for Australian exporters in any trade deals currently entered or being contemplated, with exceptions made for appropriate developing nations, and

i) Ensuring a whole of government approach in conducting a holistic Health Impact Assessment of each trade agreement, with the assessment released to the public, with opportunities for public comment, prior to any agreement being signed and during any review period.

j) Refuse any extension of temporary monopoly rights to pharmaceutical companies. These rights should never over-ride an individual's or communities right to life and health, nor a sovereign government's right to implement policies to protect and promote the health rights of citizens;

k) Incorporate into trade deals an environment chapter with agreed arbitration processes and binding trade or economic sanctions to ensure that agreements don't result in increased environmental degradation;

l) Assurance that trade policy must also work cohesively with measures to address climate change and inequality in line with our commitments under the Sustainable Development Goals (SDGs);

m) Recognition of the right of sovereign governments to pursue policy to develop their industrial capacity and create and build economically, socially and environmentally sustainable industries;

n) Recognition in line with the SDGs that states have the right to seek development through diversification, technological upgrading and innovation, including through a focus on high value added and labour-intensive sectors;

o) Recognition of the right that sovereign governments can impose and enforce financial regulation policy, including flexibility with respect to capital controls and capital transfers designed to address financial volatility;

p) Recognition of the right of governments to implement regulations that are based on protecting the privacy and intellectual property of citizens;

q) State to state commitments that re-enforce the principle that trade deals are made between sovereign nations who have the right to make choices about how to best promote policies that benefit their citizens;

r) Assurance for genuinely independent assessments of the projected costs and benefits of any agreement including the economic, regional, social, gender, cultural, regulatory and environmental impacts which means that the assessments are not to be undertaken by the Productivity Commission but actual independent bodies without a neoliberal ideological agenda;

s) If economic benefits are marginal or projected social impacts damaging then the trade deal should not be pursued and should be abandoned, renegotiated or repealed;

t) Negotiations must be as transparent as possible with broad social, health and economic consultation. This includes a consideration of relevant matters before negotiations begin, the negotiations themselves, as well as ongoing "dialogues" and "committees" resulting from negotiations. This requires unions and civil society organisations to have formal consultative status with DFAT negotiating teams and for them to release the text before each round of negotiation;

u) Assurance of transparency through the public release of proposals and draft texts of trade deals (as occurs in the WTO and is now the practice in some EU negotiations) with the final text released for public and parliamentary debate; w) Respect for our democracy by enabling a Parliamentary vote on the whole text of agreement, not just implementing legislation.

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