

Charting a New Course for Transparent and Inclusive Trade Agreements

ACTU Submission to the Joint Standing Committee on Treaties
Inquiry into 'Certain Aspects of the Treaty-making Process in
Australia'.

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Introduction

The ACTU welcomes the opportunity to make a submission to the Joint Standing Committee on Treaties inquiry into 'Certain Aspects of the Treaty-making Process in Australia'.

The ACTU is the peak body for Australian unions. The ACTU and affiliated unions have had a long and significant interest in the trade agenda on behalf of our members and workers generally.

We should expect that trade agreements are subject to proper scrutiny and that unions and others in civil society, as well as business, have the opportunity for genuine input into the negotiations on behalf of those they represent. To date trade agreement negotiations are conducted behind closed doors and Australia lags behind other countries and institutions when it comes to public scrutiny. This whole process in Australia contrasts with the experience in the European Union, for example. The EU has recognised legitimate community demand for the negotiating papers and final text to be exposed to public debate.

Summary: Australia's Current Trade Agreement Process is secretive and lacks democratic accountability

Australia's Current Trade Agreement Process is secretive and lacks democratic accountability:

- Cabinet makes the decision to initiate trade negotiations and receives reports on the progress of negotiations.
- The text remains secret until the deal is completed.
- Cabinet makes the decision to sign the completed agreement before the text becomes public and without independent evaluation.
- Only after the agreement is signed is the text is tabled publicly in Parliament and reviewed by the Joint Standing Committee on Treaties (JSCOT).
- There is no independent assessment of the economic costs and benefits of the agreement, or of social or regional impacts, before it is signed. The National Interest Assessment is done by DFAT, the department that negotiated the agreement, and it always gives a favourable assessment.
- The JSCOT reviews the agreement but it cannot make any changes to the text. It can only make recommendations which are not binding on the government.

- Parliament does not vote on the text of the agreement, only on the enabling legislation, which is mostly confined to changes in tariffs.

Trade agreements now deal with a wide range of issues that affect communities and are normally decided by parliament, including stronger medicine monopolies, foreign investor rights to sue governments over health and environmental laws, regulation of essential services, digital trade rules, temporary workers, industry policy and product standards. Such issues should be transparent, independently evaluated and decided by parliament, not traded off behind closed doors. This is even more relevant since the COVID-19 pandemic has exposed the flaws in current trade rules, like lack of local manufacturing capacity and rights for foreign investors to sue governments over actions taken to save lives.

Charting a new course for Transparent and inclusive trade agreements

Trade agreements are major undertakings with profound implications for both the Australian and the partner country or countries economy and society. They often deal with a wide range of matters that are traditionally the preserve of national governments to determine through their own domestic, democratic parliamentary processes.

Yet the process to get to the point of a signed agreement being presented to the Australian Parliament leaves a lot to be desired. As is the way with all trade agreements Australia is involved in, they are negotiated and finalised largely in secret and signed with very little, if any, public and parliamentary scrutiny.

The secrecy of the detail of these negotiations has meant that the occasional unauthorised leaking of text documents has been the only way stakeholders have gained access to documents that should have been the subject of open debate in the parliament and in the community throughout negotiations.

Only after a trade agreement has been signed does JSCOT provide an opportunity for Parliament to properly scrutinise an agreement that has been years in the making. The experience of past trade agreements suggests, the scope for meaningful changes to be made to deficiencies with any agreement once it is signed is limited. In the end, Parliament only votes on the implementing legislation, not the whole text. Essentially, it becomes an all or nothing proposition at that point in terms of ratification of the agreement.

The negotiating process for an agreement that Australia has already signed up to cannot be undone. Many agreements are put together without a proper transparent and inclusive process for

public input into negotiations. This should give this Inquiry and Parliament even greater cause to ensure any agreement is subject to comprehensive scrutiny.

To this end, we call for an independent, external inquiry into the social, economic and health costs and benefits to be part of the normal trade processes. This inquiry should also take a lead role in advocating for reforms to the treaty-making process and future trade agreement negotiations to set a new standard, both for the conduct of negotiations and for the process by which Australia enters into such agreements. The existing, flawed and inadequate process that we have seen with past agreements does not have to be set in stone forever more.

The need for a more open and democratic process for trade agreements is more important than ever now because they are no longer simply tariff deals; increasingly they deal with an expanding range of other regulatory issues which would normally be debated and legislated through the democratic parliamentary process, and which have deep impacts on workers' lives.

In summary, we submit the following recommendations should be made for all future trade agreement processes:

- Prior to commencing negotiations for bilateral or regional trade agreements, the Government should table in Parliament a document setting out its priorities and objectives. The document should include independent assessments of the projected costs and benefits of the agreement. Such assessments should consider the economic, regional, social, cultural, regulatory, health, labour and environmental impacts which are expected to arise.
- There should be regular public consultation during negotiations, including submissions and meetings with stakeholders including with trade unions. The Australian government should follow the example of the European Union and release proposals and discussion papers during trade negotiations.
- The Australian Government should follow the example of the European Union and release the final text of agreements for public and parliamentary debate, and parliamentary approval before they are authorised for signing by Cabinet.
- After the text is completed but before it is signed, comprehensive, independent assessments of the likely economic, social, environmental and health impacts of the agreement should be undertaken and made public for debate and consultation and review by parliamentary committees.

- An inquiry should review the text of a trade agreement which has been released before signing with the independent assessment of its costs and benefits, and make a recommendation to Parliament.
- Legal experts agree that the Executive power to enter into treaties is a prerogative power which can be abrogated or controlled by legislation. There is no constitutional barrier to Parliament playing a greater role in the treaty decision-making process. After release of the text and before signing, and after a review of the text and the independent assessment of the costs and benefits of the agreement, Parliament should decide whether the Cabinet should approve the agreement for signing.
- If the agreement is approved by Parliament, and approved for signing by Cabinet, Parliament should then vote on the implementing legislation.

We need independent social and economic impact assessments

The so-called national interest analyses conducted by DFAT officials are akin to someone marking their own homework. The national interest analyses and regulatory impact statements prepared by DFAT negotiators are delivered after the agreements have been signed and so far have always recommended they be ratified. They do not contain significant or robust analysis of the impacts of trade agreements, for example they do contain detailed analyses of the impacts on the labour market.

In contrast, the initial impact assessment commissioned by EU for the EU- Australia free trade agreement states there are potential job losses in the Australian labour market. The 'reallocation of jobs' (i.e. job losses) section states there are likely to be negative changes in the automotive and machinery sectors. We can see the relevant quote from the E.U. impact assessment below ¹;

¹ Commission Staff Working Document '*Impact Assessment*,' Accompanying the document Recommendation for a Council Decision authorising the opening of negotiations for a Free Trade Agreement with Australia, European Commission, Brussels, 2017, page 35

Reallocation of jobs

The modelling suggests a reallocation of EU labour primarily towards the motor equipment sector (0.22 and 0.28% in options C1 and C2 respectively for both skilled and unskilled labour), which is in line with the increase in output of motor equipment seen above. On the other hand, the fruit and vegetables sector would experience the largest decline in labour in the conservative scenario (-0.19%) while the ruminant meat sector would experience the largest decline in labour in the increased liberalisation scenario (-1.21%), followed by the sugar sector (-0.23%). As above, this seems to reflect increases in exports from Australia and New Zealand in these sectors. The reallocation of labour in other sectors is marginal or negligible in the long term.

The impact of the EU-Australia FTA on reallocating labour from one sector to another in Australia is mixed. In general agricultural and food-related sectors are allocated labour (the highest gains are for oil seed sector under option C1 and the ruminant meat sector under the options C2), while other sectors see mostly negative changes (e.g. the automotive and machinery sectors).

The pattern for New Zealand is different. This is because most sectors are impacted negatively as labour is mostly reallocated to ruminant meat (only under option C2) and the fruit and vegetable sectors (under both options C1 and C2)

This is important because the negotiations for the E.U. – Australia FTA are ongoing yet the E.U. has already conducted important analysis and released this publicly. Unfortunately for the Australian public, trade stakeholders and the Australian parliament we find out more information about the agreement from the E.U. than we do from our own Government.

The Australia EU Free Trade Agreement also demands for 3-5 years additional monopolies on biologic medicines. But we only know about this proposal because the EU has published this proposed chapter for intellectual property rights as part of publication of its proposals for the current negotiations of the EU Australia FTA. The EU has been publishing its negotiating proposals in trade agreements since 2015. Representing the interests of its powerful pharmaceutical manufacturing industry, the EU is seeking stronger monopolies on medicines, including the most expensive biologic medicines used to treat cancer and other life-threatening diseases. This would delay the availability of cheaper versions of those medicines

Even the Productivity Commission has noted that current processes for assessing and prioritising bilateral and regional trade agreements lack transparency and tend to oversell the likely benefits².

² <https://www.pc.gov.au/inquiries/completed/trade-agreements/report>

Stating the following:

“the results of modelling in feasibility studies are used to ‘oversell’ the benefits of agreements, while typically the actual text of agreements is not subject to assessment.....the Commission is concerned that, at least in some quarters, there tends to be a mindset of ‘agreements for agreement’s sake’, premised partly on the view that Australia must follow a trend in other countries. Some negotiations have run on for several years with few signs that a worthwhile outcome is close. The resources devoted to different negotiations are not made public³”

The social and health impacts of trade agreements must be understood

The Comprehensive and Progressive Trans-Pacific Partnership ratified by Australia in 2018 has chapters dealing with the regulation of essential services such as medicines, education, aged care, childcare, energy, financial and digital services, as well as foreign investment, labour and environment regulations and government procurement and product standards.

The European Union, the United States and Japan use the negotiations to fight for longer monopolies on medicines. Investors use them to obtain the right to sue governments; copyright owners use them to achieve longer copyright terms.

When trade agreements contain such wide provisions and have such significant ramifications it is imperative that they receive parliamentary and public scrutiny before they are signed.

Provisions on Temporary workers

Free trade agreements that deal with the movement of temporary overseas workers into Australia are critical issues for Australian unions and our members. Quite simply, this is because the fundamental issues at stake are about support for Australian jobs, support for Australian training opportunities, and support for fair treatment and decent wages and conditions for all workers wherever they are from.

Provisions in many trade agreements increased numbers of contractual service providers. These workers would enter under the Temporary Skill Shortage visa which covers over 400 skilled occupations. The occupations have included nurses, engineers, electricians, plumbers,

³ ibid

carpenters, bricklayers, tilers, mechanics and chefs. We are concerned there is never any independent analysis on the potential effects on the labour market and Australian workers.

We accept there is a role for some level of temporary migration where critical short-term skill shortages are proven to exist, provided there is a proper, rigorous process for determining areas of genuine need ensuring workers receive fair wages and conditions and where workers are brought to Australia for 'specialist skills' it must be mandatory for the employer to establish skills transfer programs such that the Australian workers acquire these specialist skills. But the priority must always be on maximising jobs and training opportunities for Australians – that is, citizens and permanent residents, regardless of their background or country of origin. Whether it is young Australians looking for their first job or older Australians looking to get back into the workforce or change careers, they deserve an assurance that they will have first access to Australian jobs.

This is more important than ever at a time when unemployment has just passed one million workers for the first time, youth unemployment is the highest in 22 years and the effective rate of unemployment far higher than the official unemployment rate.

It is for these reasons there needs to be detailed independent assessment of the effects on the labour market of trade agreements. There has been no modelling of the effects on the domestic labour market of the impacts of these arrangements in any national interest analyses conducted by DFAT officials. This is a significant deficiency in the current trade processes and arrangements.

We also recommend for greater transparency for all visa classes created as a result of Trade Agreements and issued subsequent to ratification must be reported at least quarterly on the Departments website with a breakdown of:

- a. Number of Visa's applied for, being processed, issued, and cancelled / surrendered
- b. The geographical region and industry
- c. The ANZSCO code

The current health crisis and our ability to respond - why we need transparent and inclusive trade agreements

There are several important issues and shortcomings in the process for negotiating trade agreements which not only deal with tariffs reduction but impact on a range of other matters of public interest including health, environment and industry policy to highlight a few.

Our long standing concerns around the secrecy, lack of transparency and absence of public scrutiny in the trade agreement process have been further amplified in the current environment as governments respond to the health and economic impact of the Covid19 pandemic.

As our affiliate the Australian Nursing and Midwifery Federation (ANMF) has highlighted, the capacity to respond effectively to this pandemic and plan for similar crisis in the future relies in part on the following:

- Ready access to a reliable supply of a range of Personal Protective Equipment (PPE) including masks, goggles, face shields, gowns, gloves and respirators manufactured in accordance with relevant standards. The availability of essential PPE should not be dependent on or vulnerable to global production/supply chains;
- Similarly, the ability to manufacture and supply essential equipment needs such as ventilators in a timely fashion;
- Access to medicines and vaccines at a reasonable cost without the constraints imposed by patent monopolies that benefit large pharmaceutical companies at the expense of public health;
- Collaboration between Federal and state governments to expand the capacity of the health system by reaching partnership with the private hospital sector to provide beds and staffing resources for pandemic and other health care purposes. Trade agreements containing Investor State Dispute Settlement provisions (ISDS) expose governments (making these types of arrangements essential to public health) to legal action by global companies on the basis that it reduces their profitability. Similarly, government imposed bans on elective surgery across the public and private systems, a necessary measure in response to the pandemic, could be subject to the same action by foreign investors.

The above examples demonstrate why the detail of trade agreements should be open to public scrutiny and debate and enhanced parliamentary scrutiny.

There will be no public or parliamentary scrutiny before the RCEP legal text is signed

A good example of the lack of parliamentary and public scrutiny is the current RCEP trade negotiations and legal text. The Regional Comprehensive Economic Partnership (RCEP) is a risky trade agreement that Australia and 14 other countries in the Asia- Pacific region have committed

to negotiate. If rumours are to be believed Australia could sign the agreement by as early as November this year.

RCEP is one of a new set of trade agreements that aim to expand the power of global corporations and lock in neo liberal economic policies. It is likely to include many of the same provisions that are in the controversial Trans Pacific Partnership (TPP-11) agreement yet the negotiations and the legal text remains completely secret. India has withdrawn from the agreement, but it still cover 2.2 billion people.

The RCEP could undermine government sovereignty and democratic policy making by restricting the ability to regulate in the public interest. It also poses a serious threat to human rights, labour rights and environmental rights in Australia and across the region.

We question how such a large trade deal, with such significant ramifications can be signed before parliament or the public sees the legal text? Basic principles of democracy and transparency are being undermined.

Figure: RCEP covers 2.2 billion people yet will be signed by the Australia Government with no parliamentary or public scrutiny



JSCOT should immediately recommend that the RCEP legal text, which is currently undergoing legal scrubbing, be released for parliamentary and public scrutiny and an independent economic and social impact assessment be conducted.

Conclusion

The ACTU believes that trade agreements should have a rock-solid commitment to ensuring that provisions of trade agreements do not jeopardise Australian jobs, undermine working conditions, allow for exploitation or compromise the ability of current and future Australian governments to exercise their sovereign rights to regulate in the public interest.

For these reasons it is imperative that we have a more transparent and inclusive trade processes, with proper parliamentary scrutiny, and full independent social, economic and health impact assessments.

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