



**Submission to the
Joint Standing Committee on
Foreign Affairs Defence and Trade Inquiry
into the implications of the COVID-19 pandemic
for Australia's foreign affairs, defence and trade
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Summary and recommendations

Current Australian government 'one-size-fits-all' trade policy ignores specific histories of particular countries, and lacks policy flexibility to respond to crises like the COVID-19 pandemic.

Trade policy must recognise the need for governments to regulate in the public interest and for a balanced economy that can protect the environment and provide employment, and for health, education, infrastructure and other essential services that are accessible to all. Trade policies must also recognise and support the specific needs of developing countries. This submission outlines the flaws in areas of trade policy that have been exposed by the pandemic and recommends policy changes to address these flaws.

Trade policy should support the specific needs of developing countries

Although the World Trade Organisation has rules which include special and differential treatment for developing countries, this has not always been practised in the WTO and other trade agreements. The impacts of the pandemic are predicted to worsen global inequality between rich and poor countries, with the possibility of food shortages and famines in some countries.

The PACER-Plus agreement between Australia New Zealand and potentially 14 Pacific Island countries is an example of the need for trade policy change for developing countries. Pacific Island countries are low income countries and four of them are least developed countries with significant levels of poverty. Australia and New Zealand have recognised this in the past by providing tariff free access for their exports. PACER-Plus mainly benefits Australia and New Zealand by reducing Pacific Island tariffs on their exports to Pacific Island countries.

The World Bank has said that the loss of employment in local industries and farms from additional import competition is unlikely to be offset by growth in export industries. Revenue losses from tariff reductions are also likely to result in reduced ability to provide essential government services.

These countries are already facing rising sea levels caused by climate change, and governments have said consistently that their priority is addressing the climate change crisis.

Fiji and Papua New Guinea, the two largest Pacific Island economies which together produce over 80% of combined Pacific Islands economic output, have not signed PACER-Plus, and only three other Pacific island countries have ratified it.

Recommendation

- That the Australian government cease trying to promote PACER-Plus in its current form, which excludes countries with over 80% of Pacific Island economic output and is not an effective regional agreement. Instead the government should conduct a fundamental review of the terms of Pacer-Plus based on genuine input from those Pacific island countries that have refused to sign or ratify the agreement.

Trade policy must support local capacity to produce medical equipment, medicines and infrastructure

The inflexible approach to trade policy has made Australia overly dependent on global production chains. This has severely reduced local manufacturing capacity to produce essential medical equipment. It has also raised the more general issues of the role of government in developing local industry policies and procurement policies.

The government has rightly assisted firms to develop local manufacturing capacity for facemasks and ventilators. There is a danger that Australia could face penalties under trade agreements for taking such actions. Australia should pause and review current negotiations and existing trade agreements to remove provisions that would restrict such actions.

Unions and some sections of manufacturing industry are calling for longer term active local industry policies to enable local manufacturing of essential health equipment, medicines and other strategic products. Such initiatives could assist in expanding employment in response to the economic crisis caused by the pandemic and could also address the climate crisis.

Recommendations

- The government should consult with industry and unions to develop a strategic manufacturing capacity in industries like health equipment, medicines and vaccines, renewable energy, transport and other infrastructure. Procurement policy is an important part of this strategy and is addressed in more detail below.
- Such initiatives could include tax incentives, encouragement of investment in key industries, support for innovation, support for productive industry collaboration, investment in infrastructure, investment in training and skills development, and investment in low-cost renewable energy.
- The government should review existing trade agreements to ensure that they do not present barriers to industry development policies.
- The government should pause current trade negotiations and review them to ensure they do not present barriers to industry development policies.
- That the government integrate government procurement policy into strategies for local industry development and economic recovery.
- That the government maximise flexibilities in trade rules about government procurement to encourage local small and medium-sized enterprises to bid for contracts.
- That the government give greater weighting to the criteria of Economic Benefit to Australia in the Commonwealth Procurement Rules so that the benefits of local employment can be fully valued and used to improve opportunities for local firms, and that Commonwealth purchasing officers' training and procedures reflect this priority.
- The government review existing trade agreements and current trade negotiations to ensure that they do not present barriers to such policies.

Trade policy must not strengthen medicine monopolies and should support affordable access to medicines

Despite the rhetoric of free trade, competition and lower prices which trade agreements claim to deliver, pharmaceutical companies have successfully lobbied for the Trade-Related Intellectual Property (TRIPS) agreement in the WTO that entrenches a 20-year patent monopoly on new medicines and vaccines, delaying the availability of cheaper versions. The same companies have lobbied for specific clauses in regional and bilateral trade agreements that increase the monopoly rights beyond the 20 years. The government needs to review and make specific changes to these rules to ensure equitable access to medicines now and in the future.

Recommendations

- That the government should utilise the Crown Use provisions for compulsory licencing in the Commonwealth Patents Act in the context of the pandemic, to ensure local low-cost production of essential medical supplies, medicines and vaccines.
- That the government should notify the WTO that it wishes to reverse its waiver on importing medicines manufactured in another country under a compulsory license, to ensure that it has the ability to import low cost-medicines when necessary.
- That the government should support the World Health Organization's COVID-19 Technology Access Pool (C-TAP), an initiative to make universally available as a public good the knowledge needed to produce vaccines, tests, treatments and other health technologies to fight COVID-19.
- That the government should not agree to provisions in current or future trade negotiations that increase monopolies on medicines.

Trade policies should not allow global corporations to sue governments over actions taken during the pandemic

All trade agreements are enforced through government-to-government dispute processes. The 164-member WTO only recognises government-to-government dispute processes.

However, global corporations have lobbied successfully for specific trade rules in bilateral and regional agreements that give foreign investors special legal rights to bypass national courts to sue governments in international tribunals for millions of dollars if they can argue that new laws or policies harm their investment, known as Investor-State Dispute Settlement (ISDS).

ISDS rules could result in cases from global companies claiming compensation for government actions during the pandemic that reduced their profits but were essential to save lives. Legal firms specialising in ISDS are already advising corporations on possible cases. Governments can avoid this by withdrawing consent for COVID-related claims and reviewing ISDS commitments.

Recommendations

The Australian government should:

- permanently restrict the use of ISDS in all its forms in respect of claims that the state considers to concern COVID-19 related measures, by negotiating with trading partner governments the withdrawal of consent from ISDS in relation to those measures.
- exclude ISDS from current and future trade and investment negotiations.
- in light of threats exposed by the pandemic, comprehensively review existing agreements that include ISDS with a view to removing ISDS provisions.

Changes needed to trade-in-services and investment rules

Regional and bilateral trade agreements open up most services including health, energy and other essential services to global private investment, unless they are specifically excluded.

Trade in Services rules treat the regulation of services not specifically excluded like a tariff, freezing it at current levels. This structure is designed to prevent future increases in regulation without due regard to the need for new regulation when circumstances change.

This inflexibility means that it is more difficult for governments to respond not only to pandemics but to other changes. For example, new forms of regulation in the energy sector are required to address the challenges of climate change, and governments need to re-regulate when privatisations fail.

Trade agreements also deregulate levels of foreign investment. When prices fall in economic crises, many sectors are vulnerable to increased concentrated ownership by global companies. During the pandemic, the government recognised the limitations of these trade rules. It directed and funded private hospitals to treat pandemic patients. It also re-introduced more extensive screening of foreign investment by the Foreign Investment Review Board to prevent predatory takeovers by global companies.

Recommendations

- That the government review trade-in-services chapters in existing trade agreements and in current and future negotiations to ensure that they enable governments to introduce new regulation in response to changed circumstances, like the COVID-19 pandemic.
- That the government review investment chapters in existing trade agreements and in current and future negotiations to ensure that they enable governments to introduce regulation of levels of foreign investment in response to changed circumstances like the COVID 19 pandemic.

The pandemic has exposed flaws in the regulation of digital trade in the Singapore Digital Economy Agreement and other negotiations.

According to the summary published on the DFAT website, Australia has made extremely deregulatory commitments in the recently-concluded Singapore-Australia Digital Economy Agreement and the WTO plurilateral negotiations for an e-commerce agreement to enable personal data to be moved across borders and prevent access to source code and algorithms. These rules contradict ACCC recommendations that more rather than less regulation is needed to protect privacy and prevent data abuse by global technology companies.

Australia's COVID-19 tracing app was launched amid some controversy about privacy protections in April 2020. The government hastened to reassure potential users that their privacy would be protected by claiming that the data for the app must be stored in Australia, and the source code for the tracing app would be revealed so that it could be examined by IT privacy experts. The same privacy protections the government is promising for the COVID-19 tracing app should apply to all future digital technology agreements.

Recommendations

- That the government review the text of the Singapore Digital Economy Agreement to ensure that personal data can be stored in Australia and that source code and algorithms can be made public, consistent with the public commitments about the COVID-19 tracing app.
- That the government review other current negotiations on digital trade like the WTO plurilateral negotiations to ensure that personal data can be stored in Australia to protect privacy and that source code and algorithms can be revealed to prevent discrimination and abuse of data, to conform with the government's public commitments about the COVID-19 tracing app.

The pandemic, human rights, labour rights, temporary workers and trade policy

The pandemic threatens the most basic human rights to life and to health, especially in developing countries. The severe economic crisis caused by the pandemic threatens the right to employment for millions. For those in work, mass unemployment threatens their basic labour rights by weakening their collective bargaining position.

Labour rights is the category of human rights most directly impacted by trade policy and trade agreements, since increased global competition tends to exert downward pressure on labour rights.

Most of Australia's trade agreements do not mention labour rights at all. Some have clauses on labour rights, but they are not fully enforceable.

Recommendations

- That the government support the inclusion of legally enforceable labour rights in trade agreements.
- That these should be based on the ILO conventions on basic labour rights including freedom of association and the right to organise, the right to collective bargaining, safe hours of work, health and safety standards, freedom from forced labour, freedom from child labour and freedom from discrimination in the workplace.
- Labour rights should be enforced through the same government-to-government dispute process as other chapters, whereby failure to implement commitments can result in trade penalties.

The inclusion in trade agreements of clauses which increase the numbers of temporary overseas workers has contributed to downward pressure on labour rights for those workers in Australia.

Temporary workers are in a weaker bargaining position than permanent migrants because they are often sponsored by a single employer, or dependent on the employer for extension of their visa, and loss of their employment can lead to deportation. This leaves them vulnerable to exploitation.

The vulnerability of these workers, which had been exposed in recent years by a series of studies and reports, has been spotlighted by the COVID-19 pandemic, since the government has excluded them from unemployment benefits and other assistance available to Australian citizens.

Recommendations

- That the government make no commitments in current and future trade negotiations to include arrangements for temporary workers.
- That existing trade agreements be reviewed to remove arrangements for temporary workers.
- That requirements for temporary workers to address genuine labour shortages should be validated by local labour market testing and then be addressed through government to government agreements which are separate from trade agreements. They should include enforceable commitments to prevent discrimination, and guaranteed labour rights for those workers.

Environment and climate change

Protection of the environment is a fundamental value which should underpin trade policy. Trade agreements should require full compliance with UN International Environmental Agreements.

At the same time, trade agreements must ensure that other provisions, such as investment protection or deregulation of services, do not undermine the ability of governments to regulate in the interest of protecting the environment. Trade agreements should not restrict governments' ability to adopt measures to address climate change.

Most of Australia's trade agreements do not have any mention of commitments to implement UN International environment agreements, including those on climate change.

Recommendations

- That the government ensure that current and future trade agreements include commitments to the adoption and implementation of UN International Environment Agreements, including the Paris agreement on climate change, enforced through the government-to-government dispute processes contained in the agreement.
- That the government review existing trade agreements with a view to including commitments to the adoption and implementation of UN International Environment Agreements, including the Paris Climate Agreement, enforced through the government-to-government dispute processes contained in the agreement.

The trade agreement process should be more open and accountable

The current Australian trade agreement process is secretive and undemocratic, with the text not made public until after the decision to sign it. The decision to sign agreements is made by Cabinet before they are tabled in Parliament and only then examined by the Joint Standing Committee on Treaties, which cannot change the text. The National Interest Analysis presented to the Committee is not independent but is conducted by the same department that negotiated the agreement. Parliament has no ability to change the agreement and can only vote on the implementing legislation. There are precedents for more open process in the WTO, the EU and the US.

The secrecy of the trade agreement process has contributed to the development of inflexible policies with flaws which have been exposed by the pandemic. A more open and accountable and democratic process with more comprehensive inputs from a broader range of stakeholders, including civil society organisations, would assist in developing policies that avoid these flaws.

Recommendations

That the government support:

- publication of negotiating texts of trade agreements.
- publication of an independent evaluation of the economic, health and environmental impacts of agreements before the decision is made to sign them.
- Parliament should vote on the whole text of the agreement, not just the implementing legislation.

Introduction

The Australian Fair Trade and Investment Network (AFTINET) is a national network of 60 community organisations and many more individuals supporting fair regulation of trade, consistent with democracy, human rights, labour rights and environmental sustainability.

AFTINET supports the development of fair trading relationships with all countries and recognises the need for regulation of trade through the negotiation of international rules.

AFTINET supports the principle of multilateral trade negotiations, provided these are conducted within a transparent framework that includes all countries, recognises the special needs of developing countries and is founded upon respect for democracy, human rights, labour rights and environmental protection. The WTO does not currently meet these goals. Proposals for a roadmap for the WTO to meet these goals have been made in a report by eminent economists published by the United Nations Conference on Trade and Development (UNCTAD) (Kozul-Wright and Gallagher, 2019).

In general, AFTINET advocates that non-discriminatory multilateral rules-based trade negotiations are preferable to preferential bilateral and regional negotiations that discriminate against other trading partners. We are concerned about the continued proliferation of bilateral and regional preferential agreements and their impact on developing countries which are excluded from negotiations, then pressured to accept the terms of agreements negotiated by the most powerful players.

Cooperative multilateral action has become even more important in the context of the COVID-19 pandemic, through institutions like the World Health Organisation. It is only through cooperative global action that governments can work together to contain the pandemic, including through cooperative action to ensure essential medical supplies and medicines and to develop and fairly distribute vaccines. International cooperation will also be needed to address the most severe economic crisis and record unemployment levels caused by the pandemic.

Governments must also address the climate crisis, and reduction of carbon emissions and commitments to the Paris Climate Agreement can and must be integrated into economic recovery strategies.

The World Trade Organisation (WTO) best case forecast scenario for 2020 predicts that, following falls in global production and mass unemployment in many countries, merchandise trade will decline by 13%, and in the worst case scenario a decline of 32%. Services trade is more difficult to measure and predict, but the WTO notes that transport, tourism, education and other traded services could be severely affected (WTO 2020).

UNCTAD has published a new series of statistics on merchandise trade for the 2020 first quarter that show a decrease of 3%, and predict a fall of 27% in the second quarter (UNCTAD 2020d). These predicted falls in merchandise trade are worse than during the global financial crisis of 2008-09 and could be the worst since the 1930s Depression (WTO 2020). UNCTAD predicts falls of 30% - 40% in foreign direct investment in 2020-21 (UNCTAD 2020a).

The pandemic threatens the most basic human rights to life and to health, especially in developing countries. The severe economic crisis caused by the pandemic threatens the right to employment for millions in all countries. For those in work, mass unemployment threatens their basic labour rights by weakening their bargaining position in the absence of enforceable protections for labour rights.

It is not enough to hope that continuing current policies will address the health, economic and climate change crises.

AFTINET welcomes the opportunity to make this submission into the implications of the COVID-19 pandemic for Australia's foreign affairs, defence and trade. The terms of reference are:

- Implications for Australia's Foreign Affairs, Defence and Trade policy, particularly with respect to strategic alliances and regional security;
- Threats to the global rules-based order that emerged due to actions by nation states during the pandemic, and how such threats can be mitigated in the event of future crises;
- The impact on human rights;
- Supply chain integrity / assurance to critical enablers of Australian security (such as health, economic and transport systems, and defence);
- What policy and practical measures would be required to form an ongoing effective national framework to ensure the resilience required to underpin Australia's economic and strategic objectives;
- Any related matters.

This submission will focus on the trade-related aspects of these terms of reference.

The need for trade policy flexibility to enable government action in the public interest and to deal with crises like pandemics

The expansion of trade is not an end in itself but should improve peoples' lives. To achieve this, trade rules must provide a framework that is consistent with human rights, labour rights and environmental sustainability, and take account of specific histories and experiences of different economies.

Over the last 20 years successive Australian governments have adopted an inflexible 'one-size-fits-all' trade policy. which aims to achieve not only zero tariffs but also zero 'other barriers' to all trade and investment¹. The assumption is that all economies and their populations will benefit from this policy, without regard to the specific histories of particular countries, and without sufficient government policy flexibility to respond to crises like the COVID-19 pandemic.

This policy demands that each country should specialise in its most cost-competitive export products, import everything else at the lowest possible prices, have no active industry policies and minimise government regulation. It is often accompanied by policies to minimise government expenditure and privatisation of essential services like education, health and infrastructure, which under trade rules become internationally-traded services or assets.

The assumption is that loss of local employment through import competition will be offset by growth in export sectors. Trade rules prioritise removal not only of tariffs but general reduction of regulation, despite the fact that new regulation may be needed in the public interest, or to achieve balanced development and employment. Government rights to regulate are generally listed as exceptions which must be reduced and removed over time. Often there is little recognition that

¹ This trade policy has been described as Neoliberal or the Washington Consensus by Nobel-prize-winning economist Joseph Stiglitz (Stiglitz and Charlton 2005).

trade policies create both winners and losers, and that governments must take action to achieve equitable employment and other outcomes.

The policy maximises low cost global production chains for corporations, but can result in a race-to-the-bottom rather than improving labour rights and environmental standards. It has left some economies overly-dependent on global production chains, with a narrow manufacturing base, unable to produce essential medical products and with scarce public health resources to deal with the pandemic.

AFTINET supports fair trading relationships with all countries. We do not support the current US trade strategy of unilateral tariffs and building discriminatory walls against immigration that will not restore lost jobs. Nor do we believe that Australia should take sides in the US-China trade wars. Trade wars increase international tensions and undermine the essential international cooperation which is needed both to overcome the pandemic and rebuild economies.

AFTINET supports a more flexible multilateral trade policy that is consistent with labour rights and environmental sustainability. We also support a non-discriminatory migration policy that ensures that migrant workers have the same rights as other Australian workers.

Trade policy must recognise the need for governments to regulate in the public interest and for a balanced economy to provide employment, and for health, education, infrastructure and other essential services that are accessible to all. Trade policies must also recognise and support the specific needs of developing countries. This submission outlines the flaws in areas of trade policy that have been exposed by the pandemic and recommends policy changes to address these flaws.

The need for trade rules to support the specific needs of developing countries in the context of the pandemic

Although the World Trade Organisation has rules which include special and differential treatment for developing countries, this has not always been practised in the WTO, and bilateral and regional trade agreements have often ignored or minimised these principles.

Despite economic growth in some emerging economies like China and India that has reduced poverty for some parts of their populations, global inequality has increased since the Global Financial Crisis of 2008. The gap between the richest and poorest countries, especially the least developed countries, has increased, as has inequality within many countries (Alvarz, Pikety *et al*, 2018: 7-9).

The impacts of the pandemic are predicted to worsen global inequality between rich and poor countries and within countries, with the possibility of food shortages and famines in some countries. In addition to the appalling humanitarian impacts, this will increase global instability and refugee flows (Oxfam, 2020). Australia should both increase its bilateral development assistance and contribute to multilateral efforts to cancel debt and assist developing countries with immediate responses to the pandemic, and with longer term policies for economic development and social safety nets (Oxfam 2020).

Australia, as a relatively rich country, also has a responsibility to ensure that its trade agreements with developing countries recognise their special and differential needs and allow space for economic development.

A recent example where trade policy change is needed is Australia's approach to the PACER-Plus trade agreement with Pacific Island countries. See AFTINET's submission to the current Inquiry by this committee on Australia's trade relationships with the Pacific Islands for more details on the case which is summarised below (AFTINET 2020a).

Pacific Island countries are low income countries and four of them are least developed countries with significant levels of poverty. Australia and New Zealand have recognised this in the past by providing tariff free access for their exports. PACER-Plus mainly benefits Australia and New Zealand by reducing Pacific Island tariffs on their exports to Pacific Island countries.

A World Bank study has shown that the one-size-fits-all predictions about benefits from trade liberalisation and tariff reductions on imports do not apply to the Pacific Islands. They have "inherent geographic obstacles" including "small but widely dispersed populations and high transport costs which means they are unlikely to experience export-driven development and associated employment creation on the scale seen in the broader Asia Pacific region" (World Bank 2014:1).

This means the loss of employment in local industries and local farming from additional import competition is unlikely to be offset by growth in export industries. Revenue losses from tariff reductions are also likely to result in reduced ability to provide essential government services (Nathan associates, 2007, Baunsgaard and Keen 2005).

In addition to their development needs, Kiribati, Tuvalu and Marshall Islands are already facing land loss and water pollution because of rising sea levels caused by climate change. Pacific Island governments have said consistently that their priority was addressing the climate change crisis, not a trade agreement that would mainly benefit Australia and New Zealand (Doran 2019).

The Australian government has failed to address climate change issues in a way that is meaningful for the Pacific, which has damaged the relationship. This has created the context for China and others to compete for influence, which now appears to be the Australian government's main concern.

Fiji and Papua New Guinea, the two largest Pacific Island economies which together produce over 80% of combined Pacific Islands economic output, have not signed PACER-Plus because they say it does not address adequately their economic development needs. Despite intense pressure from Australia and New Zealand, only three Pacific Island countries have ratified it, besides Australia and New Zealand. The agreement requires eight countries to ratify before it can be implemented. The health and employment impacts of the pandemic in the Pacific Islands serve to underline the need for more flexible local policies.

Recommendations

- That the Australian government cease trying to promote PACER-Plus in its current form, which excludes countries with over 80% of Pacific Island economic output and is not an effective regional agreement. Instead the government should conduct a fundamental review of the terms of Pacer-Plus based on genuine input from those Pacific Island countries that have refused to sign or ratify the agreement.

Supply chain integrity and practical measures to ensure the resilience required to underpin Australia's economic and strategic objectives

Flaws in the inflexible approach to trade policy and their impacts in Australia have been exposed by the pandemic. Australia has become overly dependent on global production chains, including those located in China, which is our largest trading partner. This has severely reduced local manufacturing capacity to produce essential medical equipment needed in the pandemic. It has also raised the more general issues of the role of government in developing local industry policies, and how active industry policy is restricted by inflexible trade policies.

The realities of the pandemic have forced the Australian government to act against some aspects of its inflexible trade policy. For example, the government has assisted firms to develop local manufacturing capacity for facemasks and ventilators (Tobin 2020, ABC 2020).

The Trade Minister has said

...the challenge is to get the balance right for Australia by having domestic capacity in key certain areas, while not engaging in a wholesale retreat from the openness that underpins our prosperity.

We need to better interrogate how certain supply chains work and whether factors to do with public health, national security, or market concentration mean we need to take steps to make some more resilient (Birmingham 2020: 2-3).

Unions and some sections of manufacturing industry are calling for longer term active local industry policies to enable local manufacturing of essential health equipment, medicines and other strategic industries. Such initiatives could assist in expanding employment in response to the economic crisis caused by the pandemic and could also address the climate crisis (Sas and Exposito 2020, Stanford 2020).

For example, the Australia Institute has recommended a series of policy initiatives for employment and industry development, and which integrate reduction in carbon emissions and renewable energy strategies which are summarised in the recommendations below (Stanford 2020, Nahum 2020).

There is a danger that Australia could face trade penalties under WTO agreements or under bilateral and regional for taking such actions. Australia should pause and review current negotiations and existing trade agreements to remove provisions that would restrict such actions.

Recommendations

- The government should consult with industry and unions to develop a strategic manufacturing capacity in industries like health equipment, medicines and vaccines, renewable energy, transport and other infrastructure. Procurement policy is an important part of this strategy and is addressed in more detail below.
- Such initiatives could include tax incentives, encouragement of investment in key industries, support for innovation, support for productive industry collaboration, investment in infrastructure, investment in training and skills development, and investment in low-cost renewable energy.
- The government should review existing trade agreements to ensure that they do not present barriers to industry development policies.

- The government should pause current trade negotiations and review them to ensure they do not present barriers to industry development policies

Government Procurement

There have also been calls to maximise flexibilities in trade rules about government procurement in the context of local industry development and economic recovery from the pandemic (Stanford 2020). As discussed above, the government has already taken action to engage local suppliers in procurement of essential health equipment.

In 2018-19 the Commonwealth entered into 78,150 contracts with a combined value in excess of \$64 billion (Department of Finance, 2019). This is very significant purchasing power that could be a key part of industry development and increasing local employment in the recovery strategy.

The general trade agreement rule is that purchasing arrangements must be open to global competition to achieve best value-for-money. However, economies of scale count and small and medium-sized Australian firms have difficulties in competing on a simplistic lowest cost basis with global firms for overseas contracts, and in competing in Australia with large global firms tendering for contracts here.

Australia and other countries have recognised this market reality through exceptions to procurement rules in their trade agreements for defence and other industries, and for small and medium sized enterprises of up to 200 employees. The Commonwealth Procurement Rules allow consideration of broader economic benefits like employment when assessing value-for-money.

One of the barriers to this happening in practice is that these exceptions are not implemented by Commonwealth departments.

In 2017 the Joint Select Committee on Government Procurement noted that Australia's trading partners, like the US, South Korea and others, had more exceptions and implemented them more extensively than does Australia. It recommended that the Commonwealth Procurement Rules should be clarified and strengthened to encourage Australian suppliers (Joint Select Committee on Government Procurement 2017).

More recently there have been calls for the federal government to use government procurement as part of the post-pandemic economic recovery plan, and for longer term industry development. Senator Rex Patrick has called for a series of measures to ensure that the Commonwealth government gives greater weighting to the criteria of Economic Benefit to Australia in the Commonwealth Procurement Rules, so that the benefits of local employment can be fully valued and used to improve opportunities for local firms (Patrick 2020).

Recommendations

- That the government integrate government procurement policy into strategies for local industry development and economic recovery.
- That the government maximise flexibilities in trade rules about government procurement to encourage local small and medium-sized enterprises to bid for contracts.
- That the government give greater weighting to the criteria of Economic Benefit to Australia in the Commonwealth Procurement Rules so that the benefits of local employment can be fully valued and used to improve opportunities for local firms, and that Commonwealth purchasing officers' training and procedures reflect this priority.

- That the government review existing trade agreements and current and future trade negotiations to ensure that they do not present barriers to such policies.

Reducing medicine monopolies enshrined in trade agreements to ensure equitable access to medicines and vaccines

Despite the rhetoric of free trade, competition and lower prices which trade agreements claim to deliver, pharmaceutical companies have successfully lobbied for the Trade-Related Intellectual Property (TRIPS) agreement in the WTO that entrenches a 20-year patent monopoly on new medicines and vaccines, delaying the availability of cheaper versions. The same companies have lobbied for specific clauses in regional and bilateral trade agreements that increase the monopoly rights beyond the 20 years in the WTO TRIPS agreement, at the expense of consumers.

In response to campaigning by developing countries and public health organisations, since 2003 WTO rules have some flexibilities for developing countries and some other countries in exceptional circumstances to gain exemptions from the 20-year monopoly. However, they are difficult to use, with two studies finding exemptions were granted in only 50-53% of cases (Gleeson and Labonté 2020:49).

Governments can also utilise domestic patent regulation like the Australian Crown Use provisions in the Commonwealth Patents Act. This Act has provisions for the Australian government to enable patents on medicines, vaccines and medical equipment to be overridden when necessary to prevent shortages and enable access in circumstances like the pandemic. The Act also contains compulsory licensing provisions, which mean the Federal Court can issue a compulsory license for a third party to produce cheaper versions of medicines and vaccines without the permission of the patent owner. However, there is a requirement to negotiate with the patent owner first, which may be time consuming; this requirement could be removed (Gleeson and Legge 2020).

Some countries, including Australia, have voluntarily waived rights under the WTO TRIPS agreement to import cheaper versions of medicines and vaccines manufactured in another country under a compulsory license if it does not have the local capacity to produce them. This waiver makes no sense in the context of a pandemic, when importing affordable vaccines may be the only way to access them. The government should reverse this waiver, which can be done by simply notifying the WTO. This would enable Australia to import lower cost medicines and vaccines from another country if required (Knowledge Ecology International 2020).

Outside of the WTO, pharmaceutical companies have successfully lobbied for regional and bilateral agreements to extend monopolies beyond 20 years. This is done through various different rules including approval of patents for new forms and uses of a previously patented medicine (evergreening), patent term extensions, and extensions of data protection. Data protection delays access to research data needed by generic medicines companies preparing to produce cheaper versions of patented medicines (Gleeson and Labonté 2020:50).

Public health researchers, social movements and some governments are arguing for longer term changes in trade policy and patent policy to recognise the need for flexibility in access to medicines. Health researchers are calling for publicly funded vaccine development to ensure speedy and affordable access for all. This would bypass the various forms of monopolies enshrined in the WTO and other trade agreements (Mannix 2020, Gleeson and Legge 2020). Over 390 community organisations from 150 countries have called on governments to ensure that intellectual property

rules in WTO and other agreements do not prevent access to medicines and medical supplies, especially for low income countries (Civil Society Organisations 2020).

The World Health Organisation has responded by launching the COVID-19 Technology Access Pool, originally proposed by Costa Rica, and now supported by 37 countries. This would enable vaccines, tests, diagnostics, treatments and other key tools in the coronavirus response to be made universally available as global public goods. The WHO Director-General has urged support for the initiative based on strong science and open collaboration to provide equitable access to life-saving technologies around the world (World Health Organisation 2020).

Recommendations

- That the government should utilise the Crown Use provisions for compulsory licencing in the Commonwealth Patents Act in the context of the pandemic to ensure local low cost production of essential medical supplies, medicines and vaccines.
- That the government should notify the WTO that it wishes to reverse its waiver on importing medicines manufactured in another country under a compulsory license, to ensure that it has the ability to import low cost-medicines when necessary.
- That the government should support the World Health Organization's [COVID-19 Technology Access Pool](#) (C-TAP), an initiative to make universally available as a public good the knowledge needed to produce vaccines, tests, treatments and other health technologies to fight COVID-19.
- That the government should not agree to provisions in current or future trade negotiations that increase monopolies on medicines.

Ensuring that global corporations cannot use trade and investment rules to claim compensation for actions needed to save lives during the pandemic

All trade agreements are enforced through government-to-government dispute processes. The 164-member WTO only recognises government-to-government dispute processes.

However, global corporations have lobbied successfully for specific trade rules in regional and bilateral agreements that give foreign investors special legal rights to bypass national courts to sue governments in international tribunals for millions of dollars if they can argue that new laws or regulations harm their investment, known as Investor-State Dispute Settlement (ISDS). The tribunals are staffed by practising advocates, not independent judges, and there are no precedents or appeals, leading to inconsistent decisions (French 2014, Kahale 2014).

There are now over 1,000 ISDS cases, many against low income countries (UNCTAD 2020b), with costs awarded against governments amounting to hundreds of millions or even billions of dollars. In 2019 Pakistan was ordered by an ISDS tribunal to pay \$5.8 billion to a mining company over a dispute about a mining lease. This was almost as much as the \$6 billion emergency loan just received from the IMF, cancelling the benefit of the loan (Transnational Institute 2017, Tienhaara 2019).

The Philip Morris tobacco company used ISDS to claim billions in compensation from the Australian government for Australia's plain packaging legislation. Defeating this case took a total of seven years, cost the Australian government \$12 million in legal costs, and other countries delayed similar regulation pending the result (Ranald 2014, Ranald 2019). There are increasing numbers of ISDS cases against government regulation to reduce carbon emissions and to combat climate change for

example, the US Westmorland coal company is suing the Canadian government because of a decision by the province of Alberta to phase out coal powered energy (Tienhaara 2018).

ISDS rules could result in cases from global companies claiming compensation for government actions during the pandemic that reduced their profits but were essential to save lives.

Peru cancelled road tolls to facilitate internal transport of essential goods during the pandemic, and has been threatened with an ISDS case by private road toll operators (Sanderson 2020)

Legal firms specialising in ISDS are already advising corporations on possible cases. An international arbitration law firm has told its clients:

While the future remains uncertain, the response to the COVID-19 pandemic is likely to violate various protections provided in bilateral investment treaties and may bring rise to claims in the future by foreign investors...While States may invoke *force majeure* and a state of necessity to justify their actions, as observed in previous crises that were economic in nature, these defences may not always succeed (Aceris Law 2020).

Legal scholars critical of ISDS have confirmed that after the pandemic governments could face claims for compensation from global corporations. They have called for all governments to withdraw consent from ISDS rules to avoid an avalanche of cases relating to the pandemic (International Institute for Sustainable Development 2020). UNCTAD, the UN body which monitors ISDS cases, has also acknowledged this danger (UNCTAD 2020c: 11-12). Prominent global economists and lawyers led by Professor Jeffrey Sachs have called for a moratorium on ISDS claims relating to government actions during the pandemic (Columbia Centre on Sustainable Investment 2020).

Recommendations

The Australian government should:

- permanently restrict the use of ISDS in all its forms in respect of claims that the state considers to concern COVID-19 related measures, by negotiating with trading partner governments withdrawal of consent from ISDS in relation to those measures.
- exclude ISDS from current and future trade and investment negotiations.
- in light of threats exposed by the pandemic, comprehensively review existing agreements that include ISDS with a view to removing ISDS provisions.

Trade-in-Services and Investment rules

In addition to zero tariffs, regional trade agreements like the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) and recent bilateral agreements aim to achieve zero barriers to international investment in services. They open up most services including health, energy and other essential services to global private investment.

All services are included unless very specifically excluded, known as a negative list structure. This allows governments even less flexibility than the WTO Trade-in-Services Agreement, which allows governments to nominate which specific services they wish to include, known as a positive list.

Trade-in-Services rules treat regulation of services that are covered by the agreement like a tariff, freezing it at current levels, which can only be decreased and not increased in future. This is known as the standstill and ratchet structure which is designed to prevent future increases in regulation without due regard to the need for new regulation when circumstances change (Kelsey 2016).

This inflexibility means that it is more difficult for governments to respond not only to pandemics but to other changes. For example, new forms of regulation in the energy sector are required to address the challenges of climate change.

If hospitals or vocational training services are opened up to private foreign investment, and the privatisation fails, trade in services rules make it more difficult for governments to re-regulate the service or to resume provision of public services. The recent failure of deregulation and privatisation of Australian vocational education services resulted in government re-regulation of those services late in 2016 (Conifer 2016) before the CPTPP came into force. If the CPTPP had already been implemented without very specific exclusions for private vocational education services, the ratchet structure could have been an obstacle to such re-regulation of foreign owned services.

Trade in Services rules open up hospitals, aged care centres and energy companies to private corporate ownership, and the standstill and ratchet structure makes it more difficult to increase regulation of them in a crisis. Trade agreements also deregulate levels of foreign investment. When prices fall in economic crises like that caused by the pandemic, many sectors are vulnerable to increased concentrated ownership by global companies.

During the pandemic, the government recognised the limitations of these trade rules. It directed and funded private hospitals to treat pandemic patients (McCauley 2020). It also re-introduced more extensive screening of foreign investment by the Foreign Investment Review Board to prevent predatory takeovers by global companies (Crowe 2020).

Recommendations

- That the government review trade-in-services chapters in existing trade agreements and in current and future negotiations to ensure that they enable governments to introduce new regulation in response to changed circumstances, like the COVID-19 pandemic.
- That the government review investment chapters in existing trade agreements and in current and future negotiations to ensure that they enable governments to introduce regulation of levels of foreign investment in response to changed circumstances like the COVID 19 pandemic.

The pandemic has exposed flaws in the regulation of digital trade in the Singapore Digital Economy Agreement and other negotiations.

According to the summary published on the DFAT website, Australia has made extremely deregulatory commitments in the recently-concluded Singapore-Australia Digital Economy Agreement (DFAT 2020). The summary is consistent with the demands of global technology companies including Google, Facebook and Amazon for trade rules which do not restrict the free flow of data across borders, that prevent governments from requiring that data be stored locally, and prevent governments from requiring that source code be shared. The agreement was reached in secret between October 2019 and March 2020. The full text of the agreement will not be public until after it is signed.

This deregulatory approach which allows global companies to transfer data overseas and to forbid scrutiny of their source code has been enshrined in a trade agreement despite the recommendations of the Australian Competition and Consumer Commission (ACCC) Digital Platforms Report which recommended more, not less, regulation of such companies to protect consumer privacy and

prevent discriminatory use of source code and algorithms and restrictive trade practices (ACCC 2019).

The ACCC recommendations for more regulation arise from a series of scandals about the behaviour of global technology companies including Facebook and Google [data abuse scandals](#), [anti-competitive practices](#) by Facebook, Google and Amazon; Apple's [tax avoidance](#); Uber classifying itself as a technological platform [to avoid regulation and enable exploitation of workers](#); and the human rights risks of [facial recognition software](#). These examples are detailed with references in the ACCC Report and AFTINET's submission (ACCC 2019, AFTINET 2020).

The government has taken the same deregulatory approach in the WTO plurilateral negotiations for an e-commerce agreement which are being conducted behind closed doors in Geneva. AFTINET has criticised this approach in a detailed submission to DFAT because it pre-empts regulatory recommendations made by the ACCC and by a review of the human rights aspects of digital trade is conducted by the Australian Human Rights Commission. (AFTINET 2020, Australian Human Rights Commission 2019).

However, when Australia's COVID-19 tracing app was launched amid some controversy about privacy protections in April 2020 the government hastened to reassure potential users that their privacy would be protected, and their data would not be abused.

The government claimed that the Biosecurity (Human Biosecurity Emergency) Determination 2020, Section 7 states that the data for the app must be stored in Australia (Commonwealth of Australia 2020). The government also promised to reveal the source code for the tracing app, so that it could be examined by IT privacy experts.

This appears to be a major inconsistency exposed by the pandemic.

On the one hand, the government is promising that data from the COVID-19 tracing app must be stored in Australia and source code must be made public to protect privacy.

On the other hand the government has just concluded a legally-binding trade agreement which enables global companies to store data overseas and keep source code secret. The difference appears to be based on the fact that the COVID-19 app was exposed to public debate and the government had to commit to local storage of data and publication of source code in order to gain public confidence in use of the app.

The Singapore and WTO negotiations have been conducted in secret, amid intense lobbying from global technology companies with an interest in cross-border data flows and secrecy of source code.

The same privacy protections the government is promising for the COVID-19 tracing app should apply to all future digital technology applications. This should mean that the text of the Singapore agreement should be changed if needed and that similar contradictory commitments should be excluded from other digital trade negotiations, including the WTO plurilateral e-commerce negotiations in which Australia is playing a leading role.

Recommendations:

- That the government review the text of the Singapore Digital Economy Agreement to ensure that personal data can be stored in Australia and that source code and algorithms can be made public, consistent with the public commitments made about the COVID-19 tracing app.

- That the government review existing agreements and current negotiations on digital trade like the WTO plurilateral negotiations to ensure that personal data can be stored in Australia to protect privacy and that source code must be revealed to prevent discrimination and abuse of data, to conform with the government's public commitments about the COVID-19 tracing app.

The impact of the pandemic on human rights and labour rights

Human rights include those encompassed by the Universal Declaration of Human Rights and its subsequent International Conventions, most of which Australia has signed and ratified. Labour rights are included in these instruments, but also have their own set of Conventions elaborated by the International Labour Organisation (ILO), most of which Australia has signed and ratified. These include freedom of association and the right to organise, the right to collective bargaining, safe hours of work, health and safety standards, freedom from forced labour, freedom from child labour and freedom from discrimination in the workplace (International Labour Organisation 1998).

The pandemic threatens the most basic human rights to life and to health, especially in developing countries. The severe economic crisis caused by the pandemic threatens the right to employment for millions. For those in work, mass unemployment threatens their basic labour rights by weakening their collective bargaining position.

Labour rights is the category of human rights most directly impacted by trade policy and trade agreements, since increased global competition tends to exert downward pressure on labour rights. The next section examines the evidence about this and the debate about the relationship between trade agreements and labour rights.

Trade agreements and labour rights

The trade policy model of global production chains encourages competition to provide the lowest labour and environmental costs for exports, which can erode workers' rights, especially in low-income countries. This often occurs in export processing zones or export industries where the workers have no effective labour rights to join a union or engage in collective bargaining. This model of global production chains suits the needs of global corporations but can have negative impacts on workers.

One study done for Oxfam in 2004 summarised the impacts on workers in these industries:

Supermarkets and clothing stores source the products that they sell from farms and factories worldwide. At the end of their supply chains, the majority of workers – picking and packing fruit, sewing garments, cutting flowers – are women. Their work is fuelling valuable national export growth. And their jobs could be providing the income, security, and support needed to lift them and their families out of poverty. Instead, women workers are systematically being denied their fair share of the benefits brought by globalisation. Commonly hired on short-term contracts – or with no contract at all – women are working at high speed for low wages in unhealthy conditions. They are forced to put in long hours to earn enough to get by. Most have no sick leave or maternity leave, few are enrolled in health or unemployment schemes, and fewer still have savings for the future. Instead of supporting long-term development, trade is reinforcing insecurity and vulnerability for millions of women workers (Raworth and Hardy 2004:4).

A 2019 study commented on declining labour standards in export industries:

The apparel and food sectors are to the forefront of downward pressures on labour standards. Both sectors have a common feature in that price competitiveness is a key driver with increasing pressures on competition in recent years.

The apparel sector has long been associated with the worst end of labour standards. However, these conditions have deteriorated further with the emergence of the fast fashion and super-fast fashion models. These changes have prompted an increased 'disposability' approach to clothing where the business model is based upon cheap goods with ever-shorter product life cycles and profits generated through volumes of goods sold (Reinecke *et al*, 2019:7).

Such competition encourages investors to move production from one low-income country to another where costs are lower. For example, another 2019 study reported that after Chinese labour costs increased as the result of the labour law introduced in 2008, some international companies relocated production to Vietnam, saving them a third of labour costs (Dong Huang 2019:1-25). There are similar reports of companies moving to Cambodia and Bangladesh (Bain and Arvins 2015).

A notorious example of lack of workers' rights in export processing industries is the collapse in 2013 of the Bangladesh Rana Plaza garment factory building. Workers left a dangerous building when cracks appeared, but had no effective rights to refuse when they were ordered back into the building. The building then collapsed, killing 1,200 people, mostly women and children. Those factories were supplying garments to retail stores in Australia (Yardley 2013).

More recently there have been allegations of forced labour in Western China contributing to production chains for exports of clothing to Australia (McNeil *et al* 2019). The China-Australia Free Trade Agreement gives preferential zero tariff access for Chinese imports to Australia but has no commitments by either government about labour rights (Department of Foreign Affairs and Trade (DFAT 2015). If these allegations are proven to be accurate, there would be no means for the Australian government to raise the issue of whether such products should have preferential access to Australia, and there is no obligation on the Chinese government to take action to end forced labour.

Unions and community organisations have responded to the erosion of labour rights in export industries by advocating that governments entering into trade agreements should make legally enforceable commitments to abide by the ILO conventions on labour rights outlined above.

These should be enforced through the same government-to-government dispute process as other chapters, whereby failure to implement commitments can result in trade penalties (Australian Council of Trade Unions 2016).

But WTO agreements and most other bilateral and regional trade agreements still do not include such enforceable labour rights commitments (Häberli and Janse 2011) despite the promise of them in the original post-World War Two proposal for an International Trade Organisation (United Nations Conference on Trade and Employment 1948:17).

Australia's bilateral agreements with Malaysia, Japan, China, Hong Kong and Indonesia do not include any reference to labour rights, nor does the Australia-New Zealand-ASEAN regional Free

Trade Agreement ² The giant Regional Comprehensive Economic Partnership (RCEP) currently being negotiated between Australia, New Zealand, China, Japan, South Korea and the 10 ASEAN countries did not include any reference to labour rights in its *Guiding Principles* (RCEP ministers 2012).

There are some examples of labour rights chapters in Australia's trade agreements, but they vary in enforceability. Australia's agreements with the US and South Korea have labour rights chapters which are aspirational only and have no disputes processes to enforce them (DFAT 2004, DFAT 2014). The Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), also known as the TPP-11,³ which Australia has ratified, does have labour and environment chapters with their own specific disputes processes (DFAT 2016).

The CPTPP labour chapter is modelled on some US agreements with Central and South American countries. Labour Chapters have been part of US trade agreements since the Democrat-majority Congress insisted on them in the North American Free Trade Agreement (Wallach and Tucker, 20110).

However, the International Trade Union Confederation (ITUC) has argued that the range of labour rights commitments in the CPTPP is limited. Examples include that its rules only apply to trade-related sectors of the economy and there is no commitment to ban the imports of forced and child labour, only to 'discourage' such imports. The disputes process is specific to the chapter and is very lengthy and convoluted, compared with the government-to-government dispute process that applies to other chapters in the agreement (International Trade Union Confederation 2015). Environment organisations have made similar criticisms of the CPTPP environment chapter (Sierra Club 2015).

The EU includes a social or sustainable development chapter dealing with labour and environmental standards, and other social issues in its agreements, but the government-to-government dispute process does not apply to that chapter. The EU prefers to use persuasion rather than trade penalties on these issues, and this is the approach being taken in its current negotiations for a free trade agreement with Australia (European Union 2019). Unions have called for greater legal enforceability (European Trade Union Confederation 2009).

In summary, trade agreements made through the WTO, and most regional and bilateral trade agreements made by Australia, do not have any commitments to implement labour rights. Some more recent agreements have labour rights chapters that are aspirational only. A small number of US agreements like the CPTPP have labour rights chapters with some disputes processes but unions have criticised their limited commitments and lengthy and convoluted disputes process compared with the government-to-government dispute process that applies to other chapters in the agreements. The labour rights commitments in EU agreements do not have a disputes process or trade penalties.

There has been some progress in labour rights being acknowledged in recent trade agreements. However most of Australia's agreements still encourage competitive global production chains

² The text of all these agreements which shows they have no labour chapters can be found at <https://www.dfat.gov.au/trade/agreements/in-force/Pages/free-trade-agreements-in-force>

³ The US withdrew in 2016, and the agreement signed in 2017 involves 11 countries: Australia, New Zealand, Canada, Mexico, Peru, Chile, Japan, Malaysia, Singapore, Brunei and Vietnam. Peru, Chile, Malaysia and Brunei have not ratified the Agreement, but it is in force for the other 7 countries.

without enforceable commitments to labour rights and contribute to downward pressure on those standards, especially in developing countries.

Recommendations

- That the government support the inclusion of legally enforceable labour rights in trade agreements.
- That these should be based on the ILO conventions on basic labour rights including freedom of association and the right to organise, the right to collective bargaining, safe hours of work, health and safety standards, freedom from forced labour, freedom from child labour and freedom from discrimination in the workplace.
- Labour rights should be enforced through the same government-to-government dispute process as other chapters, whereby failure to implement commitments can result in trade penalties.

Temporary overseas workers and labour rights

Some other aspects of trade agreements have also had impacts on labour rights in Australia. The inclusion in trade agreements of clauses which increase the numbers of temporary overseas workers has been driven by employer demands and have contributed to downward pressure on labour rights for those workers in Australia. The vulnerability of these workers, which had been exposed in recent years by a series of studies and reports, has been spotlighted by the COVID-19 pandemic, since the government has excluded them from unemployment benefits and other assistance available to Australian citizens (Gibson and Moran 2020).

Australia is a nation built on immigration and has a permanent migration scheme which has created a vibrant multicultural society. Permanent migrants have the same rights at work as other Australians. Their employment is not dependent on the sponsorship of one employer and they cannot be deported if they lose their employment.

Temporary work visas for overseas workers were originally designed to address specific skills shortages identified by employers, and were subject to local labour market testing to establish whether there was a skills shortage. However their use has expanded since the 1990s, and there are now many different forms of temporary work visas, including the Temporary Skill Shortage Visa, training visas, working holiday visas, seasonal work visas and international student visas (the latter permit a limited number of working hours). The number of temporary workers utilizing these visas has greatly increased. The Migrant Workers' Task Force established by the Commonwealth government reported that there were over 800,000 temporary visa workers in Australia in 2018 (Fels and Cousins 2020: 16).

Temporary workers are in a weaker bargaining position than permanent migrants because they are often sponsored by a single employer, or dependent on the employer for extension of their visa, and loss of their employment can lead to deportation. This leaves them vulnerable to exploitation.

Increases in numbers of temporary overseas workers are now being included as legally binding commitments in trade agreements. The removal of the requirement for labour market testing and/or increases in the numbers of specific categories of temporary workers are found in the China-Australia Free Trade Agreement, the Korea-Australia Free Trade Agreement, the CPTPP with ten other countries and the Indonesia Free Trade Agreement (DFAT 2014, 2015, 2016, 2019).

The PACER-Plus agreement with Pacific Island countries has a parallel government-to-government agreement for temporary seasonal workers in the horticultural and tourism industries. However, this agreement has no enforceable commitments to protect the labour rights of these workers (DFAT 2017).

Academic studies comparing various recent trade agreements have demonstrated that temporary work visas are a means of deregulating labour markets. Such arrangements create groups of workers with less bargaining power who are more vulnerable to exploitation because loss of their employment can lead to deportation (Rosewarne 2015).

A survey of temporary overseas workers in Australia published in 2017 by University of New South Wales academics found temporary overseas workers experienced widespread wage theft (Berg and Farbenblum 2017).

Similar evidence was provided in 2017 to the Joint Parliamentary Committee Inquiry into a Modern Slavery Act (Joint Standing Committee on Foreign Affairs and Trade 2017).

A study of the horticultural industry published in 2019 by Professor Joanna Howe and others showed widespread exploitation and wage theft. The industry is entirely dependent on temporary workers, the majority on working holiday visas and seasonal work visas (Howe et al 2019).

The evidence from all these studies shows gross violations of Australian minimum work standards including failure to pay even minimum wages, long hours of work, and lack of health and safety training leading to workplace injuries, as well as lack of effective freedom of association and collective bargaining rights.

The COVID-19 pandemic has meant that thousands of temporary workers and overseas students have lost their jobs but are not eligible for government payments. The government has abandoned responsibility and told them to return to their home countries, but many lack the means to do so. These workers now have no rights to employment and no income, which threatens their basic rights to food and shelter and health.

In summary, the inclusion of arrangements for temporary workers driven by employer demands in trade agreements without effective protection of their labour rights treats these workers as commodities and creates a pool of workers vulnerable to exploitation in the workplace and whom the government can exclude from social supports available to other citizens.

Recommendations

- That the government make no commitments in current and future trade negotiations to include arrangements for temporary workers.
- That existing trade agreements be reviewed to remove arrangements for temporary workers.
- That requirements for temporary workers to address genuine labour shortages should be validated by local labour market testing and be addressed through government to government agreements which are separate from trade agreements. They should include enforceable commitments to prevent discrimination and guaranteed labour rights for those workers

The Pandemic, the environment and the climate crisis

Protection of the environment is a fundamental value which should underpin trade policy. Trade agreements should require full compliance with UN International Environmental Agreements.

At the same time, trade agreements must ensure that other provisions, such as investment protection or deregulation of services, do not undermine the ability of governments to regulate in the interest of protecting the environment.

Trade policy must also work cohesively with measures to address climate change. Trade agreements should not restrict governments' ability to adopt measures to address climate change.

As discussed above in relation to industry policy, addressing the climate crisis through meeting carbon emissions reduction targets and the development of renewable energy industries should be part of the economic recovery strategy.

As discussed above in relation to labour rights, most of Australia's trade agreements do not have any mention of commitments to implement UN International environment agreements. The Australia-US FTA and the Korea- Australia FTA mention environmental goals but have no enforceability, and the CPTPP commitments have a disputes process which is more convoluted and weaker than the state-to-state disputes process applying to other chapters in the agreement (Sierra Club 2015).

Trade agreements should include enforceable commitments to UN International Environment Agreements including the Paris climate agreement, with effective sanctions for non-compliance.

Recommendations:

- That the government ensure that current and future trade agreements include commitments to the adoption and implementation of UN International Environment Agreements, including the Paris agreement on climate change, enforced through the government-to-government dispute processes contained in the agreement.
- That the government review existing trade agreements with a view to including commitments to the adoption and implementation of UN International Environment Agreements, including the Paris agreement on climate change, enforced through the government-to-government dispute processes contained in the agreement.

Changes needed to the trade agreement process

The current Australian trade agreement process is secretive and undemocratic, with the text not made public until after the decision to sign it. The decision to sign agreements is made by Cabinet before they are tabled in Parliament and only then examined by the Joint Standing Committee on Treaties, which cannot change the text. The National Interest Analysis presented to the Committee (JSCOT) is not independent but is conducted by the same department that negotiated the agreement. Parliament has no ability to change the agreement and can only vote on the implementing legislation.

There are precedents for more open processes. The WTO publishes negotiating texts before they are signed, as does the EU. In the US, the Congress can amend and vote on the whole trade agreement. AFTINET has made detailed recommendations about changes to these policies which are summarised below (AFTINET 2015). We will be making a submission to the current JSCOT inquiry on the trade agreement process .

The secrecy of the trade agreement process has contributed to the development of inflexible policies with flaws which have been exposed by the pandemic, as discussed above. A more open and accountable and democratic process with more comprehensive inputs from a broader range of stakeholders, including civil society organisations, would assist in developing policies that avoid these flaws.

Recommendations

That the government support:

- publication of negotiating texts of trade agreements,
- publication an independent evaluation of the economic, health and environmental impacts of agreements before the decision is made to sign them.
- Parliament should vote on the whole text of the agreement, not just the implementing legislation

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