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1 Trans Pacific Partnership Agreement - UPDATE

The Trans Pacific Partnership Agreement (TPPA) is a proposed new regional free trade agreement which builds on an existing Free Trade Agreement between New Zealand, Chile, Singapore and Brunei Darussalam. The negotiations now include the United States, Australia, Peru and Vietnam. The US has also extended invitations to Japan and Malaysia, though neither has taken up this invitation, with Malaysia saying it will wait and see what happens at the first meeting.

Official negotiations begin in Melbourne on 15th March 2010. Four negotiation meetings are planned during 2010.

You may remember the campaign in 2003-4 about the US-Australia Free Trade Agreement. The US government and companies identified the following Australian health, social and environmental policies as barriers to trade that they wanted to remove or change:

- Price controls under the Pharmaceutical Benefits Scheme, which ensure affordable access to medicines and kept Australian medicine prices three to ten times below US prices
- Labelling of genetically engineered food
- Australian content rules in audio-visual media like film and television
- The Foreign Investment Review Board
- Quarantine regulations
- Local content requirements for government purchasing

The US government also wanted an investor-state disputes process, which would have given US companies the right to sue Australian governments for damages on the grounds that environmental or other public interest laws could harm their investments. US companies have used this process in the North American Free Trade Agreement (NAFTA) to sue Canadian and Mexican governments for millions of dollars and to force them to change environmental protection laws which were different from US laws.

Our biggest victory was the exclusion of the investor-state complaints process, which means that US companies did not gain extra rights to sue Australian governments. The Australia-US FTA is the only US free trade agreement which does not include this process. We also prevented changes to genetically engineered food regulation, and limited the changes to the Pharmaceutical Benefits Scheme.

The agreement also had very weak labour and environment clauses, which were not legally based on International Labour Organisation standards, but committed each government only to implement its own laws, with no penalties.

All of these issues are now back on the agenda, because the Australian government has agreed to negotiate with the US, Chile, Peru, Brunei, Singapore New Zealand and Vietnam to develop a multilateral free trade agreement based on the bilateral FTAs the US has with five of these countries.

This means that all of the issues we kept out of the US–Australia FTA will be up for negotiation again. We know from submissions made by US business groups that they want to use the negotiations to obtain more changes in all of the areas listed above. And there will be strong pressure for Australia to accept an investor-state complaints process, because four of the other bilateral FTAs include this process.

We are asking our member organisations to sign on to 8 principles for the TPPA negotiations to be sent to Trade Minister Simon Crean, as part of the campaign. We have set a deadline for organisations to sign-on by 10th March 2010 to allow us to get this to the Minister and release it to the media.

We are setting up an email/letter campaign to run from our website for individual members to get involved.

Our website has been updated with current information about the TPPA. A number of links and documents are available.

Please regularly check the AFTINET website for updates on this campaign.

2 Catching Counterfeiters – Not Likely

This article has been written for AFTINET by Dr Luigi Palombi, Centre for the Governance of Knowledge and Development, Research School of Pacific and Asian Studies, Australian National University.

Have you ever bought a fake ‘Rolex’ or ‘Gucci’ handbag? You knew it was fake when you bought it. “So what?” you thought. You wanted the cachet without having to pay the astronomical price for the genuine article. Well, you might have to think twice if the Anti-Counterfeiting Trade Agreement (ACTA) becomes a reality.

You see, ACTA is a proposed international trade agreement which is about protecting intellectual property rights. Which seems completely fair and reasonable. Simply put, if the theft of physical property is a criminal offence then why should intellectual property theft be treated differently? - a point which the film and television copyright owners make in the introductory sequence of DVDs hired or sold in Australia. And it’s a message that politicians

are waking up to. Simon Crean, our trade minister, said that Australia is seeking to “combat the high levels of trade in counterfeit and pirated goods worldwide”. According to an OECD report the estimated worldwide value of this trade in 2005 was US\$200 billion.

Across the Tasman, the New Zealand government has joined Australia and a cohort of countries that are seeking to bring IP pirates to justice. ACTA’s key sponsor is the United States, but the European Union and Japan are closely involved, as are Canada, Mexico, Singapore, Republic of Korea and Morocco.

Supporters include The Anti-Counterfeiting Group Campaigning Against the Trade in Fakes, an English association which “represents the interests of UK and multinational companies”. It says fake products now extend to “almost everything you can think of, from car parts to pharmaceuticals, toys to mobile phones”. The group says they are also dangerous: “fake spirits can contain high levels of methanol ... counterfeit perfume can often burn your skin or leave you with a nasty rash ... and a women died in Scotland after drinking fake vodka”. Fair enough, these disreputable products are a problem.

Yet there is growing disquiet about ACTA. Reputable people and organisations are beginning to speak up. Anna George, a former DFAT diplomat, says: “the question is not whether counterfeit goods have terrible consequences - we know fake pharmaceuticals (mostly in developing countries), fake aircraft parts, fake Botox and the like are of acute concern - but this is not the key rationale, especially when ACTA includes copyright issues attached to the internet and trademarks”. And her retort to those that use these obvious dangers as the cause célèbre is that most countries already have “a whole range of border security ... to deal with such events”. Indeed most consumer protection agencies will act quickly to ban the sale of goods which pose such obvious risks to consumer safety.

A collation of associations which include the Australian Library and Information Association, the Australian Digital Alliance, Choice and the Internet Industry Association are concerned that ACTA is like taking a sledge-hammer to a nut especially when it threatens the “legitimate commercial, social, innovative and creative activities, the rights of consumers or the free flow of information”. You see ACTA is subject to secrecy obligations. Why hide the details if the objective is truly altruistic? And for those of you who might not remember, the trigger for what became the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), one of the pillars of the WTO, was the counterfeit bogie.

3 WTO Update

The various WTO working groups have been meeting constantly since the December 2009 Geneva Ministerial meeting with further rounds of discussions scheduled over the coming weeks. Little progress has been made and arguments are still happening around the March 2010 stocktake of the Doha Development Round of negotiations, ordered by Ministers in December.

Trade Ministers met in the margins of the World Economic Forum held from 27-31 January 2010 in Davos, Switzerland, where they continued discussions on a range of outstanding issues. No movement occurred at Davos – with the US still without an endorsed ambassador to the WTO.

The Director General of the WTO, Pascal Lamy, maintains that conclusion of the Doha round of negotiations depends on political will – making it more important than ever that we continue our focus on keeping the Australian Government to its promises about trade justice.

Whilst the December 2009 Ministerial meeting reiterated the desire to complete the Doha round in 2010, this looks extremely unlikely for a number of reasons including:

- Elections, which will delay any movement, are to occur in several key countries including the US, Brazil, Japan, UK and significant EU changes are being bedded in.
- The next ministerial meeting was scheduled for the end of 2011, making it evident that the round will not conclude in 2010.
- The G33 and G20 groups of developing nations are refusing to capitulate to the demands of the US and EU to open up their markets further. With Brazil, India, China and South Africa leading the way, the developing nations are very clear that the Trade in Services demands of the developed nations, the US in particular, are unrealistic and it is unreasonable to expect that the round could be concluded by additional unilateral concessions from developing countries.
- Ongoing monitoring of the positions of the key developing countries Brazil, South Africa, India and China (now called the BASIC group) is required. India and Brazil have both indicated some movement is possible but that the development focus needs to be central. No further movement is expected.
- A number of industrialised countries, most notably the US, Australia and the EU, are now openly saying that bi-lateral and regional free trade agreements are the way to implement the neo-liberal free trade agenda. The industrialised countries have taken this stance in an attempt to gain momentum for their WTO demands by creating a sufficient number of bi-lateral and regional free trade agreements.

4 FTA Updates

PACER Plus

In February we joined our Pacific friends at the Pacific Network on Globalisation (PANG) in supporting Pacific Island Governments demands to delay the initially 2010 meeting of officials to negotiate the PACER Plus Free Trade Agreement.

The demands came as the newly appointed Chief Trade Advisor, Dr Chris Noonan, refused to sign his contract and went public with his concerns about the contract he was offered and the interference of the Pacific Islands Forum Secretariat, a body dominated by ex-pat advisors.

The demands have been successful and the initial meeting has been postponed. Advice was received on 22nd February 2010 that Dr Noonan's contract has now been revised to reflect the independence of his office and he has now signed.

Dr Noonan's preparedness to take on the PIF Secretariat bodes well for his new role. We and PANG will closely monitor to ensure that Dr Noonan lives up to expectations and independently advises the Pacific Island Countries on PACER Plus.

A number of significant issues remain and are of concern. These include the consultative process, the apparent one sided nature of the potential outcomes, the removal of the rights of governments to ensure equitable access to essential services, capacity constraints both in terms of personnel available and the number of agreements the Pacific Island Governments

are currently negotiating. These are but a few of the concerns about this agreement and we need to maintain our vigilance and work with our Pacific Island colleagues to ensure a fair and equitable outcome.

Australia-Japan FTA

There should be no movement or developments until after the Japanese Upper House elections are held in mid-2010, followed by Australian elections. After this period it will depend on the election results – however agriculture will still cause significant difficulties, regardless of the election results. We will monitor developments – including those which will crop up outside of any direct talks around the FTA.

Australia-China FTA

The FTA negotiations are unlikely to go far, if anywhere this year. The 14th round will commence on 22nd March 2010 in Canberra. Significant differences between the two countries continue in the areas of agriculture, investment, and service liberalisation, as well as the Australian Government's commitments to Australian Industry plans such as the Textile Industry Plan and Automotive Industry Plan.

Republic of Korea

The fourth round of negotiations is scheduled to take place in Seoul in March 2010. The big delaying issues are trade in services, the auto industry and agricultural trade. If Australia is prepared to sell out agriculture then this FTA will move, but it is unlikely, particularly in an election year, that this would happen.

Australia-Malaysia FTA

The next meeting is scheduled for Kuala Lumpur in April 2010. There are still significant differences between the two sides, focused on agriculture and services (in particular Banks). The problems are significant enough for DFAT to announce they intend to hold extensive consultation with all stakeholders during 2010 – sending a message that it is not expected to move very far this year

Australia-India FTA

The Feasibility Study is still in discussion between the two governments, and there is not enough information at this stage to speculate as to the issue stopping its release. We will monitor developments and keep a close eye on the feasibility study and are ready to respond to it. There are significant tensions between the two countries, not the least is the current violence to students issue and uranium sales.

Australia-Gulf Cooperation Council (GCC) FTA

No movement since the last round of talks held in Muscat, Oman on 31st May to 2nd June 2009. At this stage no meetings are scheduled. However a Gulf-Australia Business Council was launched on 10th December 2009. There is pressure from the agricultural sector on DFAT to conclude the agreement as NZ have concluded one – but the auto industry appears to be more important than agriculture to DFAT in this FTA, with movement being held up waiting for Saudi Arabia's decision on whether it will commence an auto industry. We will monitor this FTA, in particular Saudi Arabia's decision on whether to start an Auto industry.

Australia/Mexico Joint Experts Group Report

No prospect of an FTA in the near future. Australia released its Joint Experts Group report on strengthening bilateral relations with Mexico in July 2009. We need to continue to monitor

developments in this relationship, particularly the approach of using the Joint Trade and Investment Commission in a “comprehensive” manner.

5 General Trade News

Productivity Commission – Call for Submissions on Trade Agreements

As mentioned in our previous bulletin, the Australian Government requested that the Productivity Commission (PC) undertake a study into the impact of bilateral and regional free trade agreements on trade and investment barriers, and on Australia's trade and economic performance, including their contribution to efforts to boost Australia's engagement in the evolving regional economic architecture.

AFTINET has completed its submission, which is available on our website:

<http://aftinet.org.au/cms/submissions/aftinet-submissions>

Or, it can be downloaded by clicking on the following link:

http://aftinet.org.au/cms/sites/default/files/AFTINET_PC_Submission_Final.pdf

6 Coming Events:

In our next bulletin details will be published for this year's AFTINET Dinner, to be held on 15th April 2010. Get there at 6:30pm for a 7:00pm start.

The dinner will be held at the Erciyes Restaurant – 409 Cleveland Street Surry Hills. (A few blocks from Central Station)

The dinner will cost \$60.00 per person. Get in early and book now through the AFTINET Office.

Put it into your diary now.

Keep an eye out for the official invitation – it will be a celebration of our 10th Anniversary.

7 New Resources available on the web or at our website:

1. A number of documents relating to the TPPA - <http://aftinet.org.au/cms/tppa-resources-page>
2. Links to websites about the TPPA, both Civil Society and Government - <http://aftinet.org.au/cms/tppa-resources-page>