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Inside this edition:

- [19th Round of Trans-Pacific Partnership \(TPPA\) negotiations: Dr Patricia Ranald reports from Brunei](#)
- [Australian Election: How do the major parties stack up on fair trade?](#)
- [Free Trade Agreement could prevent regulation of Coal Seam Gas mining](#)
- [The global union movement's new video: Workers speak out against the TPP](#)
- [State-Owned Enterprises and our public hospitals](#)
- [Trade deal threatens essential services in the Pacific Islands](#)
- [Tobacco clause might burn free trade agreement](#)

19th round of Trans-Pacific Partnership (TPPA) negotiations: Dr Patricia Ranald, AFTINET Convenor, reports from Brunei

Nineteenth round of Trans-Pacific Partnership (TPPA) negotiations in Brunei: wide gaps remain as US pushes to finish negotiations

Dr Patricia Ranald

US attempt to pressure TPPA Ministers fails

I attended the nineteenth round of the Trans-Pacific Partnership (TPPA) trade negotiations held in Brunei from August 23-31. The TPPA is being negotiated between Australia, the US, Canada, Mexico, New Zealand, Chile, Peru, Brunei, Singapore, Malaysia, Vietnam and Japan. The agenda is being driven by the US on behalf of its major industries which regard many areas of Australian public interest regulation as barriers to trade.

The US Trade Representative called a meeting of TPPA Trade Ministers who were at an ASEAN meeting in Brunei on August 22-23. This meeting was designed to speed up the Brunei negotiations, but did not achieve this goal.

Nine of the twelve TPPA Trade Ministers attended the meeting. The short statement released after the meeting identified a wide range of “sensitive and challenging” issues including market access for goods and services, investment, financial services, government procurement, intellectual property including copyrights and patents on medicines, competition, environment and labour. The statement said that the TPP Ministerial Meeting held on the fringes of the APEC meeting in Bali in early October would be a “milestone” and that the aim was to finish [by the end of the year](#).

The Australian Trade Minister did not attend the meeting because of the caretaker period for the Federal elections, and the Chile and Peru Ministers did not attend. The Malaysian Government issued a statement saying it would not be bound by **any timeline, and will conduct a cost-benefit analysis of the TPPA before deciding to sign it**. Following the Ministerial Meeting, US Trade Representative Froman himself also conceded that the negotiations may not be finished by year's end. However, it is clear that there is still enormous pressure to meet this deadline.

Australian and other International Civil Society Presence in Brunei

Brunei is an absolute monarchy without a Parliament or local activist groups. Because the dates of the negotiations were changed at short notice, some civil society groups from North and South America were unable to send representatives. However, there were US representatives from the Public Citizen Medicines project and Campaign for Tobacco Free

Kids. There was a wide range of civil society representatives from Japan, including consumer organisations, internet activists, anti-TPP activist groups and farmers' organisations. There were also health activists and tobacco control activists from Malaysia, and consumer representatives from Australia and New Zealand, including the Fair Deal Coalition and the Australian Digital Alliance, as well as myself from AFTINET. The civil society groups were the majority of presenters at the formal stakeholder presentations to negotiators.

As this was the first full round the attended by Japanese negotiators, there were over 100 journalists from the Japanese media, and one each from Malaysia and the US. The civil society groups were able to hold a media briefing every day, on topics like investor state disputes, patents and medicines, copyright, agriculture and state-owned enterprises.

For the first time in the TPP negotiation rounds, the Chief Negotiators failed to hold a formal session at which they reported progress at the negotiations and were available to answer questions in a forum of stakeholder groups. We were not informed of this beforehand, but arrived at the event to find that chief negotiators were only available to chat with individual stakeholders. This was very unsatisfactory, resulting in queues of people lining up to try to speak to chief negotiators on an individual basis.

The civil society groups who were present issued a [media release](#) expressing our disappointment at the failure of chief negotiators to hold a formal progress report and to answer questions in a forum where the answers could be heard by all stakeholders. We also asked for information about planned secret intersessional meetings in September, and about whether there would be further negotiating rounds after the leaders meeting in Bali in October. We also called for the release of the negotiating texts for public and parliamentary discussion.

Australian Media coverage

In addition to interviews with Japanese journalists, I did an interview with Fran Kelly on the [Radio National Breakfast](#) show and there was article by Peter Martin in [the Sydney Morning Herald](#).

Growing opposition in Malaysia

Since the previous round of TPP negotiations being held in Malaysia, a coalition of NGOs and the Malaysian Opposition have campaigned against the TPP, expressing a wide range of concerns including that the TPP mainly serves the [economic, business and geopolitical interests](#) of the United States. According to the [Malaysian Insider](#), former Malaysian Prime Minister Dr Mahathir Mohamad said, "We will not be able to decide our own affairs without interference," if the TPP is signed.

US weak tobacco proposal vs. stronger Malaysian tobacco carve-out proposal

Tobacco regulation was a divisive subject during the negotiations. Under pressure from public health groups worldwide to ensure that no rules in the agreement would undermine the ability for states to regulate tobacco use for public health reasons (including by the use of Investor-State Dispute Settlement to sue governments for damages), the United States presented a text which falls far short of these demands. The Mayor of New York City, Michael Bloomberg, heavily criticised this proposal in an opinion piece published in the [New York Times](#).

Malaysia has since [proposed a tobacco carve out](#) which reportedly *would* exclude the use of Investor-State Dispute Settlement to sue governments for damages by tobacco companies. This has been applauded by many public health groups in the United States and elsewhere. However, this would prevent ISDS cases on other issues like environmental or other areas of health regulation, which can only be prevented by excluding ISDS.

Unresolved issues in the Negotiations

Significant differences remain on investment, financial services, government procurement intellectual property, competition and state-owned enterprises, environment and labour.

Negotiations on market access for goods and services have barely begun. Japan only joined the negotiations in July, and their government has promised Japanese farmers that they will keep some protections for key agricultural products like rice, beef, pork, wheat, barley, sugar and dairy. At the same time, they have said to the other TPPA negotiating countries that they are prepared to negotiate on these issues. This produced some surprise and consternation amongst the Japanese farmers groups present in Brunei.

The US is still refusing additional agricultural market access for countries with which it has bilateral agreements. This means Australia will not gain any US market access greater than what was in the US-Australia free trade agreement, which was very little.

Underground intersessionals in September leading to October Bali leaders' meeting

There are a series of "intersessional" negotiations planned for September without even the limited civil society presence and media presence at the official negotiations. The chief negotiators will reportedly meet in Washington DC from 22-24 September. The plan is to reach agreement on as much of the text as possible, and to identify remaining areas of disagreement.

These would then be debated by the meeting of TPPA leaders to be held on the fringes of the APEC meeting in Bali the first week of October, with the aim of making trade-offs. The danger is that important areas of public policy like medicine patents and ISDS will be traded off for market access in areas like agriculture. A change of government in Australia could increase this danger, as the Liberal National Coalition has said it is willing to negotiate in some of these areas. (See article below)

Even if trade-offs are agreed in Bali, there would still be detailed technical work to be done before the text is completed, which would take at least until the end of the year. There is no information about whether there will be another formal round of negotiations after Bali.

Need to intensify AFTINET and international campaign

A rush to finish could result in another unfair deal like the US-Australia FTA, done in secret without public scrutiny. We call on the Australian government and other governments to resist the rush to finish and to release the text of any agreement for full public and parliamentary discussion before any deals are signed. We will need to intensify the AFTINET and international campaign between now and December.

Australian Election: How do the major parties stack up on fair trade?

As the election draws near, *The Australian Fair Trade and Investment Network* (AFTINET) has analysed how the trade policies of our major political parties compare in relation to fair trade and free trade.

Both the Labor party and the Coalition are committed to trade liberalisation, but differ in their approach. Labor policy emphasises sharing the benefits of trade liberalisation both domestically and between countries. The policy recognises that short-term support is needed to assist some workers and sectors to adjust and that although trade is important, it is not always sufficient for developing countries. On the other hand, the Coalition focusses on increasing Australia's exports through "fast tracking" Free Trade Agreements especially in Asia and particularly with China, Indonesia, Japan and India. The Coalition aims to increase Australia's reputation as "a safe place to invest". The Greens emphasise the importance of fairness and democracy in their approach to international trade and highlight the need to assist developing countries.

To compare the parties on key *fair* trade issues, we examined the policy documents of each party, as well as pre-election statements and publications on nine key issues. They are labour rights, the environment, health care and access to medicines, investor rights to sue governments (ISDS), intellectual property, Australia's cultural industries, transparency, the Trans-Pacific Partnership and Multilateral versus bilateral and regional agreements. As you can see from the table below, **Labor and the Greens have positive policies on all of the nine issues, whereas the Liberal National Coalition has a negative policy on ISDS, and no explicit policies on seven of the others.**

			
Labour Rights	- No specific policy position	- Supports enforceable labour rights based on International Labour Organisation core standards - Will actively work against forced, prison and child labour	- Would ensure trade agreements allow regulation of labour rights
The Environment	- No specific policy position	- Ensures trade agreements allow for environmental regulation and supports enforceable international environmental standards in the Trans-Pacific Partnership	- Would ensure trade agreements allow regulation of the environment
Healthcare and access to affordable Medicines	- No specific policy position	- Opposes any agreement which would undermine the Pharmaceutical Benefits Scheme	- Asserts that the Pharmaceutical Benefits Scheme should be “free from political interference”
Investor-State Dispute Settlement* <small>(The right of foreign investors to sue governments for damages if a law or policy “harms” their investment)</small>	- Is prepared to negotiate ISDS in international trade agreements ‘on a case by case basis’	- Will not agree to ISDS. Foreign and domestic companies must be treated equally under the law and government must be able to regulate in the public interest	- Indicate opposition to ISDS by insuring that democratic preferences of citizens are preserved
Intellectual property	- No specific policy position	- Does not support expanding intellectual property rights at the expense of consumers	- Would resist extension of control over intellectual property
Australian Cultural Industries	- No specific policy position	- Will retain the right to protect Australia’s cultural industries	- Would ensure trade agreements do not adversely impact on arts and cultural expression
Transparency & Democracy	- No specific policy position	- Regular consultation with stakeholders on trade agreements	- Call for a “democratisation” of international institutions including the IMF, World Bank and WTO
The Trans-Pacific Partnership (TPP)	- No specific policy position	- Trade policy contains a resolution to ensure TPP negotiations adhere to stated trade policy positions including that it contains labour and environmental protections	- No specific policy position, but critical of regional agreements - Have criticised the TPP and called on the government to improve transparency
Bilateral & Regional vs. Multilateral Trade Agreements	- No clear preference - Will examine bilateral or quadrilateral agreements in the Pacific as an alternative to current regional PACER-Plus negotiations	- Prefers multilateral agreements but will negotiate regional or bilateral agreements if in Australia’s interest	- Prefer multilateral agreements unless a bilateral agreement may specifically benefit a developing nation

Free Trade Agreements could prevent regulation of Coal Seam Gas mining

Investor rights to sue governments (ISDS) threaten the ability of our governments to regulate in the interests of the public and the environment, including on Coal Seam Gas (CSG) mining.

Canada signed an agreement with the United States giving investors the right to sue governments in the North American Free Trade Agreement. Now, the US Lone Pine energy company is suing the provincial government of Quebec for \$250 million because they imposed a moratorium on shale gas mining pending an environmental study. In a similar way, farmers and members of the community here have influenced the NSW and Victorian state governments to also adopt moratoriums to examine the impact of coal seam gas mining on land use and the environment. If the right for corporations to sue governments is agreed in these negotiations, our governments could be sued in the same way as the Quebec government.

This would undermine the ability of our community to insist upon environmental regulations to protect our communities and farmlands.

AFTINET has produced a new leaflet on this issue, which you can download here: [Free Trade Agreement could prevent regulation of Coal Seam Gas mining.](#)

In the lead up to the election it is vital that we let our local MPs and candidates know that they should oppose ISDS in all trade agreements, and that we want our governments to keep the right to regulate in areas like coal seam gas mining. You can help by distributing the leaflet widely among your networks and questioning candidates ahead of the election.

If you have not already done so, please follow the links to send a letter to [Trade Minister Richard Marles](#) and [Opposition Trade Spokesperson Julie Bishop](#) to ensure that neither party, if elected, agrees to these provisions which would reduce the ability of our government to regulate industries such as CSG.

For further information, please see an opinion piece published by Coal Seam Gas News, '[Don't trade away the right to regulate CSG](#)', and AFTINET Convener Dr Patricia Ranald's [interview on ABC radio](#) about the progress of the current negotiations in Brunei and ISDS.

The global union movement's new video: Workers speak out against the TPP

The global union movement has produced a [short video](#) of workers from all of the Trans-Pacific Partnership countries discussing the impact of the TPPA.

Workers from around the world speak out about downward pressure on wages and labour rights, more polluted air and water, reduced access to life saving medicines, and more powerful corporations influencing our laws and trying to override our voices.

It's a simple message and ideal for sharing on social media. They have also developed an online petition for each participating country, including Australia.

[Watch the video and sign the petition here.](#)

State-Owned Enterprises and our Public Hospitals

It appears that proposals on state owned enterprises in the Trans-Pacific Partnership Agreement (TPPA) could also apply to enterprises at the state government level, which means they could affect our public hospitals. The US wants to restrict the ways in which state-owned enterprises (SOEs) can compete with private businesses and ensure they have no advantages compared with private businesses. This is mainly intended to apply to SOEs which operate on a commercial basis.

However, the definition of SOES may include SOEs which have community service obligations which are funded by governments, like Australia Post or the National Broadband Network. The SOE proposal may threaten government funding of those community service obligations, or mean that government funding may have to be provided on the same basis to private competitors.

If the definition of SOEs includes public hospitals which also provide some services on a commercial basis, this could lead to restrictions on their public funding or claims for equivalent public funding by private competitors.

AFTINET and a number of Australian health organisations have sent a letter to Trade Minister Richard Marles outlining our concerns that the SOE proposals in the TPPA could affect the operation of our public hospitals. We ask that public hospitals be clearly excluded from these proposals.

[Read the letter here.](#)

Trade deal threatens essential services in the Pacific Islands

PACER-Plus negotiations towards a free trade agreement involving Australia, New Zealand and 14 Pacific Island countries occurred last month in Port Vila, Vanuatu, and it is expected that trade in services was discussed.

However, opening up all service 'markets' in vulnerable economies poses many threats to our island neighbours. Writing for [Eureka Street](#), AFTINET campaigner Jemma Williams explains why.

Finagling free trade in the Pacific

Eureka Street | Jemma Williams | 15 August 2013

Negotiations towards a free trade agreement involving Australia, New Zealand and 14 of our neighbouring Pacific Island countries are underway this week in Port Vila, Vanuatu.

The agreement, known as [PACER-Plus](#), aims to enhance development through greater trade in the region. However, the negotiations are being carried out on unequal playing field, with Australia and New Zealand leading the talks which involve largely small, underdeveloped island nations, five of which are listed by the United Nations as among the least developed countries in the world. Recognising this, Australia and New Zealand are funding the negotiations as well as providing assistance to Pacific Island countries to implement the agreement.

Despite insisting that promoting development in the Pacific is the priority, Australia stands to gain more than most of the Pacific Islands, which already have tariff-free access for their goods into Australian markets under previous trade arrangements. Among the issues expected to be discussed in Port Vila is trade in services, which would mean Australian companies, providing services from banking to health and education, would have unrestricted access to Pacific Island markets, and Pacific Island governments would have less rights to regulate them.

The logic for including services in trade agreements is that established private service providers, in this case based in Australia or New Zealand, would be enticed into Pacific markets through deregulation, and Pacific Island nations would benefit from increased access to the service they provide. Indeed, the entry of international telecommunications companies into a number of these island economies did improve mobile phone coverage and connectivity, including in rural areas.

However, opening up all service 'markets' in vulnerable economies poses many threats. The inclusion of services in a free trade agreement restricts the regulation of any service which could be considered to have any commercial activity or where there are one or more service providers. This deregulation and entry of private service providers is often followed by pressures to privatise essential services like water. In countries like Argentina and Bolivia private companies have [raised](#) prices and have not invested in infrastructure in unprofitable areas.

Additionally, services are typically negotiated on what is known as a 'negative list basis' — meaning that all services are included unless they are specifically excluded. This means that all services now and *in the future* would be subject to these rules even in light of new environmental or social problems or new research. This would undermine governments' policy space to address pressing development concerns like climate change, which is already affecting Pacific Island countries.

Many Pacific island nations are already struggling to provide essential services such as water, health and education. Having access to many of these services is a basic human right. Implementing policies to ensure the equitable distribution of essential public services throughout all areas of the country is one of the essential responsibilities of government. Liberalising trade in services could hinder the ability of government to fund or provide local or government-owned services to their most vulnerable populations.

Healthcare is a typical example. Foreign healthcare providers are likely to establish themselves in wealthy areas, profiting by charging high prices to those who can afford it. They would not service rural populations where the majority of people are unwaged and survive on subsistence agriculture. Governments would still have to fund or provide health care to the most vulnerable populations. Additionally, the stark inequalities in healthcare provision could lead to a 'brain drain,' where the most qualified professionals seek work in clinics which serve the wealthy.

Many Pacific Island nations question what they would gain from PACER-Plus. Earlier in the year Papua New Guinea's trade minister [said](#) PNG would gain nothing from the negotiations and he would consider withdrawing. The islands are pushing for the inclusion of temporary labour mobility rights so that their citizens will be able to gain visas to work in Australia and New Zealand, as well as more development assistance. Neither of these issues is normally included in free trade agreements,

but they are being used as bargaining chips for Pacific Island nations to concede access to Australia and New Zealand access to their services markets.

If the Australian and New Zealand governments really want to achieve development in the Pacific, it is difficult to understand why they are pushing these islands to reduce their barriers to trade in a manner which could restrict their achievement of human development goals.

Read the original article at <http://www.eurekastreet.com.au/article.aspx?aeid=37081#.UiBQpT-vh4P>

Tobacco clause might burn free trade agreement

During negotiations for the Trans-Pacific Partnership Agreement (TPPA) in Brunei, AFTINET briefed the [Sydney Morning Herald's](#) Peter Martin, who reported on the unresolved issues, including the debate over the US tobacco proposal which would still allow tobacco companies the right to sue governments when nations put in place regulation in the interests of public health. His article follows.

Tobacco clause might burn free trade agreement

Sydney Morning Herald

August 26, 2013

The timetable for completing the world's largest free trade agreement is slipping as negotiators in Brunei express concern at US proposals to give tobacco companies the power to sue governments and to weaken government control of state-owned enterprises.

The Trans-Pacific Partnership negotiations now include Australia, Brunei, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam, as well as Japan, which joined in this year.

Australia absented itself from the trade ministers' meeting because of the election.

In a blow to US hopes of wrapping up the negotiations this year the joint statement released in Brunei described the remaining issues as "sensitive and challenging".

The US had wanted to finish talks this year to fit in with a domestic political timetable.

Before the meeting New York mayor Michael Bloomberg accused President Barack Obama of bowing to "pressure from the tobacco industry" to dump a so-called safe-harbour provision that would have protected nations such as Australia from being sued by tobacco companies for restricting the sale of tobacco products.

Earlier drafts had included the safe-harbour clause in light of "the unique status of tobacco products from a health and regulatory perspective".

Mr Bloomberg said the tobacco industry had been "joined by other business interest groups that were fearful the safe-harbour provision would lead to other products being singled".

Australia's Labor government has said it would not accept any provisions that would allow corporations to sue Australian governments. The Coalition has given no such commitment.

Malaysia's trade minister Mustapa Mohamed told the meeting he would not be bound by arbitrator-proposed clauses that would loosen Malaysia's grip on state-owned enterprises and threaten its "affirmative action" program of giving preference to ethnic Malays when awarding contracts.

He said other countries shared his concern about state-owned enterprises.

The negotiations will continue at an officials level before a ministerial meeting at APEC in Bali in October.

Read more: <http://www.smh.com.au/business/tobacco-clause-might-burn-free-trade-agre...>