



AFTINET
Australian Fair Trade
& Investment Network Ltd

128 Chalmers Street
Surry Hills, NSW, 2010
Phone: 02 9699 3686
Fax: 02 9699 3717
Email: campaign@aftinet.org.au
ACN 097 603 131
ABN 83 659 681 462
www.aftinet.org.au

Briefing paper on the Trans-Pacific Partnership (TPP) and the Korea-Australia Free Trade Agreement (KAFTA), July 2014

The Korea-Australia Free Trade Agreement (KAFTA)

The bilateral Korea-Australia Free Trade Agreement (KAFTA) was approved by Cabinet and signed in April. A major concern is that this agreement includes Investor-State Dispute Settlement (ISDS), which gives foreign investors special rights to sue governments for damages in an international tribunal if they can claim that domestic legislation has 'harmed' their investment.

ISDS means that local, state and federal governments could be sued over domestic legislation

ISDS is widely opposed by the Australian community. The Howard government refused to include ISDS in the Australia-US free trade agreement, and a 2010 Productivity Commission study found that there were no benefits from ISDS and recommended against it. The previous ALP government had a policy against including ISDS in any trade agreement.

The threat of an ISDS case can reduce the ability of governments to legislate democratically in response to community concerns, and there are many examples of ISDS cases launched over health and environmental legislation. Just one of these is the US Lone Pine mining company, which is currently suing the Canadian Québec government for \$250 million because of an environmental review of gas mining, which was conducted in response to community concerns. Including ISDS in KAFTA means that at least three Korean companies who are investors in major controversial mining projects in NSW could sue the state government if the government refuses approval or introduces more environmental regulation.

The Trade Minister has claimed that there are "safeguards" in KAFTA to exclude public health and environmental legislation. However, these have not been effective in other agreements. The US-Peru FTA includes the same "safeguards" as KAFTA, yet the US Renco lead mining company was able to use the agreement to sue the Peruvian government after it was required to clean up its own lead pollution. AFTINET's detailed [submission](#) to the JSCOT and Senate Inquiries into KAFTA provides more evidence of the ineffectiveness of these safeguards.

KAFTA is not in Australia's national interest

KAFTA has now been tabled in Parliament and is being reviewed by the Joint Standing Committee on Treaties. A Senate Inquiry is also underway. After these inquiries Parliament will vote on the implementing legislation which would enable final ratification of the agreement.

The KAFTA National Interest Assessment claims that there will be benefits from KAFTA based on a tiny predicted increase of 0.04% of GDP after 15 years. But this assessment ignores the regulatory risks and costs from ISDS, the losses from zero tariffs, costs associated with copyright changes, and unfair competition from goofs produced without enforceable labour rights and environmental standards. Overall, these costs mean that that KAFTA is not in Australia's national interest.

The Trans-Pacific Partnership Agreement (TPP)

The Australian government is still negotiating the TPP with the US, New Zealand, Canada, Mexico, Peru, Chile, Singapore, Brunei, Malaysia Vietnam and Japan. The negotiations are secret, and the only detailed information about the text has come from leaked documents, industry reports and limited consultation. Most of the agreement is not about traditional trade issues but about changing domestic legislation in ways which suit US commercial interests but would disadvantage many Australians. The key issues are detailed below.

1. Investor-State Dispute Settlement (ISDS)

The TPP is also likely to include ISDS provisions, as present in the KAFTA and explained above. Inclusion of ISDS in the TPP would be even more dangerous in the TPP because it involves 12 countries including the US, and US corporations are the most frequent users of ISDS against health, environmental and other legislation.

2. Stronger patent rights and higher prices for medicines

The US is proposing changes to patent law, (broader scope, patent extensions, data exclusivity, and patents for diagnostic, therapeutic and surgical methods) which would give pharmaceutical companies broader and longer monopoly patent rights and delay the availability of cheaper generic medicines. This would increase costs to consumers and to the public health system.

3. Reducing the ability of governments to regulate medicine prices through the PBS.

The US is proposing to reduce government regulation through schemes like the PBS by precluding therapeutic comparison of new drugs with existing generic drugs, and giving pharmaceutical companies more influence over the listing, pricing and reimbursement schemes for medicines. These changes would lead to higher costs to government and to consumers.

4. Extending copyright at the expense of consumers, schools and libraries

The US proposals would extend copyright beyond the life of the author plus 70 years, to plus 90 or more years, at great expense to educational bodies and libraries, would force Internet Service Providers to police copyright breaches by internet users and could result in criminal penalties for temporary storage of data on the Internet.

5. Reductions in Australian content in film, television, and other media

The US wants to go beyond what was agreed in AUSFTA, which would mean less Australian content in film, television, radio and other media. Local content rules are essential for cultural reasons and for a local media industry.

6. Further reductions in local content for government procurement

Governments should retain the right to have local content in government procurement.

7. There is as yet no final agreement about enforceable labour rights in the TPP

There is still disagreement on definitions of labour rights and how they should be enforced. Trade liberalisation without enforceable labour rights leads to a race to the bottom on labour conditions. The inclusion of enforceable labour rights should be supported.

8. Environmental sustainability

A recent leak of the draft environment chapter shows that there is no agreement for enforceable environmental standards. The inclusion of enforceable environmental standards should be supported.

9. Food labelling.

We know from industry reports that there is a move from food producing companies to standardise and limit the regulation of food labelling. This could restrict GE labelling, listing of ingredients for health or nutrition reasons, and health warnings.

10. Text should be released before Cabinet has made the decision to sign

The text of the agreement will not be available to parliament and the public until after the decision to sign it has been taken by Cabinet. Only then does it go to the Joint Standing Committee on Treaties, but the committee cannot change the text and can only make recommendations. Parliament does not vote on the whole text of the agreement, only on the implementing legislation, which deals with those aspects of the text which require changes to legislation. There are large parts of the text, like investor rights to sue governments, which do not require changes to legislation, but which could limit the ability of future governments to regulate. The text should be released for public and parliamentary discussion before it is signed.

11. Australia unlikely to receive increased market access to the US

The US is insisting on concessions from others in the above areas before it makes any offers for increased access to US markets, and has said that it will not offer any additional market access to countries like Australia with which it already has a free trade agreement.