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Summary Briefing paper on the Trans-Pacific Partnership Agreement (TPPA)

The Australian Government has been involved in negotiations since March 2010 for a Trans-Pacific Partnership Agreement (TPPA) with the US, Chile, Peru, Brunei, Singapore, New Zealand, Vietnam and Malaysia to develop a regional free trade agreement based on the bilateral agreements the US has with four of these countries. This has resurrected many of the issues that were debated in the US-Australia Free Trade Agreement negotiations in 2004.

The Australia US free trade agreement experience (AUSFTA)

The Howard Government negotiated the AUSFTA in 2004. The US government and companies identified a target list of Australian policies as barriers to trade that they wanted to remove or change. Pharmaceutical companies attacked wholesale price controls for medicines under the Pharmaceutical Benefits Scheme (PBS), which ensure Australians affordable access to medicines, and demanded stronger intellectual property rights to delay the availability of cheaper generic drugs. Other targets were Australian content rules in audio-visual media, Australian content rules in government purchasing and labelling of genetically engineered food. The US government also wanted an investor-state dispute process, which would have given US companies the right to sue Australian governments for damages on the grounds that health or environmental 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.

There was strong community opposition to the US agenda in 2004. Opinion polls showed that only one third of Australians supported the agreement. The community campaign did have an impact. There was no investor-state disputes process, no changes to GE food labelling, and limited changes to the PBS and local media content. However, the AUSFTA did result in the creation of a special category of medicines for which higher wholesale prices could be charged, and limited government regulation for Australian content in digital media. The agreement also had very weak labour and environment clauses, which were not enforceable.

US business agenda in the TPPA: resurrecting the AUSFTA

We know from submissions made by US business groups that they want to use the negotiations to obtain more changes to the PBS, stronger intellectual property rights for drug companies, no Australian media content rules, no Australian content in government procurement and no labelling or crop regulation of genetically modified food. They are also still pushing for an investor-state dispute process.

There have been eight rounds of negotiations, the latest in Chicago in September 2011. The aim was to finish negotiations by November 2011, but disagreements with the US agenda have slowed the pace. Unions and community groups linked through AFTINET have called on the government not to agree to US business demands to change health and environmental policies and not to agree to an investor state dispute process. This call was strengthened when the Philip Morris tobacco company demanded an investor state dispute process in the TPPA, then sued the Australian government over its cigarette plain packaging legislation, using an obscure 1993 Hong Kong–Australia bilateral investment treaty. AFTINET also supports strong and enforceable chapters on internationally-recognised labour rights and environmental standards, and we call for the full text of the agreement to be released for public debate before it is signed by the Australian government.

New Australian trade policy on investor-state disputes, medicines and intellectual property

The government's new trade policy announced in April 2011 shows that it has listened to some of these concerns. Using evidence from a Productivity Commission report on Bilateral and Regional Trade Agreements, the government announced that it would not agree to investor-state dispute processes, would not negotiate any further changes to Australian intellectual property law, or any

further changes to the PBS. But there is enormous pressure from the US on these issues, strengthened by a Republican-dominated Congress.

Chicago negotiations: US business agenda threat to health and health groups' response

The US has tabled proposals for expansion of patent rights on medicines. Pharmaceutical companies already have patent rights to charge monopoly prices for medicines for 20 years. Extensions of patent periods and delays in cheaper generic drugs benefit these companies, but increase costs to consumers and the public health system. The US proposals would mean lowering patent standards to allow more patents which make only slight changes to an existing medicine, thus enabling the repeated extension or "ever-greening" of patents; extension of patent terms and data exclusivity which would delay production of generics; removal of public rights to object to new patents before they are granted, which would enable more unjustified patents; and removal of current Australian policy to disallow the patenting of medical procedures, which could impose huge future costs on hospitals.

Under the label of "greater transparency" there are also proposals to restrict the right of governments to use national pricing and reimbursement programs like our PBS. The emphasis is on recognition of innovation in new medicines, without the need to ensure that medicines are affordable to all. Proposals include greater rights for companies to demand higher prices, and to appeal against government decisions about pricing policies. They also want direct advertising of medicines to consumers, a practice which is banned in most countries, except the US, because it leads to overprescribing of medicines. The US is also insisting on the investor state dispute process, which enables tobacco companies like Philip Morris to challenge public health regulation of advertising.

These proposals were tabled in the negotiations at the same time as the US released a public paper on access to medicines which failed to mention them. The proposals met with strong criticism from US state legislators and public health and consumer groups like Doctors without Borders and Public Citizen. The American Medical Association, the American College of Preventive Medicine and other health groups called for the complete exclusion of alcohol and tobacco from the TPPA.

Health researchers from the Public Health Association of Australia have also criticised the US proposals through editorials in the Sydney Morning Herald, the Age and the Canberra Times: see <http://www.theage.com.au/opinion/politics/public-health-at-risk-in-trade-talks-20110914-1k94z.html#ixzz1XyOtY2CC>.

Labour rights and Australian content in government purchasing and media

ALP policy states that trade agreement should be underpinned by commitments to basic labour rights as agreed by most governments through the International Labour Organisation. We want all TPPA governments to commit to enforce these basic rights, including freedom of association, the right to collective bargaining, no forced labour, no child labour and no discrimination in the workplace.

US corporations want unrestricted access to Australian government purchasing contracts. Policies for local employment, and policies for contractors to implement workers' rights in the Fair Work Act and in industry agreements could be under threat.

The US is the world's larger exporter of media products. Australia has local content rules for media to ensure that Australian stories, films and music are heard. US media companies argue that these rules are a barrier to trade, and should be further reduced or abolished. Without these rules we would lose our culture and many jobs would be lost in these industries.

The Australian government should support enforceable workers' rights and ensure that it can continue to have policies for Australian content and workers rights in government purchasing, and for Australian content in media.

Release the TPPA text for public and Parliamentary debate before it is signed

The TPPA negotiations behind closed doors are dealing with issues which should be decided democratically by the Australian Parliament. We call for the release of the full text of the agreement before it is signed, so that it can be exposed to public and Parliamentary debate. There are precedents for this in other trade negotiations. The World Trade Organisation releases draft texts on its website and the Anti-Counterfeiting Agreement (ACTA) draft text was released in 2010.