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1 Resurrecting the US Free Trade Agreement: TPPA public meeting - 16th June 2010

On 16th June 2010 AFTINET, as part of the Trans Pacific Partnership Agreement (TPPA) Campaign, will be conducting a public meeting called: ***“Resurrecting the US Free Trade Agreement: What US business wants from the Trans Pacific Partnership Agreement”***.

The public meeting is also the launch event for a community education leaflet on the TPPA.

The TPPA resurrects all of the issues that were debated in the US-Australia Free Trade Agreement, including price controls under the Pharmaceutical Benefits Scheme, labelling of genetically engineered food, Australian content rules in film and television, whether corporations should have the right to challenge environmental and health regulation, and the how to protect workers’ rights in trade agreements.

The community education leaflet is aimed at explaining the issues and asking the government to ensure these policies are not traded away.

When: Wednesday, June 16, 12 noon

Where: Jubilee Room, NSW Parliament House, Macquarie St, Sydney

MC: Charles Firth, comedian and writer, *The Chaser*

Speakers:

Dr Con Costa, Vice President Doctors’ Reform Society: Pharmaceutical Benefits Scheme

Laura Kelly, Greenpeace campaigner: GE food labelling and crop regulation

Dr Kyla Tienhaara, author of *The Expropriation of Environmental Governance:*

Protecting Foreign Investors at the Expense of Public Policy, Cambridge University Press, 2009: investor-state dispute process

Paul Bastian, National President, Australian Manufacturing Workers Union: Workers’ rights and trade agreements.

2 Trans Pacific Partnership Agreement (TPPA) - UPDATE

Second Submission to DFAT: AFTINET has completed a second submission to DFAT on the TPPA. It has been placed on the AFTINET website’s TPPA resources page. AFTINET’s

first submission remains available. Both can be obtained from: www.aftinet.org.au/cms/tpa-resources-page. The Department of Foreign Affairs and Trade's (DFAT) call for additional submissions remains open.

In **late breaking news**, in an apparent response to a letter from Trade Unions (see Item 4 in this Bulletin), the US has announced it will provide briefings and space for stakeholders who provided comments, including NGOs, at the second round of negotiations in California commencing on 14th June 2010. No such briefings were provided by Australia at the Melbourne launch of negotiations in March.

Update: AFTINET attended a briefing on the TPPA negotiations given by DFAT in Sydney on 14th May 2010. DFAT admitted that "improved" market access will be limited as Australia already has agreements with the majority of TPPA countries. The message was very clear that Australia would have to wait for gains until the expansion of the TPPA to countries that Australia didn't have free trade agreements with.

The relationship of the existing Free Trade Agreements between the eight negotiating countries (United States, New Zealand, Chile, Peru, Vietnam, Brunei, Singapore and Australia) and the proposed Trans Pacific Partnership Agreement remains unclear. DFAT did state that the Australian aim was to have a clause ensuring that the agreement with the "better provisions" would prevail, be it the TPPA or the FTA with the other country. The possibility of such a clause means that we need to fight to ensure that the TPPA does not undermine our successes in the AUSFTA Campaign in 2003-04.

DFAT insists that the main focus is on creating a 21st century agreement which requires new approaches. It was stated that Australia was looking for the agreement to support the WTO and that it should be **WTO Plus**. Australia reportedly sees the TPPA as a "*strategic opportunity to increase economic liberalisation in Asia-Pacific*".

A repeated line during the briefing was that there was a focus on regulatory coherence and often tacked onto responses was the comment that "*it is early days yet*".

When pressed on the subject of an investor-state dispute process the DFAT officials did not rule out the inclusion of such a provision. They were careful to state that "the Minister has serious reservations" about such a clause but said they were doing an assessment of the risks and benefits. They also pointed out that Australia already had such a clause in four existing FTAs mainly involving developing countries. DFAT officials did acknowledge that US firms were more litigious and that this increased the risks for an agreement involving the US.

DFAT officials indicated that whilst financial services are on the agenda it would be undertaken as a positive list approach – as opposed to their preferred negative list approach. That would mean that only those financial services listed would be subject to the agreement.

As we have previously informed members, the long term plan for the TPPA is to expand it to cover additional countries. Pakistan has now indicated that they are interested in joining the TPPA, with reports that the suggestion came from Australian Trade Minister, Simon Crean, in a meeting with Pakistan's High Commissioner in Canberra in April. It has emerged that Taiwan has been seeking to join the negotiations, so far having no success. In addition South Korea is also considering joining in.

This would bring the list of countries participating or openly considering joining the negotiations to 16. The additional countries showing an interest and those that have been invited are Japan, Malaysia, Columbia, Canada, Thailand, Pakistan, Taiwan and South Korea. Over time this list will continue to grow, we will keep you up to date.

Media Coverage: We continue to have some media coverage as these occur they will be placed on our website on the TPPA Campaign media page: <http://aftinet.org.au/cms/tppa-media-reports-our-campaign>.

Organisations: We continue to ask our member organisations to sign on to 9 principles for the TPPA negotiations and over 30 have now signed on. If your organisation has not signed up it isn't too late – this campaign will run for at least the next 18 months. The principles and joint statement are available from the AFTINET TPPA Campaign page: <http://aftinet.org.au/cms/trans-pacific-partnership-agreement/trans-pacific-partnership-agreement>.

Individual Actions: Individuals are encouraged to join the TPPA campaign through our email/letter campaign to Simon Crean. This component will run on our website throughout the TPPA campaign.

We remind organisations that this part of the campaign is available to their membership to participate in. We encourage you to put the following link to the e-mail campaign on your website: <http://aftinet.org.au/cms/tppa-campaign-email-simon-crean-don%E2%80%99t-trade-away-vital-social-policies>

(**Sources:** DFAT Briefing held on 14th May 2010 in Sydney, *The China Post* 30 January 2010, *Chosun Ilbo* May 27th 2010, *Daily Times* (Pakistan) April 04 2010)

3 TPPA could threaten positive budget moves on medicines

The Trans Pacific Partnership Agreement (TPPA) currently being negotiated between Australia, the US and six other countries, raises again the prospect of pharmaceutical companies pushing for higher prices for medicines

But tucked away in the federal budget were some changes to the Pharmaceutical Benefits Scheme (PBS) which will help keep Australian medicines affordable. The budget announced some new groups of medicines in which the effectiveness and wholesale prices of new patented medicines will be compared with cheaper medicines which have the same health effectiveness but whose patents have expired. This is a positive move, as it ensures that consumers get the most effective medicines at affordable prices. This will counteract to some extent the changes that were made in 2007 by the Howard Government as a result of the US-Australia Free Trade Agreement (AUSFTA), which created a special F1 category of medicines which were not compared with others, and therefore had higher wholesale prices.

Why did the US pharma companies want the F1 category? In the US, there is no system of price control and the wholesale prices of common prescription medicines are three to ten times the prices paid in Australia, leading to higher retail prices for consumers. Under the Australian PBS, prices are negotiated with the pharmaceutical companies based on clinical effectiveness and value for money as described above. The listed medicines are then made available for sale at regulated subsidised retail prices, currently \$5.30 for pensioners and other low income groups and \$33.30 for others. The difference between the wholesale price

and the subsidised retail price is the cost of the PBS to taxpayers. If wholesale prices rise, there is pressure on the government to raise the regulated retail prices to try to contain costs.

During the debate on the AUSFTA, US pharmaceutical companies argued that Australia's system prevented them from enjoying the full benefits of their intellectual property rights by comparing the price and clinical effectiveness of new drugs with cheaper generic drugs. A strong community campaign helped to retain the PBS reference pricing system for many medicines.

But the AUSFTA set up a Joint Medicines Working Group of US and Australian representatives and in 2007 the Howard Government made changes to medicines policy that enable pharmaceutical companies to receive higher wholesale prices for some medicines, by creating the new F1 category of medicines that are supposed to have unique health benefits. However the definition of these benefits and whether they justify the higher prices has been challenged by health experts.

Australian medical studies published in 2010 show that the higher priced F1 medicines are an increasing share of the PBS budget, without enough evidence that they have proportionally improved health effects. A study of the cost of statin drugs, very widely prescribed to lower blood cholesterol levels, published in the *Medical Journal of Australia*, found that the proportion of more expensive patented statins in the F1 category is a growing share of the Australian market, without clear evidence that these are more clinically effective. This contrasts with Britain, where the use of cheaper generic statins is increasing, based on studies which compare both clinical outcomes and cost effectiveness. The article also noted that prices of generic drugs are higher in Australia than elsewhere. The article estimates that savings of at least \$3.2 billion could be made on statins over the next 10 years if the British policy of using generic drugs were adopted. The article concludes that:

“The key question is whether the health benefits resulting from using statins under patent...justify the substantially higher subsidies from the PBS...while this has been examined in other countries, there has been little consideration of this question in Australia”.

A government review of PBS costs published in February 2010 confirmed that the F1 category is contributing to higher costs for the PBS than were predicted. Given these trends, the Government attempted to address some of these cost issues in the May 2010 federal budget by announcing some new therapeutic groups of drugs which would enable reference pricing to be applied to more patented drugs.

Medicines Australia, which represents the major pharmaceutical companies, made strong submissions against the new therapeutic groups, supported by the Liberal-National Coalition parties, who may oppose the legislation in the Senate.

The TPPA provides another opportunity for the pharmaceutical industry to argue that policies like the 2010 Budget changes violate their intellectual property rights and are a barrier to trade.

The US pharmaceutical industry submission to the US Government Trade Representative advocates that the TPPA should “address intellectual property rights and market access barriers” and that “At the beginning of the TPP negotiations, the parties should agree to a

‘standstill’ on implementing new policies that might impede trade in innovative products”. “Impede trade in Innovative products” means that there should be no reference pricing or other controls on the wholesale prices that pharmaceutical companies charge for medicines.

The Australian government should stand firm against these or any other proposals in the TPPA negotiations which could prevent it and other governments from making positive changes in the public interest to reduce the cost of medicines, as it has just done in the Federal Budget. For more information, and to send a message to the Trade Minister, see www.aftinet.org.au

References

Faunce, T, *et al*, “The Impact of the Australia – US Free Trade Agreement on Australian medicines regulation and prices,” *Journal of Generic Medicines*, Vol. 7, 1, 18–29, January 2010.

Clarke, P and Fitzgerald, E, “Expiry of patent protection on statins: effects on pharmaceutical expenditure in Australia”, *Medical Journal of Australia*, 27th April, 2010, p. 8, found at www.mja.com.au/public/issues/192_11_070610/cla11057_fm.html.

Department of Health and Ageing, “The Impact of PBS Reform”, *Report to Parliament on the National Health Amendment (Pharmaceutical Benefits Scheme) Act 2007*, Commonwealth of Australia, 2010, p.15.

Medicines Australia, Presentation to the Senate Community Affairs Committee Reference Inquiry into Consumer Access to Pharmaceutical Benefits, May 7, 2010, found at www.aph.gov.au/hansard/senate/commtee/S12998.pdf.

Pharmaceutical Research and Manufacturers of America, January 25, 2010, *Submission to the Office of the US Trade Representative*, pp. 4-5, found at www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a83601.

4 Union leaders call for information and consultation on the TPPA

It's time for the next trade agreement to be a "21st century agreement." That's the advice that top union leaders from seven Pacific rim nations have for seven trade ministers who have started negotiating an unusual trade pact called the Trans Pacific Partnership Trade Agreement (TPPTA).

In their May 10 letter, the labor leaders, including President Richard Trumka of the AFL-CIO, urged the seven trade ministers, including Ronald Kirk of the United States, "to break from past practice and negotiate in a more open, transparent, and participatory manner."

Toward that end, the union leaders recommended the creation of a joint TPPTA Website that would convey a full range of information about the on-going negotiations, including "white papers, draft texts, offers and counter-offers, press statements, and declarations."

Access to the Website, and posting on it, would not be limited to the government side, but would "allow civil society to post documents (analysis, proposals, etc.) relevant to the negotiations by topic or by country."

Another proposal is to establish "side rooms" (apart from the negotiating venue) "where accredited civil society representatives could be briefed from time to time during negotiations' and where those representatives could also present their views.

"Consultation must also be on-going," the union letter emphasized. "Throughout the

negotiation process, governments must establish regular channels to ensure [that] civil society, including unions and employers, are able to meaningfully engaged in the negotiating process."

Generally, such consultations have been routinely granted only to employer representatives - a point that the letter did not make.

In its final paragraph, the letter warned: "Without implementing at least these measures, any final agreement cannot count on broad civil society support." Translation: the agreement may not fly if employers are its only supporters.

The first round of TPPA talks took place in Melbourne, Australia, in mid-March. The next round is scheduled in June in the United States.

At present, besides the United States, only Australia, Brunei, Chile, New Zealand, Peru, Singapore, and Vietnam are participating in the trade talks. Others are likely to join.

(The joint letter of May 10 is available from our website – see new resources below).

(Source: - <http://blog.aficio.org/2010/05/12/global-union-leaders-open-trans-pacific-trade-talks/>)

5 WTO Update

Significant distance still remains between the various players in the WTO. Attempts are being made by the US and other countries such as Australia to push the US agenda for the Doha round of negotiations.

The 'New G19' group of the WTO met on 19-20 May and included the EU, US and Australia as well as Canada, Switzerland, Mexico, Japan, Brazil, India, China, Argentina, Indonesia, South Africa, Burkina Faso, Mauritius, Egypt, Barbados and Zambia. No progress towards completion of the Doha round of negotiations was reported. The meeting reports are that the US remains unhappy with offers from developing countries on services and market access and is demanding they put more on the table.

Prior to the meeting, the US Ambassador to the WTO, Mr Michael Punke, stated that there was a "need to increase the level of ambition in the Doha talks". At the same media briefing on May 10th he suggested that success or failure of the Doha round depended upon advanced developing countries such as India, China and Brazil to "accept the responsibility and leadership" that goes with their new position in the global economy.

Importantly the US still remains without Trade Promotion Authority and its mandate to negotiate and US political will has been questioned by other countries.

(Sources: Third World Network, SUNS – South North Development Monitor #6922, DFAT WTO Doha Round April Bulletin)

6 PACER Plus Update

Unlike other Free Trade Agreement (FTA) negotiation, DFAT have failed to provide publicly available updates on the PACER-Plus negotiations. These would normally be available from the DFAT website. The PACER-Plus negotiating group remains the only trade negotiating group outside of DFAT's Free Trade Division and sits within its Pacific Affairs division.

Reports out of the Pacific indicate that the latest round of talks, which were held in Pohnpei (Federated States of Micronesia) on 15th to 17th April, have again been dominated by Australia and New Zealand. Both nations are pushing for a rules-based FTA that reflects **WTO Plus** trade rules. This calls for the Island nations to go beyond the requirements of the WTO, despite the majority of them not being able to meet the existing WTO requirements.

Australia and New Zealand provided several papers to the discussions with both providing papers on Rules of Origin and Technical Barriers to Trade. The Australian papers appeared as though written for inclusion as a chapter in the proposed FTA, whilst the New Zealand papers canvassed areas for discussions.

Australia also supplied papers on the areas of Development Assistance, Sanitary and Phytosanitary and Customs procedures. The papers failed to provide room for discussions outside the narrow view of Australian officials. In contrast the New Zealand papers laid out suggestions on the way talks could be structured rather than concrete suggestions.

It is important to note that there was no discussion of establishing a 'unique' trade and development agreement reflecting the needs of the Pacific Island states. This is despite assurances from Trade Minister, Simon Crean that, this agreement would be unique and was not primarily about free trade but about development.

Future Event: Planning has commenced for a follow-up of the Health and PACER-Plus Impacts conference that was held in Melbourne in March. The follow-up will occur in Sydney during the second half of July 2010. Details will be provided in our next bulletin and by email alert.

(Sources: Pacific Trade Information Network, Pacific Network on Globalisation)

7 FTA Updates

The following FTAs have had some movement or negotiations since our last bulletin.

Japan-Australia FTA

As we prepare the bulletin news has broken that the Japanese Prime Minister has resigned. This can only serve to delay progress further. We will monitor developments.

The 11th round of talks occurred in Canberra from 19-23 April. For the first time discussions included chapters on "food supply" and "improved business environment", with Australia agreeing to include these chapters. We are seeking further explanation of these discussions.

In the area of trade in services, DFAT claims that the text is "largely agreed" but issues remain particularly around the application of a chapter on subsidies. There appears to still be significant disagreement on telecommunications services, financial services, legal services and education. The areas of disagreement appear to be the main areas of interest for Australia in services.

DFAT reports that there was some progress on an investment chapter but that there are a number of outstanding issues including the inclusion of an investor-state dispute process.

In another set-back for the Australian delegation, reports indicate that the Japanese delegation again refused to make any concessions on the agricultural market access. Australia had adopted a tactic of focusing on commodity specific requests, such as increased access for wheat, in an effort to move the agricultural talks but has had no real success.

The failure to gain movement in the agricultural sector, particularly with no movement in the services area, should mean further delays. DFAT are under substantial pressure from the Australian agricultural lobby not to come to agreement until there is significant movement by the Japanese on agriculture.

China-Australia FTA

The next round of negotiations will occur later this month, a delay of almost 6 months since the last round. Trade Minister Simon Crean held talks with his Chinese equivalent in mid-May during a trip to Beijing and the opening of the Shanghai World Expo. The delay combined with the Trade Minister's discussions reinforces that significant differences still exist.

Republic of Korea – Australia FTA

As we prepare this bulletin round five of negotiations are underway in Canberra. We will report on them in the next bulletin.

Malaysia-Australia FTA

We are currently waiting for reports on the 7th round of talks held in Kuala Lumpur from 19th to 23rd April 2010. To date DFAT has not provided an update on the negotiations.

Australia-India FTA Feasibility Study

The India-Australia FTA study was officially released on 4th May 2010. It recommends an FTA between the two countries and was welcomed by the Australian Trade Minister, Simon Crean, and his Indian counterpart the Minister for Commerce and Industry, Anand Sharma.

At this stage neither government has stated when, or if, the negotiations of an FTA will commence. This indicates that there are still some issues to be resolved. AFTINET will continue to monitor this situation.

(Sources: DFAT website – www.dfat.gov.au, DFAT Newsletter 11, Eleventh negotiating round of the Australia-Japan FTA)

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

Some new resources available on our website:

AFTINET Second submission to DFAT on TPPA: <http://aftinet.org.au/cms/tpa-resources-page>.

Letter from Seven Trade Union Peak Organisations, calling for transparency, sent to the relevant Trade Ministers in each TPPA country: <http://aftinet.org.au/cms/tpa-resources-page>.

A report on forum held in Melbourne in March 2010 called “*Public Forum on Trade and Health in the Pacific. PACER Plus: Should we be concerned?*”:
[http://aftinet.org.au/cms/sites/default/files/Trade&HealthPacific\(ProposedPACERPlus\)MelbourneForum\(2010_0312\)Report.pdf](http://aftinet.org.au/cms/sites/default/files/Trade&HealthPacific(ProposedPACERPlus)MelbourneForum(2010_0312)Report.pdf).