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1. AFTINET Annual Dinner – 10th Anniversary
2. Trans Pacific Partnership Agreement - UPDATE
3. 2010 Planning Meeting Outcomes
4. WTO Update
5. FTA's UPDATE
6. General Trade News
7. Coming Events
8. New Resources available on our website: www.aftinet.org.au

1 AFTINET's 10th Anniversary Annual Dinner.

Date and Time: 15th April 2010. Get there at 6:30pm for a 7:00pm start.

Location: Erciyes Restaurant – 409 Cleveland Street Surry Hills. (A few blocks from Central Station)

Cost: \$60.00 per person (tables of 10 available)

Get in early and book now through the AFTINET Office. Put it into your diary now.

2 Trans Pacific Partnership Agreement - UPDATE

As previously reported 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. Malaysia has said it will wait and see what happens at the first meeting. Colombia has now also expressed an interest in joining the negotiations, taking the potential membership to 11.

We asked our member organisations to sign on to 9 principles for the TPPA negotiations and over 30 have now signed on. The principles and joint statement (available from our websites TPPA Campaign page: <http://aftinet.org.au/cms/trans-pacific-partnership-agreement/trans-pacific-partnership-agreement>) were sent to Trade Minister Simon Crean on 12th March 2010. If your organisation has not signed up it isn't too late – this campaign will run for at least the next 18 months. The campaign has gained significant media coverage and is still in its earliest stages. Some of the media articles are available from our website on the TPPA Campaign page.

Also available on the TPPA Campaign page is our email/letter campaign to Simon Crean. It will run on our website throughout the TPPA campaign and is available for individual members to get involved.

Of significant concern to AFTINET and its members are statements made by the Australian Ambassador to the US Kim Beazley on March 2nd, in testimony to the United States

International Trade Commission. These comments signaled that negotiations to create the TPPA should put all issues on the table and not automatically keep in place exemptions from market access commitments contained in current free trade agreements the U.S. has with some of the countries now participating in the TPPA negotiations.

"We will take the view that all of that [market access] is on the table in the negotiations of this TPP because we acknowledge that this is supposed to be an outcome that is better than anything that we've got being tossed around at the moment".

According to Beazley, all countries that are currently participating in the TPPA talks share the view that all issues will be open for discussion at the outset of the talks. New Zealand Ambassador Roy Ferguson also said during the hearing that the TPPA talks should aim for "new benchmarks for quality and ambition" for trade deals.

These statements confirm we are right to be concerned for the hard won victories of the Aus-US FTA campaign. They confirm that the PBS, local content, labelling laws, foreign investment rules, government's ability to regulate essential services, quarantine regulations, local content in government purchasing policy and more are under threat. They also confirm that an investor-state disputes process is on the table.

The first of four official meetings to kick off the negotiations occurred in Melbourne on 15th-19th March 2010. Four negotiation meetings are planned during 2010, the next to occur in the USA in mid-June, Brunei has offered to host the third round in September and there is no venue is yet set for the fourth round in December.

It would appear from reports that the first meeting was in effect one to reassure officials and to exchange experiences and commonalities. The US has not determined its negotiating position yet and this probably contributed to the first round being very limited in scope. It has emerged that the big ticket items of agriculture and services liberalisation are definitely part of the agenda.

The negotiators broke into 6 working groups on different clusters – such as Environment, Labour, Agriculture and Services liberalisation. Over 20 different subject areas were discussed. All the groups undertook some big picture discussions around what a 21st century agreement was, what it meant, what it would look like, what it would include. This is still unresolved. All the working groups discussed historic perspectives and experiences - for example technical barriers - and what their experiences had been in previous negotiations. Information was exchanged on negotiation systems.

The Chief Negotiators also discussed transparency, development and regional integration, and how to incorporate them, how to progress the agenda. They discussed regulatory conventions and cohesion and how to involve Small and Medium Enterprises (SMEs).

Consultation in Australia: DFAT informed AFTINET that formal consultations with stakeholders will be held over the next few weeks – a consultation paper will be produced. Round tables are to occur in the first week of May – with one to occur in Sydney.

The AFTINET website is being regularly updated with current information about the TPPA. Please regularly check the AFTINET website for updates on this campaign.

3 2010 Planning Meeting Outcomes

On 10th February 2010 AFTINET held its annual planning day. This is an opportunity each year for members to get involved early and help plan the new years campaign and activities. This years meeting was held in PSA House in Sydney and endorsed the following three campaigns and their objectives as AFTINET's 2010 focus.

Trans Pacific Partnership Agreement (TPPA) Campaign Objective: to ensure that the TPPA does not weaken current public interest legislation on the PBS, Australian media content, investment regulation, quarantine and food regulation, does not give rights to investors to sue governments, and is based on strong and enforceable labour rights and environmental regulation.

Pacific Agreement on Closer Economic Relations (PACER-Plus) Campaign Objectives: Work with Pacific partners, amplifying their voices and concerns to stop a bad agreement from being signed, ensuring development is central to the relationship between Australia and the Pacific.

Climate Change Campaign Objectives: To raise community awareness of the connections between climate change and trade/market ideology and the role it plays in exacerbating climate change and impeding needed action. Include in all lobby trips and forums on specific actions.

It was agreed that, because of the TPPA's size, composition, very threatening nature and ability to impact on other FTAs, the TPPA Campaign needed to be our number one priority. Lobbying events, email campaigns, forums and the like will be integral to this campaign.

PACER-Plus is still a very important campaign for AFTINET and will be the second major campaign of 2010, continuing our good work of 2009. The planning group agreed that Climate Change and Trade needed to be included in all of our other Fair Trade Campaigns. This is a natural progression to our campaign to highlight the impacts of trade related activities and rules on climate change and the ability of governments to respond to climate change.

It was agreed that because of the current state of play in negotiations of Australia's other proposed free trade agreements, including WTO negotiations, that there is limited likelihood of any of them developing substantial movement this year. They should be monitored.

The AFTINET working group met on 10th March 2010 to endorse the outcomes of the planning meeting.

4 WTO Update

Australia has appointed a new Ambassador to the WTO – Tim Yeend – a longtime trade official with DFAT and an unreformed neo-liberal free trader. He previously headed up the commencement of the TPPA negotiations, Gulf Cooperation Council FTA and negotiations at the WTO.

The WTO stocktake meetings, held from 22nd-26th March 2010, confirmed that little progress has been made and that many differences still exist between the countries and various groupings in the Doha Development Round of negotiations. WTO Director General, Pascal Lamy, has conceded that there has been little progress and that there is a need for 'political will' to be exercised.

Egypt's representative sums it up well, on behalf of the Arab Group:

“We even seem to have difficulty in agreeing on an effective stocktaking exercise, that would be able to deliver the necessary breakthrough in the negotiations. It is also not clear for some, as to what this exercise really means, or how its results would guide us to conclude the Round this year, needless to mention the lack of clarity and understanding for some of where we actually are in the negotiations, and the road ahead.”

The Director General of the WTO reported that there is wide recognition that where the gaps are clear, political decisions will be needed as part of the final package and that where the size of the gaps are less clear, further technical work will be required before moving towards political consideration. In other words, he believes the WTO needs a mix of technical and political preparations to re-start movement of the Doha Development Round.

It is safe to take the view that this means the round will not be concluded in 2010 and in all likelihood not in 2011. Emerging from a meeting of the Trade Negotiating Committee of the WTO, Indian Additional Secretary, DK Mittal stated:

“This is not part of the (Doha) Ministerial Mandate of 2001. They have delayed it to 2010 and it might go up to 2015. Does this mean we disregard the mandate?”

The WTO has conceded that it will need to utilise the numerous up-coming gatherings that have already been scheduled, such as the Cairns Group, OECD and APEC, “to foster and facilitate an on-going and supportive ministerial dialogue on the DDA [Doha Development Agenda]”.

AFTINET will monitor these meetings to ensure that we are up-to-date with the political movement around the Doha Development Round of negotiations.

5 FTA Updates

PACER Plus

The first set of negotiations to be undertaken by officials was postponed after the Chief Trade Advisor (CTA) refused to sign his contract and criticised the Pacific Island Forum Secretariat. AFTINET and the wider network were involved in supporting his calls and added to the pressure – a success for us and the network (and the CTA).

There is significant concern about the potential changes to the Australian government’s commitment to the Pacific. One of the most welcome changes brought about by the Rudd Government was the appointment of a Parliamentary Secretary for Pacific Islands Affairs, occupied by Duncan Kerr until October last year when he announced his retirement. The Rudd government has not moved to fill this vacancy. This role along, with the soon to be vacant Parliamentary Secretary for International Development Assistance, currently occupied by Bob McMullan, have been key to the development of closer ties with Pacific countries.

There had previously been a Parliamentary Secretary looking after Pacific Island Affairs during the Keating government. This position was abolished under John Howard and Alexander Downer, leaving the Pacific far down the list of priorities. The combined work undertaken by the occupants of both roles under the Rudd government have gone a long way towards healing the worst of the relationship problems created under the Howard government.

The concern is that the positions will be abolished after the next federal election, signalling another downgrading of relationships with the Pacific. No moves are currently underway to

replace Duncan Kerr or to confirm that the Parliamentary Secretary for Pacific Islands Affairs position will remain. There is now concern that position of Parliamentary Secretary for International Development Assistance will also disappear. Both positions are important to the direction of PACER-Plus.

Kerr in particular has facilitated cultural and sporting exchanges between the Pacific Island Countries and Australia, improving our understanding and connections with our neighbours from the Island Countries and enriching our society. The failure to fill this key position and commit to continuing with it post election makes no sense.

Members should take the time to write to Kevin Rudd and ask him to commit to it.

Australia-Japan FTA

There should be no movement or developments until after the Japanese Upper House elections are held in mid-2010 and the Australian federal elections later in 2010.

Australia-China FTA

The 14th round of discussions occurred on 24-26 February 2010, after a 14 month hiatus. There are still significant differences between the two countries on market access for goods – with differences over agriculture remaining significant. There is also a gulf between the two on services and investment. It would appear China is particularly interested in access to education services and also the movement of natural persons (temporary labour migration).

In a door stop interview on 24th February, Simon Crean also indicated these gaps but effectively said Australia would accept the same level on agriculture access as New Zealand, provided we got better services access, continuing the trend of the government to trade off agricultural interests for the services sector. Crean also seemed to indicate that there was room to move in the investment area as it was as much in Australia's interests as China's.

Republic of Korea

Again no meetings or movements since last report, though round four is underway in Seoul as this bulletin is written.

Of significant concern here is the number of common FTA partners Australia and South Korea have, and therefore the ability to agree on a number of issues common to all those FTAs. This could lead to quick movement on this FTA and as a result we will be keeping a close eye on each round of negotiations.

Australia-Malaysia FTA

The last set of discussions occurred in Canberra on 7-11 December 2009. DFAT said they were constructive and that they went smoothly – draft texts were produced and preliminary exchanges occurred on market access and draft proposals. The parties are yet to engage on the most sensitive issue – i.e agriculture.

As with the proposed Korean FTA there is some basis for them to start consolidating text from common agreements i.e ASEAN-Aus-NZ FTA.

The next meeting is scheduled for Kuala Lumpur in April 2010.

Despite the commonalities 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, with the new release date set for some time on the first half of 2010. Whilst there is not enough clear information as to the issues stopping its release, we can speculate that violence against students and a ban on uranium sales are some of the problems.

AFTINET will keep a close eye on the feasibility study and respond to it when it is released. AFTINET will also keep on top of any developments of the proposed FTA over the coming months.

Australia-Gulf Cooperation Council (GCC) FTA

No changes since the last bulletin – no meetings have been held or scheduled.

Australia-Indonesia FTA

There has been no movement on this potential FTA since the Feasibility Study was released in 2008. It remains on DFAT's agenda but appears to be going nowhere in the immediate future.

6 General Trade News

Could this be the start of a different approach? – Not Likely - The WTO's Agriculture Committee has moved to make members' exchanges on their policies more readily available to the public. For the first time, questions and answers on farm trade policies in the 10 March 2010 meeting are being compiled into official WTO documents, with restricted circulation at first and then available publicly after 60 to 90 days. This is the link: http://www.wto.org/english/news_e/news10_e/ag_com_10mar10_e.htm

Tobacco Company Files Claim against Uruguay over Labelling Laws

This is an interesting article that highlights the risks of an investment agreement in terms of a government's right to legislate in the public interest.

Measures taken by Uruguay to deter smokers have drawn a legal challenge by one of the world's largest tobacco companies under a treaty designed to protect foreign investors. Philip Morris, the maker of Marlboro cigarettes, objects to three recent regulations enacted by Uruguay that restrict the branding that can be featured on cigarette packages. Under Uruguayan law, health warnings must cover 80 percent of each cigarette package. The company argues that this restriction prevents it from effectively displaying its trademarks. Tobacco companies have complained in the past that cigarette-labelling measures violate international law. In 2001, for instance, Philip Morris argued that Canada's proposal to prohibit the descriptors 'light' and 'mild' were in breach of certain investment provisions in the North American Free Trade Agreement.

While health warnings on cigarette packages are commonplace today, Philip Morris charges that Uruguay's measures are 'extreme' and 'unprecedented', going beyond what is necessary to reduce the harm caused by smoking. The rules have required it to withdraw several brands of its Marlboro cigarettes, leading to a "very substantial loss of market share," a spokesperson for the company told Bridges.

The rules "won't stop people from smoking; it just makes people switch brands," said the Philip Morris spokesperson.

In response, three subsidiaries of the Swiss-headquartered company filed for arbitration on 19 February with the World Bank's International Centre for the Settlement of Investment Disputes, claiming violations of the Switzerland-Uruguay bilateral investment treaty. Bilateral investment treaties provide a range of guarantees to foreign investors, typically including protection against expropriation and guarantees that investors will be treated fairly and not discriminated against vis-à-vis domestic investors. The definition given to 'investment' also tends to be broad, encompassing intangible rights like trademarks. In this case, Philip Morris argues that Uruguay has expropriated its intellectual property without compensation; has failed to treat its investment fairly and equitably; and has unreasonably impaired the use of its investment.

Philip Morris declined to estimate the damages it seeks in its claim, remarking only that they are 'substantial'.

A TRIP to the WTO?

Philip Morris has long contested that so-called 'plain-packaging legislation' - regulations that prohibit branding on cigarette packages - run afoul of international trade and investment rules.

Last year Philip Morris commissioned an [opinion](#) from the law firm Lalive, which concluded that requiring cigarettes to be sold in generic packages would breach several obligations under the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

The law firm points out that TRIPS prevents governments from discriminating against trademarks based on the nature of a particular good or service.

"A plain packaging measure would ... create a two-tier system: one which severely restricts the use of trademarks and is only applicable to tobacco companies, and another which affords the minimum standards of protection to all other products," argues the firm.

While TRIPS allows measures to protect public health, Lalive argues that plain packaging "goes overboard." It is "clearly not the least restrictive measure available to protect public health."

Why investment arbitration?

Philip Morris's decision to challenge Uruguay under an international investment agreement highlights the different methods for settling investment and trade disputes. A WTO dispute would need to be taken up by a member government, while the Switzerland-Uruguay bilateral investment treaty, like many international investment agreements, permits the foreign investor to arbitrate directly with the host government.

In effect, the investor-to-state dispute mechanism extinguishes the political considerations inherent in the WTO's government-to-government procedure.

Indeed, a WTO challenge by Switzerland, home of Philip Morris International, seems highly unlikely given that the Swiss also introduced health warnings on cigarette packages in 2010. In Switzerland, 56 percent of the package must be covered by health warnings, and labels such as 'light' and 'mild' are prohibited.

Source: ICTSD reporting - <http://ictsd.org/i/news/bridgesweekly/71988/>

7 Coming Events:

Public Forum – Will PACER Plus damage population health in the Pacific?

When: 12-13 April 2010

Location: Ground floor lecture theatre (G04), City Campus, La Trobe University - 215 Franklin St, Melbourne

Will PACER Plus damage population health in the Pacific? Some commentators fear that it may. See http://phmoz.org/wiki/index.php?title=Trade_and_Health_in_the_Pacific for background.

This forum will bring together researchers, activists and health professionals from Australia and the Pacific to consider a range of health issues at stake in the current renegotiation of the Pacific Agreement on Closer Economic Relations (PACER) as PACER Plus.

Health practitioners, researchers, academics and activists, along with others with an interest in the impacts of trade agreements in the Pacific are invited to attend.

This forum is a shared initiative of the People's Health Movement Australia (PHM Oz), the La Trobe Institute for Human Security and the Public Health Association of Australia.

There is no charge for this event.

Registration

To register, please complete the registration form available from the PHM Oz website (<http://phmoz.org/>) and send it to Cassandra Fletcher (C.fletcher@latrobe.edu.au) or Deborah Gleeson (d.gleeson@latrobe.edu) by 1st April 2010. Registration forms may also be mailed to Deborah Gleeson, School of Public Health, Health Sciences 2, La Trobe University Bundoora VIC 3086 AUSTRALIA

Campus location map and public transport: <http://www.latrobe.edu.au/city/location>

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

- 1 US Civil Society TPPA Campaign: <http://citizenstrade.org/tpp.php>
- 2 NZ Civil Society TPPA Campaign: <http://www.nznotforsale.org/>
- 3 Some publications from the Fair Trade Association of Australia & New Zealand:
 - Fairtrade At a Glance <http://www.fairtrade.com.au/files/FTF10/Glance.pdf>
 - Fairtrade is Unique <http://www.fairtrade.com.au/files/FTF10/Unique.pdf>
 - Market Research on Fairtrade in Australia, September 2009
<http://www.fairtrade.com.au/files/FTF10/Market.pdf>
 - Fairtrade Sales in Australia, 2009
<http://www.fairtrade.com.au/files/FTF10/Sales.pdf>
 - Overview of Fair Trade Fortnight 2010
<http://www.fairtrade.com.au/files/FTF10/The-Big-Swap.pdf>