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1 Trans Pacific Partnership Agreement (TPPA) - UPDATE

Consultation in Australia: The Department of Foreign Affairs and Trade (DFAT) are holding formal consultations with stakeholders in various state capitals over the next few weeks. The Melbourne consultation/briefing will take place on 12th May 2010 and the Sydney consultation/briefing will take place on 14th May 2010. To take part you will need to contact the DFAT Office in your state and register for the briefing. The contacts in each state can be found at <http://www.dfat.gov.au/contacts.html> - select your state and look for the business relations officer or the speaker organiser. The alternate is to contact the TPPA section of DFAT's Canberra Office through the switchboard on 02 6261 1111.

Call for Further Submissions: DFAT has also called for further submissions. They have said “officials will be continuing the consultation process to inform and refine Australia’s negotiating mandate going forward. We would welcome views on any issues which may be relevant to the negotiations.” DFAT have said that they are particularly interested in views from stakeholders on the following issues:

- Financial Services
- Investor-State Dispute Settlement
- Ways to approach regulatory coherence in the TPP
- How to ensure SMEs are able to benefit from the TPP

For more information, or to provide submissions on the TPP, please email DFAT at tpp@dfat.gov.au.

AFTINET is preparing a further submission which will be placed on the AFTINET website’s TPPA resources page. AFTINET’s existing submission is available at: www.aftinet.org.au/cms/tppa-resources-page

Update: In the March bulletin we informed members of the latest countries interested in joining or invited to join the existing eight TPPA countries. These were Japan, Malaysia and Columbia. We can now add Canada and Thailand to that list, bringing the total to 13 possible countries. Over time this list will grow, we will keep you up to date.

The second round of talks is to occur in the USA from 14 June 2010, Brunei has offered to host the third round which is now due to occur in October and there is no venue yet set for the fourth round in December.

The latest information from our allies in the US seems to indicate that the US government plan is to extend the agreement by groups of countries rather than having one country join at a time. Their aim is to reach a critical mass of countries signing on. The Australian Department of Foreign Affairs and Trade (DFAT) reported that Australian negotiators also discussed the goal of expanding the agreement to countries throughout the Asia-Pacific, including a process for consideration of additional countries. DFAT stated that Australia continues to see the TPPA as a possible pathway towards achieving the APEC goal of a Free Trade Area of the Asia-Pacific (FTAAP).

At the same time tensions are starting to emerge over the issue of which countries should and shouldn't be included and how they can join. For example the USA and New Zealand don't want Canada to join because of disputes over the Dairy Industry. There is growing sentiment in the US that it doesn't want New Zealand also because of the Dairy industry!

The significant concerns about the lack of a development aspect of a Trans Pacific Partnership Agreement have been confirmed. The US does not want any special mechanisms put in place for developing countries.

“We are not looking at doing anything that would be considered special and differential treatment here. If you're joining, there's one set of standards and all countries will meet that set of standards. If there are requirements for technical assistance or trade capacity building, we will need to consider how best to provide that, but we are not looking at special treatment for countries, Malaysia or Vietnam or whoever,” a USTR official said.

Given that developing countries are a target of the agreement this is unconscionable.

US Trade Barriers reports are prepared by the United States Trade Representative (USTR) based on submissions from US business to identify what they call "trade barriers". The 2010 reports are now out. It gives an insight into what the US may try to push for in the negotiations for the TPPA. There are individual country reports and a consolidated report. The report on Australia highlights Government Procurement, Intellectual Property Rights, Telecommunications, Local Content in Media laws, Foreign Investment Rules and the Foreign Investment Review Board, Pharmaceuticals (extended copyright etc) and Blood Plasma as barriers of trade. We should expect to see some, if not all of these, placed on the TPPA agenda by the US.

Copies of the reports for each of the relevant countries are available from our website TPPA Campaign resources page: <http://aftinet.org.au/cms/tppa-resources-page> or from the USTR website: <http://www.ustr.gov/about-us/press-office/reports-and-publications/2010>

Media Coverage: We continue to have some media coverage, the latest being an interview for the “Earth Matters” program on Melbourne’s 3CR, rebroadcast on more than 10 Community Radio stations around Australia. The podcast and other articles are available

from 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 campaign has gained significant media coverage and is still in its earliest stage. The principles and joint statement (available from the AFTINET 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.

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.

The AFTINET website is being regularly updated with current information about the TPPA.

(**Sources:** DFAT Briefing Round 1 Update, NZ Herald April 16th 2010, Washington Trade Daily April 15th 2010, Inside US Trade 2nd April 2010.)

2 Minister Crean responds on TPPA

Letter from Australian Trade Minister Simon Crean to the Canberra Times

There is an urgent need to correct the record after the publication of the article, "Big pitfalls and fewer freedoms in the new trade agreement with the US" (Canberra Times March 15, pg9) by Thomas Faunce and Ruth Townsend. The article gives an incorrect account of the Trans-Pacific Partnership talks that are being held in Melbourne this week. To paint these talks as simply just involving Australia and the US is wrong. The partnership involves eight nations. The goal of the negotiations is to find a pathway to a Free Trade Area of the Asia-Pacific. It is not a reopening of the FTA with the US that came into force in 2005. It is misleading to imply that in the lead-up to the first round of talks there has not been engagement with the Australian public. I tabled a document on November 26, 2008, in Parliament containing a summary of views gathered through a consultation process undertaken by my department. Those consultations continue and views are always welcome and can be sent to tpp@dfat.gov.au

It is wrong to suggest that we are about to re-open obligations in relation to the Pharmaceutical Benefits Scheme that were settled in 2005. If there are to be any changes to the scheme in the future, it would be part of a domestic policy debate in Australia. It does not concern me what the US drug companies are pushing for because decision about the scheme are made in the national interest by the Australian Government. The article also argues there is a threat to Australia from the introduction of an investor-state dispute settlement provision through the TPP. We will give our negotiating partners a chance to pitch their case on the issue, but let me say we have serious reservations about the inclusion of investor-state dispute settlement provision in this agreement. We do not want new layers of red tape under the guise of trade liberalization. Australian negotiators will make this clear at the Melbourne meeting which concludes today.

(**source:** Canberra Times March 17th 2010)

Nations ponder terms for Pacific free trade - Jacob Saulwick – SMH - March 16, 2010
SIX years after Australia entered its controversial free trade agreement with the United States, the Trade Minister, Simon Crean, said "everything is on the table" for a new agreement featuring the world's largest economy.

Under President Barack Obama, the US has been pressing for increased trade liberalisation in Asia and yesterday negotiations started on a new regional agreement to include Australia, the US, New Zealand, Singapore, Chile, Brunei, Peru and Vietnam.

The Trans-Pacific Partnership Free Trade Agreement is being seen as the precursor to a broader Asian trade bloc, and has the potential to change the trade terms between its member countries from their existing bilateral arrangements.

Mr Crean appeared to indicate yesterday that some of the most controversial aspects of the US agreement would be revisited as part of the new regional trade push.

One issue that flared was whether the deal would include a mechanism allowing companies to sue a government if it introduced laws that hindered trade interests.

Asked yesterday if the new agreement could include this type of mechanism, which was left out of the US deal, Mr Crean said: "We approached this on the basis that everything is on the table. No exclusions ... clearly we understand the fundamental importance of investment as part of the new trade equation."

Mr Crean's office later moved to clarify his reply, however, indicating the government remained very reluctant to include the mechanism.

"We continue to have serious reservations about the inclusion of investor-state dispute settlement provisions ... and Australian negotiators will be making this clear," a spokesman for Mr Crean said.

The convener of the Australian Fair Trade and Investment Network, Pat Ranald, said dispute mechanisms included in the North American Free Trade Agreement had allowed American firms to sue the Canadian and Mexican governments over environmental regulations.

"We don't think that corporations need any additional rights to governments in the Australian legal context," Dr Ranald said.

(source: Sydney Morning Herald, March 16th 2010)

3 Tobacco plain packaging legislation: No corporate rights to sue in the US Free Trade Agreement, but beware the TPPA.

The government announcement last week that it would implement the World Health Organisation proposal for plain packaging of tobacco products came under strong attack by tobacco companies.

The director of corporate affairs at Philip Morris said in a statement: "Plain packaging would represent an unconstitutional expropriation of valuable intellectual property and violate a variety of Australia's international trade obligations, such as the WTO agreement on trade-related aspects of intellectual property rights (TRIPS), ...and the US-Australia Free Trade

Agreement”. This is a quote from a study published by the conservative Institute of Public Affairs.

As reported in our last Bulletin, Philip Morris has sued the Government of Uruguay under an investment treaty which gives companies the right to sue governments for damages if their policies harm the company’s investment. British American Tobacco also threatened legal action against the Australian Government.

Several Australian legal experts responded to these threats by pointing out that the WTO agreements have exceptions for health measures and the AUSFTA does **not** have a clause that enables individual companies to sue governments for damage. This was a result of strong community campaigning against it. The companies would have to convince their home governments to take action under a government-to-government dispute processes, which would be difficult, and any penalties would be government-to-government trade sanctions, not payments to the companies.

However the fact that the companies can make such threats shows their belief that trade laws protect their intellectual property rights and profits more than governments’ right to promote public health. Trade law does in fact often give greater rights to corporations at the expense of governments’ right to legislate for public health and other social and environmental objectives.

It was the strong campaigning by unions, environment groups and other community groups through AFTINET that kept the investor-state complaints process out of the US-Australia Free Trade Agreement, the only US bilateral trade agreement which does not give corporations the right to sue governments for damages.

But this could change. The Australian government is in negotiations with the US and six other countries (Chile, Peru, Singapore, New Zealand, Brunei and Vietnam) for the Trans Pacific Partnership Agreement, which will re-open the issue of giving corporations the right to sue governments. The US has bilateral agreements with three of these countries, which do contain investor-state disputes rights, and US business is pressing for the TPPA to extend these corporate rights to include Australia. The danger is that the Australian government will agree to these demands in the hope of increased access to US agricultural markets.

If you have not already done so, use our website to send a message to Trade Minister Simon Crean asking him to keep the investor-state disputes process out of the TPPA, and not to trade off other vital health, environmental and social policies www.aftinet.org.au

4 WTO Update

We reported in March that the WTO had conceded that it would need to utilise the numerous up-coming gatherings 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]”.

The Cairns Group meeting has now taken place in Punta del Este in Uruguay. Cairns Group countries present were Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Guatemala, Indonesia, New Zealand, Paraguay, Peru, Philippines and Uruguay. Costa Rica, Malaysia, Pakistan, South Africa and Thailand were unable to attend due to the disruptions to air traffic caused by the Iceland volcano. Of significant interest were the invited guests, who

comprised the US, EU, Japan, the Director General of the WTO along with Mexico and Egypt. No breakthrough on agriculture trade barriers occurred.

The Cairns Group meeting called for the rapid conclusion to the farm talks of the Doha Round of WTO negotiations. It reiterated the need for the discussion to be open and transparent and called for efforts at both a political and technical level. It stopped short of calling for a WTO Ministerial meeting. It also called for other country groupings such as G20, APEC and the OECD to support the rapid end of the Round.

Despite the strong statements, the calls for rapid conclusion are not being followed up on the ground, with country officials at the WTO reportedly reluctant to move beyond the existing stalemate.

AFTINET will monitor these meetings to ensure that we are up-to-date with the political movement around the Doha Development Round of negotiations.
(**source:** Bridges Weekly Trade Digest, 21 April 2010)

5 PACER Plus Update

Negotiations on PACER Plus have recommenced with both a Trade Officials and Trade Ministers meeting occurring over the last two weeks of April in Phonpei, in the Federated States of Micronesia. The officials meeting has been described as a stocktake of trade issues, priorities and needs. The Ministerial meeting called for further officials meetings and further updates for the August 2010 Pacific Island Forum Leaders meeting in Port Vila, Vanuatu.

Shipping, aviation, telecommunications and other infrastructure were identified as key areas for PACER Plus discussions by the meeting of Trade Ministers.

It would appear that the Island governments are not the easy picking Australia and New Zealand would have hoped, an indication of this being the status of the Chief Trade Advisor. Prior the meeting Australia's Trade Minister, Simon Crean, was stating that the CTA was fully operational and his office set-up and operating. The meeting outcome noted that the office was still in the process of being set-up, with the implication that this would slow the pace of negotiations.

AFTINET participated in a meeting of the Pacific Trade Network with the newly appointed Chief Trade Advisor, Dr Chris Noonan, in Sydney on 22nd April 2010, whilst he was on a stopover on his way to Phonpei. The discussions were robust and open. Dr Noonan left us all with the impression that he would not be a captive to Australia and New Zealand, and truly intended to provide the Island Governments with independent advice.

It was clear that there are still problems in obtaining the resources needed to get the Office of Chief trade Advisor up and running, employing staff, travel arrangements, consultative arrangements and logistical problems, among others.

The discussions indicated that Labour Mobility will be a major issue in PACER-Plus. It could be the make-or-break part of the deal for the Island Countries who requested access for horticultural workers, care-givers, etc to be on the same basis as the Australia-New Zealand-ASEAN FTA. To obtain an acceptable labour mobility program it is clear that a trade-off on Services and Investment would be possible. We need to ensure we keep up our campaign on this FTA, in particular the need to ensure that labour mobility is not contained in PACER-

Plus which would lead to a restriction of labour rights for vulnerable workers from the Pacific.

Dr Noonan reinforced that the Island Countries were strongly committed to national consultations and would not object to a Human Rights Impact Assessment. He indicated that 'Aid for Trade' might be an area that civil society should examine in light of the European Union Economic Partnership Agreements (EU-EPA).

6 FTA Updates

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

Republic of Korea

It has emerged from reports of the fourth negotiating round held in Seoul from 15th to 19th March 2010 that Market Access provisions are proving to be a hurdle. As expected, negotiators have moved rapidly on common text from common FTA partners but hit a snag when discussing market access provisions. There is still some distance between the two countries even with the use of common FTA partners as a base for negotiations.

The countries have now exchanged revised offers on market access for goods, listing possible tariff concessions. The Korean offers do not appear to have included very much on agriculture. DFAT reports that Australia has highlighted this area as needing an improved offer from the Korean government. Korea is seeking further access to Australia for industrial goods through reduction or elimination of tariffs.

Discussions occurred on goods-related chapters, including chapters on *Trade in Goods*, *Technical Barriers to Trade*, *Sanitary and Phytosanitary Measures*, *Trade Remedies*, *Rules of Origin* and *Customs Procedures*. Reports are that differences still exist in these chapters and that further discussion will be required. It would appear that there are significant differences on proposals for enhanced cooperation in the agricultural, energy and mineral resources sectors.

There is some convergence on services and investment, particularly Cross Border Trade in Services, Telecommunications and Labour Migration. The reports indicate that the differences that remain are significant, with DFAT stating that "the remaining ones will require further intensive work." There will be an exchange of revised texts and offers before the next round.

The two sides reportedly made some progress on *intellectual property rights*, *government procurement*, *legal and institutional issues*, *competition policy*, *labour*, *environment* and *e-commerce*, but differences outweigh the convergences.

The fifth round of negotiations will be held in Canberra in late May 2010.

(**source:** DFAT briefing papers on Republic of Korea FTA Negotiations – Round 4)

Australia-Malaysia FTA

We are currently waiting for reports on the 7th round of talks held in Kuala Lumpur from 19th to 23rd April 2010.

Australia-India FTA Feasibility Study:

News has broken that the India-Australia FTA study has been released recommending an FTA between the two countries. AFTINET will report in the next issue.

7 General Trade News

Thinking the Unthinkable: Could America Repeal NAFTA? - by: Ian Fletcher

Four congressmen have now moved a bill to repeal NAFTA. Superficially, this means little, as passage of this bill is unlikely in the near future. But more fundamentally, it means a lot because, unbeknownst to most Americans inside and outside the Washington Beltway, free trade is inexorably losing its base of support on Capitol Hill.

This means, for a start, that President Obama's recent brave-faced pledge to move forward with his proposed Trans-Pacific Partnership (interestingly, the dread phrase "free trade agreement" has been carefully left out of the name) is quite likely dead on arrival. Obama himself may know this and may have staged this gesture simply to placate foreign nations and domestic corporate interests.

The lack of any change on trade issues in the Oval Office has distracted most Americans from the fact that in recent years there has been an inexorable movement away from free trade in the House and Senate, driven by the public's relentlessly rising skepticism of free trade.

For example, according to one analysis by Global Trade Watch, no fewer than seven Senate and 30 House seats flipped from pro- to anti-free trade in the 2006 election. Seventy-three percent of winning Democratic candidates in that election emphasized trade as an issue in their campaigns, while 72 percent of losing Democratic candidates did not. Not a single candidate of either party ran on free trade as a positive agenda, and not a single opponent of free trade was ousted by a free trader, in either the House or the Senate. Six anti-free-trade Democrats - Sherrod Brown of Ohio, Claire McCaskill of Missouri, Jon Tester of Montana, Bob Casey of Pennsylvania, Sheldon Whitehouse of Rhode Island, and Jim Webb of Virginia, plus Independent Bernie Sanders of Vermont - captured seats formerly held by free traders.

This trend continued in 2008. Thirty-six new free-trade opponents were elected to the House: 13 in contests against incumbents, 20 in battles for open seats, and three in special elections. (Eight free-trade opponents lost, so the net gain was 28.) And seven new free-trade opponents were elected to the Senate: Mark Begich of Alaska, Mark Udall of Colorado, Jeanne Shaheen of New Hampshire, Tom Udall of New Mexico, Kay Hagan of North Carolina, Jeff Merkley of Oregon, and Al Franken of Minnesota.

This is mainly, but not exclusively, a Democratic trend: The 2008 winners also included 10 Republican opponents of free trade who either held or won seats while campaigning against free trade. Oddly enough, given the condemnations of "protectionism" issuing from the Democratic leadership, this trend seems to be a big winner for the Democrats. For example, after the 2006 election, it was estimated that another 10 to 20 Democratic challengers might have won if they had attacked free trade.

But the Democratic Congressional Campaign Committee was headed by Rahm Emanuel (now President Obama's chief of staff), a free trader. Emanuel played a leading role in securing Democratic votes to pass NAFTA in 1993 while serving as a staffer under Bill Clinton and decided not to use the issue. But for this decision, Lois Murphy, to take only one example, might well have beaten Jim Gerlach, rated by nonpartisan observers as one of the most vulnerable Republican incumbents in the nation, in Pennsylvania's 6th district. Instead,

Gerlach squeaked back in with 1.2 percent of the vote after the DCCC effectively vetoed a trade-oriented get-out-the-vote program.

But people noticed. So after declining to run ads attacking free trade in 2006, the DCCC, startled by the issue's potency even when neglected, relented and aired spots on the issue in 2008. The main thing currently impeding an even stronger response in the voting booth is simply how deeply conflicted is the public's dislike of free trade. According to one 2006 poll, the public seems frustrated about where to place responsibility. Close to eight in 10 (78 percent) say the government could do something about protecting American jobs. But a majority (52 percent) do not think it's realistic for the government to control corporate outsourcing.

So the voters register their protests when given the chance, but otherwise remain stymied in their attempts to crystallize an opinion of what solution they ultimately want. The most puzzling thing about recent public opinion polls is that while the economy consistently ranks high on voters' priority lists, trade per se does not, suggesting that voters have yet to become fully convinced that free trade, as opposed to other currently hot issues like our broken financial system, is the root cause of America's economic ills. But if trade is at least a big part of the cause, then presumably this will eventually tell upon public opinion and trade will move up voters' priority lists. This will, if recent trends are any indication, find expression at the polls and drive Congress even further away from free trade.

If nothing stops this trend, not only will it remain impossible to pass new free-trade agreements, but existing ones will become vulnerable, with NAFTA the biggest and most obvious target. NAFTA repeal by 2018 is easily a 50-50 possibility.

This work by Truthout is licensed under a Creative Commons Attribution-Noncommercial 3.0 United States License. (Source: <http://www.truthout.org/thinking-unthinkable-could-america-repeal-nafta58717>)

Policy Space to Prevent and Mitigate Financial Crises in Trade and Investment Treaties - By Kevin P. Gallagher - G-24 Discussion Paper, United Nations

Do nations have the policy space to deploy capital controls to prevent and mitigate financial crises? This UNCTAD report, written by GDAE's Kevin P. Gallagher for the U.N.'s G-24 Intergovernmental Group on International Monetary Affairs and Development, examines the extent to which measures to mitigate the global financial crisis and prevent future crises are permissible under a variety of bi-lateral, regional, and multi-lateral trade and investment agreements. He finds that U.S. trade and investment agreements, and to a lesser extent the WTO agreement, leave little room to maneuver when it comes to capital controls. This is the case despite the increasing economic evidence showing that capital controls can be useful in preventing or mitigating financial crises. More specifically, this study demonstrates that:

- Capital account liberalization is not associated with economic growth in developing countries.
- Capital controls can help developing countries maintain financial stability. Indeed, those nations that deployed capital controls in the run-up to the global financial crisis were less hard hit during the crisis.
- The WTO allows for the use of capital controls for those nations that have not made market-access commitments in cross-border trade in financial services or foreign investment in financial services.

- WTO members that have made commitments in financial services are not permitted to use capital controls, however untested safeguard mechanisms may apply to prevent and mitigate crises.
- U.S. agreements do not permit restrictions on capital movements of any kind and have no apparent exceptions to this rule. A handful of recent U.S. agreements have a grace period, however, which delays action on capital controls for a certain period of time.
- U.S. agreements stand in stark contrast with the agreements of other capital exporters such as E.U. nations, Canada, Japan, and even China. These nations either fully permit the use of capital controls or at minimum have safeguard mechanisms for crises.

The report concludes by offering remedies at the WTO and within U.S. trade and investment agreements to better ensure that developing nations can effectively deploy capital controls to prevent and mitigate financial crises.

Download the full report

http://www.ase.tufts.edu/gdae/policy_research/CapControlsG24.html

(source: Global Development and Environment Institute at TUFTS University)

8 AFTINET's 10th Anniversary Annual Dinner.

AFTINET's 10th Anniversary Dinner on 15th April at Erycises Restaurant in Surry Hills was a great success. The evening was well supported with 120 attendees, who had a great time and enjoyed some great food.

Our MC, Sally McManus Secretary of ASU NSW & ACT (Services) Branch, kept the evening running smoothly and on time and organised a special version of Happy Birthday to be sung for AFTINET. Our speakers, Doug Cameron and Kerry Nettle, were well received and gave insight into AFTINET's history and success. Their brevity and amusing anecdotes kept everyone engaged. All the while in the background a slide show of AFTINET's historic achievements, campaigns, rallies, etc was shown.

We would like to thank everybody who attended, our speakers and special guests, everyone who donated and those who participated in the auction. AFTINET raised \$5,135 through the dinner, auction, and sale of Guessing Competition tickets on the night. Thank you.

9 Coming Events:

World Fair Trade Fortnight runs from 1st to 16th May 2010. Events are being held in various locations around Australia & New Zealand. Check out events in your area by going to the Fair trade Association of Australia and New Zealand: <http://www.fta.org.au/>

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

Some new resources available on our website:

US Trade Barriers Country Reports for each of the TPPA countries are available from our website: <http://aftinet.org.au/cms/tppa-resources-page>

TPPA media coverage: An interview for the "Earth Matters" program on Melbourne's 3CR, rebroadcast on more than 10 Community Radio stations around Australia. The podcast and other articles are available from our website on the TPPA Campaign media page:

<http://aftinet.org.au/cms/tppa-media-reports-our-campaign>.