



TRADE

1. The ACTU is a supporter of trade as a vehicle for economic growth, job creation, tackling inequality and rising living standards. Having a strong export sector is imperative for Australia's prosperity. However, unions should not be expected to be 'cheerleaders' for a trade agenda that does not deliver for Australian workers or the broader community. Where proposed free trade agreements, or provisions of those agreements, are not in the national interest and the interests of our members and workers generally, we will make the case for change.
2. The COVID-19 pandemic has shown the risks that come with 'just-in-time' supply chains, and the importance of Australia's sovereign capacity. Australian manufacturers who pivoted to making crucial personal protective equipment and other essential goods are now facing job losses. Recovery from the pandemic presents an opportunity to ensure Australia can protect its own interests during a crisis going forward.
3. The single most important objective of trade policy should be to deliver benefits to the Australian economy, communities and working people by increasing opportunities for local businesses and creating local jobs whilst protecting quality public services. This should not be at the expense of workers in developing countries.
4. Politicians seem to have lost sight of this. Instead, trade policy has become ideologically driven, with a focus on pursuing and signing 'trophy' trade agreements which provide little, if any, benefits to Australian communities and that, in many cases, decimate local industries and local jobs and undermine our public services. The current agreement-making process undermines our democracy, and our politicians are not listening to community concerns.
5. Over recent decades, politics and policy making have been dominated by the neoliberal idea that what is best for big business is best for Australian communities and workers. This is based on the neoliberal tenets of free markets without government intervention; private ownership of public services; privatised profits and socialised costs; and placing a primacy on the maximization of company and shareholder wealth. Neoliberalism is based on the false belief that if we design policy to increase the profits of big business, the benefits will trickle down and improve wages and conditions for Australians. Current Australian trade policy approaches are a prime example the failure of this belief.
6. But the reality is the benefits are not trickling down, they are trickling up to multinational conglomerates who are reaping the profits – and then moving them offshore before they are taxed. Australian workers are not benefiting from our Free Trade Agreements (FTAs). Australia, like many other countries, is finding that large sections of our society are losing out. Even in sectors where we were supposed to be reaping the benefits, such as agriculture, profits are going to large businesses, while agricultural workers and farmers are left in some of the most exploited and least safe conditions in the country.
7. We are seeing the consequences of our trade agreements, with manufacturing jobs being shed by the tens of thousands and communities being decimated. The Coalition Government's explicit approach of ending industry assistance simply to sign free trade agreements with Korea, Japan and China has destroyed local industry – particularly the automotive industry. The automotive industry had been one of Australia's largest industries, employing 200,000 people in generally well-paid secure jobs. By contrast, the Government's own modelling of three contemporary trade agreements purported to result in just 5434 additional jobs by 2035.

8. In the 1980s and 90s, autonomous trade liberalisation and tariff reduction measures were accompanied by industry plans and assistance to lessen the negative impact on those workers made worse off. Recent trade policy dominated by FTAs has failed to provide support or protection for the losers of free trade or contribute to industrial policy plans. Workers, families, communities and their industries have effectively been left behind.
9. The benefits to exporters, who are supposed to be the winners of free trade, have also not been as high as claimed. While Australia generally reduces its tariffs to zero quickly, non-tariff barriers to trade and other behind the border measures designed to unfairly keep Australian exports out are also hurting our industries. This is particularly the case in FTAs with high income countries. In addition, the proliferation of FTAs has created hard to navigate import duty structures. Only 19% of local exporters utilise any FTA provisions.
10. While our trading partners exploit tariff and non-tariff barriers, Australia fails to implement measures to support legitimate barriers to trade, such as anti-dumping and safeguard measures, barriers to dangerous imports, or barriers that support objectives such as national security, the prevention of deceptive practices, animal or plant life, health and the environment. This has not only negatively impacted local industry but has also resulted in the import of products containing asbestos, sub-standard building products and the outbreak of white eyed prawn which has devastated Australia's domestic prawn industry. We need additional resourcing of the Anti-Dumping Commission to ensure the appropriate action is taken when products are dumped into the Australian market.
11. Trade agreements are increasingly being carried out in secret, with little or no socio-economic impact testing, in order to provide private profit and more power for big business at the expense of workers and their families. The ACTU condemns the secrecy with which the DFAT negotiates trade agreements; with negotiation parameters and the final text being withheld from public scrutiny until after Cabinet makes the decision to sign them, after which they cannot be changed.
12. Elements of social and economic policy and legislation are being incorporated into trade agreements without due democratic processes or proper consultation. Examples include migration, VET, pharmaceutical benefits scheme and advisory board, OH&S, industrial, and labour market policies.
13. The Australian government is currently negotiating 14 bi-lateral, multilateral or plurilateral trade agreements. Whether or not these trade agreements are in the national interest requires urgent analysis. The largest deal, that has been signed and is the most likely to be ratified soon, is the Regional Cooperation Economic Partnership agreement. This is the largest multilateral trade deal in history. The giant Regional Comprehensive Economic Partnership IS between Australia, China, Japan, South Korea, New Zealand and the ten members of ASEAN (Brunei, Cambodia, Indonesia, Laos, Myanmar, The Philippines, Singapore, Thailand and Vietnam) . Other large trade agreements currently being negotiated include the Australia- E.U. FTA and the Australia – U.K. FTA. All of them contain labour mobility provisions of one kind or another - with some removing labour market testing all together. The current Government is allowing these provisions to undermine local jobs by making it easy for companies to bring exploited, underpaid workers into Australia as temporary migrants.
14. The CHAFTA MOU on Investment Facilitation Arrangements allows companies who invest \$150 million in projects in Australia to bring in their own workforce. The CHAFTA side letter on removal of mandatory skills assessment in TSS trades allows workers without relevant and sometimes fraudulent qualifications to be brought into Australia. The broad definition of “contractual service providers” in labour mobility chapters are not designed to facilitate genuine trade in services, but to undermine local wages and conditions by providing greater freedom for employers to import labour on less favourable conditions, without the need to undertake Labour Market Testing. These elements threaten local jobs and could be extended in all other bilateral FTAs due to the Most Favoured Nation clause which under the WTO rules demands that all countries are offered the same concessions. The increase in temporary migration through FTAs increases worker vulnerability in general but affects female workers most of all.
15. The current approach to trade treats workers as commodities. This must stop. Labour mobility must not be used as a bargaining chip in trade agreements – these policies should be set by immigration agencies and Ministers in light of broader questions of justice and national interest. They are too important to the future of our jobs and employment to be traded away.

16. Worse yet, the scope of FTAs is becoming wider and much more far-reaching. FTAs are increasingly encompassing even more dangerous provisions; provisions that are much less about delivering economic development through trade than they are about maximising profits for multinational corporations. For instance, many FTAs contain Investor-State Dispute Settlement (ISDS) clauses (or ISDS-like clauses that function in the same way) which allows foreign investors to bypass national courts and sue governments for millions of dollars in private international tribunals if they argue that a change in domestic law or policy at a local, state, or national level will 'harm' their investment. This includes law and policy such as minimum wages, occupational health and safety, public health and environmental regulations. These clauses put corporate interests over public interests and prevent Governments from governing in the best interests of citizens.
17. FTAs also further complicate already the difficult legal, social, and economic situation faced by First Nations peoples. The secrecy in which the FTA negotiations occur are especially disadvantageous for the consideration of their rights, such as Native Title. Along with the general problems of ISDS, such provisions particularly place Indigenous people at a disadvantage in situations where the interests of multinational corporations clash with land and cultural rights. The absence of labour market testing, and the lack of training obligations, are also bad for First Nations employment outcomes, and damage done to the public sector also damages the chances of achieving Indigenous health and education goals. While some FTAs do contain exemptions for Indigenous Businesses in procurement matters, protections for Traditional Knowledge are barely recognised, and matters such as cultural rights must be explicitly addressed and not simply folded into general discussions about intellectual property.
18. Transnational corporations are regularly using the secretive corporate courts under ISDS provisions to avoid paying their legitimate share of taxes. A 2016 Report had show that corporations used the 'investor protection' provisions of different trade deals to sue at least 24 countries from India to Romania over 40 tax related disputes
19. Modern FTAs (CPTPP, RCEP, TiSA, EU, UK etc) promote further deregulation and the privatisation of public services, ignoring their crucial and proven role in development and in reducing inequity. Privatisation has clearly failed us in the past¹. Public services (including public education and health) are designed to meet social needs through affordable, accessible, and often universal programs that serve the public interest, funded by our common wealth. Free trade agreements that are specifically designed to enhance private commercial interests, by opening more services to global market forces, will not benefit Australian communities. Provisions within FTAs that promote trade in services on a commercial basis have far-reaching consequences for public services in signatory countries. Women are disproportionately affected by privatisation; they make up a large part of the public-sector workforce whose jobs and income are threatened, and women access public services at a greater level. Australia's free trade agenda fails to consider the impact on women.
20. Modern FTAs contain 'standstill' and 'ratchet' clauses: the standstill clause effectively freezes the degree of regulation in particular sectors meaning that governments are no longer free to implement stricter regulatory provisions, and the ratchet clause means that governments will be unable to reverse privatisations – once a sector is privatised or deregulated, governments face the triggering of dispute mechanisms. This means that governments have lose control of services and potentially face financial and trade implication when reversing failed privatisations. Considering the privatisation of public hospitals and associated services has demonstrably failed, the decimation of TAFE, the cost a privatised electricity market, the reduction in skills requirements and the importation of asbestos, and our recent inability to respond to a global pandemic through sovereign means (privatisation of CSL, inability to manufacture PPE at scale in a timely manner), this is a recipe for disaster.
21. The health risks of current and future agreements include increasing the cost of medicines and influencing the decisions of the of the Pharmaceutical Advisory Board and the Pharmaceutical Benefits Scheme (PBS), meaning increased costs flow on to the Australian public, or the public healthcare system in terms of increased fees for medicines. Patent term extension and data retention exclusivity included in free trade agreements risk lives by delaying access to generic medicines and may lead to restrictions on diagnostic tools and procedures. Patent protectionism has seen the delayed roll out of pandemic specific vaccinations

1 Taking Back Control: A Community Response to Privatisation (2017): https://d3n8a8pro7vhmx.cloudfront.net/cpsu/pages/1573/attachments/original/1508714447/Taking_Back_Control_FINAL.pdf?1508714447

both nationally and internationally. Whilst ever any global citizen is at risk, we are all at risk lengthening our border closures, and yet Australia's position in blocking TRiPS waivers, allowing generic manufacturing of vaccines, ensures profit is put before people.

22. They also weaken the ability of Government to regulate and restrict tobacco and alcohol availability and advertising and restrict its capacity to implement new food labelling policies which highlight the health risks of consumables. Considering non-communicable diseases are a leading killer of Australians, this is a clear indication of profit being placed before people.
23. Australia is pushing TiSA-like provisions in the plurilateral discussions on domestic regulation discipline in services. Australia and the European Union had proposed a draft joint ministerial statement towards the WTO's twelfth ministerial conference. The negotiations have remained slow since then, but are expected to pick up speed
24. The WTO Government Procurement Agreement is designed to limit Government's ability to support local business by buying ethically, sustainably and from local small and medium enterprises and disadvantaged communities. Rather than trading away exemptions negotiated in existing agreements to support local industry by procuring their products and services we call on federal and state governments to be fully utilising these exemptions unlike current procurement procedures which largely ignore them. This policy has left our nation ill prepared to respond to pandemics.
25. United States-based multinational tech companies now represent five of the seven largest corporations in the world (Google, Facebook, Amazon, Apple and Microsoft). These companies are pushing hard to have the rules of FTAs written in their favour to allow themselves free access to data and transfer the data wherever they want- all under the guise of 'e-commerce'. These companies want bilateral FTAs, TiSA, and the WTO negotiations to all include provisions on e-commerce which restricts the rights of governments to regulate areas such as privacy and consumer protection, and cross-border data transfers. These corporations are also seeking to have the ability to operate and profit within a country without having to maintain any type of physical or legal presence (and without paying tax).
26. The plurilateral negotiations on digital trade (known as the Joint Statement Initiative (JSI) group on electronic commerce) are propelled by the United States and coordinated by Australia, Japan and Singapore. The proposal on the table are on the lines of the Trans-Pacific Partnership. An UNCTAD paper has highlighted how the proposed provisions are expected to adversely impact developing countries that are currently suffering from an unbridgeable digital divide. The provisions promoted by Australian trade negotiators risk to undermine measures by other Ministries and regulators working at developing the country's data protection policies.
27. The union movement is committed to getting a better deal on trade for all Australians. Trade is extremely important to the economy, accounting for 40% of GDP. Changing trade policy is central to rebalancing economic rules in favour of working people. A good trade policy puts shared prosperity, decent work and sustainable social and economic development at the centre of trade agreements. A good trade agreement is not an end in itself, rather it should be a means of creating complementary and cooperation between countries, based on respect for workers' rights, protection of the environment and increased opportunities for business, regardless of their size or power.
28. The primary measure of the success of our trade policies should be measured through quality job creation, rising wages and more engaged and competitive businesses; all measures of broadly shared benefits. It should not be based on higher corporate profits, increased offshoring of Australian jobs and weakening labour market protections, wages, rules of law and democratic decision-making in Australia or in negotiating partner countries.
29. The ACTU believes that trade policy should be informed by unwavering principles which themselves draw on fundamental Australian values of human dignity, egalitarianism, community, fairness and democracy. These should act as minimum standards upon which we as a country make decisions about whether or not we

want to enter into negotiations, and sign on to an agreement. These principles must result in the following priorities being at the forefront of activity resulting from trade policy:

- a) Before entering into negotiations, a prior assessment of the existence of a minimum floor wage (based on the calculation developed by the Asia Floor Wage for the garment sector) and its coverage of all workers, including informal workers, across the territory of partner countries. Trade union representatives from Australia and from the proposed partner countries need to be part of the assessment.
- b) This assessment should be part of a comprehensive assessment of the cost and benefits of entering into negotiations with partner countries tabled and discussed in Parliament.
- c) Incorporation of a labour arbitration mechanism where unions in both countries can challenge exporters for violations of the eight ILO Core Conventions. This should be part of the initial MoU and not left for the negotiations phase where it has limited chances to be incorporated. The arbitration processes should be developed with the participation of labor representatives from all partner countries. Eligibility of complaints should not be conditional to their impact on trade. Exporters found violating ILO Core Conventions should be black-listed until violations are remedied. Such a framework intends to strengthen the bargaining capacity of unions in countries and sectors where the violation takes place, rather than providing the importing country with opportunity for NTB in disguise of labour rights' protection;
- d) Commitment in trade deals to protect workers' rights, raise wages and improve living standards in all signatory countries by defining "acceptable conditions of work" to include a living wage, social protection, OHS, licensing and other regulatory standards;
- e) Recognition of the right of sovereign governments to implement rules that preserve and protect the place of domestic political, legal and judicial systems including collective bargaining;
- f) Preservation of the ability of governments at all levels to favour domestic producers in government or government-funded procurement particularly to promote local small and medium enterprise, ensure sovereign capacity to respond to pandemics, and local defence suppliers. This should include existing exemptions for Australian SMEs to give preference to local businesses where possible and to allow full, fair and reasonable right for domestic producers to participate in government projects and procurement. Governments should actively support Australian businesses by seeking access to the supply chains of overseas investors and participants in the local economy;
- g) Refrain from making commitments on the temporary movement of people as this is the remit of migration policy;
- h) If commitments on the temporary movement of people are to be included, or if they exist in current agreements, safeguards must exist to ensure:
 - The maintenance of skills testing requirements and licencing requirements for industries and professions. Public interest and recognition of our high worker standards requires stringent skills testing;
 - Workers' rights are protected through ensuring pre-departure and post-arrival briefings regarding workers' rights and entitlements in Australia, including the right to belong to and access support from a union
 - The establishment of a tri-partite body, modelled on the ILO, to monitor and recommend policy approaches
 - The right for local workers to have preference over local jobs and legitimate cases of skills shortages being primarily met by training and permanent migration rather than employer driven temporary migration.

- i) Elimination of the use of foreign ships utilising non-national seafarers in the domestic shipping industry and their replacement by Australian ships utilising Australian seafarers;
- j) Preservation of the ability of government to protect Australian industry from illegal anti-competitive behaviour through a properly resourced anti-dumping commission. The commission must assist Australian industry to identify and stamp out this illegal activity. It should also have responsibility for safeguard investigations and assurance that imported goods comply with Australian safety, quality, quarantine and sustainability standards;
- k) A perspective of economic cooperation and complementary, rather than competition and reciprocity in tariff reduction, quotas and market access for Australian exporters in any trade deals currently entered or being contemplated. Appropriate special and differential treatment for developing nations, and
- l) Refuse any extension of temporary monopoly rights to pharmaceutical companies and make provision for the waiver of monopoly rights to protect public health in the circumstances of the global pandemic. These rights should never over-ride an individual's or communities right to life and health, nor a sovereign government's right to implement policies to protect and promote the health rights of citizens, including the manufacture and distribution of COVID-19 vaccine outside of pharmaceutical company licencing agreements;
- m) Recognition of sovereign government entitlements to implement rules that preserve rights for national and local choices about the provision, and retention, of public services, both existing and future services, - education and health amongst them. Our national and State/Territory public health care systems, public education systems, tertiary and vocational education systems, aged care services, child care services, social services, and government departments must all be explicitly excluded from FTAs regardless of whether a positive or negative list is used;
- n) Incorporate into trade deals an environment arbitration mechanism with agreed consultation and hearing processes and black-listing of exporters that are found to violate agreed standards to ensure that agreements don't result in increased environmental degradation;
- o) Assurance that trade policy must also work cohesively with measures to address climate change and inequality in line with our commitments under the Sustainable Development Goals (SDGs);
- p) Recognition of the right of sovereign governments to pursue policy to develop their industrial capacity and create and build economically, socially and environmentally sustainable industries;
- q) Recognition in line with the SDGs that states have the right to seek development through diversification, technological upgrading and innovation, including through a focus on high value added and labour-intensive sectors²;
- r) Recognition of the right that sovereign governments can impose and enforce financial regulation policy, including flexibility with respect to capital controls and capital transfers designed to address financial volatility;
- s) Recognition of the right of governments to implement regulations that are based on protecting the privacy, including through data protection, and intellectual property of citizens;
- t) State to state commitments that re-enforce the principle that trade deals are made between sovereign nations who have the right to make choices about how to best promote policies that benefit their citizens;
- u) Assurance for genuinely independent assessments of the projected costs and benefits of any agreement including the economic, regional, social, health, gender, cultural, regulatory, health and

2 United Nations Conference on Trade and Development, Aid4Trade, 2013, p.243, https://www.wto.org/english/res_e/booksp_e/aid4trade15_chap9_e.pdf

environmental impacts which means that the assessments are not to be undertaken by the Productivity Commission but actual independent bodies without a neoliberal ideological agenda;

- v) If economic benefits are marginal or projected social impacts damaging then the trade deal should not be pursued and should be abandoned, renegotiated or repealed;
 - w) Negotiations must be transparent with broad social, health and economic consultation. This includes a consideration of relevant matters before negotiations begin, the negotiations themselves, as well as ongoing “dialogues” and “committees” resulting from negotiations. This requires unions and civil society organisations to have formal consultative status with DFAT negotiating teams and for them to release the text before each round of negotiation;
 - x) Assurance of transparency through the public release of proposals and draft texts of trade deals (as occurs in the WTO and is now the practice in some EU negotiations³) with the final text released for public and parliamentary debate;
 - y) Respect for our democracy by enabling a Parliamentary vote on the whole text of agreement, not just implementing legislation.
30. Good trade policy should be transparent and accountable to the public and deliver quality jobs, rising wages and greater equality.

3 European Union, *EU Negotiating text in TTIP*, February 2015, <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1230>