



Review of the China-Australia Free Trade Agreement (ChAFTA) and the Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA)

Submission to the Department of Foreign Affairs and Trade

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Introduction

About the ACTU

Since its formation in 1927, the Australian Council of Trade Unions (ACTU) has been the peak trade union body in Australia. The ACTU consists of affiliated unions and regional trades and labour councils that together have nearly 2 million members who are engaged across a broad spectrum of industries and occupations in the public and private sectors.

Worker-centred trade policy

The ACTU supports fair trade as a vehicle for economic growth, job creation, tackling inequality and raising living standards. The most important objective of trade policy should be to deliver benefits to workers, the community and the economy by increasing opportunities for local businesses, creating quality local jobs, and protecting public services. The benefits of trade must be shared among our community and promote equitable development abroad.

We welcome the opportunity to contribute to the Department of Foreign Affairs and Trade's (DFAT) General Review of the China-Australia Free Trade Agreement (ChAFTA) and the Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA).

China and Indonesia being key trade partners for Australia, these agreements have a significant impact on our economy. It is imperative that they align with a fair and just trade policy and uphold the interests of working people.

Currently, both ChAFTA and IA-CEPA contain provisions that prioritise profit over human rights. These provisions expand and entrench temporary labour mobility pathways and grant extensive rights to foreign investors through Investor-State Dispute Settlement (ISDS) mechanisms, undermining the rights and protections of workers and constraining the Australian Government's ability to regulate in the public interest.

The ACTU calls on the Australian Government to uphold the commitments to trade policies consistent with Australian values of justice and equality, community views, workers' rights and the interests of developing countries¹ in all existing and future trade agreements.

¹ Australian Labor Party, 2023 ALP National Platform, <https://www.alp.org.au/media/3569/2023-alp-national-platform.pdf>.

Recommendations

Recommendation 1: Protect the integrity of Australia's migration system by removing any waivers to labour market testing and other labour mobility commitments in ChAFTA and IA-CEPA.

Recommendation 2: Insert labour rights and human rights chapters to ChAFTA and IA-CEPA with binding and enforceable commitments.

Recommendation 3: Require that parties to both trade agreements commit to promoting and implementing core ILO Conventions, including:

- Conventions 87 & 98 (Freedom of Association and Effective Collective Bargaining),
- Conventions 29 & 105 (Elimination of all forms of forced or compulsory labour),
- Conventions 100 & 111 (Elimination of discrimination in respect of employment and occupation), and
- Conventions 185 & 187 (Safe and Healthy working environment).

Recommendation 4: Require that parties to both trade agreements commit to promoting and implementing the *UN Convention on the Elimination of All Forms of Discrimination Against Women*.

Recommendation 5: Require that parties to both trade agreements commit to promoting and implementing the *UN Declaration on the Rights of Indigenous Peoples*.

Recommendation 6: Remove ISDS clauses from both ChAFTA and IA-CEPA.

Recommendation 7: Implement the Joint Standing Committee on Trade and Investment Growth's recommendations by legislating a trade-negotiation framework.

Recommendation 8: Renegotiate ChAFTA and IA-CEPA to have them aligned with the Joint Standing Committee on Trade and Investment Growth's recommendations.

Recommendation 9: Re-orient ChAFTA and IA-CEPA towards actively promoting a green economy with binding and enforceable commitments.

Labour Migration

The ACTU supports a migration system that contributes to improving the lives of all working people. This can be achieved through realising three key principles:

First, Australia's migration system should be anchored in permanent migration. Migrant workers must have security, their rights fully protected, and genuine opportunities to settle with their families and become lasting members of our communities.

Second, migration policy must complement—not replace—Australia's skills and training system. Claims of labour and skills shortages too often mask a real lack of secure jobs, fair wages, and decent conditions. Priority must be given to better matching local workers with available jobs and investing in upskilling local workers, rather than defaulting to bringing in workers from overseas on temporary visa programs.

Finally, migrant workers must be protected by strong safeguards against exploitation. Migration policy must not enable employer tactics that undercut wages and conditions or put workers against one another. All workers, regardless of background or visa status, deserve fair treatment and equal protections at work.

Including labour mobility commitments in free trade agreements can easily undermine these principles. This is particularly the case where such agreements include waivers to labour market testing, as we can see in both ChAFTA and IA-CEPA.

ChAFTA erodes Australia's migration system by not requiring labour market testing, economic needs testing or other procedures of similar effect as a condition for temporary labour migration.² Labour market testing is a mechanism designed to ensure local workers have a fair opportunity to compete for jobs by requiring businesses to advertise position vacancies in Australia. When labour market testing is bypassed, businesses are permitted to recruit workers from overseas without first making a genuine effort to find suitable workers in Australia.

The Memorandum of Understanding on an Investment Facilitation Agreement, which was signed alongside ChAFTA, further undermines Australia's migration system by making more conditions of temporary migration such as English language requirement and income threshold subject to

² ChAFTA, Chapter 10: Movement of Natural Persons, Article 10.4.3(b):
<https://www.dfat.gov.au/sites/default/files/chafta-chapter-10-movement-of-natural-persons.pdf>.

negotiation.³ Other countries with similar agreements have witnessed Chinese investors bringing in whole workforces from offshore to deliver projects onshore.⁴

IA-CEPA expands and entrenches temporary labour mobility pathways, particularly through contractual service suppliers and intra-corporate transferees.⁵ The side letters and ancillary arrangements negotiated alongside IA-CEPA further normalise short-term approaches to labour migration through exploiting Working Holiday Maker visa⁶ and training visa programs.⁷

Temporary migration pathways that only facilitate immediate gains for businesses hurt local workers by distorting the job market and undermine the integrity of Australia's migration system by making migrant workers vulnerable to exploitation. It is imperative that labour migration is strategically planned with a long-term vision to upskill local workers and grow Australia's economy.

Recommendation 1: Protect the integrity of Australia's migration system by removing any waivers to labour market testing and other labour mobility commitments in ChAFTA and IA-CEPA.

Human Rights and Labour Rights

The need for meaningful regulation of basic rights in trade relationships is heightened in the modern context. Exploitation, including workers enduring slavery and slave-like conditions, is a prolific issue that needs urgent practical attention. The Government has made a clear policy commitment to advancing trade that uplifts the lives and dignity of working people, while promoting basic human rights, the rights of First Nations peoples, women, and marginalised communities.⁸

As trade agreements establish enforceable legal obligations, they must align with Australia's domestic and international commitments to protect fundamental human and labour rights. Some

³ Memorandum of Understanding Between the Government of Australia and the Government of the People's Republic of China on an Investment Facilitation Arrangement: <https://www.dfat.gov.au/sites/default/files/chafta-mou-on-an-investment-facilitation-arrangement.pdf>.

⁴ Pippa Morgan & Andrea Ghiselli, "Chinese workers on Africa's infrastructure projects: the link with host political regimes," *The Conversation*, 11 January 2023: <https://theconversation.com/chinese-workers-on-africas-infrastructure-projects-the-link-with-host-political-regimes-195732>.

⁵ IA-CEPA, Chapter 12: Movement of Natural Persons: <https://www.dfat.gov.au/trade/agreements/in-force/iacepa/iacepa-text/Pages/iacepa-chapter-12-movement-of-natural-persons>.

⁶ IA-CEPA *Side Letter on Working Holiday Maker visas between the Government of Australia and the Government of the Republic of Indonesia*, 5 July 2020: <https://www.dfat.gov.au/sites/default/files/iacepa-side-letter-work-holiday-visas.pdf>.

⁷ IA-CEPA Memorandum of Understanding between the Government of Australia and the Government of the Republic of Indonesia on a Pilot Workplace-Based Training Visa Arrangement: <https://www.dfat.gov.au/trade/agreements/in-force/I-ACEPA/I-ACEPA-text/Pages/I-ACEPA-mou-pilot-workplace-based-training-visa-arrangement>.

⁸ Senator the Hon. Don Farrell, 13 Nov 2022, *Trading our way to greater prosperity and security*: <https://www.trademinister.gov.au/minister/don-farrell/speech/trading-our-way-greater-prosperity-and-security>.

recent trade documents contain references to fundamental rights, but they do not translate into enforceable rights-based protections.⁹

ChAFTA and IA-CEPA do not contain any chapters on human rights, labour rights or any basic rights. The current reviews provide the Australian Government with an excellent opportunity to commit to negotiating clear and enforceable rights-based chapters. By incorporating enforceable rights into our trade agreements with China and Indonesia, Australia can play a key role in putting International Labour Organization (ILO) Conventions and other international human rights instruments into practice and driving a systemic shift toward prioritising dignity and protections for all workers.

Recommendation 2: Insert labour rights and human rights chapters to ChAFTA and IA-CEPA with binding and enforceable commitments.

Recommendation 3: Require that parties to both trade agreements commit to promoting and implementing core ILO Conventions, including:

- Conventions 87 & 98 (Freedom of Association and Effective Collective Bargaining),
- Conventions 29 & 105 (Elimination of all forms of forced or compulsory labour),
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Recommendation 4: Require that parties to both trade agreements commit to promoting and implementing the *UN Convention on the Elimination of All Forms of Discrimination Against Women*.

Recommendation 5: Require that parties to both trade agreements commit to promoting and implementing the *UN Declaration on the Rights of Indigenous Peoples*.

⁹ For example, *Australia–United Arab Emirates Comprehensive Economic Partnership Agreement* (CEPA): <https://www.dfat.gov.au/trade/agreements/in-force/australia-uae-comprehensive-economic-partnership-agreement-cepa/australia-uae-cepa-official-text>.

Investor-State Dispute Settlement

The ACTU has consistently opposed the inclusion of Investor-State Dispute Settlement (ISDS) clauses in trade agreements.¹⁰ ISDS clauses give foreign investors the ability to claim compensation against a government for any action that impacts the value of their investment or their ability to make profits.

ISDS emerged not as a neutral legal mechanism but as a post-colonial response by capital-exporting states to newly independent countries' effort to reclaim sovereignty over their natural resources and regulate foreign corporate activity. ISDS in trade and investment agreements were largely designed by and for wealthy states, embedding legal protections that privileged foreign investors while circumscribing the regulatory autonomy of the Global South. From their inception, ISDS provisions have functioned to reproduce colonial economic hierarchies, disciplining post-colonial states and constraining decolonisation by subordinating public interest governance to the protection of private capital.

Today, ISDS clauses continue to prioritise corporate interests over those of workers and communities. ISDS has been consistently used by powerful private investors as a way of retaliating against governments that seek to regulate in the interests of their people. ISDS cases are not referred to conventional courts but to ad hoc tribunals that are not run by judges and not bound by legal conventions or precedent.¹¹ Claims often involve demands for hundreds of millions of dollars in compensation, while governments incur substantial legal costs in defending them, placing pressure on public budgets and discouraging necessary regulation.

ISDS has a well-documented “regulatory chill” effect. Following Australia’s introduction of tobacco plain-packaging legislation in 2011, Philip Morris Asia launched an ISDS claim seeking billions of dollars in compensation. The existence of this claim contributed to New Zealand, Namibia, and Togo delaying similar public-health measures.¹² This demonstrates how the threat of litigation alone can impede evidence-based policymaking.

¹⁰ ACTU, Submission to the Joint Standing Committee on Treaties Inquiry into the Second Protocol to Amend the AANZFTA, 19 January 2024: <https://www.actu.org.au/wp-content/uploads/2024/02/D02-ACTU-submission-to-JSCOT-inquiry-Jan-2024.pdf>; ACTU, Submission to DFAT on the Renegotiation of Australia’s Bilateral Investment Treaties with Argentina, Pakistan and Türkiye, 14 March 2025: <https://www.actu.org.au/wp-content/uploads/2025/07/D07-BIT-renegotiations-ACTU-submission-140325.pdf>.

¹¹ Robert French, ‘Investor-State Dispute Settlement – A Cut Above the Courts?’, Supreme and Federal Courts Judges’ Conference, Darwin, 9 July 2014: <https://www.hcourt.gov.au/sites/default/files/assets/publications/speeches/former-justices/frenchcj/frenchcj09jul14.pdf>.

¹² Philip Morris vs Australia: ISDS Used to Delay Public Health Policies (ISDS Platform, bilaterals.org, updated April 2021): <https://www.isds.bilaterals.org/?philip-morris-vs-australia-isds>.

Recent developments highlight the urgency of reform. For example, Australian billionaire Clive Palmer has a record of lodging four ISDS claims against the Australian Government, seeking more than \$420 billion in compensation.¹³ These claims illustrate the profound risks ISDS poses, even encouraging domestic investors engage in “treaty shopping” to disguise themselves as foreign claimants.

Both ChAFTA and IA-CEPA contain ISDS provisions. Australia is realistically exposed to the possibility of ISDS claims from Chinese investors. In 2025, a bipartisan proposal to end the lease held on the Port of Darwin, which was owned by a Chinese corporation (Landbridge Group) led to the Chinese Ambassador explicitly warning of economic retaliation against Australia, should Landbridge Group be compelled to sell the Port. It is very likely that this retaliation could come in the form of yet another costly and protracted ISDS claim, especially since ISDS provisions available to Chinese investors are not only found in ChAFTA, but also in a 1988 Bilateral Investment Treaty that was not terminated when ChAFTA was entered into in 2015.¹⁴

The ACTU calls upon the government to use this review as a timely opportunity to remove these harmful ISDS clauses. Such action will be consistent with unequivocal commitments made by the Labor Government to phase out existing ISDS clauses and not to enter into any future trade agreement that seeks to impose them.

Recommendation 6: Remove ISDS clauses from both ChAFTA and IA-CEPA.

Legislated Framework for Trade Agreements

In May 2024, the Joint Standing Committee of the Australian Parliament on Trade Investment and Growth made a series of recommendations to the government which advocated for a systematised approach to negotiating trade and investment agreements.¹⁵

In line with the ACTU’s recommendations outlined earlier in this submission, the Committee’s recommendations include that the Australian Government seek to not include provisions in trade

¹³ Australian Fair Trade and Investment Network (AFTINET), “Clive Palmer’s foreign investor claims against Australia now \$420 billion”, 10 January 2025: <https://aftinet.org.au/clive-palmer-latest-ISDS-claim-against-australia>.

¹⁴ Agreement between the Government of Australia and the Government of the People’s Republic of China on the Reciprocal Encouragement and Protection of Investments (Australia–China Bilateral Investment Treaty), 11 July 1988: <https://investmentpolicy.unctad.org/international-investment-agreements/treaties/bit/203/australia--china-bit-1988>.

¹⁵ Parliament of Australia, Joint Standing Committee on Trade and Investment Growth, Report on the Systemic and Statutory Issues Relating to the Negotiation and Approval of Trade and Investment Agreements, 1 May 2024: https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Joint_Standig_Committee_on_Trade_and_Investment_Growth/Approachtotrade/Report.

and investment agreements that waive labour market and skills testing or include ISDS provisions.¹⁶

Furthermore, the Committee noted that there are certain elements regarding trade and investment agreements that are fundamental to the public interest and recommended that the Australian Government establish a legislative framework for the negotiation of Australia's trade and investment agreements.¹⁷

Although yet to formally respond to the Committee's recommendations, the Government has made firm policy commitments to enact a legislative framework for negotiating international trade and investment agreements and to include in the legislative framework a refusal to enter agreements that contain ISDS provisions, waive Labour Market Testing, lock-in privatisation or undermine the rights of Indigenous Peoples.

The ACTU strongly affirms the Committee's recommendations and urges the Government to use the opportunities presented by the current reviews to implement them. Such action on the part of the Government would also be a principled step in actualising firm policy commitments that have been made for a fairer trade policy that prioritises the interests of working people and upholds human rights and dignity.

A legislative framework will help systematise Australia's approach to negotiating trade agreements. It will ensure that the aims of the Government's trade policy are embedded into the way Australia conducts its international business and will help shift the focus on trade negotiations towards the interests of ordinary people.

Recommendation 7: Implement the Joint Standing Committee on Trade and Investment Growth's recommendations by legislating a trade-negotiation framework.

Recommendation 8: Renegotiate ChAFTA and IA-CEPA to have them aligned with the Joint Standing Committee on Trade and Investment Growth's recommendations.

¹⁶ Ibid., Recommendation 5, p. 88.

¹⁷ Ibid., Recommendation 8, p. 110.

Green Economy

The Australian Government has recognised the environmental crisis brought about by human-made climate change and committed to ensuring that no trade agreement undermines commitments to achieving net-zero emissions by 2050. While this is a strident commitment to environmental sustainability, active steps should be taken to ensure that environmental protections are embedded into all trade agreements.

Both ChAFTA and IA-CEPA do not contain environmental chapters, explicit environmental protections or any enforceable environmental obligations. The ACTU urges the Government to negotiate binding environmental chapters that affirm key UN Conventions on climate change and environmental protection.¹⁸

The reviews at hand also present the Government with an opportunity to re-orient these trade agreements towards promoting a green economy. Developing regulations and standards for environmentally friendly goods, services and technologies as well as supporting investment and cooperation in developing clean energy, decarbonisation, and green finance can be facilitated through ChAFTA and IA-CEPA. The development of interoperable policy frameworks for environmental protection in trade can also be included in the agreements to support global initiatives for transition away from fossil fuels.¹⁹

Promoting a green economy will benefit not only Australian businesses and consumers, but also our trading partners. Both China and Indonesia have a significant interest in the development of environmentally friendly trade. Indonesia has expressed a strong desire to de-carbonise their economy and, like many nations in the Asia Pacific region, has begun to grapple with the realities of climate change.²⁰ China has emerged as a leader in green technology and the development of alternatives to fossil fuels.²¹

Recommendation 9: Re-orient ChAFTA and IA-CEPA towards actively promoting a green economy with binding and enforceable commitments.

¹⁸ Australian Labor Party, 2023 ALP National Platform: <https://www.alp.org.au/media/3569/2023-alp-national-platform.pdf>.

¹⁹ DFAT, Indo-Pacific Economic Framework: Clean Economy Agreement, November 2023: <https://www.dfat.gov.au/trade/organisations/wto-g20-oecd-apec/indo-pacific-economic-framework>.

²⁰ Republic of Indonesia, Second Nationally Determined Contribution (SNDC), Submission to the United Nations Framework Convention on Climate Change (UNFCCC), 24 October 2025: https://unfccc.int/sites/default/files/2025-10/Indonesia_Second%20NDC_2025.10.24.pdf.

²¹ Isabel Hilton, "How China Became the World's Leader on Renewable Energy", Yale Environment 360, 13 March 2024: <https://e360.yale.edu/features/china-renewable-energy>.

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