Submission to the Department of Foreign Affairs, Defence and Trade on the proposed Australia-Hong Kong free trade agreement

May 2017

Dr Patricia Ranald and Jemma Williams
Australian Fair Trade and Investment Network

Introduction

The Australian Fair Trade and Investment Network (AFTINET) welcomes the opportunity to make a submission on the proposed Australia-Hong Kong free trade agreement.

AFTINET is a network of 60 community organisations and many more individuals which advocates for fair trade based on human rights, labour rights and environmental sustainability. Our member organisations represent over two million Australians.

AFTINET supports the development of fair trading relationships with all countries and recognises the need for regulation of trade through the negotiation of international rules.

AFTINET supports the principle of multilateral trade negotiations, provided these are conducted within a transparent framework that recognises the special needs of developing countries and is founded upon respect for democracy, human rights, labour rights and environmental sustainability.

In general, AFTINET advocates that non-discriminatory multilateral negotiations conducted through the WTO are preferable to preferential bilateral and regional negotiations that discriminate against other trading partners. We are concerned about the continued proliferation of bilateral, sectoral and regional preferential agreements and their impact on developing countries which are excluded from negotiations, then pressured to accept the terms of agreements negotiated by the most powerful players.

We are particularly concerned at attempts to use bilateral and regional trade agreements to create and expand rules which benefit global corporations but reduce peoples' rights. For example, the failed Trans-Pacific Partnership (TPP) between the US, Australia and 10 other Pacific Rim countries contained rules on Investor-State Dispute Settlement and the extension of monopoly rights on medicines and copyright.

This submission argues that the Australia-Hong Kong FTA should not include these harmful provisions. We advocate for both the process and the content of negotiations to be based on principles of democracy, human rights, labour rights and environmental sustainability.

Summary of recommendations

1. Prior to commencing negotiations, the Government should table in Parliament a document setting out its priorities and objectives. The document should include independent assessments of the projected costs and benefits of the agreement. Such assessments should consider the economic, regional, social, cultural, regulatory and environmental impacts which are expected to arise.
2. There should be regular public consultation during negotiations, including submissions and meetings with all stakeholders. The Australian Government should release its proposals and discussion papers during trade negotiations.
3. Draft texts should be released for public discussion.
4. The final text should be released for public and parliamentary discussion before it is authorised for signing by Cabinet.
5. The current National Impact Analysis (NIA) process is inadequate. After the text is completed but before it is signed, comprehensive independent studies of the likely economic, social, health and environmental impacts of the agreement should be undertaken and made public for debate and consultation and review by parliamentary committees.
6. Parliament should vote on the whole text of the agreement, not just the implementing legislation.
7. The 1993 ISDS Australia-Hong Kong investment agreement should be cancelled and ISDS should not be included in the new agreement
8. There should be no extension of monopolies on patents or copyright in the agreement.
9. The agreement should use a positive list to identify which services will be included in the agreement.
10. Public services should be clearly and unambiguously excluded, and there should be no restrictions on the right of governments to provide and regulate services in the public interest.
11. Government should retain the right to regulate all services to meet service standards, health, environmental or other public interest objectives.
12. The agreement should require the adoption and implementation of agreed international standards on labour rights, enforced through the government-to-government dispute processes contained in the agreement.
13. The agreement should require the adoption and implementation of applicable international environmental standards, including those contained within UN environmental agreements, enforced through the government-to-government dispute processes contained in the agreement.
14. Australia should not make any offers for additional numbers of temporary workers or for the removal of labour market testing for temporary workers other than senior executives and managers.

15. The agreement should not contain any provisions which would prevent governments from supporting local firms in government procurement decisions.

The trade agreement process should be transparent, democratic and accountable

The current Australian trade agreement process is secretive and undemocratic. Negotiations are conducted in secret, and the decision to sign agreements is made by Cabinet before they are tabled in Parliament and examined by the Joint Standing Committee on Treaties. The National Interest Analysis presented to the committee is not independent but is conducted by the same department which negotiated the agreement. Parliament has no ability to change the agreement and can only vote on the implementing legislation.

A Senate inquiry in 2015 entitled *Blind Agreement* criticised this process and made some recommendations for change. The Productivity Commission has recommended that before trade agreements are authorised for signing by Cabinet the final text should be released publicly and there should be independent assessments of the costs and benefits of the agreement. The EU has developed a more open process, including public release of documents and text during negotiations and release of texts before they are signed (Senate Foreign Affairs and Trade Committee 2015; EU 2015; Productivity Commission 2010).

Accordingly, we make the following recommendations.

Recommendations:

1. ***Prior to commencing negotiations, the Government should table in Parliament a document setting out its priorities and objectives. The document should include independent assessments of the projected costs and benefits of the agreement. Such assessments should consider the economic, regional, social, cultural, regulatory and environmental impacts which are expected to arise.***
2. ***There should be regular public consultation during negotiations, including submissions and meetings with all stakeholders. The Australian Government should release its proposals and discussion papers during trade negotiations.***
3. ***Draft texts should be released for public discussion.***
4. ***The final text should be released for public and parliamentary discussion before it is authorised for signing by Cabinet.***
5. ***The current National Impact Analysis (NIA) process is inadequate. After the text is completed but before it is signed, comprehensive independent studies of the likely economic, social, health and environmental impacts of the agreement should be undertaken and made public for debate and consultation and review by parliamentary committees.***
6. ***Parliament should vote on the whole text of the agreement, not just the implementing legislation.***

No Investor-State Dispute Settlement processes (ISDS)

Background on ISDS

All trade agreements have government-to-government dispute processes to deal with situations in which one government alleges that another government is taking actions which are contrary to the rules of the agreement. ISDS gives additional special rights to foreign investors to bypass national courts and sue governments for compensation in an international tribunal if they can argue that a change in law or policy has harmed their investment.

ISDS was originally designed to compensate for nationalisation or expropriation of property by governments. But ISDS has since developed concepts like “indirect” expropriation which do not exist in national legal systems. The United Nations Committee on Trade and Development has documented that that numbers of known outstanding cases have grown steeply from 100 in 1993 to over 700 in 2016 (UNCTAD, 2015 and 2017).

There are many examples of ISDS cases against health and environmental laws and policy enacted by national, state and local governments. Swiss pharmaceutical company Novartis has lodged a dispute against Colombian government regulation to reduce the high monopoly price on a patented treatment for leukaemia (Williams, 2016). The US Lone Pine mining company is suing the Canadian Government because the Québec provincial government conducted a review of environmental regulation of gas mining (CBC 2012). The French Veolia Company is suing the Egyptian Government over a local government contract dispute in which it is claiming compensation for a rise in the minimum wage (Breville and Bulard 2014). The Mexican transport company Grupo Autobuses de Oriente (ADO) recently threatened Portugal with a €42 million ISDS case after it cancelled plans to privatise part of Lisbon's public transport network (Jones 2016).

Australian experts, including Australia’s High Court Chief Justice French and the Productivity Commission, have noted that ISDS is not independent or impartial and lacks the basic standards of national legal systems. ISDS has no independent judiciary. Arbitrators are chosen from a pool of investment lawyers who can continue to practice as investment law advocates. In Australia, and most national legal systems, judges cannot continue to be practising lawyers because of obvious conflicts of interest (Kahale 2014, French 2014, Productivity Commission 2010 and 2015).

ISDS has no system of precedents or appeals, so the decisions of arbitrators are final and can be inconsistent. In Australia, and most national legal systems, there is a system of precedents which judges must consider, and appeal mechanisms to ensure consistency of decisions.

Even if a government wins the case, defending it can take years and cost tens of millions of dollars. ISDS arbitrators and advocates are paid by the hour, which prolongs cases at government expense. An OECD study found ISDS cases last for three to five years and the average cost is US$8 million per case, with some cases costing up to US$30 million (Gaukrodger and Gordon 2012).

The June 2015 Productivity Commission examination of ISDS confirmed its 2010 study and recommended against the inclusion of ISDS in trade or investment agreements on the grounds that it poses "considerable policy and financial risks" to governments (Productivity Commission 2010:274, 2015: 82).

This prompted the previous ALP government to adopt a policy against ISDS from 2011. Many other governments, including Germany, France, Brazil, India, South Africa and Indonesia are reviewing their ISDS commitments (Filho 2007, Biron 2013, Uribe 2013, Mehdudia 2013, Bland and Donnan 2014).

In September 2015, United Nations Human Rights independent expert Alfred de Zayas launched a damning report which argued strongly that trade agreements should not include ISDS. The report says ISDS is incompatible with human rights principles because it "encroaches on the regulatory space of states and suffers from fundamental flaws including lack of independence, transparency, accountability and predictability" (de Zayas 2015).

1993 Hong Kong bilateral investment treaty and plain packaging case

Australia already has a bilateral investment treaty with Hong Kong (1993) which includes ISDS.

Tobacco company Philip Morris tried to use this agreement sue the Australian Government over its 2011 cigarette plain packaging legislation, after tobacco companies lost their claim for billions of dollars of compensation in Australia's High Court.

The US-based company could not sue under the US-Australia FTA because that agreement had no ISDS clause. Instead, the company shifted some assets to Hong Kong and claimed to be a Hong Kong company. It then used the 1993 investment treaty to claim billions of dollars in compensation.

Although Philip Morris ultimately lost the case, it took over four years and reportedly cost $A50 million in legal fees for the tribunal to decide the threshold issue that Philip Morris was not a Hong Kong company (Tienhaara 2015b).

The Australian Government won on the issue of jurisdiction, so the substantive issue of whether the company deserved billions of dollars of compensation because of the legislation was not tested. Even so, the case had a freezing effect on other governments' introduction of plain packaging legislation. The New Zealand Government delayed introducing its own legislation pending the tribunal decision (Johnston 2015).

A new free trade agreement with Hong Kong should result in the cancellation of the 1993 Hong Kong agreement and should not contain ISDS provisions.

"Safeguards" not effective

The only clear exclusion from ISDS cases in the TPP was for tobacco regulation. However, the need for this specific carveout casts doubt on the effectiveness of the general safeguards for other public interest legislation.

Claimed general ISDS "safeguards" in the TPP for health, environment and other public welfare measures have not prevented ISDS cases. Legal experts have

provided detailed critiques of the weaknesses of the TPP safeguards, quoted in the AFTINET submission to the Senate Inquiry into the TPP (AFTINET 2016).

These “safeguards” do not address the main structural deficiencies of ISDS tribunals, which have no independent judiciary, no precedents and no appeals process. Tribunals have enormous discretion in interpreting the meaning of “safeguards” (Tienhaara 2015a).

Recommendation

7. ***The 1993 ISDS Australia-Hong Kong investment agreement should be cancelled and ISDS should not be included in the new agreement***

No extension of monopoly intellectual property rights on patents or copyright

Intellectual property rights as expressed in patent and copyright law are monopolies granted by states to patent and copyright holders to reward innovation and creativity. However, intellectual property law should maintain a balance between the rights of patent and copyright holders and the rights of consumers to have access to products and created works at reasonable cost. This can be a matter of life or death in the case of affordable access to essential medicines**.** Trade agreements should not be the vehicle for extension of monopolies that contradict basic principles of competition and free trade (Stiglitz 2015).

The 2010 Productivity Commission Report on Bilateral and Regional Trade Agreements concluded that, since Australia is a net importer of patented and copyrighted products, the extensions of patents and copyright imposes net costs on the Australian economy. The Commission also concluded that extension of patent and copyright can also impose net costs on most of Australia's trading partners, especially for developing countries in areas like access to medicines (Productivity Commission 2010: 263).

Based on this evidence, the Report recommended that the Australian Government should avoid the inclusion of intellectual property matters in trade agreements. This conclusion was reinforced by a second report in 2015 (Productivity Commission 2010, 2015).

The 2016 Productivity Commission report on Australia’s Intellectual Property Arrangements demonstrated that intellectual property policy has been constrained by trade agreements. Global pharmaceutical companies have successfully lobbied for longer monopolies in trade agreements which have delayed the availability of cheaper medicines, resulting in higher prices.

The report criticises a ‘more is better mind set’ in relation to intellectual property protections and poor consultation and transparency resulting in agreements which typically involve trade-offs, in which the Government has capitulated too readily, resulting in longer monopolies, which are against Australia’s interests (Productivity Commission 2016: 26).

Public health experts and humanitarian medical organisations like Doctors Without Borders (MSF) have demonstrated how successive trade agreements have strengthened patents and other monopoly rights on medicines to the benefit of global pharmaceutical companies and to the detriment of access to affordable medicines, especially in developing countries (Lopert and Gleeson 2013, Hirono *et al*, 2015). MSF's analysis of the TPP concluded that it would further delay price-lowering generic competition by extending and strengthening monopoly market protections for pharmaceutical companies" (MSF 2015).

Recommendation

8. ***There should be no extension of monopolies on patents or copyright in the agreement.***

Trade in services: positive list, clear exclusion of public services, right to regulate services in the public interest

Trade agreements should not undermine the ability of governments to regulate in the public interest, particularly regarding essential services like health, education, social services, water and energy.

To the extent that services are included in any trade agreement, a positive list rather than a negative list system should be used. A positive list allows governments and the community to clearly understand what is included in the agreement, and therefore subject to the limitations on government regulation under trade law. It avoids the problem of inadvertently including in the agreement future service areas, which are yet to be developed. It also means that governments retain their right to develop new forms of regulation needed when circumstances change, as has occurred with the need for financial regulation following the Global Financial Crisis and governments' responses to climate change (United Nations 2009, Stiglitz 2016).

The inclusion of essential services like health, water and education in trade agreements limits the ability of governments to regulate these services by granting full 'market access' and 'national treatment' to transnational service providers. This means that governments cannot specify any levels of local ownership or management, and there can be no regulation regarding numbers of services, location of services, numbers of staff or relationships with local services. Governments should maintain the right to regulate to ensure equitable access to essential services, service standards and staffing levels, and to meet social and environmental goals.

Public services should be clearly excluded from trade agreements. This requires that public services are defined clearly. AFTINET is critical of the definition of public services in many trade agreements which defines a public service as "a service supplied in the exercise of governmental authority … which means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers." This definition results in ambiguity about which services are

covered by the exemption. In Australia, as in many other countries, some public and private services are provided side-by-side.

Even when essential services are not publicly provided, governments need clear rights to regulate to ensure equitable access and to meet other social and environmental goals.

Recommendations

9. The agreement should use a positive list to identify which services will be included in the agreement.

10. Public services should be clearly and unambiguously excluded and there should be no restrictions on the right of governments to provide and regulate services in the public interest.

***11. Government should retain the right to regulate all services to meet service standards, health, environmental or other public interest objectives*.**

Support for and implementation of internationally-recognised labour rights

The Australian Government should ensure that trade agreements include commitments by all parties to implement agreed international standards on labour rights, including the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work and the associated Conventions. These include:

- the right of workers to freedom of association and the effective right to collective bargaining (ILO conventions 87 and 98)
- the elimination of all forms of forced or compulsory labour (ILO conventions 29 and 105)
- the effective abolition of child labour (ILO conventions 138 and 182), and
- the elimination of discrimination in respect of employment and occupation (ILO conventions 100 and 111).

The implementation of these basic rights should be enforced through the government-to-government dispute processes contained in the agreement.

Recommendation

***12. The agreement should require the adoption and implementation of agreed international standards on labour rights, enforced through the government-to-government dispute processes contained in the agreement*.**

Support for and implementation of internationally-recognised Environmental Standards

Protection of the environment is a fundamental value which should underpin trade policy. Trade agreements should require full compliance with an agreed-upon set of Multilateral Environmental Agreements, with effective sanctions for non-compliance.

At the same time, trade agreements must ensure that other provisions, such as investor-state dispute processes, do not undermine the ability of governments to regulate in the interest of protecting the environment.

Trade policy must also work cohesively with measures to address climate change. Trade agreements should not restrict governments' ability to adopt measures to address climate change.

The implementation of environmental standards should be enforced through the government-to-government dispute processes contained in the agreement.

Recommendation

***13. The agreement should require the adoption and implementation of applicable international environmental standards, including those contained within UN environmental agreements, enforced through the government-to-government dispute processes contained in the agreement*.**

Movement of people

Australia is a nation built on immigration and has a permanent migration scheme. Those who migrate under this scheme have the same rights as other Australians. Their employment is not dependent on the sponsorship of one employer and they cannot be deported if they lose their employment.

Temporary work visas for overseas workers other than senior executives and managers were originally designed to address specific skills shortages, and were subject to local labour market testing to establish whether local workers were available. Recently the use of temporary overseas workers without labour market testing has increased to the point where it is replacing permanent migration.

Temporary migrant workers are in a far weaker bargaining position because they are sponsored by a single employer and loss of their employment can lead to deportation. This leaves them vulnerable to exploitation.

Increases in numbers of temporary migrant workers and removal of labour market testing are now frequently included in trade negotiations.

AFTINET opposes the inclusion of temporary worker provisions in trade agreements because it treats workers as if they were commodities. Governments should always retain their ability to regulate labour market policies, which need constant adjustment to ensure workers are not exploited. The inclusion of temporary labour arrangements in trade agreements removes this flexibility.

Academic studies comparing various recent trade agreements have demonstrated that a range of governments are using temporary work visas without local labour market testing as a means of deregulating labour markets. Such arrangements create groups of workers with less bargaining power who are more vulnerable to exploitation because loss of their employment can lead to deportation (Rosewarne 2015, Howe 2015).

Both media reports (ABC 2015a, 2015b, 2015c) and recent Australian studies have provided more evidence of the exploitation of temporary workers. A Fair Work Ombudsman investigation revealed that that up to 20 per cent of 457 visa workers were being underpaid or incorrectly employed. The Fair Work Ombudsman reported that temporary visa holders accounted for one in 10 complaints to the agency in 2015. In the three years from 2012, the agency dealt with 6000 complaints and recovered more than $4 million in outstanding wages (Toscano 2015).

A study by Monash University which interviewed workers on 457 and other temporary visa programs had similar findings (Schneiders and Millar 2015). The Senate inquiry into temporary work visas also provided similar evidence (Senate Standing Committee on Education and Employment 2015).

The evidence of violations of Australian minimum work standards included failure to pay even minimum wages, long hours of work, and lack of health and safety training leading to workplace injuries.

The current Australian Government has recognised some of these issues in its recent abolition of the Visa 457 scheme and its replacement with alternative schemes which it claims will restore labour market testing, announced in April 2017 The changes do not apply to arrangements to remove labour market testing in previous trade agreements, because of the inflexibility referred to above (Anderson, 2017). The effectiveness of these changes has been debated (Patty 2017).

Nevertheless, it appears that the inclusion of temporary worker provisions without labour market testing in future trade agreements would be inconsistent with the Government's stated policy to restore labour market testing.

Recommendation

14. Australia should not make any offers for additional numbers of temporary workers or for the removal of labour market testing for temporary workers other than senior executives and managers.

Government Procurement

There has been a controversial debate in Australia about both Commonwealth and state government procurement policies, and the ability of governments to use procurement policy as part of industry development policy. Past trade agreements have been interpreted in a way which limits the policy space in this area

AFTINET believes that Australian procurement policy should follow the example of trading partners like South Korea and the US in maximising policy flexibility on

government procurement. These should include broader definitions of value for money, which recognise the value of supporting local firms in government contracting decisions (AFTINET, 2017).

South Australia, Victoria and New South Wales have recently developed such policies, and there is a current Joint Select Committee inquiry into changes to Commonwealth procurement guidelines to incorporate broader definitions of value for money. The agreement should not contain any provisions which would prevent governments from supporting local firms in government procurement decisions.

Recommendation 15

The agreement should not contain any provisions which would prevent governments from supporting local firms in government procurement decisions.

References

Australian Broadcasting Corporation (2015a) Four Corners Program, *Slaving Away*, May 6, found February 26, 2016 at http://www.abc.net.au/4corners/stories/2015/05/04/4227055.htm

Australian Broadcasting Corporation (2015b) 7.30 Report Program, *Worker Rort*, June 22, found February 26, 2016 at http://www.abc.net.au/7.30/content/2015/s4259918.htm

Australian Broadcasting Corporation (2015c) Four Corners Program, *7-Eleven: The Price of Convenience*, August 31, found February 26, 2016 at http://www.abc.net.au/4corners/stories/2015/08/30/4301164.htm

AFTINET (2016) "Submission to the Senate Foreign Affairs and Trade inquiry into the TPP", October, found February 22, 2017 at http://aftinet.org.au/cms/sites/default/files/1610%2027%20TPP%20Senate%20Inquiry%20submission%20-%20final.pdf

AFTINET (2017) Submission to the Joint Select Committee inquiry into Commonwealth government procurement guidelines, March, found May 2 at http://aftinet.org.au/cms/sites/default/files/1704%20Submission%20to%20procurement%20inquiry.pdf

Anderson, S., (2017) "Government abolishing 457 visas, Turnbull says," April 19, found May 3, 2017 at http://www.abc.net.au/news/2017-04-18/government-abolishing-457-visas/8450310

Bland, B., and Donnan, S., (2014) "Indonesia to terminate more than 60 bilateral investment treaties", *Financial Times*, March 27, found April 12, 2014 at http://www.ft.com/intl/cms/s/0/3755c1b2-b4e2-11e3-af92-00144feabdc0.html#axzz2xrYOwsEb

Biron, C., (2013) "Latin American countries put up front against corporate lawsuits", Inter Press Service, October, found March 10, 2014 at http://www.mintpressnews.com/latin-american-countries-put-front-corporate-lawsuits/170030/

Breville and Bulard (2014) "The injustice industry and TTIP", *Le Monde Diplomatique*, English edition, June, found March 3, 2016 at http://www.bresserpereira.org.br/terceiros/2014/agosto/14.08.injustice-industry.pdf

Canadian Broadcasting Company (CBC) (2012) "Ottawa sued over Québec fracking ban", November 23, found November 18, 2015 at http://www.cbc.ca/news/business/ottawa-sued-over-quebec-fracking-ban-1.1140918

De Zayas, A., (2015) "UN Charter and Human rights treaties prevail over free trade and investment agreements," Media Release, September 17, found September 18, 2015 at http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16439&LangID=E#sthash.WdxSGvlb.dpuf

European Union (2015) EU negotiating texts in TTIP, February, Brussels, found February 12, 2015 at http://trade.ec.europa.eu/doclib/press/index.cfm?id=1230

Filho, J., (2007) “The Brazilian Experience with Bilateral Investment Agreements: A Note”, UNCTAD Expert Meeting On Development Implications of International Investment Rule-Making, June 28-29, found March 10, 2014 at http://unctad.org/sections/wcmu/docs/c2em21p15_en.pdf

French, R.F. Chief Justice (2014) “Investor-State Dispute Settlement-a cut above the courts?” Paper delivered at the Supreme and Federal Courts Judges conference, July 9, 2014, Darwin, found August 8, 2014 at http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj09jul14.pdf

Gaukrodger, D., and Gordon, C., (2012) “Investor-state dispute settlement: a scoping paper for the investment policy community”, OECD Working Papers on International Investment, no. 2012/3, OECD Investment Division, Paris, December found March 27, 2014 at www.oecd.org/daf/inv/investment-policy/WP-2012_3.pdf

Hirono, K., Haigh, F, Gleeson, D., Harris, P., Thow, A., (2015) “Negotiating healthy trade in Australia: Health impact assessment of the proposed Trans-Pacific Partnership Agreement” Liverpool, NSW: Centre for Health Equity Training Research and Evaluation, February, found March 8, 2016 at http://hiaconnect.edu.au/wp-content/uploads/2015/03/TPP_HIA.pdf

Howe, J., (2015) “TPP and China free trade agreement: our valuable labour standards must be protected,” The Age October 6, found March 3, 2016 at http://www.theage.com.au/comment/tpp-and-china-free-trade-agreement-our-valuable-labour-standards-must-be-protected-20151005-gk1zup.html

Johnston, M., (2015) “Pressure to bring in tobacco plain packaging,” *New Zealand Herald*, March 2, found February 9, 2016 at http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11410127

Jones, T., (2016) “Portugal threatened with post-treaty claim,” *Global Arbitration Review,* September 27, found October 24, 2016, at http://bilaterals.org/?portugal-threatened-with-first

Kahale G., (2014) Keynote Address, Eighth Juris Investment Arbitration Conference, Washington DC, March 8, found September 1, 2014 at http://www.curtis.com/siteFiles/Publications/8TH%20Annual%20Juris%20Investment%20Treaty%20Arbitration%20Conf.%20-%20March%2028%202014.pdf

Lopert, R., and Gleeson, D., (2013) “The high price of "free" trade: US trade agreements and access to medicines,” *Journal of Law, Medicine and Ethics*, 41(1): 199-223. DOI: 10.1111/jlme.12014 found March 3, 2016, at http://onlinelibrary.wiley.com/doi/10.1111/jlme.12014/abstract

Mann, H., (2015) “ISDS: Who Wins More, Investors or States?” *Investment Treaty News*, February, found November 15, 2015 at http://www.iisd.org/itn/wp-content/uploads/2015/06/itn-breaking-news-june-2015-isds-who-wins-more-investors-or-state.pdf?utm_source=lists.iisd.ca&utm_medium=email&utm_campaign=ITN+Breaking+News+Analysis+-+ISDS:+Who+Wins+More,+Investors+or+States?

Medicins sans Frontieres (2015) “Statement by MSF on the official release of the full text of the Trans-Pacific Partnership”, November 5, found January 22, 2016 at http://www.msfaccess.org/about-us/media-room/press-releases/statement-msf-official-release-full-text-trans-pacific

Medicins sans Frontieres (2016) RCEP: impact on access to medicines, December, Geneva, found February 23, 2017 at https://www.msfaccess.org/sites/default/files/ACCESS_Brief_RCEPTradingAwayHealth_ENG_2016_0.pdf

Mehdudia, S., (2013) "BIPA talks put on hold," *The Hindu*, January 21, found November 19, 2013 at http://donttradeourlivesaway.wordpress.com/2013/01/breaking-news-indian-government-puts-negotiations-on-all-bilateral-investment-treaties-bits-on-hold/.

Patty, A. (2017) "Abolition of 457 visas is 'spin over substance', say unions," Sydney Morning Herald, April 18, found May 29, 2017 at http://www.smh.com.au/business/workplace-relations/abolition-of-457-visas-is-spin-over-substance-say-unions-20170418-gvmxss.html

Productivity Commission (2010) *Bilateral and Regional Trade Agreements Final Report*, Canberra, December.

Productivity Commission (2015) *Trade and Assistance Review 2013-14*, June, found January 19, 2016 at http://www.pc.gov.au/research/recurring/trade-assistance/2013-14.

Productivity Commission (2016) Intellectual Property Arrangements, December 20, Canberra, found February 20, 2017 at http://www.pc.gov.au/inquiries/completed/intellectual-property/report

Public Citizen (2016) "Two hundred law and economics professors urge Congress to reject I SDS in the TPP," September 7, found on October 24 at http://www.citizen.org/documents/isds-law-economics-professors-letter-Sept-2016.pdf

Rosewarne, S., (2015) "Free Trade Agreements driving labour market reform by stealth" The Conversation January 20, found March 3, 2016 at http://theconversation.com/free-trade-agreements-driving-labour-market-reform-by-stealth-36124

Schneiders B., and Millar R., (2015) "'Black jobs': Rampant exploitation of foreign workers in Australia revealed," *Sydney Morning Herald*, October 1 found October 2, 2015 at http://www.smh.com.au/national/investigations/black-jobs-rampant-exploitation-of-foreign-workers-in-australia-revealed-20150930-gjxz7q.html

Senate Standing Committee on Foreign Affairs Defence and Trade (2015) "Blind agreement: reforming Australia's treaty-making process," May, found January 24, 2016 at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Treaty-making_process/Report

Senate Standing Committee on Foreign Affairs Defence and Trade (2015) "Blind agreement: reforming Australia's treaty-making process," May, found January 24, 2016 at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Treaty-making_process/Report

Stiglitz J., (2015) "Don't trade away our health," *News York Times*, January 15, found January 16, 2015 at http://www.nytimes.com/2015/01/31/opinion/dont-trade-away-our-health.html?_r=0

Stiglitz J., (2016) "In 2016, let's hope for better trade agreements" *the Guardian*, January 10, found January 11, 2016 at http://www.theguardian.com/business/2016/jan/10/in-2016-better-trade-agreements-trans-pacific-partnership

Tienhaara, K., (2015a) “The TPP has been released and our concerns have been vindicated,” *The Drum*, November 6, found November 6, 2015 at http://www.abc.net.au/news/2015-11-06/tienhaara-ttp-investment/6918810

Tienhaara, K., (2015b) “Dismissal of case against plain cigarette packaging good news for taxpayers,” *Canberra Times*, December 20 found January 16, 2016 at http://www.smh.com.au/comment/the-dismissal-of-a-case-against-plain-cigarette-packaging-is-good-news-for-taxpayers-20151218-glrb53.html

Tienhaara,K., (2016) *The Canary in the coalmine: What Canada’s experience with Investor-State Dispute Settlement tells us about Australia’s future under the Trans-Pacific Partnership,* October 25, published by GetUp, found on October 25 at http://cdn.getup.org.au/1929-Tienhaara_TPP_Final.pdf

Toscano, N., (2015) “One in five migrant workers on 457 visas could be underpaid or incorrectly employed,” *Sydney Morning Herald* May 29, found March 3, 2016 at http://www.smh.com.au/national/one-in-five-migrant-workers-on-457-visas-could-be-underpaid-or-incorrectly-employed-20150529-ghcmxr.html

United Nations (2009) *Report of the Commission of Experts of the President of the United Nations General Assembly on Reforms of the International Monetary and Financial System (the Stiglitz Commission)* New York.

United Nations Conference on Trade and Development (UNCTAD) (2015) *Recent Trends in IIAS and ISDS*, February, found March 10, 2015 at http://unctad.org/en/PublicationsLibrary/webdiaepcb2015d1_en.pdf

United Nations Conference on Trade and Development (UNCTAD) (2016) **“**Record Number of Investor-State Arbitrations Filed in 2015,” February 2, Geneva, found February 25, 2016 at http://investmentpolicyhub.unctad.org/News/Hub/Home/458

United Nations Conference on Trade and Development (UNCTAD) (2017) *Investment Dispute Settlement Monitor,* February, Geneva, found February 24, 2017 at http://investmentpolicyhub.unctad.org/ISDS

Uribe, M., (2013) “Investment arbitration in Latin America: Irreconcilable Differences?” *Kluwer Arbitration Blog*, May 13, found February 26, 2016 at http://kluwerarbitrationblog.com

Williams, Z., (2016) “As Colombia pushes for cancer drug price cut, Novartis files ISDS dispute”, *Industrial Arbitration Reporter*, November 30, found May 1, 2017 at http://isds.bilaterals.org/?investigation-as-colombia-pushes