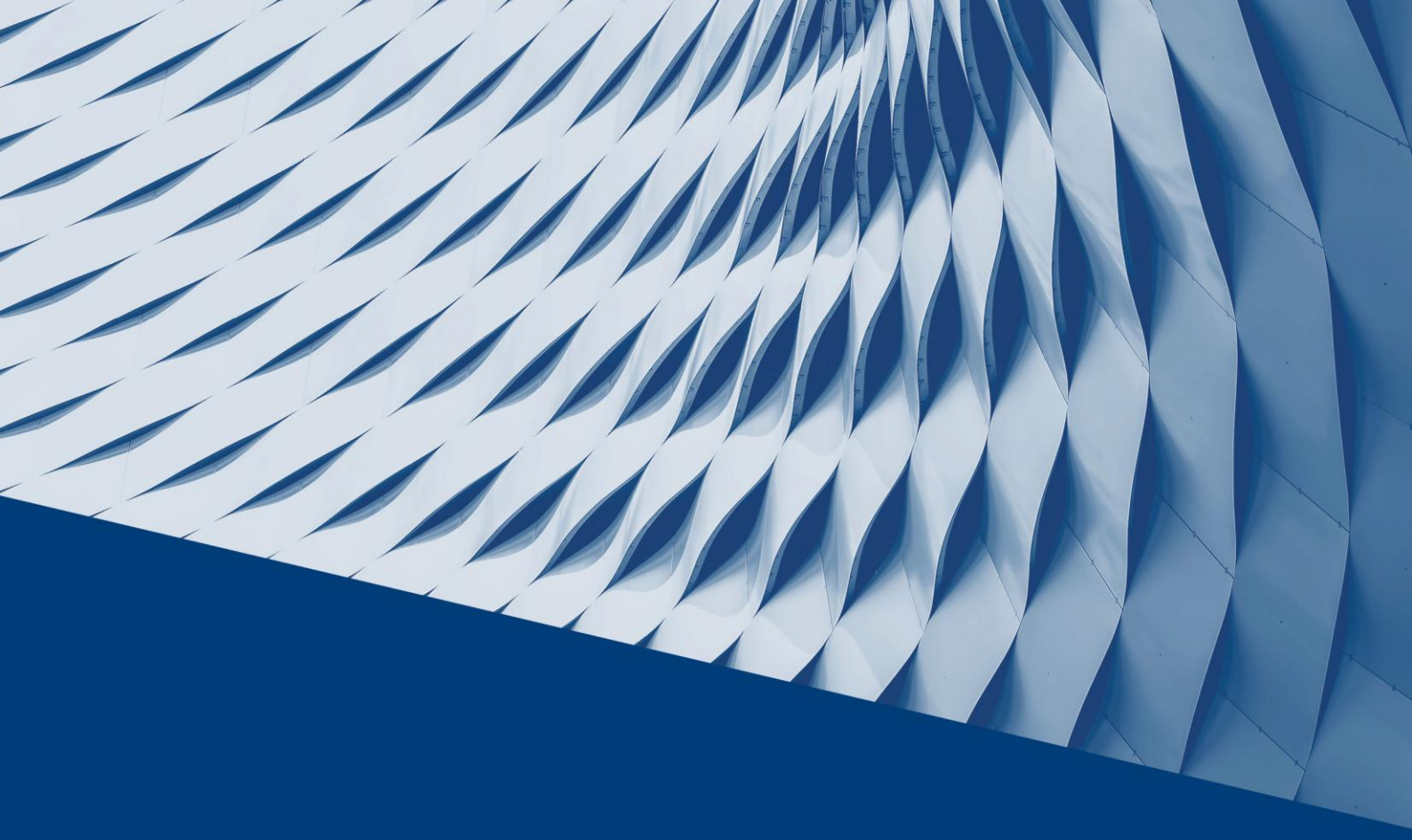

Southeast Asia Free Trade Agreements (FTAs) modernisation review

Submission by the Australian Council of Trade Unions

ACTU Submission, 19 December 2025
ACTU D. No 54/25

ACTU
australian council of trade unions

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Introduction

The Australian Council of Trade Unions (ACTU) is Australia's peak national body of unions, founded in 1927. Our 37 affiliated unions and trades and labour councils represent nearly 2 million members across all industries and occupations. The ACTU advocates on behalf of its affiliates on a wide range of issues to improve the lives of all workers.

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.

Recommendations

Recommendation 1: The Australian Government should immediately implement the recommendations of the Joint Standing Committee on Trade and Investment Growth (JSTIG) inquiry into Australia's approach to negotiating trade and investment agreements.

Recommendation 2: The Australian Government should use this new legislative framework for negotiating trade and investment agreements as the basis for modernising agreements with Southeast Asian trading partners.

Recommendation 3: The Australian Government should contribute development assistance funding to ODA eligible trading partners to support the realisation of progressive trade issues.

Recommendation 4: The Australian Government should renegotiate Southeast Asian trade agreements to ensure enforceable labour rights.

Recommendation 5: The Australian Government should urgently prioritise the removal of ISDS provisions from Southeast Asian trade agreements.

Recommendation 6: The Australian Government should exclude digital trade provisions that prevent or restrict regulation of the digital economy, including regulating to protect workers' rights and privacy, regulating cross-border data flow, requirements for local presence or storage of data, and access to source code.

Australia's approach to negotiating trade agreements

The report by Australia's Special Envoy for Southeast Asia, Nicholas Moore AO, *Invested: Australia's Southeast Asia Economic Strategy to 2040*[1] recommended that Australia's Trade 2040 Taskforce, in collaboration with Southeast Asian partners, review the scope of existing Free Trade Agreements (FTAs) to determine priorities for potential upgrade negotiations.

This review goes to the issue of what matters should be included and excluded trade agreements. These issues were explored in the recent Joint Standing Committee on Trade and Investment Growth (JSTIG) inquiry into Australia's approach to negotiating trade and investment agreements, which examined a range of matters including how the Australian Government develops a negotiating mandate and framework; consultation with stakeholders; the economic, social and environmental impacts of agreements; and the steps taken to protect and advance Australia's national interest, including the public interest. The Committee handed down recommendations in an interim[2] and final report[3] in 2024 which the Government has yet to respond to which are highly relevant, including:

- that the Australian Government develop a legislative framework to establish a trade advisory committee and cleared advisor system, informed by the United States model (Recommendation 1, interim report);
- that the Australian Government seek to include human rights, labour and environmental chapters in its trade agreements that reflect, and where appropriate contain specific references to, relevant United Nations and International Labour Organisation conventions and declarations to which Australia is a signatory (recommendation 4, report); and
- that the Australian Government establish a legislative framework for the negotiation of Australia's trade and investment agreements (Recommendation 8, report).

It is the view of Australian Unions that the Government should adopt the recommendations of this inquiry to ensure a consistent and principles-based approach to Australia's trade negotiations, ensuring that unions and other stakeholders have the opportunity for genuine input.

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[1] Nicholas Moore AO, *Invested: Australia's Southeast Asia Economic Strategy to 2040,* https://www.dfat.gov.au/sites/default/files/invested-southeast-asia-economic-strategy-2040.pdf

[2] https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Joint_Standing_Committee_on_Trade_and_Investment_Growth/Approachtotrade/Interim_report

[3] https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Joint_Standing_Committee_on_Trade_and_Investment_Growth/~/link.aspx?_id=5E107A330A5948A682F3215008B7C6C5&_z=z

The ACTU noted in our submission to the JSTIG inquiry that the review of Southeast Asian trade agreements proposed by the Southeast Asian Economic Strategy must be undertaken within the context of a new approach to trade agreements based on a legislative framework that enshrines a transparent, consultative, and democratically accountable process for negotiating trade agreements, and sets parameters on the content of agreements to ensure that agreements protect workers' rights and ensure the Government can regulate in the public interest.

Given that we expect the Government will pursue the 'modernisation' of Southeast Asian trade agreements within this new consultative framework, this submission does not intend to be exhaustive, but aims to highlight a few key priorities for renegotiating trade agreements to embed progressive trade issues and exclude provisions that are not in the public interest.

Recommendation 1: The Australian Government should immediately implement the recommendations of the Joint Standing Committee on Trade and Investment Growth (JSTIG) inquiry into Australia's approach to negotiating trade and investment agreements.

Recommendation 2: The Australian Government should use this new legislative framework for negotiating trade and investment agreements as the basis for modernising agreements with Southeast Asian trading partners.

Southeast Asia Free Trade Agreements (FTA)

Australia currently has seven FTAs in force with Southeast Asian economies:

- Singapore-Australia (SAFTA) – in force since 2003
- Thailand-Australia (TAFTA) – in force since 2005
- Indonesia-Australia (IA-CEPA) – in force since 2020
- Malaysia-Australia (MAFTA) – in force since 2013
- ASEAN-Australia-New Zealand (AANZFTA) – in force since 2010
- Regional Comprehensive Economic Partnership (RCEP) – in force since 2022
- Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) – in force since 2018

The Australian Government should upgrade all agreements in the new legislative framework outlined by the JSTIG recommendations to ensure they contain enforceable provisions on labour rights, human rights, environmental standards and net zero, women's rights, and indigenous rights, and in the case of developing countries, Australia should contribute to development assistance funding to achieve these goals. The Government must also use the opportunity of this

review of Southeast Asia trade agreements to prioritise the removal of Investor-State Dispute Settlement (ISDS) clauses from all agreements.

Recommendation 3: The Australian Government should contribute development assistance funding to ODA eligible trading partners to support the realisation of progressive trade issues.

Enforceable labour rights

In prioritising agreements for renegotiation, the Australian Government should consider the situation for human and trade union rights in each country. Australia's trade policy must reflect our commitment to human rights and decent work. The International Trade Union Confederation's 2025 Global Rights Index[4] paints a stark picture: violations of workers' rights are escalating globally, with Asia-Pacific ranked as the second worst region for workers. According to the Index, 83% of countries in Asia-Pacific violate the right to collective bargaining, 87% impede union registration, and 70% deny workers access to justice. Violence against workers doubled compared to the previous year, and two of the world's ten worst countries for workers— Myanmar and the Philippines — are in Southeast Asia. Appendix 1 provides an overview of the labour rights situation in a number of Southeast Asian countries sourced from the ITUC Global Rights Index.

The *Southeast Asia Economic Strategy* made only one recommendation regarding lifting standards for workers rights: to 'work with Southeast Asian partners to strengthen legal and policy frameworks on workplace health and safety, environmental standards and modern slavery (Recommendation 16). Disappointingly, this recommendation was couched in terms of concerns around these issues being impediments to investment, and work in these areas is with the aim of making investment projects more attractive to investors, rather than the intrinsic benefit for workers and communities of strengthening regulatory frameworks in these areas. Given the state of workers' rights in our region, it is critical that the Australian Government's approach for deepening economic ties with Southeast Asia puts the protection and raising of workers' rights at the forefront.

Australia must ensure robust, fully enforceable labour rights provisions in agreements it negotiates, with accountability mechanisms for governments and businesses. These provisions must be as enforceable as the rest of the trade agreement with material consequences if these

[4] https://www.ituc-csi.org/global-rights-index

commitments are not followed. These provisions must be part of the government's negotiating 'red lines' – so no enforceable workers' rights mean no trade deal.

In order to be effective, labour chapters must:

- Be open to all complaints of labour violations without condition - remove the limitations that the dispute must occur 'in a manner effecting trade and investment', or that it has to be 'sustained and recurring.'
- Ensure Parties ratify, adopt and maintain laws in compliance with the ILO Core Conventions. Instead of just a reference to the ILO 1998 Declaration on Fundamental Principles and Rights at Work, the agreement must reference each of the fundamental Conventions.
- Recognise and protect the right of each Party to determine its labour policies and priorities, set and regulate its levels of domestic labour protection and adopt or modify relevant policies and laws accordingly – in full conformity with the obligations in the labour chapter, including the international instruments referred to above.
- Highlight and reinforce the central role of the social partners (workers' and employers' representatives) participation in achieving the objectives of the labour chapter, including their role in the dispute settlement mechanisms, and implement policies and measures for social dialogue.
- Include an arbitration mechanism that is effective, timely and accessible, including a role for trade unions in each country to bring disputes to challenge Government and exporters for violations of fundamental labour standards and workers must have access to remedy for violations of their rights.
- Create a tripartite consultative body to oversee labour standards.
- Include a prohibition on countries importing/exporting products made with forced labour.
- Ensure the protection of temporary migrant workers.
- Ensure enforcement through the government-to-government dispute processes contained in the agreement in the same way as other chapters and provisions of the agreement.

Recommendation 4: The Australian Government should renegotiate Southeast Asian trade agreements to ensure enforceable labour rights.

Investor-State Dispute Settlement (ISDS)

The Australian Union movement has long opposed ISDS provisions, which give additional legal rights to foreign investors to enable them to sue governments for compensation in international tribunals if they can argue that a change in law or policy reduces the value of their investment or

will impinge on their future profits. These provisions preference the interests of corporations over the interests of the people: ISDS restricts the ability of governments to regulate in the public interest and imposes an unnecessary cost burden on governments to defend themselves in ISDS cases. ISDS also has a chilling effect on Government regulation, where governments may be reluctant to adopt measures out of fear of ISDS claims. For example, the New Zealand Government delayed the introduction of its tobacco plain packaging legislation when Philip Morris sued the Australian Government over its plain packaging law. The impact of ISDS – both the chilling effect on Government regulation and the financial impact of defending ISDS cases – is particularly damaging to low-income countries.

Australia currently has ISDS provisions in ten FTAs, including:

- China-Australia Free Trade Agreement
- Korea-Australia Free Trade Agreement
- Singapore-Australia Free Trade Agreement
- Thailand-Australia Free Trade Agreement
- Australia-Hong Kong Free Trade Agreement and Associated Investment Agreement
- Indonesia-Australia Comprehensive Economic Partnership Agreement
- ASEAN-Australia-New Zealand Free Trade Agreement

While the Australian Union movement welcomes the Albanese Government's policy of excluding ISDS from future agreements and reviewing ISDS in existing agreements, we note with alarm that the Australian Government has three current ISDS cases pending against it from billionaire Clive Palmer, where he is seeking billions of dollars in compensation. Palmer's cases use ISDS clauses in Southeast Asian trade agreements, highlighting the urgency of removing ISDS provisions from these agreements as a matter of priority.

Recommendation 5: The Australian Government should urgently prioritise the removal of ISDS provisions from Southeast Asian trade agreements.

Digital trade

Australia must retain the ability to regulate the digital economy. Workers need governments to implement strong regulations in the rapidly evolving digital economy to protect human rights and ensure new technology benefits us all. Australia's employment laws, human rights laws, privacy laws, and competition laws all need to be strengthened to respond to the development of the digital economy. The Australian Government must preserve the ability to regulate in the digital domain

through excluding restrictions on the regulation of cross-border data flows, restrictions on requirements for local presence and storage of data, and restrictions on access to source code. These rules will lock in deregulation of the digital economy and cement the power of big tech companies over workers. Although tech companies did not invent insecure work, many have developed digital platform business models built on precarity and exploitative labour practices. We are concerned digital trade rules could impede the ability of current and future governments to regulate for decent work in the growing digital platform economy, including regulating the use of AI.

We note with concern the 'ambitious' digital trade rules adopted in the 2020 Digital Economy Agreement (DEA) between Australia and Singapore (SAFTA).[5] The DEA and SAFTA contain some exceptions for cross-border data flow and location of computing facilities. Exceptions include government procurement, information held or processed on behalf of government, personal credit information, and data related to measures like health are listed as reservations in SAFTA. The DEA also enables the financial regulatory authorities of the Parties to access information processed or stored on computing facilities outside the Party's territory. Even with these exceptions, however, the restrictions on regulating cross-border data flows, location of computing facilities and local presence have implications for the ability of governments to regulate and enforce laws, including tax law, and implications for workers' rights. Digital trade rules mean that governments will not be able to access data for public policy reasons, such as monitoring labour practices.

Workers require legal measures to govern data use and algorithmic accountability in the world of work to ensure transparency, data protection and the prevention of discrimination and undue interference. The ACTU is calling for the creation of a National Artificial Intelligence Authority to regulate AI and protect creative workers from content theft and ensure all workers have a voice in the uptake of AI.

Recommendation 6: The Australian Government should exclude digital trade provisions that prevent or restrict regulation of the digital economy, including regulating to protect workers' rights and privacy, regulating cross-border data flow, requirements for local presence or storage of data, and access to source code.

[5] DFAT, 'Australia-Singapore Digital Economy Agreement: fact sheet', https://www.dfat.gov.au/trade/services-and-digital-trade/australia-singapore-digital-economy-agreement-fact-sheet

Appendix 1: Global Rights Index – workers rights in Southeast Asia

The following Southeast Asian countries, which Australia has bilateral or plurilateral FTAs with, have ratings of 4 (systematic violation of rights) or 5 (no guarantee of rights) on the Global Rights Index[6]:

Cambodia

Union leaders in Cambodia are routinely detained and prosecuted on trumped-up charges, with trials characterised by a blatant disregard for due process and impartiality in several countries including Cambodia. On 4 December 2024, the Phnom Penh Municipal Court upheld the conviction of Morm Rithy, President of Cambodian Tourism and Services Workers' Federation (CTSWF), on charges of incitement, as well as "discrediting a judicial decision". The charges stemmed from comments Rithy made during a live Facebook broadcast, in which he criticised the arrest of a casino worker. He was convicted in absentia and sentenced to 18 months' imprisonment and fined KHR 2 million (US$ 500)

China

There are persistent allegation of state-imposed forced labour affecting Uyghur, Kazakh and Kyrgyz minority groups within the Xinjiang Uyghur Autonomous Region (XUAR). According to UN Experts[7], forced labour in China is enabled through the State-mandated 'poverty alleviation through labour transfer' programme which coerces Uyghurs and other minority groups into labour in XUAR and other regions, where they are subject to systematic monitoring, surveillance and exploitation, with no ability to refuse work due to a fear of punishment and arbitrary detention.

Freedom of association is strictly regulated, with workers not free to form or join trade unions of their choice: only one 'workers organisation' recognised in law. The Government frequently uses public order laws to crack down on activists and trade unionists. It is not possible for a worker to participate in a legitimate strike or demonstration without violating Chinese law that prohibits the disturbance of public order. In addition, it is common for the prosecutor and the court to view industrial actions taken by workers as public security violations rather than as the exercise of fundamental rights.

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[6] en__global_right_index_2025__final_web.pdf

[7] https://www.ohchr.org/en/press-releases/2026/01/un-experts-alarmed-reports-forced-labour-uyghur-tibetan-and-other-minorities

In Hong Kong, the 2021 National Security Law has been used to inhibit the rights of working people and unions. More than 200 trade unions, civil society organisations and independent press outlets have been forced to disband themselves as a result of systematic state orchestrated smearing and defamation, threats and criminalisation. In 2020, 47 pro-democracy defenders, including trade union leaders, were arrested for conspiracy to subversion for taking part in a preliminary vote to select candidates for council elections. In January 2025, Lee Cheuk Yan, General-Secretary of the Hong Kong Confederation of Trade Unions (HKCTU), which has been forced to disband, is facing trial for exercising freedom of association – he is charged with inciting subversion of state power of China and is facing a sentence of 10 years in prison if convicted.

Indonesia

In 2020, the Indonesian Government passed a controversial Omnibus Law on Job Creation. The Omnibus Law faced widespread criticism from trade unions. Key concerns included the elimination of sectoral and regional minimum wages, increased precarious work through outsourcing, and the weakened standards for fixed-term contracts. The International Labour Organisation Committee on the Application of Standards reviewed the law in 2023 and recommended the Government seek the assistance of the ILO for comprehensive labour law reform to ensure compliance with international labour standards. In 2024, the Constitutional Court partially overturned the law, following a petition filed by trade unions.

Philippines

The Philippines is ranked as among the 10 worst countries in the world for workers' rights. Workers and unions in the Philippines exist in a daily struggle to exercise even the most basic rights in an environment of endemic harassment, violence, and death.

The government has long deployed "red-tagging" as a tactic against union leaders and members, falsely accusing them of supporting or participating in the communist insurgency. This strategy puts workers and activists at direct risk, while deterring others from joining or forming unions. Despite international calls to end "red-tagging", the government has shown little political will to protect union leaders or promote a climate conducive to the healthy functioning of unions.

Myanmar

Myanmar remains one of the most repressive environments for workers globally. Since the military coup in February 2021, the country has witnessed a systematic dismantling of labour protections.

Trade unions have been outlawed, union leaders imprisoned or forced into exile, and workers subjected to intimidation, violence, and arbitrary dismissal. The International Labour Organization (ILO) has identified multiple indicators of forced labour in Myanmar's garment sector, including excessive unpaid overtime, withholding of wages, and physical abuse. Workers who refuse overtime face termination, and striking employees are often assaulted or arrested. The situation has deteriorated to such an extent that the ILO invoked Article 33 of its Constitution in June 2025—a measure used only three times in the organisation's history—calling for targeted sanctions and international pressure to compel compliance with fundamental labour standards. The ILO Commission of Inquiry documented widespread abuses, including torture, arbitrary detention, and even killings of trade unionists, alongside the junta's systematic use of forced labour in military operations and infrastructure projects.

The ACTU's submission to the JSCOT inquiry on the Second Protocol to AANZFTA raised concerns about Myanmar's inclusion in AANZFTA while the military junta is in power – the Australian Government must ensure that trade agreements are not used to legitimise the military junta.

Thailand

Labour laws often fail to protect domestic and temporary workers, as well as those in the informal and platform economies. In Thailand, migrant workers are barred from forming and joining unions, banned from union leadership positions, or denied the right to engage in union activities.

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