



31 October 2018

Joint Standing Committee on Treaties  
Aspects of the Peru-Australia Free Trade Agreement revisited

Via email: [jsct@aph.gov.au](mailto:jsct@aph.gov.au)

Attention Committee Members,

### **Peru – Australia Free Trade Agreement**

The Electrical Trades Union of Australia (ETU) is the Electrical, Energy and Services Division of the Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia (CEPU). The ETU represents over 62,000 electrical industry workers around the country and the CEPU as a whole, represents over 101,000 workers nationally, making us one of the largest trade unions in Australia.

The ETU welcomes the opportunity to make a submission to the Joint Standing Committee on Treaties (JSCOT) inquiry into aspects of the Peru-Australia Free Trade Agreement (PAFTA) revisited.

The ETU maintains its opposition to both the way in which the Government is negotiating Australia's trade deals and the content of those agreements, which continue to fall well below the community's expectation for Government to protect Australian jobs, skills, industries and sovereignty.

The ETU supports Australian Fair Trade and Investment Networks submission to this review and supports all recommendations reasoned in that submission.

The PAFTA contains harmful provisions which will act to the detriment of the Australian economy, including;

- a. The inclusion of Investor State Dispute Settlement provisions;
- b. Loopholes which will lead to exploitation of foreign workers;
- c. Absence of provisions to facilitate testing of skills equivalence of overseas workers qualifications;
- d. Loopholes which will allow suitably qualified Australian workers to be overlooked in favour of foreign workers; and
- e. A lack of independent and transparent review of the merits of the trade deal

The ETU continues to call for fair trade agreements rather than free trade agreements. That is, trade agreements which adequately address:

- a. Upholding Occupational Licencing and Mandatory Skills Testing regimes;
- b. Labour Mobility Provisions which don't undermine local jobs;
- c. The removal of Investor State Dispute Settlement Provisions;
- d. Assessment of environmental impacts;
- e. Confidence that agreements are transparently negotiated with the Australian people; and
- f. Transparency with the Australian people on all operational aspects of trade agreements.

We understand that the JSCOT is noting its [August 2018 report](#) into PAFTA and that the Committee will again consider:

- ongoing concerns over the increasing complexity created by the number of trade agreements, particularly multiple agreements with the same partner; and
- the specific inclusion and operation of the Investor-State Dispute Settlement provisions in recently concluded trade agreements

There are three matters the ETU wish to specifically raise for the committee's consideration.

### **I.S.D.S**

The PAFTA provisions for ISDS, although slightly different from those contained in the TPP-11 agreement, are an unacceptable provision of trade agreements. ISDS is an enormously costly system with no independent judiciary, precedents or appeals, which gives increased legal rights to global corporations which already have enormous market power, based on legal concepts not recognised in national systems and not available to domestic investors.

Most global trading parties have recognised that ISDS provisions are not in a nations sovereign interest and we are seeing that these provisions are increasingly being omitted from trade deals.

New Zealand has the sense to remove these provisions from the TPP-11 but this Australian Government did not.

### **No Independent Analysis**

The PAFTA agreement was embarked upon as an insurance policy to what was appearing to be a failing TPP negotiation, this alone raises serious concerns about the quality of this trade deal.

Notwithstanding, there has been no independent assessment of the claimed increases in market access from the Peru FTA compared with the TPP-11, and no assessment of the costs and benefits to the Australian economy as a whole. DFAT simply asserted in its National Interest Analysis that the costs would be 'negligible', and this was again simply asserted in the previous very cursory JSCOT report<sup>1</sup>.

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<sup>1</sup> JSCOT [Report](#)

## **Labour Issues**

Two examples of the labour issues the ETU has concerns with are contained in Annexure 11-A<sup>2</sup> at B Installers and Servers and C (b) IntraCorporate Transferees (specialists).

It is the ETU's experience with equivalent provisions in other trade agreements that these terms are simply used as a method of bringing in foreign workers to work in Australia where there is no skills shortage and often high unemployment of that skillset in the region.

The workers are paid the country of origin wages and in a few cases, the ETU has found these workers living in squalid share house arrangements of up to 6 or 8 persons to a property earning an income that is not enough to purchase meals and incidentals in Australia.

Whilst the intention of the provision is understood, the reality is that these provisions are not being used this way and further broadening these kinds of arrangements through the ratification of another, potentially unnecessary trade deal is completely unacceptable.

These provisions in effect create a labour market testing exemption regime without calling it a labour market testing exemption.

## **Recommendations**

The ETU provides the following recommendations in relation to PAFTA:

### **Recommendation 1**

The review finds that PAFTA is not in the Australian national interest and should not be continued in its current form.

### **Recommendation 2**

Investor State Dispute Settlement clauses, or any similar arrangements, undermine Australian legal sovereignty. These arrangements and clauses should be immediately removed from the PAFTA, and any future trade agreement or treaty that Australia enters into.

### **Recommendation 3**

Labour Market Testing is a critical tool for ensuring the interests of the Australian domestic workforce are protected. The PAFTA provisions which directly or inadvertently remove, exempt or water down Labour Market Testing requirements in Australia should be immediately stripped from the PAFTA and its accompanying documents.

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<sup>2</sup> <https://dfat.gov.au/trade/agreements/not-yet-in-force/pafta/full-text/Pages/annex-11-a-schedule-of-australia.aspx>

## **Recommendation 4**

A review must be conducted into Australia's skills assessment and licencing institutions and regulators capacity to maintain appropriate occupational skills testing of overseas workers is not compromised.

## **Recommendation 5**

The full text of trade agreements should be required to be presented to both houses of parliament for an open debate, including aspects that do not require implementing legislation, and endorsement before being agreed to by the government.

## **Recommendation 6**

That a detailed social and economic impacts assessment of the PAFTA text and its accompanying documents should occur immediately, followed by immediate commencement of detailed stakeholder consultation (including industry, unions and civil society groups).

## **Conclusion**

The current secret and undemocratic process our Governments are utilising to negotiate international trade deals are unacceptable to the Australian public. More and more public institutions are calling for the text of trade agreements to be released for public and parliamentary scrutiny before they are signed and when they are reviewed. These demands have grown because trade agreements now deal with issues like medicines, copyright, food regulation, labour rights and other public interest issues which should be decided through the democratic parliamentary process, not secretly signed away in trade deals.

This review process simply reinforces concerns in regard to secrecy and a lack of transparency in the review process. This review simply pretends to give civil society a voice in the review while continuing to lock the Australian public voice out of the debate.

The complexity of bilateral and regional trade agreements and the potential for provisions to impose net costs on the community presents a compelling case for the negotiated text of an agreement to be comprehensively analysed before signing and again at each and every review.

Current processes fail to adequately assess the impacts of agreements. They do not systematically quantify the costs and benefits of agreement provisions, fail to consider the opportunity costs of pursuing preferential arrangements compared to unilateral reform, ignore the extent to which agreements actually liberalise existing markets and are silent on the need for post-agreement evaluations of actual impacts.

The questionable claims of job creation in trade agreements assumes all jobs are exchangeable – that a laid-off linesman or electrician can just slot into a newly- created banking or viticulture role.

It will take more than vague assurances of job creation and some misapplied economic theory to convince our union that the PAFTA in its current form can do anything but harm the working people we represent.