

# Trade

1. The ACTU is a supporter of trade as a vehicle for economic development, job creation, tackling inequality and raising living standards. The most important objective of trade policy should be to deliver quality, sustainably produced and delivered goods and services that benefit 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, including Aboriginal and Torres Strait Islander peoples, and promote just and equitable development abroad. We have longstanding concerns about the previous Government's agenda on trade which placed the needs of business above all else - where businesses and investors enjoy significant rights with few responsibilities - jeopardising local jobs, undermining working conditions, and compromising the ability of current and future Australian Governments to regulate in the public interest.
2. The Coalition Government's explicit approach of ending industry assistance simply to sign free trade agreements with Korea, Japan and China has destroyed local industry – particularly the automotive industry. The automotive industry had been one of Australia's largest industries, employing 200,000 people in generally well-paid secure jobs. By contrast, the Government's own modelling of three contemporary trade agreements purported to result in just 5434 additional jobs by 2035.
3. Congress welcomes the growing realisation in many quarters of the limitations and adverse impacts of unfettered trade policy, and that a rebalance is overdue. Governments must be empowered to directly support local workers and industries – for instance, through public procurement and industry policy – in addition to seeking mutually beneficial trade relationships with international partners.
4. In the 1980s and 90s, autonomous trade liberalisation and tariff reduction measures were accompanied by industry plans and assistance to lessen the negative impact on those workers made worse off. Recent trade policy dominated by FTAs has failed to provide support or protection for the losers of free trade or contribute to industrial policy plans. Workers, families, communities and their industries have effectively been left behind.
5. While some trading partners exploit tariff and non-tariff barriers, Australia has failed to implement measures to support legitimate barriers to trade, such as anti-dumping and safeguard measures, barriers to dangerous imports, or barriers that support objectives such as national security, the prevention of deceptive practices, animal or plant life, health and the environment. The Commonwealth must expedite a broad review of anti-dumping policy and the Anti-Dumping Commission to deliver a level playing field for Australian manufacturers exposed to unfair trade practices. It must also provide additional resourcing to the Anti-Dumping Commission to ensure it can effectively meet its remit. We need additional resourcing of the Anti-Dumping Commission to ensure the appropriate action is taken when products and services are dumped into the Australian market.
6. Trade agreements have been carried out in secret, with little or no socio-economic impact testing, in order to provide private profit and more power for big business at the expense of workers and their families. The ACTU condemns the secrecy with which the DFAT negotiates trade agreements; with negotiation parameters and the final text being withheld from public scrutiny until after Cabinet makes the decision to sign them, after which they cannot be changed.
7. The need for a more open and democratic process for trade agreements is more important than ever, as their content has expanded beyond tariff deals: they increasingly deal with an expanding range of other regulatory issues which would normally be debated and legislated through the democratic parliamentary process, and which have deep impacts on workers' lives.
8. The process for negotiating trade agreements must be reformed: trade agreements must be subject to proper scrutiny and unions, civil society and business stakeholders should have the opportunity for genuine input into the negotiations on behalf of those they represent. Trade agreement negotiations are currently conducted behind closed doors, and Australia lags behind other likeminded countries when it comes to transparency and public scrutiny of agreements.

9. Congress calls for a transparent, consultative, and democratically accountable process for negotiating trade agreements:
  - a. Prior to commencing negotiations for bilateral or regional trade agreements, 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, regulatory, health, labour and environmental impacts, and impacts on Aboriginal and Torres Strait Islander peoples, which are expected to arise.
  - b. There should be regular, in-depth and meaningful stakeholder consultation during negotiations, including with unions, business and civil society representatives. These consultations must provide attendees genuine insight into the substance of agreements under development and the negotiation process – for example, via the circulation of draft agreement text and discussion of the Commonwealth’s negotiating priorities and strategy.
  - c. The Australian Government should legislate an advisory committee system based on the system in the US, to enable stakeholders to provide information and advice with respect to negotiating objectives and bargaining positions before Australia enters into a trade agreement. The committees would be consulted as negotiations progress and provided with negotiation text on a confidential basis in order to provide real-time advice, and be provided with the final text before it is signed in order to provide advice on whether the agreement should be entered into. The committee would also provide advice on the operation of existing trade agreements and other related trade policy issues.
  - d. Proposals and discussion papers during trade negotiations should be publicly released and available for public comment.
  - e. The final text of agreements should be released for public and parliamentary debate, and parliamentary approval before they are authorised for signing by Cabinet.
  - f. After the text is completed but before it is signed, comprehensive, independent assessments of the likely economic, social, environmental and health impacts of the agreement should be undertaken and made public for debate and consultation and review by parliamentary committees.
  - g. An inquiry should review the text of a trade agreement which has been released before signing with the independent assessment of its costs and benefits and make a recommendation to Parliament.
  - h. After release of the text and before signing, and after a review of the text and the independent assessment of the costs and benefits of the agreement, Parliament should decide whether the Cabinet should approve the agreement for signing – this should be subject to a debate and vote by Parliament.
  - i. If the agreement is approved by Parliament, and approved for signing by Cabinet, Parliament should then vote on the implementing legislation.
  - j. Independent evaluations of the agreement should be held five years after the agreement comes into force, and at five yearly intervals thereafter. These evaluations should examine the economic, employment, environmental, social, health and gender impacts of the agreement, and be made publicly available.
10. The content of our trade agreements must also be reformed: for too long Australia has put forward negotiating priorities that only benefit business and are detrimental to the interests of workers and our communities, including Aboriginal and Torres Strait Islander peoples, and workers and communities abroad.
11. The Australian Government must not sign up to trade agreements that:
  - a. contain damaging provisions such as Investor-State Dispute Settlement (ISDS) - which enables private investors to sue the Government for changes to laws and regulation that may impinge on their profits;
  - b. limit the capacity of governments to procure goods and services locally, or attach other conditions to public procurement contracts;

- c. incentivise and lock-in the privatisation or contestability of public services or constrain the capacity of governments at all levels to re-municipalise, insource, nationalise or regulate public services and publicly-funded services;
  - d. undermine Medicare, the public health system, or the Pharmaceutical Benefits Scheme;
  - e. include TRIPS plus provisions or limit the use of TRIPS flexibilities;
  - f. undermine State or Commonwealth workplace laws or occupational licensing arrangements;
  - g. undermine laws that relate to anti-dumping;
  - h. limit the right of the Commonwealth, state and territory governments, local governments or any statutory or subsidiary bodies to regulate in the interests of public welfare, the environment, or in relation to safe products;
  - i. constrain the capacity of governments to regulate the use, access to and location of data and source code, or to develop digital industrial policies, digital public infrastructure, or to tax, or apply duties to, the digital economy;
  - j. undermine occupational licensing and mandatory skills testing requirements, or do not require skills assessments to be undertaken in Australia;
  - k. do not include labour chapters with enforceable international labour standards;
  - l. contain International Maritime Services Annexes that undermine Australian maritime cabotage.
12. The current approach to trade treats workers as commodities. This must stop. Labour mobility must not be used as a bargaining chip in trade agreements – this should be the remit of migration, skills and industry policy, based on tripartite input and subject to democratic oversight.
13. FTAs have under previous governments encompassed even more dangerous provisions; provisions that are much less about delivering economic development through trade than they are about maximising profits for multinational corporations. For instance, many FTAs contain Investor-State Dispute Settlement (ISDS) clauses (or ISDS-like clauses that function in the same way) which allows foreign investors to bypass national courts and sue governments for millions of dollars in private international tribunals if they argue that a change in domestic law or policy at a local, state, or national level will 'harm' their investment. This includes law and policy such as minimum wages, tax, occupational health and safety, public health and environmental regulations. These clauses put corporate interests over public interests and prevent Governments from governing in the best interests of citizens. We will welcome the current Federal Government's commitment to not include ISDS provisions in future trade agreements
14. FTAs also further complicate already the difficult legal, social, and economic situation faced by Aboriginal and Torres Strait Islander peoples. The secrecy in which the FTA negotiations occur are especially disadvantageous for the consideration of their rights, such as Native Title. Along with the general problems of ISDS, such provisions particularly place Aboriginal and Torres Strait Islander peoples at a disadvantage in situations where the interests of multinational corporations clash with land and cultural rights. The absence of labour market testing, and the lack of training obligations, are also bad for Aboriginal and Torres Strait Islander peoples' employment outcomes, and damage done to the public sector also damages the chances of achieving Aboriginal and Torres Strait Islander peoples' health and education goals. While some FTAs do contain exemptions for Aboriginal and Torres Strait Islander peoples Businesses in procurement matters, protections for Traditional Knowledge are barely recognised, and matters such as cultural rights must be explicitly addressed and not simply folded into general discussions about intellectual property.
15. Modern FTAs promote further deregulation and the privatisation of public services, ignoring their crucial and proven role in development and in reducing inequity. Public services (including public education and health) are designed to meet social needs through affordable, accessible, and often universal programs that serve the public interest, funded by our common wealth. Free trade agreements that are specifically designed to enhance private commercial interests, by opening more services to global market forces, will not benefit Australian communities. Provisions within FTAs that promote trade in services on a

commercial basis have far-reaching consequences for public services in signatory countries. Women are disproportionately affected by privatisation; they make up a large part of the public-sector workforce whose jobs and income are threatened, and women access public services at a greater level. Australia's free trade agenda fails to consider the impact on women.

16. Modern FTAs contain 'standstill' and 'ratchet' clauses: the standstill clause effectively freezes the degree of regulation in particular sectors meaning that governments are no longer free to implement stricter regulatory provisions, and the ratchet clause means that governments will be unable to reverse privatisations – once a sector is privatised or deregulated, governments face the triggering of dispute mechanisms. This means that governments have lost control of services and potentially face financial and trade implications when reversing failed privatisations, or expanding the scope of public goods. Considering the privatisation of public hospitals and associated services has demonstrably failed, the decimation of TAFE, the cost of a privatised electricity market, the reduction in skills requirements and the importation of asbestos, and our recent inability to respond to a global pandemic through sovereign means (privatisation of CSL, inability to manufacture PPE at scale in a timely manner), this is a recipe for disaster.
17. Trade policy by Australian governments over recent decades has repeatedly included the acceptance of agreement provisions which create health risks both in Australia and internationally. The absence of independent health impact reports in the course of public consultation and review mean that health issues are often deprioritised in trade negotiations and ignored in the long term assessment of trade policy effectiveness. The health risks of current and future agreements include increasing the cost of medicines and influencing the decisions of the Pharmaceutical Advisory Board and the Pharmaceutical Benefits Scheme (PBS), meaning increased costs flow on to the Australian public and the public healthcare system through exorbitant prices on medicines and other health and pharmaceutical products. Patent term extension and data retention exclusivity included in free trade agreements risk lives by delaying access to generic medicines and may lead to restrictions on access to diagnostic tools and procedures. As highlighted by our experience through the Covid pandemic, contributing to global health development is fundamental to preventing and responding to international health crisis; yet Australia's position in blocking TRIPS waivers, failing to implement the principles in the Doha Declaration, supporting the inclusion of 'TRIPS Plus' provisions in trade agreements and opposing local generic production through patent waivers, has undermined such global responses.
18. They also weaken the ability of Government to regulate and restrict tobacco and alcohol availability and advertising and restrict its capacity to implement new food labelling policies which highlight the health risks of consumables. Considering non-communicable diseases are a leading killer of Australians, this is a clear indication of profit being placed before people.
19. Government procurement provisions in trade agreements or at the WTO can limit Government's ability to support Australian workers and business through procurement. They prevent governments from using procurement policy to support outcomes such as increased employment, higher labour standards, sustainability and emissions reductions, protection of the environment and national treasures, growth in strategic industries, the SME sector, and Aboriginal and Torres Strait Islander peoples. In negotiating future trade rules, government must not further undermine its ability to use procurement policy for these and related purposes. Government must also make better and more regular use of exemptions in existing FTAs that allow it to support local workers and industry through procurement.
20. Digital trade or e-commerce provisions restrict the right of governments to regulate areas such as privacy and consumer protection, requiring companies to have a local presence, and cross-border data transfers. Provisions that prohibit access to source code make it impossible to expose discriminatory or harmful automated decisions and can pose serious threats to safety and public interest. These provisions have implications for workers' rights including privacy, and the ability to hold corporations accountable for complying with industrial laws, health and safety laws, tax laws, etc, where they do not have a local presence. These provisions also tie the hands of future governments from regulating emerging technologies, such as Artificial Intelligence and have been described by the US Trade Representative as 'policy suicide'.

21. The union movement is committed to getting a better deal on trade for all Australians. Trade is extremely important to the economy, accounting for 40% of GDP. Changing trade policy is central to rebalancing economic rules in favour of working people. A good trade policy puts shared prosperity, decent work and sustainable social and economic development at the centre of trade agreements. A good trade agreement is not an end in itself, rather it should be a means of creating complementary and cooperation between countries, based on respect for workers' rights, protection of the environment and increased opportunities for business, regardless of their size or power.
22. The success of our trade policies should be measured through quality job creation, rising wages and more engaged and competitive businesses; all measures of broadly shared benefits. It should not be based on higher corporate profits, increased offshoring of Australian jobs and weakening labour market protections, wages, rules of law and democratic decision-making in Australia or in negotiating partner countries.
23. Congress recognises that the Government is increasingly seeking to negotiate 'green economy agreements', such as the first-of-its-kind Singapore-Australia Green Economy Agreement, to support increased investment and trade in low emissions and sustainable goods and services. While these agreements are not strictly 'free trade agreements', Congress calls on the Commonwealth to ensure that any such agreements are negotiated in a manner and on terms consistent with this Congress policy. Congress supports critical minerals MOUs on the condition that they are consistent with this Congress policy, and consistent with the support for increased onshore processing of critical minerals as noted in the Congress industry policy.
24. Congress will campaign and advocate for legislation to ensure:
  - a. Will not be negotiated with countries that abuse workers' rights.
  - b. Will only be negotiated with countries that have ratified all fundamental ILO Conventions.
  - c. Include binding, enforceable labour rights protections to hold governments and businesses accountable for violations of workers' rights. The arbitration processes should be developed with the participation of labour representatives from all partner countries. Eligibility of complaints should not be conditional to their impact on trade. Exporters found violating ILO Core Conventions should be black-listed until violations are remedied. Such a framework intends to strengthen the bargaining capacity of unions in countries and sectors where the violation takes place, rather than providing the importing country with opportunity for NTB in disguise of labour rights' protection;
  - d. Include binding, enforceable commitments to end modern slavery, including banning the import of products made with forced labour.
  - e. Support the capacity-building of unions in developing countries to assist with upholding workers' rights.
  - f. Are consistent with a robust permanent migration system which protects the rights of migrant workers and ensures temporary migration is only used in situations of genuine workforce shortages.
  - g. Exclude provisions that facilitate increased numbers of temporary migrant workers who are vulnerable to exploitation.
  - h. Exclude provisions that enable the waiving of labour market testing requirements or other processes to verify labour shortages.
  - i. Exclude provisions that could undermine occupational licencing and mandatory skills testing regimes.
  - j. Exclude the 'specified work' requirement for Working Holiday Maker visas by abolishing second and third year visas to prevent exploitation.
  - k. Include enforceable commitments to UN Human Rights Treaties and Declarations and multilateral environmental agreements.
  - l. Are consistent with protecting the rights of Aboriginal and Torres Strait Islander peoples people.



- m. Are consistent with and promote the UN Guiding Principles on Business and Human Rights and OECD Guidelines for Multinational Enterprises on Responsible Business Conduct.
  - n. Exclude ISDS provisions, and review ISDS provisions in existing agreements.
  - o. Do not restrict the use of government procurement at any level.
  - p. Maintain current government procurement exclusions for SMEs, Aboriginal and Torres Strait Islander peoples enterprises, national treasures, ethical standards, environmental standards, and for local government procurement.
  - q. Are supported by a robust and well-resourced anti-dumping policy.
  - r. Exclude cultural industries through a broad-based cultural exception or reservation, to ensure the Government is free to regulate this sector.
  - s. Exclude all public services and publicly-funded services from all levels of government.
  - t. Include a blanket exemption for all existing State Government non-conforming measures regarding investment and services.
  - u. Enable Governments to retain the ability to regulate or re-regulate public services. Provisions incentivising the privatisation of public assets and services, or disincentivising the expansion of public ownership and delivery of essential services must not be included.
  - v. Use a positive list structure for trade in services, rather than a negative list.
  - w. Contain a complete definition of cabotage to ensure it is properly excluded from trade agreements.
  - x. Do not extend patent monopolies or data protection monopolies on medicines in trade agreements.
  - y. Do not include any TRIPS Plus provisions.
  - z. Exclude digital trade provisions which would restrict regulation of data, including data licensing, cross-border data flows, restrictions on requirements for local presence and storage of data, and restrictions on access to source code. Include provisions that ensure digital companies do not evade labour law, tax law, and must abide by Australian standards for privacy and consumer protection, including where data is held offshore.
25. Current trade agreements should be assessed against the new legislated framework, and where they are inconsistent, those aspects should be renegotiated.