

# The Trans-Pacific Partnership Agreement: Contradictions in Australia and in the Asia Pacific Region

Patricia Ranald \*

## Abstract

*The Trans Pacific Partnership Agreement (TPPA) is currently being negotiated between the US, Australia, New Zealand, Singapore, Brunei, Peru, Chile, Vietnam and Malaysia. The TPPA is intended to multilateralise the bilateral legally binding agreements the US has with four of these countries, including Australia, as the building block for a legally binding Free Trade Agreement in the Asia Pacific area. The TPPA re-opens many of the issues debated in the US-Australia Free Trade Agreement in 2004. These include pressures from US industry groups for changes to Australian regulation like the Pharmaceutical Benefits Scheme, regulation and labelling of genetically engineered foods and local content rules for Australian media. The paper analyses the endurance of the agenda despite the changes of government in the US and Australia since 2004, and discusses the contradictions and uncertainties of the strategy in Australia and in the Asia Pacific.*

**JEL Codes:** F13, F15, K33

## Keywords

*Trans Pacific Partnership Agreement (TPPA); bilateral trade agreements; United States trade policy; Australia-US Free Trade Agreement (AUSFTA).*

## Introduction

The Trans Pacific Partnership Agreement (TPPA) is being negotiated between Australia, the United States, (US), Chile, Peru, Brunei, Singapore, New Zealand, Vietnam and Malaysia. The current target for conclusion of the negotiations is November 2011.

This analysis of the TPPA combines the conceptual approach to trade agreements developed by Cox, Busch and Milner's concepts of regionalism and Weiss and Thompson's analysis of specific historical state development strategies. This approach seeks to explain the origins of, and changes in, trade institutions and

---

\* Research Associate, University of Sydney

government policies through a critical analysis of their social origins and histories, and the power relationships between their advocates and critics. This involves analysis of different interests of classes and social forces and their relationship to governments and other state institutions. These forces include corporations and business organisations on the one hand, and organisations like unions and community groups which seek to defend the interests of the less powerful, on the other. State institutions at national and international levels are influenced, but not simply determined by, dominant economic interests. Institutions also develop their own histories which in turn influence the development of policies, which can persist despite changes of government. State policies can reflect the outcomes of contests between social forces (Cox 1994).

The demise of Cold War polarisation enabled the consolidation of global production systems in three economic macro regions, dominated by the most powerful states. These were the Americas, centred on the US; Europe, centred on a united Germany and the European Union; and Asia previously centred on Japan, and now increasingly on China. Bilateral and regional trade agreements in this context enable transnational corporations to achieve regional economies of scale in investment, and access to raw materials and markets, while still seeking access to global markets (Busch and Milner 1994).

Transnational corporations are powerful influences on states, pressing for global and regional regulatory frameworks and policies that will create a favourable environment for their global trade and investment strategies. However, the establishment of global, regional and bilateral trade agreements which can change national forms of regulation is not a simple process of reducing the role of nation states in relation to global corporations and institutions. States are the main actors in trade negotiations. The most powerful states like the US seek to use aspects of their national legal frameworks as the model for legally enforceable global or regional regulation through trade agreements. State models of regulation also differ because of different specific histories. The European model of regulation and of trade agreements has been more interventionist about labour regulation and social service provision because of the relative strength of the labour movement in key European countries. Some Asian models of economic development (Japan, South Korea, Taiwan) have relied extensively on state intervention to assist industrial investment (Weiss and Hobson 1995).

States may respond to national resistance to trade agendas by attempting to mediate the effects of international regulation on what are still national political constituencies. This resistance and differing state responses arise because trade agreements not only deal with reductions in tariffs (taxes on imports), but now seek to apply global trade rules to many areas previously regarded as the domain of national government regulation. These include access to medicines, water services, financial services, cultural policies, quarantine, food regulation, government purchasing and environmental policies. These new forms of legally binding global regulation attempt to internationalise previous national state functions, effectively removing key aspects of policy from national democratic pressures. However the attempted removal of policies from national democratic legitimation can itself provoke resistance from a range of labour and social

movements, which can in turn influence governments and the policy outcomes (Cox 1994: 52–53).

This article analyses US trade policy as expressed in the North American Free Trade Agreement (NAFTA) template, and pursued through bilateral and regional trade agreements, and situates the TPPA in this strategy. Part one of the paper briefly analyses the successes and failures of this template, pursued by both Republican and Democratic administrations, in North, Central and South America. Part two examines why the template has made little headway in the Asia Pacific through the Asia Pacific Economic Cooperation forum (APEC), and the role of the TPPA as a new strategy for advancing this template. Part three analyses Australia as a case study of the way in which the resistance encountered to the NAFTA model may present problems for the negotiation of the TPPA in Australia and in the region. The conclusion draws together the evidence to discuss the contradictions faced by the TPPA in Australia and in the region.

### **US Trade Policy in North, Central and South America**

US Trade policy is broadly based on neoliberal policies (also known as the Washington consensus) as defined by Stiglitz, that are promoted through International Financial Institutions, and the World Trade Organisation (Stiglitz and Charlton 2005). Neoliberal theory argues that removal of all tariff and other trade barriers benefits consumers and enables global competition to maximise efficient allocation of resources. The logic of multilateral trade theory prefers multilateral trade liberalisation to preferential bilateral and regional agreements, because the latter are based on product rules of origin for particular countries, which by definition exclude products from other countries and can result in trade diversion (Adams, Dee et al. 2003). Although successive US governments have supported this theory, in practice they have resisted WTO initiatives for the removal of agricultural export subsidies to US farm businesses, despite the logical incompatibility of the latter with trade liberalisation. This resistance has contributed to the delay in multilateral WTO negotiations, which have been underway since 2001 (Stiglitz and Charlton 2005: 58–59).

From the 1990s, US trade strategy has in practice pursued preferential bilateral and regional agreements, based on NAFTA. Since 2001, this pursuit has been linked explicitly in some cases to the US military/strategic agenda (Buchanan 2010: 90). This strategy permits the US to maximise market opening to its exports and to pursue its regulatory agenda in particular countries and regions, while leaving agricultural subsidies in place, as these can only be reduced multilaterally (Stiglitz and Charlton 2005: 24).

US bilateral and regional trade agreements have followed the NAFTA template. This template supports US-style legal frameworks which increase the legal rights of corporations and reduce the rights of governments to regulate corporate activity. The agenda includes greater protection of corporate intellectual property rights to charge high prices for patents, notably on medicines, and for copyright. It also includes removal of restrictions on levels of foreign investment, financial deregulation<sup>1</sup> and elimination of industry and procurement policies that favour local firms. The agenda involves reduction of government rights to regulate

services, including the abolition of local content laws in audio-visual services. Further, it challenges food regulation and quarantine law where they are seen to harm US agribusiness interests (Ranald 2006).

The agenda includes an investor-state disputes process which enables individual corporations to sue governments if their investments are harmed by government policy or regulation. Under this process in NAFTA, US companies have sued Mexican and Canadian governments for millions of dollars, on the grounds that changes in health and environmental regulation have harmed the value of their investment (Tienhaara 2009). The NAFTA agenda also includes clauses intended to protect the environment and labour rights, which were inserted by the Clinton administration in order to get Democratic Congressional support. However, these lack the enforcement provisions which apply to other aspects of the agreements, and have not proved effective in preventing labour and environmental abuses in some US FTA signatory countries (Murphy 2010).

Overall, the NAFTA agenda raises questions about democracy and legitimacy because it seeks to change social policies which are normally decided through Parliamentary processes by national or state governments, not through trade negotiations conducted behind closed doors.

The US strategy has been to develop bilateral agreements based on the NAFTA template with willing partners, enabling the US to maximise its bargaining power, and then to extend the bilateral agreements into regional agreements where possible. For example, NAFTA began with the US-Canada FTA, then in 1994 added Mexico to form NAFTA. The strategy was to extend NAFTA into Central and South America. The US did succeed in obtaining bilateral agreements using the NAFTA model with Chile and Peru. However attempts to regionalise the NAFTA model were contested by the larger South American governments like Brazil and Argentina. These governments had been democratically elected after decades of military dictatorship and neoliberal economic policies. Their popular support was based in part on more interventionist and independent models of development. Their contestation of NAFTA policies was supported by more radical elected governments in smaller countries like Venezuela, Bolivia and Ecuador. These governments have negotiated South American regional trading arrangements not based on the NAFTA model (Alwyn 2010: 71–72, Wallach and Tucker 2010: 59).

In Central America the US did however succeed in negotiating bilateral FTAs with six small Central American countries, in which there were less popular resistance and more compliant governments. These agreements were then regionalised into the Central America-Dominican Republic-United States Free Trade Agreement with Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and the Dominican Republic (Alwyn 2010: 72). However, subsequent agreements with Panama and Columbia were not ratified by Congress after the Democrats, who were critics of the NAFTA agenda, gained more influence in the second term of the Bush administration from 2005, and were able to vote with some Republicans against the final agreements (Wallach and Tucker 2010: 60).

## US Trade Policy in the Asia Pacific and the TPPA

In the Asia Pacific region, the US has implemented bilateral agreements only with Singapore and Australia. Ratification of an agreement with South Korea has been delayed by Congress for the same reasons that have delayed ratification of the Panama and Columbian agreements (Wallach and Tucker 2010: 60).

Since 1994, the US has sought to implement the NAFTA model through the APEC, but without success. APEC is based on a series of sub-regions of 21 economies at very different stages of economic development. They are the US, Canada, Mexico, Chile, Peru, Russia, China, Hong Kong, Taiwan, Japan, South Korea, Indonesia, Malaysia, Philippines, Singapore, Thailand, Vietnam, Singapore, Australia, New Zealand and Papua New Guinea. APEC operates on consensus and the majority of its Asian members have insisted that it have no legally binding trade agreements. Instead, its member governments have set non-binding voluntary targets for removal of trade and investment barriers. These targets are 2010 for industrialised countries and 2020 for developing countries (APEC 2010).

Key APEC member governments like Japan and South Korea, and some South East Asian governments, have developed interventionist models of state-supported investment which differ from the NAFTA model (Weiss and Hobson 1995). APEC also includes China and Vietnam, which combine aspects of centralised socialist economies with markets and foreign investment in some sectors. These disparate economies have not so far been prepared to negotiate legally binding agreements based on the NAFTA model, preferring inter-regional trade agreements which do not include the US, and which focus on trade in goods and services rather than the NAFTA regulatory agenda. These include the Association of South East Asian Nations (ASEAN) Free Trade Agreement and some regional arrangements with China and Japan (Kelsey 2010: 21–22).

Following the failure of APEC to adopt the NAFTA agenda, the TPPA was adopted as a strategy to achieve better market access for US firms. It aims eventually to achieve US-style regulatory frameworks in Asia (Kelsey 2010; Wallach and Tucker 2010). China is also a competitor with the US for economic and strategic influence in the region, and China has achieved some legally binding trade agreements with some APEC member countries. The TPPA is seen in part as a means of neutralising Chinese economic influence in the region (Buchanan 2010: 86–89).

Thus the TPPA is a coalition of the willing which the US hopes to use as a building bloc for greater market access using legally binding trade agreements in the Asia Pacific. The first step was for the US to offer to join the P4, and agreement between New Zealand, Chile, Singapore and Brunei, and to invite others to join. This strategy, developed under the US Bush administration through the Office of the US Trade Representative (USTR) in 2008, has persisted despite the transition to the Obama administration.

Indeed the pre-election trade policy of the Obama Democrats was influenced by US trade union and community group criticism of NAFTA. The Obama pre-election policy foreshadowed changes to the NAFTA model, on issues like regulation of medicines, foreign investment regulation, and investor-state dis-

putes processes. It also supported the strengthening of labour and environment protection clauses. After the Presidential election, a majority of Democrats elected to the House of Representatives put forward an anti-NAFTA Trade Reform Bill which sought to embody a set of trade principles which protect access to medicines, limit investor rights, ban the investor-state disputes process, and have strong enforceable labour and environment clauses. (Wallach and Tucker 2010: 54–55, 60–61).

The Bush TPPA policy was reviewed by the Obama administration when it came into office in 2009, a process which engendered fierce debate between the USTR and Obama's political advisors. However, following intensive lobbying by business organisations, the TPPA strategy was continued, but with some changes. The most notable were suggestions that the agreement could include stronger labour and environment clauses, in line with the Obama election policy (Wallach and Tucker 2010: 62).

The continuity of the strategy with the previous administration was, however, shown in letter from the US Deputy Trade Representative to the *Wall St Journal*, which listed both market access and countering trade competitors as justifications for the TPPA (Marantis 2010).

Nevertheless, the Obama administration support for TPPA does not guarantee that it will be approved by Congress. Most of the anti-NAFTA Democrats survived the US mid-term Congressional elections of November 2010. Although the Republican leadership is pro-NAFTA, many of the 80 newly elected Republicans are Tea Party isolationists, opposed to all trade agreements, albeit for different reasons from the Democrats. The persistence of high unemployment rates of up to 10 per cent in the US economy since the global financial crisis is likely to increase domestic resistance to increased access by other trading partners to US markets (Wallach 2010).

## The TPPA and Australian Trade Policy

The Rudd and Gillard Labor governments have also supported the TPPA, despite strong Labor criticism of the Australia-US free Trade Agreement (AUSFTA) when it was negotiated in 2004. The Australian case study provides an example of the resistance which the TPP may face in some other countries.

Australian government support for the TPPA was expressed by the Trade Minister, Simon Crean, in a statement made as the negotiations began in Melbourne in March 2010:

The Trans-Pacific Partnership represents a pathway toward achieving APEC's long-term goal of a Free Trade Area of the Asia-Pacific. (Crean 2010a)

The TPPA resurrects many of the domestic regulatory issues that were debated in the Australia-US Free Trade Agreement (AUSFTA). Despite a bipartisan policy in favour of free trade, the then Labor Opposition responded to public debate which was highly critical of the impacts on national regulation of the AUSFTA when it was negotiated between the Bush and Howard governments in 2004. The extent of this criticism was shown by the fact Labor used its control of the

Senate, together with the Greens and Democrats parties, to amend the AUSFTA implementing legislation. This was the first time Labor had ever amended the implementing legislation for a trade agreement. This historical experience has shaped the debate about the TPPA.

## The AUSFTA Debate

Support for a US free trade agreement was initiated by US- and Australian-based business interests from 2000. An account by *Australian Financial Review* journalist Mark Davis based on interviews with key government and business players revealed how Australian investors from the wine and other industries were disturbed when the US suddenly raised tariffs on lamb imports in 2000. They lobbied for a FTA in the belief that it would prevent the US from arbitrarily raising tariffs in the future (Davis 2005: 44).

A business coalition was formed to promote the agreement, which included the Australian Chamber of Commerce and Industry, the American Chamber of Commerce in Australia, the Australian Industry Group, the Minerals Council of Australia and the Business Council of Australia (AUSTA 2002). However, the National Farmers Federation was sceptical that the US would agree to any significant market access in agriculture, and noted that US agricultural subsidies could not be changed through a bilateral agreement (Davis 2005).

A letter from the US Trade Representative to the US Congress alerted Australian unions and community organisations that health and social policies would be on the agenda. Price controls on medicines through the Pharmaceutical Benefits Scheme, Australian content laws for audio-visual services, quarantine laws, labelling of genetically engineered food and the Foreign Investment Review Board were all seen by the US as barriers to trade (Zoellick 2002).

This attempted negotiation of key social policies outside of the parliamentary process generated public debate and criticism. Community groups feared that the unequal bargaining power between the US and Australian governments would result in these policies being traded away in the hope of increased access to agricultural or other markets. Unions, public health groups, churches, pensioners, environment and other community organisations linked through the Australian Fair Trade and Investment Network (AFTINET) and other community networks campaigned against all of these aspects of the agreement (AFTINET 2004). The investor-state complaints process was a major target of community campaigning, on the grounds that it would be a dangerous weakening of governments' ability to regulate for social and environmental goals (Australian Broadcasting Commission [ABC] 2003; Henry 2003).

AUSFTA prompted the biggest critical public debate ever held in Australia about a trade agreement. There were hundreds of community meetings, public rallies in many cities, many articles in community, union, local and specialised media, over 700 submissions to parliamentary inquiries in 2004 and thousands of letters, postcards and emails sent to politicians. Two books critical of the agreement were subsequently published (Capling 2004; Wiess et al. 2004).

The claimed economic benefits of the agreement were contested fiercely by many economists, ranging from Australian National University Professor Ross



Garnaut and other prominent academics, to economic journalists in *Sydney Morning Herald*, *The Age* and *The Australian* (Ranald 2006). Most of these predicted correctly that Australia had little to gain from the agreement because the US agribusiness lobby would prevent significant increases in access to its agricultural markets.

There was widespread media coverage about the possible impact of AUSFTA on the price of medicines, including an episode of the ABC National *Four Corners* television programme (ABC 2004). There was also much debate about the impact of changes to Australian content rules for audio-visual media, with prominent actors and producers challenging the agreement at public events like the Logie television awards and the Australian Film Institute awards (Krien and Byrnes 2004).

This debate influenced public opinion. Polls conducted by Hawker Britton showed a steady decline in support for the AUSFTA, from 65 per cent before negotiations started early in 2003 to 35 per cent in February 2004 when the deal was concluded. This lack of support was confirmed by a Lowy Institute poll in February 2005 showing only 34 per cent supported the agreement (Cook 2005; Hawker Britton 2004).

The public debate and decline in support for the agreement prompted the Opposition Australian Labor Party (ALP), and the Democrats and Greens to adopt policies critical of the AUSFTA by the end of 2003. After a fierce internal debate, the ALP parliamentary caucus finally decided to endorse the AUSFTA implementing legislation with some amendments. Community concerns about the cost of medicines and Australian media content rules were reflected in the amendments, which sought to protect current levels of Australian content in film and television and to prevent pharmaceutical companies from making spurious legal claims to extend patents (Latham 2004).

In summary, US negotiators did not achieve all that they wanted in several areas of policy. The exposure of the negotiating process to public debate and lobbying influenced the government to resist some US demands, and the Opposition and minor parties to amend the legislation. The impact of these oppositional campaigns can be seen in the lack of an investor-state complaints process, the limited changes to the Pharmaceutical Benefits Scheme (PBS), preservation of some local media content policy, and the retention of regulation of genetically engineered food.

## Post-Implementation Impacts of the AUSFTA

The economic and social impacts of the AUSFTA have been debated regularly since its implementation in 2005. Some of the worst fears of its critics have not come to pass. The AUSFTA did not result in the demise of the Australian economy, as predicted by the title of one of the books written by its critics, *How to Kill a Country, Australia's Devastating Deal with the United States* (Weiss et al. 2004). But nor did the agreement deliver the economic benefits promised by its supporters.

The economic evidence to date supports the thesis that the AUSFTA resulted in the US gaining more access to Australian markets than vice versa. Australia's



trade deficit with the US has increased every year since the agreement came into force in 2005 (Quiggin 2010). The relative importance of the US as a destination for Australian exports has also declined. This has had no impact on the Australia's overall economic performance, because of growth in exports to other destinations. Exports to the US grew by only 2.5 per cent per year from 2005–2010, compared with double digit growth in exports to Australia's Asian trading partners, the largest of which is China, with which Australia has no bilateral trade agreement (Tiffin 2010).

In agriculture, there was no additional access to the sugar market, and increased access to dairy, beef, lamb and wine markets was phased in over 12–17 years. There has been limited access for other Australian products. This has resulted in criticism of the AUSFTA by farmers' organisations and other sections of business. The Australian Industry Group, the peak body for manufacturing industry, surveyed its members in 2010 and found that eighty per cent said that the AUSFTA was not very effective in improving export opportunities, and eighty-five per cent said it had failed to help in setting up operations in the US. These impacts have been reported regularly in the media (Australian Industry Group 2010; Priestly 2008; Tiffin 2010).

A recent report by the Productivity Commission on Australia's preferential bilateral and regional trade agreements concluded that 'feasibility studies have produced overly optimistic expectations of their likely economic effects', the actual economic effects were 'modest' and that 'business has produced little evidence to indicate that preferential agreements have provided significant commercial benefits' (Productivity Commission 2010: xxxvi, xxv and xxxv). The Productivity Commission findings were repeated in a Government Treasury report and both reports were debated in the media (ABC Radio 2010b).

The negative impacts on public policy from the AUSFTA have also been publicly debated. These included changes to the PBS by the Howard Government to create a special category of patented medicines for which higher wholesale prices can be charged, thus increasing the budgetary cost of the PBS to government (Clarke and Fitzgerald 2010; Department of Health and Ageing 2010; Faunce et al. 2010). These rising costs were recognised by the Labor government which implemented measures in the 2010 budget to limit the application of the special category and contain the costs (Senate Community Affairs Committee References Inquiry 2010).

Another controversial debate was the proposal in the AUSFTA to commercialise the supply of blood products by introducing competitive tendering for the supply of blood products in Australia by US firms. This was blocked by an Inquiry by the Department of Health and by state governments which argued successfully that Australian blood products policy should continue to be based on the non commercial principles of donated blood, national self-sufficiency, medical safety and supply of blood products free to recipients, rather than the commercial principles of competitive tendering (Australian Health Ministers 2006; Flood 2006). These ongoing debates about the economic and social policy impacts of the AUSFTA have set the scene for political responses to the TPPA.

## Australian Responses to the TPPA Negotiations

Labor's policy differences with the Howard government on the AUSFTA in 2004 were described above. The Australian Labor Party (ALP) came to office in 2007 with explicit trade policies to protect public health systems, local Australian media content, regulation of essential services and to include core labour standards in trade agreements. The policy also committed to improved consultation and parliamentary debate about trade negotiations (ALP 2009).

However, despite this policy, the government supported the US government initiative on the TPPA, and hosted the first round of negotiations in Melbourne in March 2010. It also responded to pressure from some Australian business organisations, which saw the TPPA as an opportunity to get greater access to US markets than was achieved under the AUSFTA. The Trade Minister, Simon Crean announced:

The TPP will be an ambitious, 21st century agreement that will strengthen economic integration in the region. The Australian Government will be seeking a high standard, comprehensive agreement ... The participation of the US is an important signal of the Obama Administration's commitment to the region, and an encouraging sign of broader US engagement on trade policy issues. (Crean 2010a)

The Minister also said that Australia would be seeking greater access to US markets than was achieved under the AUSFTA and that 'everything would be "on the table" in the negotiations' (Saulwick 2010).

The debates about the AUSFTA and its ongoing policy impacts analysed above influenced the reaction of Australian unions and other community groups to the announcement of the start of the TPPA negotiations in Melbourne in March 2010 (AFTINET 2010). The reaction was prompted by the news that US business group submissions on the TPPA were raising many of the issues which proved so controversial in the AUSFTA. The US government received public submissions from US industry groups in 2009 indicating that they wanted further changes to Australian policies on the PBS and intellectual property rights (Pharmaceutical Research and Manufacturers of America 2009), media content (Motion Picture Association of America 2009), labeling of genetically engineered food (Biotechnology Industry Organisation 2009), quarantine (National Pork Producers Council 2009) and procurement policies, and that they supported the inclusion of an investor-state disputes process in the agreement (Coalition of Service Industries 2009). Submissions from agribusiness groups advocated against further opening of US agricultural markets, in the context of high unemployment (US Sugar Alliance 2009). The USTR National Trade Estimate report on Foreign Trade Barriers in Australia in 2010 also listed pharmaceuticals, intellectual property rights protection, treatment of blood products, local media content regulation and government procurement as trade barriers (Office of the United States Trade Representative 2010).

As the negotiations began, over thirty Australian organisations issued a public statement, noting that

The government has said that they will try to use the agreement to improve Australian access to US agricultural markets, but the danger is that further changes to the Pharmaceutical Benefits Scheme and the other policies will be demanded as trade-offs. (AFTINET 2010)

The statement called on the Australian Trade Minister to adopt the following principles in the negotiations:

- No further changes to the Pharmaceutical Benefits Scheme which would reduce affordable access to medicines
- No investor-state disputes process which would give special rights to international corporations to sue governments for damages
- Full rights for governments to regulate labelling of genetically engineered food and to regulate GE crops, including existing moratoria
- No further weakening of Australian Government power to regulate audio-visual media for Australian content purposes
- Retention of the Foreign Investment Review Board, and of its powers to review foreign investment in the public interest
- No weakening of quarantine regulations
- No reductions in the ability to have local content requirements for government purchasing and industry policies that support local employment
- Strong labour clauses that require signatories to enforce the core International Labor Organisation's (ILO) standards in the ILO Conventions, with trade penalties for noncompliance
- Strong environmental clauses that require signatories to meet all applicable international environmental standards including those contained within UN environmental agreements, with trade penalties for non compliance. (AFTINET 2010: 2)

The supporting organisations included the Australian Council of Trade Unions, the Australian Conservation Foundation, the Australian Catholic Social Justice Council, the Australian Pensioners and Superannuants Federation and the Public Health Association of Australia, eleven national unions and several other church community and environment organisations. At the same time, a statement dealing with some of these issues in an international context was issued by the national peak trade union bodies of Australia, the US, New Zealand, and Singapore (Australian Council of Trade Unions 2010). The two statements and the issues they raised were reported widely in the media (ABC Radio National 2010a; Colebatch and Schneiders 2010; Davidson 2010; Faunce and Townsend 2010a; Saulwick 2010; Tienhaara 2010).

Before the negotiations the Australian Trade Minister Simon Crean responded in answer to questions that 'everything was on the table'. However he later qualified this statement by saying that there was no intention to negotiate changes to the PBS (Crean 2010 b). A further qualification was made on the investor-state dispute process, with the Minister reported as saying:

We continue to have serious reservations about the inclusion of investor-state dispute settlement provisions ... and Australian negotiators will be making this clear. (Saulwick 2010)

These reservations were strengthened by the reaction of the Philip Morris Company in May 2010 to the Australian Government announcement that it would follow a World Health Organisation recommendation to legislate for plain packaging of cigarettes. Philip Morris had already used an investor-state dispute process to sue the Uruguayan Government for damages when that government introduced similar legislation, and the company threatened to take similar legal action against the Australian government. Currently it is unable to do so because the AUSFTA has no investor-state disputes process. If the Australian government did agree to an investor-state dispute process in the TPPA, it would be handing the company a weapon for legal action against its own plain packaging legislation (International Centre for Trade and Sustainable Development 2010; Davison 2010).

A review of Australia's trade policy was conducted by the new Trade Minister Craig Emerson following the 2010 election. The outcome of this review, announced in April 2011, was the adoption of many of the recommendations of the Productivity Commission *Report on Bilateral and Regional Trade Agreements*, including the Commission's conclusion that the benefits of bilateral agreements had been exaggerated. The policy review has three important implications for the TPPA, which are responses to the submissions and campaigning from community organisations. Firstly, the policy now rejects the inclusion in trade agreements of investor state dispute procedures which give foreign investors greater legal rights than domestic investors. Secondly, the policy makes it clear that changes to the PBS will not be negotiated in trade agreements. Thirdly, the policy recommends against the strengthening of intellectual property rights through trade agreement negotiations (Emerson 2011). As discussed above, these are three of the major US demands in the Trans-Pacific Partnership agreement. If the policy is implemented, Australian negotiators will have less to offer the US negotiators in return for Australian demands for increased access to US markets.

## Conclusion

Cox's concepts of corporate influence and resistance by community groups, Busch and Milner's concepts of regionalism and Weiss and Thompson's analysis of specific historical state development strategies provide useful frameworks for analysing the contradictions of the TPPA as a US trade strategy in Australia and in the region.

The TPPA is seen by the US as a building block for a NAFTA-style legally binding free trade agreement in the Asia Pacific region, which would extend US style regulatory frameworks into many areas of social regulation.

Both the Obama Democrats and the ALP were influenced by unions and social movements to develop policies critical of the NAFTA model before they were elected, but both governments have since supported negotiations for the TPPA.

The US strategy faces contradictions at several levels. Some of the negotiating governments have strong traditions of domestic regulation which can generate resistance to removal of this regulation, as occurred during the AUSFTA debate. This has influenced the Australian government negotiating position, limiting the ability to reach agreement with the US agenda.

While these governments also respond to local and transnational business pressures in favour of the TPPA, the Australian experience of the AUSFTA shows that the government's ability to deliver improved access for local business to US markets is likely to be severely limited. The submissions from US agribusiness demonstrate strong pressures on the US government not to increase agricultural market access. Even if the US government did concede some domestic market access, such an agreement would have to be ratified by the US Congress. This may prove unlikely in a Congress dominated by anti-NAFTA Democrats and Tea Party isolationist Republicans in the context of high levels of unemployment.

Improved market access to other markets is also unlikely. Australia already has bilateral agreements with three TPPA governments (Singapore, Chile and New Zealand), and also has a Free Trade Agreement with the ten ASEAN countries, through the ASEAN-ANZ FTA, which includes Malaysia, Brunei and Vietnam. Apart from the US, this leaves Peru as the only likely candidate for improved market access for Australia.

The Australian government faces contradictory pressures. On the one hand, the US, its most powerful ally, wants the TPPA as a building bloc for greater access to Asian markets. Australian business interests want greater market access to the US than was achieved in the AUSFTA. This will be difficult if not impossible to achieve, and would almost certainly be met by demands for further concessions in sensitive public policy areas. On the other hand, the government is facing pressure against such concessions from unions and community groups which are a significant part of its electoral support base. The 2010 trade policy on investor rights and intellectual property is a response to these pressures. The Greens, who will hold the balance of power in the Senate from July 2010, also have a more critical approach to the NAFTA model (Australian Greens 2007). This may leave the Government with the unpalatable option of relying on the Liberal-National Coalition Opposition for the Parliamentary endorsement of any implementing legislation required for the TPPA. This suggests that the TPPA negotiations could be as controversial for the Gillard Labor government as the AUSFTA negotiations were for the Howard Coalition government.

Nor are the TPP negotiations likely to deliver increased market access for business in the other TPP negotiating countries. The four TPPA countries which are ASEAN members (Singapore, Malaysia, Brunei and Vietnam) already have a free trade agreement with Australia and New Zealand through the ASEAN-ANZ FTA, which leave the US, Peru and Chile as the only candidates for improved market access.

The doubts about TPPA negotiators reaching agreement are compounded by the diversity of the governments involved. For example, the Obama administration proposals for labour clauses are not likely to prove attractive to Brunei, which would have difficulty meeting basic International Labour Organisation

standards on freedom of association. More interventionist models of investment regulation in Malaysia and Vietnam mean there is resistance to the investment aspects of the NAFTA model. The New Zealand government, like the Australian government, is likely to face resistance to the US agenda for changes to its medicine pricing policy, and for stronger intellectual property rights.

Overall, these contests of interests at national and international levels mean that the TPPA may not be concluded by the end of 2011 and may prove difficult to implement as a building block for free trade in the Asia Pacific.

## Notes

1. The TPPA process began in 2008, as the global financial crisis was underway. Financial services corporations are still demanding further financial deregulation, and it is still on the TPPA agenda, despite recommendations from the G20 group of governments for global and national regulatory frameworks to prevent a recurrence of the crisis. See Kelsey and Seuffert (2010) for a discussion of these issues.

## References

- Alwyn, J. (2010) 'The TPPA and indigenous peoples: Lessons from Latin America' in Jane Kelsey (ed.) *No Ordinary Deal: Unmasking the Trans-Pacific Partnership Agreement*, Allen and Unwin, Sydney, pp. 70–81.
- Asia Pacific Economic Cooperation Forum (2010) About APEC, available: [http://www.apec.org/apec/about\\_apec.html](http://www.apec.org/apec/about_apec.html) [accessed 5 October 2010].
- AUSTA (2002) Who we are, available: <http://www.austa.net/whoAreWe.htm> [accessed 9 December 2004].
- ABC (2003) Australian Broadcasting Corporation Radio National, Groups outline case against free trade deal, Transcript of *The World Today*, 24 November, available: <http://www.abc.net.au/theworldtoday> [accessed 8 December 2004].
- ABC Radio National (2010a) Fears new regional trade deal to undermine public interest, PM Programme 15 March, available: <http://abc.net.au/radionational/pm> [accessed 18 March 2010].
- ABC Radio National (2010b) Bilaterals don't work, Transcript of PM Programme, 14 December, available: <http://www.abc.net.au/pm/content/2010/s3093162.htm> [accessed 15 December 2010].
- ABC Television (2004) 'Bitter pill?' transcript of *Four Corners*, 2 August 2004, available: <http://www.abc.net.au/4corners/content/2004/s1167518.htm> [accessed 10 September 2004].
- ACTU (2010) Australian Council of Trade Unions, Proposed Pacific Statement must deliver for workers, jobs and the environment, International statement from the Australian Council of Trade Unions, the New Zealand Council of Trade Unions, the Singapore National Trade Union Congress, American Federation of Labor and Congress of Industrial Organisations, March 15, available: <http://www.actu.org.au> [accessed 19 March 2010].
- AFTINET (2010) Australian Fair Trade and Investment Network, Don't trade away health, environmental and social policies. Statement from 33 organisations sent

- to the Trade Minister, 15 March, available: <http://www.aftinet.org.au> [accessed 19 March 2010].
- Australian Greens (2007) Australian Greens Policy: Sustainable economy, March, available: [www.greens.org.au/about/policy](http://www.greens.org.au/about/policy) [accessed 7 September 2007].
- Australian Health Ministers' Conference (2006) Australian Health Ministers' conference statement on national self-sufficiency in the supply of blood and blood products, April.
- Australian Industry Group (2010) Business seeks better returns from Free Trade Agreements, Media Release 7 January, available: [http://www.aigroup.com.au/mediacentre/releases/archive 2010](http://www.aigroup.com.au/mediacentre/releases/archive%202010) [accessed 5 March 2010].
- Australian Labor Party (2009) *National Platform and Constitution*, 2009, ALP Canberra, Chapter 2, pp. 4–6.
- Biotechnology Industry Organisation (2009) Submission to the Office of the US Trade Representative, 11 March, available: <http://www.regulations.gov/search/regs/home.html#docketDetail?R=0900006480fa6a1> [accessed 25 March 2010].
- Buchanan, P. (2010) 'Security implications of the TPPA' in J. Kelsey (ed.) *No Ordinary Deal: Unmasking the Trans-Pacific Partnership Agreement*, Allen and Unwin, Sydney, pp. 82–97.
- Busch, M. and Milner, H. (1994) 'The Future of the international trading system: International firms, regionalism and domestic politics' in S. Stubbs and G. Underhill (eds) *Political Economy and the Changing Global Order*, St Martin's Press, New York, pp. 259–276.
- Capling, A. (2004) *All the Way with the USA: Australia, the US and Free Trade*, UNSW Press, Sydney.
- Clarke, P. and Fitzgerald, E. (2010) 'Expiry of patent protection on statins: Effects on pharmaceutical expenditure in Australia', *Medical Journal of Australia*, (Rapid Online Publication), 27 April, p. 8, available: [http://www.mja.com.au/public/issues/192\\_11\\_070610/cla11057\\_fm.html](http://www.mja.com.au/public/issues/192_11_070610/cla11057_fm.html) [accessed 14 June 2010].
- Coalition of Service Industries (2009) Submission to the Office of the US Trade Representative, March 11, available: <http://www.regulations.gov/search/regs/home.html#docketDetail?R=0900006480fa6a1> [accessed 25 March 2010].
- Colebatch, T. and Schneiders, B. (2010) 'Free Trade talks turn to the Pacific', *The Age*, 15 March, p. 4.
- Cook, I. (2005) *Australians Speak 2005: Public Opinion and Foreign Policy*, The Lowy Institute, Sydney.
- Cox, R. (1994) 'Global restructuring' in R. Stubbs and G. Underhill (eds) *Political Economy and the Changing Global Order*, Macmillan, London, pp. 45–59.
- Crean, S. (2010a) Pushing forward with the Korean FTA and the Trans-Pacific Partnership, Media release 15 March, available: [http://www.dfat.gov.au/minister.index.html](http://www.dfat.gov.au/minister/index.html) [accessed 20 March 2010].
- Crean, S. (2010b) Letter to the *Canberra Times*, March 17, p. 10.
- Davidson, K. (2004) 'We've nothing to gain from US trade deal', *The Age*, 22 March, p.11.



- Davis, M. (2005) 'Forging a new trade route', *Australian Financial Review* January 5, pp. 44–45.
- Davison, M. (2010) 'Big tobacco's huff and puff is just hot air', *The Age*, 4 May, p.11.
- Dee, P. Adams, R., Gali, J. and McGuire, G. (2003) *The Trade and Investment Effects of Preferential Trading Arrangements — Old and New Evidence*, Productivity Commission, Canberra, July.
- Department of Health and Ageing (2010) *The Impact of PBS Reform, Report to Parliament on the National Health Amendment (Pharmaceutical Benefits Scheme) Act 2007*, Commonwealth of Australia.
- Emerson, C. (2011) Gillard Government trade policy statement: Trading our way to more jobs and prosperity, Canberra, 12 April.
- Faunce, T., Bai, J. and Nguyen, D. (2010) 'The Impact of the Australia-US Free Trade Agreement on Australian medicines regulation and prices', *Journal of Generic Medicines*, 7(1), pp.18–29.
- Faunce, T. and Townsend, R. (2010a) 'Big pitfalls and fewer freedoms in new trade agreement with US', *Canberra Times*, 15 March, p. 9.
- Faunce, T. and Townsend, R. (2010b) 'Public health and medicines policies', in J. Kelsey (ed.) *No Ordinary Deal: Unmasking the Trans-Pacific Partnership Agreement*, Allen and Unwin, Sydney, pp. 149–162.
- Flood, P. Wills P., Lawler P. et al. (2006) *Review of Australia's Blood Fractionation Arrangements*, Commonwealth of Australia, Canberra, December.
- Hawker Britton (2004) US Free Trade Agreement disappoints Australia, Media Release, February 19, Hawker Britton, Sydney, available: <http://www.hawkerbritton.com.au> [accessed 11 March 2004].
- Henry, D. (2003) 'Free-trade clause would be a dangerous weakening of the law', *Sydney Morning Herald*, 23 October, p. 15.
- International Centre for Trade and Sustainable Development (2010) *Bridges Weekly*, 10 March, available: <http://ictsd.org/i/news/bridgesweekly/71988/> [accessed 22 March 2010].
- Kelsey J. (2010) 'Introduction' in J. Kelsey (ed.) *No Ordinary Deal: Unmasking the Trans-Pacific Partnership Agreement*, Allen and Unwin, Sydney, pp. 9–28.
- Kelsey J. and Seuffert, N. (2010) 'The TPPA and financial sector deregulation', in J. Kelsey (ed.) *No Ordinary Deal: Unmasking the Trans-Pacific Partnership Agreement*, Allen and Unwin, Sydney, pp. 231–245.
- Krien, A. and Byrnes, H. (2004) 'The Logies turn political, local content sold out: Actors', *Sun-Herald*, 18 April, ID: media/pressclp/UK8C6, Parliamentary Library, Canberra.
- Latham, M., (2004) Joint statement by Federal Labor leader Mark Latham and Deputy Leader of the Opposition in the Senate and Shadow Minister for Trade Steven Conroy, Media Release, 4 August, Canberra.
- Marantis, D. (2010) Letter to the *Wall St. Journal*, 5 May.
- Motion Picture Association of America, (2009) Submission to the Office of the US Trade Representative, 11 March, available: <http://www.regulations.gov/search/regs/home.html#docketDetail?R=0900006480fa6a1> [accessed 25 March 2010].

- Murphy, T. (2010) 'Government procurement and labour issues', in J. Kelsey (ed.) *No Ordinary Deal: Unmasking the Trans-Pacific Partnership Agreement*, Allen and Unwin, Sydney, pp. 189–198.
- National Pork Producers Council (2009) Submission to the Office of the US Trade Representative, 11 March, available: <http://www.regulations.gov/search/regs/home.html#docketDetail?R=0900006480fa6a1> [accessed 25 March 2010].
- Office of the United States Trade Representative (2010) National trade estimate report on foreign trade barriers in Australia, available: <http://www.ustr.gov/about-us/press-office/reportsandpublications/201> [accessed 18 June 2010].
- O'Malley, N. (2010) 'Hard sell in a dark market', *Sydney Morning Herald*, 24 April, Features, p. 1.
- Pharmaceutical Research and Manufacturers of America (2009) Submission to the Office of the US Trade Representative, 10 March, available: <http://www.regulations.gov/search/regs/home.html#docketDetail?R=0900006480fa6a1> [accessed 25 March 2010].
- Priestley, M. (2008) Australia's Free Trade Agreements, Background note prepared by Australian Parliamentary Library.
- Productivity Commission (2010) *Bilateral and Regional Trade Agreements Final Report*, Productivity Commission, Canberra, December.
- Quiggin, J. (2010) 'Lessons from the Australia-US Free Trade Agreement' in J. Kelsey (ed.) *No Ordinary Deal: Unmasking the Trans-Pacific Partnership Agreement*, Allen and Unwin, Sydney, pp. 98–108.
- Ranald, P. and Southalan L. (2004) 'Ten devils in the detail of the Australia-US Free Trade Agreement', Australian Fair Trade and Investment Network, May, available: <http://www.aftinet.org.au/> [accessed 10 January 2006].
- Ranald, P. (2006) 'The Australia-US Free Trade Agreement: A contest of interests', *Journal of Australian Political Economy*, 57, June pp. 30–56.
- Ranald, P. (2010) 'The politics of the TPPA in Australia', in J. Kelsey (ed.) *No Ordinary Deal: Unmasking the Trans-Pacific Partnership Agreement*, Allen and Unwin, Sydney, pp. 40–61.
- Senate Community Affairs Committee, (2010) *Reference Inquiry into Consumer Access to Pharmaceutical Benefits*, May 7, available: <http://www.aph.gov.au/hansard/senate/commttee/S12998.pdf> [accessed 24 May 2010].
- Saulwick, J. (2010) 'Nations ponder terms for Pacific free trade', *Sydney Morning Herald*, 16 March, p. 6.
- Stiglitz, J. and Charlton, A. (2005) *Fair Trade for All*, Oxford University Press, New York.
- Tienhaara, K. (2009) *The Expropriation of Environmental Governance: Protecting Foreign Investors at the Expense of Public Policy*, Cambridge University Press, Cambridge.
- Tienhaara, K. (2010) 'Trade discord a deal breaker', *Canberra Times*, 22 March, p. 15.
- Tiffen, R. (2010) 'Mind the gap: the benefits from free trade haven't quite gone the distance', *The Age*, Melbourne, 3 March, available: <http://www.theage.com.au/>

- opinion/politics/mind-the-gap-benefits-from-free-trade-havent-quite-gone-the-distance-20100302-pg6p.html [accessed 25 March 2010].
- US Sugar Alliance (2009) *Submission to the Office of the US Trade Representative*, 11 March, available: <http://www.regulations.gov/search/regs/home.html#docketDetail?R=0900006480fa6a1> [accessed 25 March 2010].
- Wallach, L. and Tucker, T. (2010) 'US politics and the TPPA' in J. Kelsey (ed.) *No Ordinary Deal: Unmasking the Trans-Pacific Partnership Agreement*, Allen and Unwin, Sydney, pp. 52–69.
- Wallach L. (2010) Interview on ABC Radio National *Late Night Live*, 17 November, available: <http://www.abc.net.au/rn/latenightlive/> [accessed 19 November 2010].
- Weiss, L. et al. (2004) *How to Kill a Country: Australia's Devastating Trade Deal with the United States*, Allen and Unwin, Sydney.
- Weiss, L. and Hobson, J. (1995) *States and Economic Development: A Comparative Historical Analysis*, Polity Press, Cambridge.
- Zoellick, R. (2002) Letter to the US Senate, Washington, 13 November, available: [http://www.ustr.gov/Document\\_Library/Letters\\_to\\_Congress/2002/USTR\\_Zoellick\\_Notifies\\_Congress\\_of\\_Intent\\_To\\_Initiate\\_Free\\_Trade\\_Negotiations\\_With\\_Australia.html](http://www.ustr.gov/Document_Library/Letters_to_Congress/2002/USTR_Zoellick_Notifies_Congress_of_Intent_To_Initiate_Free_Trade_Negotiations_With_Australia.html) [accessed 1 September 2004].

## About the Author

» **Dr Patricia Ranald** is a Research Associate at the University of Sydney and teaches researchers in the ACTU Organising Education and Campaign Centre. She has published widely on the social impacts of globalisation and trade agreements and is Convener of the Australian Fair Trade and Investment Network (AFTINET), which advocates for fair trade policies based on human rights, labour rights and environmental sustainability. She can be contacted at [pranald@actu.org.au](mailto:pranald@actu.org.au).