

ActionAid Australia submission to the Joint Standing Committee on Treaties Inquiry into Certain Aspects of the Treaty-making Process in Australia

July 2020

1. Introduction

ActionAid Australia welcomes the opportunity to make a submission to the Joint Standing Committee on Treaties: Inquiry into Certain Aspects of the Treaty-making Process in Australia. ActionAid Australia supports women living in poverty to stand up and claim their human rights by collectively confronting the injustices they face. In more than 45 countries, ActionAid supports women to understand their rights, reflect on the people and systems that affect them, and harness their power to act with others to change their lives and positions in society. More than 60,000 Australians support our efforts to advance economic and climate justice for women and their rights in emergencies. ActionAid is a member of the Australian Council for International Development (ACFID) and partners with DFAT through the Australian NGO Cooperation Program and a number of other schemes including Pacific Women Shaping Pacific Development and the Australian Pacific Climate Change Partnership.

Trade agreements have broad impacts on gender equality, particularly in developing countries. These impacts can be positive, when trade agreements are designed with gender equality in mind. However, currently, trade rules are often developed without adequate consultation with women or consideration of the gendered impacts. This can worsen the situation for women, reinforcing gender inequality and resulting in unequal social and economic outcomes. It is crucial that the Government takes steps to expand its gender analysis of trade rules and ensure that trade agreements are developed to support gender equality objectives, in line with DFAT's gender policy.¹

Reform of Australia's procedure for negotiating and ratifying trade agreements is necessary to support this process. The current procedure lacks transparency, limits scope for civil society input, including from women's organisations, and does not give Parliament adequate oversight of trade agreements. By updating the trade agreement procedure, the Government could ensure that trade negotiations are transparent; stakeholder consultation is mandatory; and gender, and broader social, economic, and environmental impacts of trade agreements are identified and addressed. This would ensure that agreements have better outcomes for women and their communities in Australia and in partner countries.

ActionAid notes that Australia's trade negotiation and ratification processes have been addressed by several Parliamentary inquiries in recent years², and that all inquiries have recommended improvements to transparency and accountability. With community concern about the undemocratic nature of trade negotiations growing, this inquiry is an opportunity for the

¹ DFAT (2016) *Gender equality and women's empowerment strategy*, <https://www.dfat.gov.au/sites/default/files/gender-equality-and-womens-empowerment-strategy.pdf>

² Senate Foreign Affairs, Defence and Trade References Committee (2003) *Voting on Trade: The General Agreement on Trade in Services and an Australia-US Free Trade Agreement*, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Completed_inquiries/2002-04/gats/report/index; Joint Standing Committee on Treaties (2012) *Report 128: Inquiry into the Treaties Ratification Bill 2012*, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Completed_Inquiries/jsct/ratification_bill/report/index; and Senate Foreign Affairs, Defence and Trade References Committee (2015) *Blind Agreement: Report on the Commonwealth's treaty-making process*, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Treaty-making_process/Report

Government to rebuild public trust in trade agreements by taking action to enhance transparency and democratic accountability at all stages of the negotiation and ratification process.

ActionAid Australia supports and reiterates the recommendations of the Australian Fair Trade and Investment Network (AFTINET) submission to this inquiry as a member of the network.

<u>Recommendations</u>	
Transparency	<p>Recommendation 1: <i>The government should update its procedure for the negotiation and ratification of trade agreements to ensure that:</i></p> <ul style="list-style-type: none"> <i>i. Australia’s negotiation positions are published;</i> <i>ii. Negotiating texts are published throughout trade negotiations; and</i> <i>iii. The final text of agreements is published before each agreement is signed.</i>
Stakeholder consultation	<p>Recommendation 2: <i>The Government should facilitate mandatory public consultations prior to the commencement of trade negotiations and regular consultations throughout trade negotiations. The Government should use these consultations to show leadership in women’s rights by providing opportunities for input from women’s rights organisations and other civil society groups in partner countries.</i></p> <p>Recommendation 3: <i>The Government should publish consultation reports prior to initiating trade negotiations; and as consultations are conducted throughout trade negotiations. Reports should detail how evidence is taken into consideration in trade negotiations.</i></p> <p>Recommendation 4: <i>The Government should increase civil society representation on the Ministerial Advisory Committee for Free Trade Agreements, including reserving space for gender expertise.</i></p>
Impact assessments	<p>Recommendation 5: <i>The Government should commit to complete independent ex ante and ex post gender impact assessments (GIAs), along with broader social, economic and environmental impact assessments, for all trade agreements in order to identify and respond to any potential negative impacts on women’s rights and gender equality.</i></p> <ul style="list-style-type: none"> <i>i. GIAs should be conducted prior to the commencement of trade negotiations in order to inform the scope of negotiations. A second impact assessment should be completed before trade agreements are signed in order to identify any likely impacts and to provide opportunities for renegotiation. Ex post assessments should be conducted once a deal is implemented so that actual impacts can be identified and redressed.</i> <i>ii. GIA findings must be taken into account and trade provisions that are found to negatively impact women must be mitigated or removed from the agreement.</i>

<p>Parliamentary oversight</p>	<p>Recommendation 6: <i>Prior to commencing trade negotiations, the Government should table in Parliament a document setting out its priorities and objectives, along with ex ante social and environmental impact assessments, including specific gender impact assessments.</i></p> <p>Recommendation 7: <i>JSCOT should be mandated to review all trade agreement texts, along with gender and other social, economic and environmental impact assessments, before the agreements are signed and to make recommendations to Parliament. A separate sub-committee of JSCOT could be established to enable this review.</i></p> <p>Recommendation 8: <i>The categorisation of trade agreements should not be changed in a way that would reduce scrutiny of trade agreements.</i></p> <p>Recommendation 9: <i>Trade agreements should be subject to Parliamentary debate, and Parliament should have the rights to vote on the whole agreement, not just the implementing legislation.</i></p>
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2. Trade policy and women’s rights

Evidence shows that women in all countries across the world, and particularly women in developing countries, continue to experience significant social and economic disadvantage. Gender discrimination in access to resources means that women are more likely to experience poverty and financial insecurity, due to their concentration in precarious, casual and low-paid employment and their disproportionate burden of unpaid domestic and care work. In order to address these imbalances, gender biases in the economy must be identified and economic policy, including trade policy, designed to redress these biases and contribute towards gender equality goals and obligations. Yet, this analysis is often missing from trade policy and assessment of trading partners, with negotiators working from the flawed assumption that trade rules will stimulate economic growth and that this will automatically benefit women.³ The emergence of COVID-19 has reinforced these concerns. The crisis has exposed serious weaknesses in the global trade system, with up to one billion women workers left jobless with no minimum conditions or social protection.⁴ It has highlighted the need for trade rules to be reoriented around decent work conditions, human rights, gender equality and environment sustainability.

Well-designed trade rules can, of course, play an important role in supporting gender equality and women’s rights. However, when trade rules are gender blind and trade liberalisation is approached as a goal in itself, women can face inadvertent consequences as discriminatory economic structures are reinforced and deepened. Women are particularly impacted where trade rules stifle workers’ rights, disadvantage small-scale farmers, facilitate the privatisation of public services and reduce access to affordable medicines. These rules can exacerbate gender inequities within the economy, limiting women’s access to decent and dignified work, increasing the burden of unpaid domestic and care work and deepening women’s poverty. Women in developing countries also bear the negative impacts of liberalising trade tariffs, which reduces a vital source of funding for essential public services, that women disproportionately rely on, as well as for specific initiatives designed to redress

³ WTO (2017) *Gender aware trade policy: A springboard for women’s economic empowerment*, https://www.wto.org/english/tratop_e/devel_e/a4t_e/gr17_e/genderbrochuregr17_e.pdf

⁴ ILO estimate: 1.6bn informal workers face destitution by year end and another 300 million formal jobs will be lost by the end of the year. Women comprise 60% of the informal sector globally so we can estimate that almost a billion low-paid women workers face destitution.

gender inequities. The inclusion of investor-state dispute settlement mechanisms in trade agreements can also undermine governments' ability to regulate in the public interest, with flow-on effects for women's rights and gender equality.

To support the development of gender responsive trade agreements the Government should establish a negotiation and ratification procedure that ensures that:

- Trade negotiations are transparent;
- Women, including women-led civil society organisations in Australia and partner countries, are equitably involved in trade policy discussions and negotiations;
- Gender impact assessments, as well as broader social, economic and environmental impact assessments, are conducted and taken into consideration when developing and negotiating trade agreements; and
- Parliamentary and public oversight is guaranteed for all trade agreements.

3. Transparency in trade negotiations

Under current trade negotiation procedures, the Government is not required to release any information publicly during bilateral, regional and plurilateral trade negotiations. This lack of transparency has faced broad public criticism in Australia and internationally. ActionAid has raised these concerns in relation to the Trans-Pacific Partnership (TPP-11)⁵ and the Pacific Agreement on Closer Economic Arrangements plus (PACER Plus)⁶, as well the ongoing negotiations for the Regional Comprehensive Economic Partnership (RCEP) Agreement.⁷ Reforms have also been recommended by the Productivity Commission⁸ and a 2015 Senate Inquiry into the treaty-making process.⁹ The direction of travel at the international level is also towards greater transparency. For multilateral negotiations, the WTO now publishes submissions made by member states during negotiations and reports by committee chairs on its website.¹⁰ The EU also releases its negotiating proposals during the negotiations and has committed to releasing the final text before the agreement is signed.¹¹

Transparency in policy development processes is a crucial facet of democracy and enables the public to be aware of, feed into, and hold the government to account for the policies it implements. Given the broad implications that trade agreements have across a range of domestic policy areas in Australia and for partner countries it is imperative that trade negotiations have the same level of transparency as domestic policy-making processes. Transparency is particularly important to ensure women have access to trade negotiation documents and trade agreement texts and can provide independent analysis of the gendered impacts. Without this analysis there is an increased risk that

⁵ ActionAid (2018) *Submission to the Joint Standing Committee on Treaties Inquiry into the Trans Pacific Partnership Agreement*, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/TPP-11/Submissions

⁶ ActionAid (2018) *Submission to the Joint Standing Committee on Treaties Inquiry into the Pacific Agreement on Closer Economic Arrangements plus*, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/PACERPlus-Agreement/Submissions

⁷ Civil Society open letter demanding the release of the RCEP text (2019) <https://www.bilaterals.org/?open-letter-demanding-the-release>

⁸ Productivity Commission (2010) *Bilateral and Regional Trade Agreements Final Report*, <https://www.pc.gov.au/inquiries/completed/trade-agreements/report>

⁹ Senate Standing Committee on Foreign Affairs Defence and Trade (2015) *Blind agreement: reforming Australia's treaty-making process*, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Treaty-making_process/Report

¹⁰ See WTO documents portal at https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S001.aspx

¹¹ European Union (2015) *Trade for all: Towards a more responsible trade and investment policy*. http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf

women's rights are overlooked, and trade agreements include rules that have negative outcomes for women.

Recommendation 1: *The government should update its procedure for the negotiation and ratification of trade agreements to ensure that:*

- i. *Australia's negotiation positions are published;*
- ii. *Negotiating texts are published throughout trade negotiations; and*
- iii. *The final text of agreements is published before each agreement is signed.*

4. Stakeholder consultation

A robust procedure for public consultation during trade negotiations is crucial to build public trust in trade agreements and to ensure the social and environmental impacts of trade provisions are considered in trade negotiations. However, it is particularly important to ensure trade policy is open and accountable to women, because women's lower rate of representation in formal government structures, decision-making processes and trade negotiation teams means that they have fewer opportunities to shape trade policy and ensure the gendered impacts of trade rules are identified and taken into consideration. The need for gender analysis to be incorporated into trade policy was reiterated in the Sustainable Development Goals, which urged Governments "to refrain from promulgating and applying any unilateral economic, financial or trade measure not in accordance with international law and the Charter of the UN that impede the full achievement of economic and social development, particularly in developing countries."¹²

The Government's current approach to stakeholder consultation could be more consistent and transparent. Stakeholders do have some ability to provide input to the Department of Foreign Affairs and Trade (DFAT) through written submissions at the commencement of negotiations and, in some cases, through subsequent meetings and public consultations throughout trade negotiations. However, stakeholder input is limited by the lack of access to agreement texts and DFAT not providing information on how this input is taken into consideration during trade negotiations. Further, civil society organisations from partner countries are almost entirely excluded from consultation processes. In trading partner countries this is a missed opportunity to strengthen gender equality in trade agreements, recognising that many countries continue to exercise gender discrimination in employment as identified through the CEDAW reporting processes.

Stakeholder consultation in the Regional Comprehensive Economic Partnership Agreement

Negotiations for the RCEP Agreement, which Australia is currently negotiating with 14 partner countries across Asia, have been extremely secretive, with stakeholders facing higher levels of exclusion than the widely criticised Trans-Pacific Partnership Agreement. Stakeholder consultations were not held until 2015, three years after negotiations started.¹³ Yet, business stakeholders had access to negotiators throughout this period, including through formal presentations at RCEP negotiations.¹⁴

Even after civil society consultations commenced, stakeholder input has continued to be impeded by the lack of access to negotiation texts and the structure of consultation sessions. At the Melbourne round of negotiations in June 2019, stakeholders, including ActionAid Australia, were only given five minutes to present at the consultation and there was no opportunity for discussion

¹² United Nations (2015) *The 2030 Agenda for Sustainable Development*, A/RES/70/1, [paragraph 30], <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>

¹³ Friends of the Earth International, Transnational Institute, Indonesia for Global Justice, Focus on the Global South, and Paung Ku (2018) *RCEP: A Secret Deal*, <https://www.tni.org/files/publication-downloads/foe-rcep-secret-deal-2-web.pdf>

¹⁴ Ibid, p. 14.

with negotiators. It remains unclear if and how this evidence has been taken on board by negotiators and incorporated into negotiation texts.¹⁵

Despite frequent calls for the negotiating texts to be released throughout the negotiations, and a letter signed by 94 civil society organisations calling for the release of the final agreement text¹⁶ after Governments announced the conclusion of text-based negotiations on 4 November 2019¹⁷, the text remains secret and will not be released until after the planned signing in November 2020.

ActionAid notes the announcement by the Minister for Trade, Tourism and Investment on 17 June 2020 that the Government had established a Ministerial Advisory Committee (MAC) to enhance transparency in free trade agreements. Despite the assertion that the MAC “brings together a broad cross-section of business, industry and community representatives”¹⁸ the 20-member committee¹⁹ includes only one union and one consumer organisation representative, and one stakeholder representing Aboriginal and Torres Strait Islander businesses. Notably, the Australian Fair Trade and Investment Network, of which ActionAid is a member, is not represented on the MAC. The MAC also lacks a gender balance, with 12 male representatives and only 8 women. There is no representation from women’s rights organisations on the committee. ActionAid is concerned that rather than increasing transparency in trade agreements, this committee will further entrench the imbalance between consultation with business versus civil society stakeholders. We are calling on the Government to address this imbalance by increasing civil society representation on the committee, including by ensuring representation from a gender specialist or women’s rights organisation.

The Government should address broader concerns with stakeholder consultations by establishing a clear procedure that mandates that consultations are conducted regularly throughout negotiations; provides opportunities for all stakeholders to input equally into trade agreements, including women’s rights organisations from partner countries; and ensures that stakeholder consultation reports are published and detail how evidence is taken into consideration in trade negotiations.

Recommendation 2: *The Government should facilitate mandatory public consultations prior to the commencement of trade negotiations and regular consultations throughout trade negotiations. The Government should use these consultations to show leadership in women’s rights by providing opportunities for input from women’s rights organisations and other civil society groups in partner countries.*

Recommendation 3: *The Government should publish consultation reports prior to initiating trade negotiations; and as consultations are conducted throughout trade negotiations. Reports should detail how evidence is taken into consideration in trade negotiations.*

¹⁵ See evidence given by the Australian Council of Trade Unions and Electrical Trades Union of Australia to the JSCOT inquiry into the Indonesia-Australia Comprehensive Economic Partnership Agreement and the Australia-Hong Kong Free Trade Agreement on 27 August 2019,

<https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Fcommjnt%2Fcacb4d67-172f-4092-8083-35680f552cde%2F0005;query=Id%3A%22committees%2Fcommjnt%2Fcacb4d67-172f-4092-8083-35680f552cde%2F0000%22>

¹⁶ Open letter demanding the release of the RCEP text (2019) <https://www.bilaterals.org/?open-letter-demanding-the-release>

¹⁷ ASEAN (2019) *Joint leaders’ statement on the Regional Comprehensive Economic Partnership (RCEP)*, <https://www.asean2019.go.th/en/news/joint-leaders-statement-on-the-regional-comprehensive-economic-partnership-rcep/>

¹⁸ Birmingham, S (2020) *Media Release: Enhanced transparency for free trade agreement negotiations*, <https://www.trademinister.gov.au/minister/simon-birmingham/media-release/enhanced-transparency-free-trade-agreement-negotiations>

¹⁹ The committee includes 18 non-government stakeholders as well as the Federal Minister for Trade, Tourism and Investment and the Minister Assisting the Minister for Trade and Investment.

Recommendation 4: *The Government should increase civil society representation on the Ministerial Advisory Committee for Free Trade Agreements, including reserving space for gender expertise.*

5. Independent gender impact assessments

Currently independent impact assessments are not conducted for Australian trade agreements, meaning that the social, environmental and economic impacts of agreements are not independently assessed. DFAT conducts a National Interest Analysis (NIA) for each agreement, however this is not independent and invariably reflects favourably on agreements without providing a genuine analysis of their potential costs and benefits. It is crucial that independent and comprehensive gender impact assessments (GIAs) are conducted for all trade agreements in order to determine the gendered impacts of trade rules and to identify how these rules may impact on Australia's international women's rights obligations. The United Nations Conference on Trade and Development has developed a set of tools to support governments to design gender-aware impact assessments.²⁰ GIAs should be conducted as a part of the broader assessment of the social and environmental impacts of trade agreements and it is crucial that these findings are released publicly and acted upon so that final agreements are designed to have the best possible outcomes for gender equality in Australia and partner countries.

JSCOT recognised the importance of impact assessments in its report on the PACER Plus trade agreement, recommending that "part of the development assistance allocated to implementing PACER Plus be specifically used to monitor the revenue of Pacific Island Governments, the public health, and gender equality impact of the Agreement."²¹

Recommendation 5: *The Government should commit to complete independent ex ante and ex post gender impact assessments (GIAs), along with broader social, economic and environmental impact assessments, for all trade agreements in order to identify and respond to any potential negative impacts on women's rights and gender equality.*

- i. *GIAs should be conducted prior to the commencement of trade negotiations in order to inform the scope of negotiations. A second impact assessment should be completed before trade agreements are signed in order to identify any likely impacts and to provide opportunities for renegotiation. Ex post assessments should be conducted once a deal is implemented so that actual impacts can be identified and redressed.*
- ii. *GIA findings must be taken into account and trade provisions that are found to negatively impact women must be mitigated or removed from the agreement.*

6. Parliamentary oversight

Trade agreements are increasingly encroaching on domestic policy space, with trade rules impacting on a wide range of policy issues that should be decided by Parliament, such as health and environmental standards, and the management of public services. In order to uphold democratic standards, it is critical that Parliament is given a more active role in the development and ratification of trade agreements. This should include greater oversight by Parliament and an expanded role for JSCOT in the review of trade agreements. It is important that the categorisation of trade agreements is not reformed in a way that would reduce scrutiny of trade agreements.²²

²⁰ UNCTAD (2016) *Implementing gender-aware ex ante evaluations to maximise the benefits of trade reforms for women*, Policy brief no. 51, http://unctad.org/en/PublicationsLibrary/presspb2016d7_en.pdf Accessed 28/06/18

²¹ Joint Standing Committee on Treaties (2018) *Report 179*, https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/PACERPlus-Agreement/Report_179

²² See AFTINET submission to this inquiry for more information.

Recommendation 6: *Prior to commencing trade negotiations, the Government should table in Parliament a document setting out its priorities and objectives, along with ex ante social and environmental impact assessments, including specific gender impact assessments.*

Recommendation 7: *JSCOT should be mandated to review all trade agreement texts, along with gender and other social, economic and environmental impact assessments, before the agreements are signed and to make recommendations to Parliament. A separate sub-committee of JSCOT could be established to enable this review.*

Recommendation 8: *The categorisation of trade agreements should not be changed in a way that would reduce scrutiny of trade agreements.*

Recommendation 9: *Trade agreements should be subject to Parliamentary debate, and Parliament should have the rights to vote on the whole agreement, not just the implementing legislation.*

Australia has made trade agreements a clear priority for its bilateral and multilateral relations. These agreements have the potential to support gender equality and poverty eradication in partner countries. However, unless gender analysis is given stronger priority in trade negotiations and trade rules are designed to support gender equality objectives, these agreements will continue to undermine women's rights and reinforce existing gender discrimination in employment and access to resources. The Australian Government has an opportunity to be a world leader in driving gender inclusive and responsive trade, and ensuring all genders equitably benefit from trading opportunities. ActionAid encourages JSCOT to give consideration to the recommendations contained within this submission to advance this objective.

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