



CCJP

CATHOLICS IN COALITION FOR JUSTICE AND PEACE

Catholics in Coalition for Justice and Peace
2015 Occasional Paper Series

The Trans Pacific Partnership – What does this mean for us?

Edited Transcript of Address given by Dr. Patricia Ranald

Sunday 21st June 2015

Dr Patricia Ranald is a Research Associate at the University of Sydney. She is also the Convener of the [Australian Fair Trade and Investment Network](#) (AFTINET), a network of community organizations, including church groups, human rights groups, unions and environmental organizations. AFTINET advocates for fair trade policies based on human rights, labour rights and environmental sustainability.

She holds a Master's Degree in Political Science from the University of Adelaide and a Master of Public Policy degree from the Graduate School of Business at the University of Sydney. Her Doctoral thesis in International Relations at the University of NSW was a comparative study of the World Trade Organisation and regional trade agreements, and won the UNSW Humanities Research Centre Award for best doctoral thesis of 2000.

She was formerly a Senior Research Fellow at the University of New South Wales, and currently teaches researchers in the ACTU education programme.



CCJP

CATHOLICS IN COALITION FOR JUSTICE AND PEACE

Visit: www.ccjpoz.org

Thank you very much. I would like to honour the original owners of the land. I was very cheered by the Pope's encyclical which fits very much into the themes we're talking about because what we're really talking about with trade agreements is the domination of the kind of corporate mentality which puts markets before people

I'm going to talk about free trade agreements generally and the way they exist at different levels – global, regional and bilateral; and then the process and the secrecy of it; and then go into some examples from the Trans Pacific Partnership and why we think it's going to have harmful social impacts... what we call 'neo-liberal economics', These are the economics which the Pope is criticising, which really say that we should pay attention to markets rather than the social impacts of the economy.

The reason they promote free trade agreements is that they argue that global competition means greater efficiency and the same quality at lower prices. There is some truth in that. Some global competition can be useful, but the problem is the balance of these things.

The emphasis is on getting rid of all tariffs or taxes on imports but in addition to that looking at other what they call 'barriers to trade' and that's where we come into the big problems with agreements like the TPP because they tend to regard government regulation of many kinds as a barrier to trade. That can delve into areas like medicine prices, copyright, essential services, media content, all sorts of industry policy and environmental regulation.

These are issues that we normally think should be decided through democratic processes - we have a discussion, we pass a law– but they are now being negotiated secretly in trade agreements.

The problem with this theory globally is also that it's very unfair to developing countries. If you look at the history of countries like Australia, Britain, the US and Europe, they all used tariff protections and other protections in order to develop their level of industrialisation and then they gradually reduced tariffs. Now they're saying to developing countries, you must reduce your tariffs. That tends to mean that developing countries get trapped in the primary industries like agriculture and mining, and it means that often there's also threats to security because the advice they get is 'don't grow your vital crop, grow a cash

crop that you can export and sell'. Of course, if you're growing a cash crop and that crop fails, you haven't any food. So the whole issue of food security comes up. Most societies do want to have a more diversified economy, jobs and skills. If you look at whose interest this is promoting, it really is the interests of global corporations.

They want zero tariffs on everything; they want to be able to have global production chains, no restriction on foreign investment or requirements to contribute to local development. The trade and services area, which is becoming globalised, too, includes things like health, education, water. Water's not something that's traded internationally but it's now being owned internationally – and they tend to treat services regulation as if it were a tax to be reduced over time.

One of the big paradoxes of this model is that one thing that global corporations want is actually stronger intellectual property rules that mean stronger rules on patents and things like copyright, which give them monopoly rights for longer.

These agreements negotiated between governments are legally binding and enforceable, so once you've signed a trade agreement those rules can be enforced against you. The design of them is deliberately designed to lock in future governments so it's difficult to get out of trade agreements and there's two sorts of enforcement. The one they all have is called a 'government to government dispute process'. If you've signed a trade agreement and you break the rules, another government can complain and then it goes to an international tribunal and a decision is made. If it goes against you, the other government can ban or tax your products, so there's a sort of trade penalty.

With US agreements in particular, but in more and more other agreements, they're putting in an extra enforceability mechanism which is called 'investor stage dispute settlement' (ISDS). What this means is that it's not a government that complains; it's a single foreign corporation that makes the complaint and those complaints are even less fair than the government-to-government dispute processes. That's the mechanism the Philip Morris tobacco company is currently using to sue the Australian Government.

Many global agreements exist through the World Trade Organisation (WTO) where there's 160 governments. It's more than just about trading goods but agricultural services, intellectual property, quarantine, etc. Regional agreements like the North American FTA between Mexico, Canada and the US, or the European Union's regional trade agreement, ASEAN, the ten ASEAN countries in our region have an FTA with Australia and New Zealand; and then there's bilateral, just between two countries – the Australia-US Free Trade Agreement, which we all talked about or some of us talked about in 2004 when it was being negotiated.

Trade agreements in general can change our laws through negotiation without going through the democratic process. In Australia, the way that the government negotiates trade agreements is essentially a Cabinet process; it's just the Prime Minister and Cabinet who make the decisions about going into negotiations and how they run. Then at the end Cabinet signs off on the text and the text can't be changed after that. It's only released to the public and the parliament after it's been signed off by Cabinet. It does get reviewed by a Joint Standing Committee on Treaties, but it's a joint committee of both houses of parliament so the Government has the majority on it. Then when parliament votes, it only votes on the implementing legislation, i.e. the legislation that's actually necessary to be changed immediately; for instance, if there are tariff changes they vote on that.

Q: If it's skewed towards Cabinet and government, when a new lot comes in with an alternative viewpoint against it ... what can they do?

They have to go back to the governments that the treaty is being negotiated with and try to renegotiate. It's quite difficult. If it's only a bilateral agreement, that's a bit easier, but when we look at the Trans Pacific Partnership that's 12 governments so it is very difficult, almost impossible.

Q: What sort of penalties are involved if you ever want to get out?

Under the rules, you have to compensate the other parties to the agreement for any losses in trade or access to your markets. That's the problem.

There's a current Senate enquiry into this process because a lot of people are very unhappy with it. We've asked for changes which would involve releasing

the text before it's signed and the parliament actually makes the decision about the whole trade agreement, not just the implementing legislation.

There's also a global movement to end the secrecy in trade agreements.

We finally get to the Trans Pacific Partnership Agreement!

It's a legally binding agreement. It's not quite regional. It's Pacific Rim countries - some countries in Asia and some countries in The Americas. Most of them already have, like Australia, bilateral agreements with the United States, but the United States is building on those bilateral agreements and it's very much driving the agenda.

It is acting on behalf of its most powerful industries, export industries particularly, like the pharmaceutical companies, the media companies, IT companies, etc. It aims for zero tariffs but also zero other barriers and it's the most extensive trade agreement I've ever seen in the number of topics it deals with. The negotiations are secret. There have been some consultations. We go and talk to the Dept of Foreign Affairs that provides the negotiators, but they can't show you the text. They only talk about it in general terms.

There's also another trade agreement being negotiated which is not so far along as the TPP, called the Regional Comprehensive Economic Partnership in which Australia is also involved. It is more like a regional agreement because it's the ten ASEAN countries, Australia, New Zealand, China, Japan, Korea and India. There are many new issues in the TPP which tend to restrict policy.

The first one is higher prices for medicines. The TPP is trying to affect the regulation of medicine prices in two ways. The first one is that the US pharmaceutical industry does see medicines purely as an export industry and not as a public good. From their point of view, if they have longer patents on medicines, that is longer monopolies to charge higher prices for longer. If you invent a new medicine you get a monopoly for 20 years and that is enough; it's only after that time, cheaper generic medicines come to market.

In the TPP they want to extend that period, particularly with the newest types of drugs called 'biologic drugs' which treat cancer and other serious illnesses. These proposals would add hundreds of millions of dollars each year of delay to the cost of the Pharmaceutical Benefits Scheme (PBS).

The second thing they want is to interfere with the PBS itself. In the US, when a new medicine is invented, the pharmaceutical company puts it on the market at the price they choose. In Australia, if a new medicine comes on to the market, our Government compares its effectiveness and value for money with other medicines and says this is the price that you can charge for this medicine, so the pharmaceutical companies regard that as a barrier to trade.

Also, with the PBS, the retail price that we pay at the chemist is subsidised. Of course, if you raise the wholesale price that means the total cost of the scheme is more and that's what they want to do.

Another areas that's been very controversial, and again involves extension of monopolies, is copyright. Copyright means that if you write or create something you have a right to payments for that for a certain period. There's meant to be a balance between your right to payments and the public's right to have access to information. The WTO standard for copyrights is still 50 years after the author's death or in the case of cinematic products the creation of the product. When we signed the US-Australia Free Trade Agreement we had to agree to 70 years because that was the US standard and that's sometimes known as the 'Mickey Mouse standard' because it came into being just as Mickey Mouse and other early cinematic products were about to come out of copyright.

In the TPP they're saying for some cinematic products they want 90 years. For a country like Australia, which is a net importer of copyright goods, the economy as a whole is paying more for copyright but also schools, libraries, educational institutions are all paying more for longer periods of copyright.

The other very controversial area in copyright is that they want to have more restrictions on the internet in order to make sure that people pay copyright.

They also want to have another go at Australian content in media and government purchasing. The US is saying because they are the largest exporters of media content, that any country that has any local content rules, that these are a barrier to trade, so they're still trying to reduce further Australia's local content rules. Of course, they're there to preserve our culture.

That's also the case with Government purchasing. Again, in most countries in the world, when governments buy things, they have some rules about saying

governments will buy a certain percentage of local content to make sure that they're supporting local industries.

There's also a series of chapters which are completely new in trade agreements. They are really about having rules about the way the government-owned enterprises can operate and having more rights for foreign investors to be able to have information about proposed laws and regulations before they come into practice. They want there to be limits on what governments can require, for example, for things like tobacco labelling or food regulation or alcohol labelling.

They want to make sure that state-owned enterprises don't have any special privileges in competing with private entities. **We want to make sure that publicly owned enterprises with a public purpose can pursue that public purpose and continue to get assistance from government to do that without having to operate in a purely commercial fashion.**

Food labelling is another issue. We have seen one leaked document about labelling alcohol products - they wanted to restrict the ways in which governments could require health warnings to be on alcohol labelling.

Q: In those circumstances, the plain packaging for cigarettes and so on, would never get passed under these sorts of rules?

There's a big debate within the TPP regulations about tobacco regulation and health regulations. The US tobacco companies have objections so there's no agreement about that. The tobacco companies are open about blocking it.

With the country of origin food labelling, if it's not passed before the TPP comes into effect and the TPP does come into effect, and then the legislation comes forward, it's possible that the government could be sued over it.

The problem with this investor rights to sue government is that the system set up to deal with it - an international tribunal system - it's main concern is whether the investment of the foreign investor has been harmed.

The current Coalition Government has agreed to it. It's in the Korea FTA, the China FTA which has just been released, and they're proposing that they would agree to it under certain conditions in the TPP.

The problem is that it's not a proper legal system. There have been an increasing number of cases, over 600 are now still going on globally. They're mostly taken by large global companies from the US and the EU because it's a very expensive process. This is called 'indirect expropriation'.

This comes from an idea 30 years ago that if a government took the property of a foreign investor then the foreign investor had to be compensated. This legal system has adopted this idea of indirect expropriation. That concept doesn't exist in Australian law, US law or in most national legal systems, it's a special concept that's been evolved in this tribunal system. Even if the government wins the case, they're very expensive to fight.

The arbitrators are not independent judiciary, they are investment lawyers. They can continue to be practising lawyers, so they can be an advocate for Philip Morris one month and then the next month they have a seat on a tribunal as an arbitrator. That's not acceptable in Australia because it's considered to be a conflict of interest. These tribunals don't have that sort of independent judiciary and they don't have precedents for appeal.

Although the Government says we have safeguards to ensure that there won't be cases against health and environmental legislation, both kinds of safeguards have been put into recent trade agreements but they haven't prevented cases from being taken and once a case is taken it can have this freezing effect, not only on that government but on other governments.

I'll use the tobacco example. Philip Morris has taken a case against Australia, but before the legislation was passed in 2011 the tobacco companies as a group had a big public campaign against it. But the legislation was passed, and then it was challenged by a group of tobacco companies in the High Court. They demanded compensation for loss of the use of intellectual property, i.e. the trademarks on the packets. The High Court threw it out saying that under Australian law you can only be compensated if your real property is taken and besides this is a public health measure and you don't have to be compensated for that.

So Philip Morris, a US company, couldn't sue under the US-Australia FTA because there wasn't that provision in it (we campaigned and kept it out of that). They found an obscure investment agreement that Australia has with

Hong Kong and they are suing the Australian Government under that provision in the Hong Kong–Australia FTA. They just shifted some investments to Hong Kong and said, we’re a Hong Kong company now, we’re going to sue you.

So you can see how this thing is open to abuse and that case is still going on, four years later. It’s cost the Government millions of dollars to defend it. They’ve only just got to hear the substantive issues because what the companies do is raid a whole lot of technical issues.

As a result of that case, the US and New Zealand governments which were both considering plain packaging legislation are waiting until that case is determined because they don’t want to be sued. So that’s your freezing effect.

There’s a growing global movement against investor-state dispute settlement (ISDS) and a lot of governments have now said, we don’t want to have any more agreements like this, including the Australian Government

On workers’ rights and environmental protection: at the beginning of the negotiations we were promised that the TPP would raise standards in the region by having enforceable labour rights – basic labour rights like freedom of association, right to collective bargaining, no forced labour, no child labour, etc. and also basic environmental protections. Now we know from leaked documents that that still hasn’t been agreed. They haven’t agreed that the standards will be enforceable in the terms of the labour standards, and with environment there’s a huge fight about which environmental standards and whether they’ll be enforceable. For instance, the US has said they don’t want any reference to Climate Change.

The good news is that the reason the negotiations have been dragging on since 2010 is that community groups have pressured governments in the different countries not to agree to a lot of this agenda. There’s also now a big movement against it in the US itself. Fast-track legislation means that the US Congress has the power to amend trade agreements, they have to give up power and fast track to the government to push the agreement through Congress without it.

There’s a big push on to finish but so far we’re winning that. The longer it gets delayed, it means it gets mixed up in the US Presidential Race. Hilary Clinton has now come out and said she doesn’t think the TPP is a good idea. Neither

candidate wants to support it because it's very unpopular. The opinion polls show that the majority of people don't want the TPP.

I'll just mention the China FTA quickly, and that is that it was signed or agreed in principle between the governments last November but we've only just had the official signing and the release of the text this week. There are two problems there. Like the TPP it has this ISDS clause, so it means that foreign investors could sue the Australian Government. But the big factor is that they want a special temporary labour permission for Chinese companies that invest in Australia with an investment worth more than \$150 million, This is actually a very low threshold – that's like a building in the CBD or a small mining project – those companies will have the right to bring in most of the workforce as temporary workers. **That means that workforce will be isolated from the rest of the workforce in Australia. They're supposed to be paid the same wages and commissions. These will be workers from China, most of whom don't speak English, and they will be very vulnerable to exploitation and to not having awareness about health and safety and all of those things. Neither the China agreement nor the Korean agreement has enforceable labour standards.**

AFTINET are trying to prevent these things and present an alternative vision of what trade should be about. We've got about 60 organisations in our network and a lot more individuals, and we co-ordinate with other groups in other TPP countries. We want to end the secrecy, release the text and have a fair deal or no deal in the TPP or other agreements.

With the China FTA, we are working with parliament. There's now a cross-party parliamentary group of parliamentarians from Labor, the Greens and Independents, including some of the ex-Palmer Party members of parliament. They have formed a group just in the last month to examine critically the TPP in particular but they'll also be looking carefully at the China FTA and we may be campaigning when we've done the analysis of the text to try and get the Senate not to vote for the incoming legislation, the China FTA and the TPP.

We will be asking people to send messages to parliamentarians and especially to senators, so keep an eye out for all those messages. Our website has a lot more information. Thank you very much.

