

Eureka Anniversary Dinner Speech November 13, 2015

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The Australian Fair Trade and Investment Network (AFTINET) is a network of 60 community organisations, and many more individuals including church, public health, unions, aid and development, environment, pensioner and other community groups. We advocate for fair trade based on human rights labour rights and environmental sustainability. Our website is www.aftinet.org.au

Tonight I want to talk about the democratic and human rights heritage of Eureka and how that can be eroded by international trade agreements, using the example of the Trans-Pacific Partnership agreement or TPP.

Well what is the Eureka Heritage? I am sure this audience is aware of it as we celebrate the 161st anniversary, so I will just summarise some principles.

The organisation of the Ballarat Reform League and the Eureka uprising resulted from grassroots organisation of a very diverse multicultural population of men and women (as Claire Wright's fascinating book on the women of Eureka reminds us). They organised in the first instance against the tyranny of miners' licences which were a form of taxation, enforced by the police and ultimately the military, and against arbitrary arrest, intimidation and violence.

But their positive vision was much broader. As many have said, Australian democracy was born at Eureka. The Ballarat Reform Charter demanded the right to vote for all men without any property qualification (women's suffrage struggle would come later) to elect a Parliament which would be accountable to the people, and which would make laws through an open democratic process, with public input as well as Parliamentary debate.

The Eureka Heritage is also linked to broader struggles for human rights which are a prerequisite for a democratic society, like freedom of speech, freedom of assembly, freedom of association, and workers' rights to organise and collectively bargain in the workplace. The organisers of the 1891 shearers' strike flew the Eureka flag and invoked its heritage.

These principles were those on which Australian Commonwealth and State Parliaments came to be based.

So how does the Trans-Pacific Partnership or TPP erode these principles?

Notice the language shift, partnerships up sounds much more cuddly and friendly than a free trade agreement. But it's not an equal partnership, and it's not really about trade. The TPP is part of a series of global agreements, including the Transatlantic Trade and Investment Partnership between the US and Europe, and the Trade in Services Agreement which are being used as a vehicle to create global rules which suit global corporations, not people. These agreements attempt to bypass democratic laws and structures and lock governments into rules in many areas which affect our lives, from medicines and the environment to labour laws and the Internet.

The TPP is a legally binding trade agreement negotiated between 12 Pacific Rim countries. In the Americas they are the US, Canada, Mexico, Peru and Chile. In the Asia Pacific they are Japan, Malaysia, Singapore, Brunei, Vietnam, Australia and New Zealand. You may have seen in the media that negotiations finished recently, and the monster text of 30 chapters and thousands of pages has just been made public.

So why are we worried about it? The TPP is not mainly about traditional trade issues like reducing tariffs or taxes on imports. The agenda is being driven by the US on behalf of its most powerful export industries like pharmaceutical, tobacco, media, IT and agribusiness industries, and most of its 30 chapters are about changing our domestic laws and policies in ways that suit the global corporations of those industries.

The first Eureka principle that the TPP violates is open government. The TPP was negotiated in secret, although it can commit our governments to change current laws and tie their hands in making future laws. But apart from some leaked documents we were not able to see the detail until after the deal was done.

These secret talks began in 2010, and missed many deadlines, but on October 6 this year they announced they had reached agreement about a text, and they release the text last week on November 5. That process gave the government a month to put out its positive spin before we saw all the details.

The second Eureka principle that the TPP violates relates to the democratic role of Parliament to make laws which affect our lives. The TPP commits Australia to policies that could increase the price of medicines, and allow foreign corporations to sue our governments for millions or even billions of dollars over changes to domestic law on health, environmental or other public interest issues. These are policy issues which should be decided by the normal open democratic parliamentary process, not secretly signed away as part of a trade deal.

The process of signing the TPP is also undemocratic. Cabinet will make the decision to sign it, not Parliament. Only after Cabinet makes that decision, will it be tabled in Parliament for 20 sitting days and reviewed by Parliamentary Committees, but those committees and Parliament itself can't change the text. Parliament will only vote on legislation needed to implement the agreement, not the whole agreement, and it can only vote yes or no. A recent Senate inquiry into this secretive and undemocratic process was very aptly called *Blind Agreement*.

The TPP agenda has been driven by the US as the largest economy, with half the countries already having bilateral trade agreements with the US. It is also part of US trade and military rivalry with China in the region. Australia is trying to do a balancing act by being in both the TPP because of the US alliance and negotiating an FTA with China which is our largest trading partner.

Australia already has free trade agreements with the TPP's biggest players, US and Japan, and with all but 3 of the other TPP countries, so there are very few potential gains from increases in market access for Australian exports. In fact, a recent study by the [US Department of Agriculture](#) showed zero gains in GDP growth for Australia (p. 21). We are told that gains will come from removing non-tariff barriers to trade. But this is precisely what we are worried about. We want our governments to retain the ability to have public interest regulation.

Now that we have the text we can see the devil in the detail. Our community campaigning has made a difference, and pressured governments to resist some of the worst things that we saw in leaked documents. But the final text confirms our fears

that the TPP is not about free trade, but about increasing corporate monopoly rights at the expense of people and communities. It erodes the ability of future governments to make democratic laws which protect the public interest, which is completely contrary to the Eureka Heritage. I only have time to look at four examples of these.

Foreign investor rights to sue governments over changes in domestic laws

The TPP permits foreign corporations to sue governments in international tribunals if they can argue that a change in law or policy at national, state or local level “harms” their investment. This is known as Investor-State Dispute Settlement or ISDS. The tribunals consist of investment lawyers who are not independent judges but can continue to be practising lawyers, acting for a corporation one month, and sitting on a tribunal in the next month. In Australia, and most legal systems if you become a judge you can’t continue to be a practising lawyer because of obvious conflicts of interest. The TPP does not require tribunals to take notice of other decisions or precedents, and there are no appeals. In Australia, and most legal systems, judges have to consider other similar cases and their decisions can be appealed to higher courts. As Australian High Court [Chief Justice French](#) has said, these tribunals are not independent or impartial yet they can undermine decisions of national court systems.

There are [increasing numbers of cases](#) against [health](#), [environment](#) and even [minimum wage](#) laws. The US Lone Pine mining company is suing the Canadian government because the Québec provincial government dared to review the environmental regulation of gas mining. The US pharmaceutical company Eli Lilly is suing the Canadian government over a court decision which refused a patent for a medicine which is was not sufficiently more medically effective than existing medicines. The French Veolia company is suing the Egyptian government over a contract dispute in which they are claiming compensation for a rise in the minimum wage. In case you may have heard of the Philip Morris tobacco company is currently suing the Australian government for billions of dollars over our plain packaging laws, despite the fact that it was passed through our Parliament with bipartisan support and our High Court found that the tobacco companies had no case for compensation or damages. Philip Morris is thumbing its nose at our Parliament and our High Court. This case has dragged on for four years and cost the government over \$50 million just in

legal fees. These cases show that ISDS undermines democracy and sovereignty, completely contrary to Eureka principles.

The only bit of good news is that public health campaigning against the Philip Morris case has resulted in a change in the TPP which is a complete exclusion from ISDS cases for tobacco regulation. This is a victory, and means we won't face more cases on tobacco regulation in the future. But in a way it's the exception that proves the rule because the fact that it needed such a specific exclusion for Tobacco shows that the general 'safeguards' in the TPP for other types of health and environment legislation are not effective.

The government claims there **are** some extra safeguards in the TPP for other health, environment, and public interest laws. But none of these safeguards or procedural improvements address the [fundamental flaws](#) of ISDS that it is a biased system with no independent judiciary, no precedents and no appeals.

Medicine

We should remember that pharmaceutical companies already have 20 year patents which give them 20 years of high monopoly prices before cheaper forms of medicines become available. But this is not enough for them. They want extra monopolies for the latest and most expensive biologic drugs which are used to treat cancer and other life-threatening diseases. This is simply a grab for additional profits from companies which are already amongst the most profitable in the world.

In the negotiations the US originally claimed an additional 7 years of monopoly on biologic drugs, before cheaper biologic medicines become available. They didn't get this but they did get an extra three years, which is still outrageous. Trade Minister Robb claims that he has done a special deal for Australia and that Australia will not have to make any immediate changes to its current 5 years of monopolies on biologic drugs. But when you read the text it is ambiguous. It refers to governments taking other measures which would deliver a comparable market outcome, resulting in an extra three years of monopoly prices in future. If this happens public health studies show that each year of delay in the availability of cheaper medicines will cost the

government [hundreds of millions of dollars](#), creating pressure for higher prices at the chemist.

[MSF, Doctors without Borders](#) says the TPP will restrict and delay access to lower-priced medicines for millions of people, especially in developing countries, where they don't currently have any special regulation for biologic drugs.

Environment and Labour rights

One of the big promises made about the TPP was that governments would have to commit to both enforceable environmental standards and enforceable labour rights. The text shows this is not so, with [weak environmental standards](#), only one of which is enforceable.

On labour rights, although there is mention of ILO principles, governments basically commit to implement their own industrial laws, and investigations can only occur if there is evidence of sustained or recurring violations of labour rights. The complaint process is similar to previous trade agreements where there is a very long consultation process and no complaint has ever been found or changes enforced.

The lack of enforceability of environmental standards and labour rights contrast with the strong legal rights for corporations to sue governments over environmental laws and even labour laws.

Copyright Monopolies

Copyright law is meant to maintain a balance between the right of creators to a reasonable income through payments for the use of their work, and the rights of consumers to fair use of information. Most copyright is now held by corporations, which lobby for trade agreements to extend their payments and rights like patents is a monopoly right which is the opposite free trade.

The Productivity Commission, usually a supporter of free trade has now done two studies which argue that distension of both patents and copyright through trade agreements should be opposed because it simply transfers wealth to patent and

copyright holders. It's particularly bad for the Australian economy because Australia is a net importer of copyrighted and patented goods, so it simply adds to our trade deficit

But The TPP sets in stone specific and [stronger legal rights for copyright holders](#), and criminalisation of breaches, while consumer rights to fair use are vague and less enforceable. This will make it much harder for future governments to improve consumer rights or respond to technological change.

These four examples show that the TPP is attempting to set regional and ultimately global rules which will undermine open democratic processes and will prevent governments from regulating in the public interest in the future, completely contrary to the Eureka Heritage.

For more information on these and other chapters of the TPP, see the AFTINET website [here](#).

What can we do about it?

AFTINET has been campaigning since 2010. We have addressed many public meetings here and interstate, this year averaging more than one a week, and held public events including three public rallies in Sydney, rallies and public meetings in Melbourne Canberra Brisbane and Perth. This has prompted much more media debate and we now have [mainstream media commentators](#) writing opinion pieces against the TPP, and critical coverage on commercial TV shows like Channel 10's The Project and on talkback radio like 2UE and Adelaide's 5AA. We have worked with [Getup](#) to get over 100,000 people to sign petitions against the TPP, and organisations like [Choice](#) and the [AMA](#) have strongly criticised the TPP.

There have also been campaigns in other TPP countries and a strong campaign in the US itself from unions and community groups which don't want the TPP to limit changes to medicines and other policies in the future. Both Hillary Clinton and Donald Trump have come out against the TPP, and since most Democrats and many Republicans oppose it, it will have a rocky road through the US Congress.

The next steps in Australia are that sometime in the next couple of months, the Cabinet will make a decision to sign the TPP, and it will be tabled in Parliament for 20 sitting days and examined by parliamentary committees, before Parliament votes on the implementing legislation. The Parliamentary process will start in early February next year, which gives us time to gear up a strong campaign to try to block the implementing legislation in the Senate. So in the spirit of Eureka we will be organising more rallies and other events, and asking you to send messages to your MPs and Senators.

For more information go to our website www.aftinet.org.au, where you can sign up for updates, join AFTINET, or give a donation to support our campaign. The website also has links to [Facebook](#) and twitter @AFTINET.