

Ten years since the Australia-US Free Trade Agreement: Where to for Australia's Trade Policy?

REPORT ON WORKSHOP OUTCOMES

**Workshop Dates
25-26 September 2014
UNSW Australia**

**Morven Brown Building, Room 310
Gate 8, High Street, Kensington
Sydney, Australia**



**ACADEMY OF
THE SOCIAL SCIENCES
IN AUSTRALIA**

ASSA WORKSHOP REPORT ON OUTCOMES

Ten years since the Australia-United States Free Trade Agreement: Where to for Australia's Trade Policy?

The Workshop was held at UNSW Australia on 25-26 September 2014, as outlined in the attached program (Attachment 1). Dr Elizabeth Thurbon opened the event and Professor Eileen Baldry, Acting Dean of Arts and Social Sciences, welcomed participants. The Workshop brought together a group of 20 leading and emerging scholars from various disciplines as well as former Australian trade officials and civil society representatives (see List of participants in Attachment 2).

Description / Rationale

The workshop's purpose was to encourage debate about the economic, social and strategic impacts of the past decade of preferential trade deals, and Australia's trade policy options into the future. Over two days, participants discussed three key questions: What have been the strengths and limitations of Australia's trade policy approach over the past decade? What are the major trade-related challenges facing Australia in the next ten years? And how might these challenges best be met? Within this framework, participants were asked to focus on one or more of the following questions:

(1) What have been the main outcomes of Australia's embrace of preferential trade deals? Have the anticipated economic benefits been realised? Have the potential negative implications come to pass?

(2) How does preferentialism impact on Australia's ability to progress a less discriminatory and more democratic and development-friendly international trade regime?

(3) Is Australia's current involvement in Trans Pacific Partnership (TPP) negotiations a desirable way forward, or would Australia be better served by seeking involvement in China-centric trade negotiations?

(4) In what ways can trade policy help to advance Australia's commitment to addressing climate change?

(5) How can trade policy serve to buttress Australia's role in the Asian (or Asia-Pacific) Century?

Highlights from the proceedings

Day 1 began with a session focussed on trade and intellectual property (IP). Kimberlee Weatherall, Hazel Moir, Luigi Palombi and Anna George spoke to the impacts of the patent and copyright provisions of existing FTAs and the lessons for current and future negotiations, especially those centred on the TPP. We heard that many of the anticipated benefits of the Copyright provisions of the AUSFTA had not been realised – though neither had many of the anticipated fears. In relation to patents, we learned that the AUSFTA had served to lock in a broken patent system, whilst also impacting negatively on the affordability and safety of Australian medicines, and the fortunes of the Australian Generics industry. We also gleaned insights into the negotiation of the IP aspects of the AUSFTA, and how they required federal and state bureaucracies to engage in highly complex negotiations for which few were sufficiently prepared or intellectually attuned. The group then debated the main lessons of past experiences for current and future negotiations, and the most desirable way forward.

Session two focused on Trade, Industry and the Environment, with presentations by Shiro Armstrong, Elizabeth Thurbon and John Mathews. We discovered that the Australia-US FTA has resulted in trade diversion and coincided with a decrease in trade between these two countries. We also learned that Australia's preferential deals leave more room to move than is often assumed for the government to use public procurement for industry development goals. However the Australian government appears far more reluctant than other countries with similar commitments (such as South Korea) to actually use this room. Finally, we heard how certain kinds of trade agreements could help to promote the uptake of green technologies and reduce carbon emissions, and what might be done to overcome obstacles to the realisation of this goal posed by existing WTO and preferential arrangements.

Day one concluded with a session devoted to Trade and Health, with Deborah Gleeson, Andrew Mitchell and David Adamson discussing the implications of certain trade and investment agreements for human and animal health. We developed an understanding of the history of government policy related to trade and public health, and how it has changed over time. It was revealed that from a public health point of view, the results of AUSFTA were mixed, but in many respects the efforts of the United States to encroach on Australian health policy were successfully rebuffed. However since that time, policy has shifted, with public health goals now given less priority in Australian trade policy. We also learned about scope and flexibility that remains within the international trade and investment regimes to pursue innovative domestic health regulations, such as plain packaging tobacco laws, and heard suggestions for how to maintain this scope in future agreements. Finally, we gained an appreciation of the complex relationship between trade and animal, plant and human health, and the importance of maintaining the integrity of local regulations for animal and plant health and food safety under current TPP negotiations.

The second day began with a session on the geopolitics of trade, and on US- vs China-centric regionalism in particular, led by Michael Wesley, Ann Capling, John Ravenhill and Bryan Mercurio. We heard a variety of views on the opportunities and challenges posed by Australia's participation in the TPP and RCEP negotiations. Bryan Mercurio highlighted the benefits of Australia's current approach, while Michael Wesley emphasised the dynamics of competitive regionalism that underpin these negotiations, and the complex set of choices, challenges and opportunities that this new phase of Sino-American rivalry presents for Australia. Ann Capling and John Ravenhill evaluated Australia's approach to current negotiations by comparing it with that of other countries, revealing some significant Australian limitations.

Session two focused on the drivers and dynamics of negotiations, with presentations by Maryanne Kelton, Mitali Tyagi, Patricia Ranald and Thomas Faunce. We learned about the interconnection of defensive, commercial and politico-strategic interests in the construction of trade policy, with an emphasis on the AUSFTA. We also heard about the history of Australia's investment treaty practice, and the dynamics shaping Australia's approach to investment treaty negotiation over the past decade. Finally, we discussed the key corporate drivers of the existing AUSFTA and the proposed TPP, and the

extent to which such agreements and the mode of their negotiation impact on Australia's domestic regulatory autonomy and on democratic decision-making.

The final session was devoted to a discussion of future collaborative endeavours and the communication of research outcomes to the scholarly and wider community.

Communication of Outcomes

The findings of research conducted for and debated at the Workshop have been communicated in the following ways:

(1) The Free Trade Scorecard

A special series of 13 articles written for a general audience and published by The Conversation in October 2014, to coincide with the TPP negotiations being held in Sydney at that time.

The Conversation is one of Australia's leading independent news outlets. In 2014 it had 2.2 million readers a month direct to the site and reached a further 10 million readers through republications. Articles in the Series attracted many comments from readers.

The Series is available at: <http://theconversation.com/au/topics/free-trade-scorecard>

Each article in the series carried the following by-line acknowledging ASSA: *“This article draws on research prepared for the 2014 Workshop “Ten Years since the Australia-US Free Trade Agreement: Where to for Australia’s Trade Policy?”, sponsored by the Academy of the Social Sciences in Australia and Faculty of Arts and Social Sciences, UNSW Australia.”*

(2) Special Issue of the *Australian Journal of International Affairs*:

In 2015, the AJIA will publish a Special Issue based on the topic of the Workshop, to be Guest Edited by Elizabeth Thurbon. The Special Issue will carry nine articles from workshop attendees. The AJIA is a policy-facing journal and also Australia's leading scholarly journal in this area.

It should also be noted that the workshop served to deepen institutional linkages and contributed to new research collaborations. For example, a number of workshop participants are now collaborating on an ARC DP application related to the topic of trade and health policy.

The organisers and participants would like to sincerely thank the Academy for their financial support.

Elizabeth Thurbon

School of Social Sciences, UNSW Australia

List of Participants

ADAMSON, David. David Adamson started his professional life as the economist at the CRC for Tropical Pest Management. He joined the School of Economics at The University of Queensland in 2004 to work on climatic variability and uncertainty impacts on water management in Australia's Murray–Darling Basin. David has been commissioned to work on The Garnaut Climate Change Review, The Murray-Darling Basin Plan and has finally submitted a PhD. Despite all these opportunities, he is still found loitering in the biosecurity area and has started collaborating in a European Cost-Action project dealing with the economics concepts of one-health.

ARMSTRONG, Shiro. Shiro Armstrong is Co-Director of the Australia-Japan Research Centre and Director of the East Asian Bureau of Economic Research at the Crawford School of Public Policy at the Australian National University. He specializes on East Asian economic integration and the East Asian economies, including Japan. He has been visitor to Tokyo University, Peking University, Harvard and was the Gary Saxonhouse Fellow at Columbia University in 2011. He is recipient of an Australian Government Endeavour Research Fellowship, Gary Saxonhouse Prize Fellowship for Japanese Economics, Crawford Award, and Japan Foundation Fellowship. He is Editor of the East Asia Forum and East Asia Forum Quarterly.

CAPLING, ANN. Ann Capling is Provost and Professor of Political Science at Murdoch University, Perth, Western Australia. Prior to joining Murdoch, Ann was Professor of Political Science at the University of Melbourne and Adjunct Professor at the Crawford School of Economics and Government at the Australian National University. She specialises in international political economy, especially trade policy, Asia-Pacific trade agreements, and the multilateral trade system. She has published five books and more than 50 journal articles and chapters on a range of issues including Australian trade and industry policy, the World Trade Organization, preferential trade agreements and economic regionalism, and the Australian Football League. Ann has provided policy advice and professional training to a broad range of government, business and civil society organisations. Recent appointments include Member of the Social, Behavioural and Economic Sciences Panel for the 2010 Excellence in Research Australia exercise and Member of the Australian Government Delegation to the 2010

Ministerial Meeting of the WTO. Ann was born and educated in Canada and completed her PhD at the University of Toronto. She has held previous academic appointments at the University of Melbourne, the Australian National University, Monash University, and the University of Calgary, Canada. She is Past President of the Australian Political Science Association.

FAUNCE, Tom. Prof Thomas Faunce has a joint position in the ANU College of Law and the College of medicine, Biology and the Environment. He lead an ARC Discovery grant studying the impact of the AUSFTA on Australia's PBS in 2004 which involved interviews in Australia with members of the PBAC and pharmaceutical companies as well as US interviews with AUSFTA negotiators. He has published widely in this area including his book *Who Owns Our health* with UNSW Press and Johns Hopkins university Press. He also has published extensively and is a frequent media commentator on impacts of the TPPA on Australian health and sovereignty

GEORGE, Anna. Anna George is an adjunct professor to the Sir Walter Murdoch School of Public Policy and International Affairs, Murdoch University. Her area of interest is public policy and the intersection between health policy and intellectual property governance, including the effects on access to medicine. She is a former Australian ambassador with extensive experience as a multilateral negotiator working on disarmament, trade and social policy in multilateral and regional forums: Organization for the Prohibition of Chemical Weapons (OPCW); Middle East Arms Control and Regional Security Working Group (ACRS); UN - Social and Status of Women Commissions, UNRWA and UNIDO; and WTO Trade related aspects of intellectual property (TRIPS); Food and Agricultural Organization (FAO), Plant Genetic Resources for Food and Agriculture (PGRFA) and Free Trade Agreements (FTAs). She is also an Associate Fellow with the Centre on Global Health Security, Chatham House.

GLEESON, Deborah. Dr Deborah Gleeson is a lecturer in public health at La Trobe University. She has a Master of Public Health and a PhD in Health Policy. Dr Gleeson teaches subjects in the Bachelor of Health Science with a public health, health policy and health systems focus. Her research interests centre on the impact of trade agreements on health care and public health policy. Over the last three years she has been following the negotiations for the Trans Pacific Partnership Agreement (TPPA)

closely and has undertaken research into the potential risks the agreement presents for health in Australia and the other participating countries. A major focus of her research has been analysis of draft provisions for pharmaceutical pricing and reimbursement. She represents the Public Health Association of Australia on matters related to the TPPA and has attended official stakeholder events at several negotiating rounds. She has a large number of publications on the TPP, including peer-reviewed papers, submissions, opinion pieces and policy briefs.

KELTON, Maryanne. Maryanne is a senior lecturer in international relations at Flinders University of South Australia. Her research interests concern Australian foreign policy, alliances, and the security and economics nexus. She is the author of ‘More than an Ally’? Contemporary Australia-US Relations (Ashgate, 2008) and New Depths in Australia-US Relations: The Collins Class Submarine Project (ANU, 2005). She has published in the *International Relations of the Asia-Pacific*, *Australian Journal of International Affairs* and *the Australian Journal of Politics and History*. She is also an author of international relations simulations.

MATHEWS, John. John Mathews received his MSc in Control Systems and PhD in cybernetics from Imperial College, London. In 1990 he joined UNSW and in 1998 transferred to MGSM, Macquarie University, taking a chair in strategic management in 2002. From 2009 to 2012 he was Inaugural Eni Chair of Competitive Dynamics and Global Strategy at LUISS Guido Carli University, Rome. His research has focused on the competitive and technological dynamics of the rise of new industrial powers in East Asia, publishing several books and nearly 100 refereed papers on these themes. He was co-author with Linda Weiss and Elizabeth Thurbon of *How to Kill a Country* (2004) and *National Insecurity* (2007). For the past several years his interest has been in the dynamics of greening of the global economy, with particular reference to China. His next book *Greening of Capitalism: How Asia is Driving the Next Great Transformation*, is to be published by Stanford University Press in November.

MERCURIO, Bryan. Bryan Mercurio is Professor and Vice Chancellor’s Outstanding Fellow of the Faculty of Law at the Chinese University of Hong Kong (CUHK). Prior to joining CUHK, Professor Mercurio was a Senior Lecturer at the University of New South Wales (UNSW), Faculty of Law, and Director of the International Trade and Development Project at the Gilbert + Tobin Centre for Public

Law. Professor Mercurio's expertise is in the field of international economic law, with a particular interest in the intersection between trade law and intellectual property rights, free trade agreements, WTO dispute settlement and increasingly international investment law. He is the author of one of the most widely prescribed case books on WTO law (2012 2nd edition, Hart Publishing, with Simon Lester and Arwel Davies) and editor of the leading collection on bilateral and regional trade agreements (Cambridge University Press, 2009, with Simon Lester). Prior to academia, he worked both in government and in private practice and has advised law firms, international organizations, NGOs and several governments on a wide range of international trade and investment matters. He is currently advising the government of Taiwan on legal aspects of its free trade agreements and ASEAN on certain aspects of trade in services.

MITCHELL, Andrew. Andrew is a Professor at Melbourne Law School, Australian Research Council Future Fellow, Director of the Global Economic Law Network, a member of the Indicative List of Panelists to hear WTO disputes, and a member of the Energy Charter Roster of Panelists. He has previously practised law with Allens Arthur Robinson (now Allens Linklaters) and consults for States, international organisations and the private sector. Andrew has taught law in Australia, Canada and the US and is the recipient of three major current grants from the Australian Research Council and the Australian National Preventive Health Agency. He has published approximately 100 academic books and journals and is an Editorial Board Member of the *Journal of International Economic Law* and a General Editor on the *Journal of International Dispute Settlement*. He has law degrees from Melbourne, Harvard and Cambridge.

MOIR, Hazel. Hazel Moir is an Adjunct Associate Professor at the ANU's RISSS and has recently taken up a Fellowship at the Centre for European Studies to investigate the "intellectual property" dimensions of any possible trade agreement with the European Union. She read economics at Cambridge (when Keynes was still respectable) then did a PhD in demography at Brown University (USA). After brief stints in the private sector and in overseas aid, she spent 20 years in the Australian Public Service working in a variety of roles and departments – from micro-economic reform to women's refuges. She claims as her biggest achievement the funding in the 1986 budget of the first longitudinal study of Australian businesses – the fore-runner of the linked business data now available from the ABS. After retiring at 48, she spent several years doing varied fun things, combined with short

working stints and a master's degree in human rights, with the first semester based in a converted monastery on the Lido in Venice. When she turned 55 she embarked on a second PhD at the ANU – an empirical study of the quantum of new knowledge embodied in granted patents. She found none. She then traced her sample of Australian patents through the US and European Patent Offices, reading the correspondence between applicants and examiners to identify the detailed prescriptive rules which led to the grant of patents for so many “inventions” that contained no new knowledge or know-how. This book was published in 2013 – *Patent Policy and Innovation: Do Legal Rules Deliver Effective Economic Outcomes?* Legal rules do not deliver good economic policy. Hazel has made a number of submissions to government enquiries into aspects of patents and copyright policy.

PALOMBI, Luigi. Luigi Palombi is an intellectual property lawyer and academic. His PhD thesis entitled *The Patenting of Biological Materials in the Context of TRIPS* laid out the legal argument against the patenting of isolated biological materials. He spearheaded a campaign against the BRCA gene patents leading to an Australian Senate Inquiry into gene patents. He collaborated with the American Civil Liberties Union in the Myriad BRCA gene patent litigation. He published his book, *Gene Cartels*. The U.S. Supreme Court unanimously adopted this argument. He has made many guest appearances on a variety of subjects on Australian radio and television including on the ABC's Catalyst, 4 Corners, Lateline, 7.30 Report, The Law Report, AM, The World Today and PM. He practises law from Sydney Australia in the medical, biotech and pharmaceutical sectors in Australia and overseas. He is an adjunct professor of law at Murdoch University.

RANALD, Patricia. Dr Patricia Ranald is a Research Associate 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. She was formerly a Senior Research Fellow at the University of New South Wales, and has also worked for unions and community organizations. Dr Ranald has published widely on the social impacts of globalisation and trade agreements. She is a contributing author to *No ordinary deal: unmasking the Trans-Pacific Partnership Free Trade Agreement*, Allen and Unwin, edited by Jane Kelsey, 2010. Other books include *Trade Justice*, published by the Australian Catholic Social Justice Council, 2005, and *Stopping the Juggernaut: Public Interest versus the Multilateral Agreement on Investment*, Pluto Press, 1999. Dr Ranald is Convener of the Australian Fair Trade and Investment Network (AFTINET), a network of community organizations,

which advocates for fair trade policies based on human rights, labour rights and environmental sustainability www.aftinet.org.au.

RAVENHILL, John. John Ravenhill is Director of the Balsillie School of International Affairs and Professor in the Department of Political Science at the University of Waterloo. He received his PhD from the University of California at Berkeley. For more than two decades he was a Professor at the Australian National University, first in the Research School of Pacific and Asian Studies and then as Head of the School of Politics and International Relations in the Research School of Social Sciences. From 2000 to 2004, he held the Chair of Politics at the University of Edinburgh. He has recently completed editing, together with Saadia Pekkanen and Rosemary Foot, the Oxford Handbook of the International Relations of East Asia. He is the editor of the Oxford University Press text, *Global Political Economy*, the fourth edition of which was published in 2014. He is a Fellow of the Academy of Social Sciences in Australia.

THURBON, Elizabeth. Liz Thurbon is a Senior Lecturer in International Relations at UNSW Australia. She holds a Bachelor of Economics (Soc Sci, Hons 1) and a PhD in Politics from the University of Sydney. Her research specialism is the (international) political economy of industrial development and change, with a particular focus on the relationship between ideas, institutions and industrial transformation in Northeast Asia and Australia. She has published widely on these topics in scholarly outlets and is also the co-author of two popular books on Australian political economy. In 2012, Liz was a Korea Foundation Fellow at Seoul National University, where she worked towards the completion of her most recent book, *The Developmental Mindset: The Evolution of Financial Activism in South Korea, 1961-2014* (forthcoming).

TYAGI, Mitali (attending in a personal capacity). Mitali Tyagi is a Senior Legal Officer in the Office of International Law (Attorney-General's Department) specialising in international trade and investment law. She holds a Bachelor of Laws (Honours I) from the University of Sydney, and a Master of Laws (International Law) from New York University (USA). Her previous legal experience includes positions at King & Wood Mallesons, the Cape York Land Council, Australian Law Reform, Parliamentary Committee on Legal and Constitutional Affairs and the International Development Law Organisation.

WEATHERALL, Kimberlee. Kimberlee Weatherall is an Associate Professor at the Sydney Law School. Kimberlee teaches and researches in intellectual property law, with one of her research interests being the relationship between international trade and intellectual property. She is the author of a number of influential analyses of the IP provisions of the Australia-US Free Trade Agreement, the Anti-Counterfeiting Trade Agreement and (proposals for) the IP Chapter of the Trans-Pacific Partnership, and has been invited to speak on these topics at conferences worldwide including Singapore, Taiwan, Washington DC, and Oxford, as well as to the Japanese Diet and committees of the Parliament of the Commonwealth of Australia. She is a member of various advisory groups and boards including the Australian Digital Alliance, the IP Committee of the Law Council of Australia and the Commonwealth Government's Advisory Council on Intellectual Property.

WEISS, Linda. I gained my PhD from the London School of Economics and am currently Professor Emeritus in the Department of Government & International Relations at the University of Sydney where I have taught for the past 20 years in the fields of comparative politics and international political economy. I am a Fellow of the Academy of the Social Sciences in Australia, and also hold an Honorary Professorship in political science at Aarhus University in Denmark. I specialise in the comparative and international politics of economic development, with a focus on state capacity and public-private sector relations in Europe and East Asia. My most recent book focuses on the United States. *America Inc? Innovation and Enterprise in the National Security State* (Cornell University Press, 2014), lies at the intersection of political economy and international security.

WESLEY, Michael. Michael Wesley is Professor of National Security and Director of the School of International, Political and Strategic Studies at the Australian National University. His career has spanned academia, with previous appointments at the University of New South Wales, Griffith University, the University of Hong Kong, Sun Yat-sen University and the University of Sydney; government, where he worked as Assistant Director General for Transnational Issues at the Office of National Assessments; and think tanks, in which he was Executive Director of the Lowy Institute for International Policy and a Non-Resident Senior Fellow at the Brookings Institution. Professor Wesley has also served as the Editor in Chief of the *Australian Journal of International Affairs*, a Trustee of the Queensland Art Gallery and a Board Member of the Australia Television Network. He is a Non-

Executive Member of the Senior Leadership Group of the Australian Federal Police and a Director of the Kokoda Foundation. His most recent book, *There Goes the Neighbourhood: Australia and the Rise of Asia*, won the 2011 John Button Prize for the best writing on Australian public policy.

Workshop Program

Thursday September 25

- 9.00-9.30** **Registration / Coffee**
Room 310, Morven Brown Building, UNSW Australia
Gate 8, High Street, Kensington
- 9.30-9.45** **Welcome**
Eileen Baldry, Acting Dean, Arts and Social Sciences, UNSW
- 9.45-12.00** **Session 1: Trade and Intellectual Property**
Hazel Moir, ANU
Kimberlee Weatherall, University of Sydney
Anna George, Murdoch University
Luigi Palombi, Murdoch University
Discussant: John Mathews, MGSM
Moderator: Maryanne Kelton, Flinders University
- 12:00 -1.00** **Lunch**
- 1.00 - 3.00** **Session 2: Trade, Industry and the Environment**
Shiro Armstrong, ANU
John Mathews, MGSM
Liz Thurbon, UNSW Australia
Discussant: Christian Downie, UNSW Australia
Moderator: John Ravenhill, Balsille School of International Affairs
- 3.00 - 3.30** **Afternoon Tea**
- 3.30 - 5.30** **Session 3: Trade and Health**
Deborah Gleeson, La Trobe University
David Adamson, University of Queensland
Andrew Mitchell, Uni of Melbourne / NY University Law School
Discussant: Marc Williams, UNSW Australia
Moderator: Linda Weiss, University of Sydney
- 6:00** **Drinks / Dinner**
Bluesalt Restaurant, Crowne Plaza, Coogee Beach



Friday September 26

- 9.00** **Coffee**
- 9.30 – 11.45** **Session 1: US- vs China-Centric Regionalism**
Michael Wesley, ANU
John Ravenhill, Balsille School of International Affairs and
Ann Capling, Murdoch University
Bryan Mercurio, Chinese University of Hong Kong
Discussant: William Clapton, UNSW
Moderator: Linda Weiss
- 11.45-1.00** **Lunch**
- 1.00-3.15** **Session 2: The Drivers and Dynamics of Negotiations**
Maryanne Kelton, Flinders University
Mitali Tyagi, Canberra
Patricia Ranald, University of Sydney
Tom Faunce, ANU
Discussant: Anna George, Murdoch University
Moderator: David Adamson, University of Queensland
- 3.15-3.45** **Afternoon Tea**
- 3.45 - 4.45** **Session 3: Publication Planning**
All workshop presenters are asked to participate in this session
- 4.45** **Farewells**