



BULLETIN: July 2017

Inside this edition:

- [Parliament Procurement Report says trade deals should not undermine local jobs](#)
- [Pacific trade deal weakened by Fiji, PNG and Vanuatu withdrawal](#)
- [Civil Society Called for Delay to enable proper assessment of the deal](#)
- [Zombie Trans-Pacific Partnership no sleeping beauty, says health expert](#)
- [Ecuador has Terminated 16 Bilateral Investment Treaties containing ISDS](#)
- [European Court says States should decide on ISDS](#)
- [Trump drafts Executive Order for Big Pharma](#)
- [How RCEP affects food and farmers](#)
- [More news from our website](#)

Introduction

Our campaign against restrictive government procurement in trade agreements has resulted in a Parliamentary report on the implementation of new Commonwealth procurement guidelines which recommends that trade agreements should not prevent governments from using procurement to develop local industries and local jobs.

AFTINET and other civil society groups opposed the signing of the PACER-Plus Agreement, without the three largest Pacific Island economies -Papua New Guinea, Fiji and Vanuatu. There has been no independent assessment of the deal, which will cut public sector revenues in these countries.

Attempts to resurrect the dead Trans-Pacific Partnership are ongoing, but sober analysis from public health experts shows that this is both unlikely and undesirable.

Our campaign against Investor-State Dispute Settlement is also bolstered by recent decisions in Ecuador, and the Court of Justice of the European Union.

These campaigns about Government Procurement, ISDS and the TPP are playing out in the secret negotiations for the Regional Comprehensive Economic Partnership. The next round of RCEP

negotiations will be in Hyderabad, India, from July 17-28. Civil society in India is gearing up to challenge the RCEP, based on leaks which show that TPP text is being copied into it.

Parliament Procurement Report says trade deals should not undermine local jobs

The [Joint Select Committee on Government Procurement](#) has recommended that the Commonwealth Procurement Rules should be clarified and strengthened to encourage Australian suppliers. To ensure this, the Australian Government must not enter into trade agreements which could undermine these benefits to local industry and employment.

Recommendation 8 specifies that in negotiating World Trade Organisation or other trade agreements, the Australian government should not enter into any commitments that undermine its ability to support Australian businesses.

This means that current negotiations for Australia to join the WTO Government Procurement Agreement should not trade off the ability of the Australian government to improve its support for Australian businesses.

The Report also said that procurement officers must be better informed of the exemptions currently available in trade agreements to preference domestic businesses.

The Report reflects the submissions made by AFTINET, unions and local industry groups.

Pacific trade deal weakened by Fiji, PNG and Vanuatu withdrawal

Vanuatu's decision to join Fiji and Papua New Guinea to boycott the June 14 signing of the PACER-Plus trade deal between Australia, New Zealand shows there are serious weaknesses in the agreement because the three largest Pacific island economies are saying there are no benefits for them.

[The text](#) was released only on May 31. Pacific island, Australian and NZ community groups called for an independent analysis and time for proper public and parliamentary consultation about the deal.

There has been no independent analysis done about how PACER-Plus will impact on the daily lives of Pacific Islander people and their environment, in each country.

The main purpose of PACER-Plus is to reduce tariffs on Pacific Island imports from Australia and New Zealand and to reduce the ability of governments to regulate foreign investment in services and other sectors.

Tariff reductions would lead to significant revenue losses for smaller Pacific Island countries, which could impact on the ability of these governments to provide essential services to their populations.

"We are concerned that the agreement could threaten local industries and jobs, and reduce the ability to regulate essential services," said Dr Patricia Randal, the Convenor of the Australian Fair Trade and Investment Network.

Civil Society Called for Delay to enable proper assessment of the deal

[Over 30 groups and 449 individuals](#) from the Pacific, Australia and New Zealand called for a halt to the signing of PACER-Plus, until there has been proper time to assess its impacts and time to properly consult Pacific peoples.

“These voices see PACER-Plus as a deal that will deliver the most economic benefits to Australia and New Zealand and limit, in a legally binding way, how Pacific communities can determine their own form of development,” commented Mr Adam Wolfenden, Campaigner for the Pacific Network on Globalisation (PANG).

A signing ceremony took place on June 14th in Nuku’alofa, Tonga. The Australian and New Zealand governments seem determined to ignore the fact that, without the three largest economies it is not an effective regional agreement.

Zombie Trans-Pacific Partnership no sleeping beauty, says health expert

The Trans-Pacific Partnership is a zombie, lurching around, which should not and cannot be resurrected, says public health expert, Prof Ronald Labonte, in [The Conversation](#).

He writes that tougher patent protection would [affect the price of drugs](#), especially costly new “biologics” used in treating cancers and autoimmune disorders.

TPP requirements to prove the necessity of, or scientific justification for, new [health regulations](#) would be more stringent than those under the World Trade Organization (WTO) system.

New obligations allowing private corporations from any member country to participate in developing new technical regulations could potentially lead to [regulatory capture](#).

Contentious [investor-state dispute settlement \(ISDS\) rules](#) would allow foreign investors to sue governments over new policies or regulations affecting the value of their investments.

Ecuador has Terminated 16 Bilateral Investment Treaties containing ISDS

On May 16, 2017, President Correa of Ecuador terminated 16 Bilateral Investment Treaties (BITs). This action followed the recommendation of the Ecuadorian Commission that audited the country’s Investment Protection Treaties, and found they were not in the national interest.

The Commission was set up in October 2013 and was comprised of Government officials, academics, lawyers and civil society groups, including investment law expert Muthucumaraswamy Sornarajah, and supported by the Transnational Institute (TNI).

Treaties were terminated with China, the Netherlands, Germany, the UK, France, Spain, Italy, Sweden, Switzerland, Canada, the United States, Argentina, Bolivia, Peru, Venezuela, and Chile.

The [report](#) found:

- The principal sources of Foreign Direct Investment flows into Ecuador are from Brazil, Mexico and Panama, none of which have a BIT with Ecuador
- Of the 7 largest foreign investors in Ecuador, only 23% come from a country which has a BIT signed with Ecuador
- BITs contradict and undermine the development objectives laid out in the country’s constitution
- The costs for Ecuador have been immense with investors disproportionately benefiting in cases against Ecuador

- Ecuador has faced 26 cases in international tribunals based on the BITs
- In the 15 cases where the tribunal has made judgements on jurisdiction, the investor has been favoured in 13 cases (87%) and the State only twice
- A total of \$21.2 billion dollars has been demanded as compensation from Ecuador by corporations for supposed violation of investment protection agreements
- The total amount disbursed so far by the State has been \$1.498 billion dollars, equivalent to 62% of health spending
- Of the cases that are currently open, the State runs the risk of having to disburse \$US13.4 billion. This is equivalent to 52% of the General State Budget for 2017.

This development in Ecuador accelerates the international movement against ISDS (Investor-State Dispute Settlement) and in favour of an international investment system based on democratic rights, national sovereignty, labour and human rights and environmental sustainability.

European Court says States should decide on ISDS

On 16 May 2017, the Court of Justice of the European Union (CJEU) issued the long-awaited landmark [Opinion 2/15 on the EU-Singapore Free Trade Agreement](#). According to the CJEU, the agreement falls under the EU's powers, but not entirely. EU Member States' national and regional parliaments and the European Parliament must ratify some important provisions regarding investors, particularly ISDS.

While it was clear that tariffs and quotas can be exclusively agreed by the European Commission, the new-style trade agreements, covering regulatory powers, intellectual property, investment, government procurement, competition and sustainable development were challenging many powers of member states. The European Commission moved to resolve these conflicts by asking the CJEU to rule on whether the European Commission could sign and ratify the EU–Singapore Free Trade Agreement.

The Opinion determines that provisions on non-direct investment and Investor-State Dispute Settlement (ISDS), must be decided by Member States.

This recognises the democratic right of states to manage foreign investments of a portfolio nature, and allows the state to veto any move to ISDS, which would allow foreign investor corporations to avoid the national judicial system in any disputes that may arise.

This will have an immediate effect on the shape of the proposed EUSFTA, and will certainly affect any EU trade and investment agreement with the UK after Brexit. It will influence the way any EU–Australia FTA may be structured.

The decision recognises the basic conflict between corporate power and democratic rights, which has resulted in the world-wide campaigns against ISDS.

[See longer report here.](#)

Trump drafts Executive Order for Big Pharma

The *New York Times* has [published a leaked draft](#) of a new Trump Executive Order which demonstrates that Big Pharma has captured the White House.

The document directs the United States Trade Representative to conduct a study of price differences between the United States and other countries, and to review trade agreements that may need to be revised “to promote greater intellectual property protection and competition in the global market.”

This is Big Pharma coming back after its big win in the Trans-Pacific Partnership was sunk by President Trump in January this year. Expect any US bilateral trade initiative to demand stronger monopolies for US pharmaceutical companies.

The draft order targets a program, 340B, that requires the drug industry to give discounts to hospitals and clinics that serve large numbers of low-income patients. The pharmaceutical industry has complained that the program is being abused, while hospitals say they would have to cut services without it.

Many of the people President Trump has hired to work on drug policy have ties to the pharmaceutical industry. Joe Grogan, the associate director of health programs in the budget office, worked as the head of federal affairs for Gilead, whose expensive hepatitis C drugs have helped fuel the debate over rising drug costs. Tom Price, the secretary of health and human services, was a Republican congressman whose policies were seen as Pharma industry-friendly and who opposed measures like allowing Medicare to negotiate drug prices. And the new commissioner of the Food and Drug Administration, Scott Gottlieb, was a longtime consultant to the drug industry.

New report on RCEP, food and farmers as protests planned for India talks

The Regional Comprehensive Economic Partnership (RCEP) is a mega-regional trade deal, which if adopted, will cover half of the world’s population, including 420 million small family farms which produce 80% of the region’s food. A new infographic from GRAIN shows what this agreement will mean for food and farmers in the region, based on current leaked drafts.

- land grabbing may expand
- millions of small dairy farmers could lose their livelihoods
- the use of farm chemicals will likely go up,
- mega-food parks could proliferate and
- seeds will be privatised.

[Read and download the infographic here.](#)

The next round of the RCEP is scheduled to be held in Hyderabad on July 17-28,

On June 15, representatives from the All-India Trade Union Congress, Indian Federation of Trade Unions, Telangana Rythu Joint Action Committee, Rythu Swarajya Vedika, Telangana Raithanga Samiti, National Alliance of Dalit Organisations and Doctors Without Borders attended a meeting to plan civil society actions.

They will hold protests and a ‘People’s Convention on RCEP and Free Trade Agreements’ in the city during the last week of July 2017.

[More news from our website](#)

AFTINET's submission on the Peru FTA. Download AFTINET's submission to the Department of Foreign Affairs and Trade on the proposed Peru-Australia free trade agreement [here](#).

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