



## BULLETIN: September 2017

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### Introduction

Thanks to all who have renewed their AFTINET membership. We need your support to continue our campaigns. If you haven't done so, you can renew on our website [here](#).

AFTINET members joined unions and community groups to protest the recent TPP talks in Sydney – the latest attempt to resurrect the failed deal. Although the Australian government is pushing for minimal changes to the text, other 'TPP11' members are recognising that many current clauses are not in their national interests.

We held a successful Trade and Privatisation forum in Sydney, and will share our ideas about how to fight the negative impacts of trade in services clauses with you soon.

Not content with their lot, US corporates have demanded even stronger ISDS rights in the new NAFTA, which is currently being renegotiated.

And the procurement wars rage on. The Coalition government says Queensland's policy to preference small local suppliers contravenes trade agreements, and is also attempting to rush through implementing legislation for the World Trade Organisation Government Procurement Agreement before negotiations are finished.

## Sydney TPP revival meeting outcome vindicates community concerns

*Dr Patricia Randal*

Trade negotiators from 11 of the original 12 TPP countries met in Sydney from August 28-30 for their third set of talks to see if the TPP can be revived without the US, aiming to complete talks by November this year. The 11 countries are Australia, New Zealand, Japan, Canada, Mexico, Peru, Chile, Singapore, Brunei, Malaysia and Vietnam.

AFTINET only had five days' notice of the time and place of the talks, but we were able to organise a protest addressed by ACTU President Ged Kearney, and speakers from the NSW Nurses and Midwives Association, ActionAid and Greenpeace. See photos [here](#).

Before the meeting Trade Minister Steve Ciobo was [leading the charge](#) for endorsement of the TPP with minimum changes to the text. This was despite the fact that opposition from a broad range of Australian [community groups](#) meant an [Australian Senate inquiry](#) refused to endorse the TPP, and the Australian Parliament has not passed the implementing legislation.

Community groups oppose the TPP because it gives pharmaceutical companies [stronger monopolies](#) on costly biologic medicines, delaying the availability of cheaper forms of those medicines. It entrenches copyright monopolies at the expense of consumers. It gives [special rights to foreign investors](#) to bypass national courts and sue governments for millions of dollars in unfair international tribunals over changes to domestic laws. It would also restrict future governments from [re-regulating essential services](#) like energy or financial services, despite demonstrated market failures, and it would result in more vulnerable [temporary migrant workers](#), without testing if local workers were available. In short, the TPP is a US-driven agenda for greater corporate rights at the expense of people's rights.

Many of the 11 other governments only agreed to this agenda because the US demanded it in return for access to US markets. They will not give a free ride to the US without that market access, and nor should Australia. [Malaysia and Vietnam](#) said before the meeting that, without the US, the terms of the TPP should be renegotiated.

Sixty-seven national and international health and consumer groups, including the Public Health Association of Australia, the World Public Health Association and Médecins Sans Frontières also [called for](#) deletion or complete renegotiation of the clauses on medicines and foreign investor rights to sue governments.

Community and other TPP governments' concerns have been vindicated by the reported outcomes of the meeting. [Nikkei Asian Review](#) quotes the Japanese chief negotiator saying that the 11 TPP countries agreed to suspend some parts of the text that were only reluctantly agreed to get access to the US market. These include the controversial three-year increase in data protection monopolies for biologic medicines, which would delay cheaper versions of these medicines. These clauses would only be resurrected if the US decides in future to re-join the agreement.

The Nikkei Asian Review also reports that Canada and Mexico want to suspend several parts of the TPP text to prevent the US from using them as a model in the renegotiation of NAFTA, and that other governments, including Malaysia and Vietnam, want to renegotiate other parts of the text, including government procurement and state-owned enterprises. There is no agreement on investment rules, copyright and other issues. Further negotiations are planned for Japan in late September.

It is clear from these reports that some governments recognise that many clauses in the TPP are not in their national interests. Any renegotiation of the TPP will be a long and painful process, which may not produce an outcome.

In practice, the Australian government has quietly conceded that a TPP without the US is unlikely by starting separate bilateral negotiations with [Peru](#) and [Mexico](#), two of the three TPP countries without FTAs with Australia. If it really believed that the TPP could be revived this year, these negotiations would not be necessary.

The current text of the TPP is dead because it requires ratification by the US as the largest economy. Even with the minimal change of deleting the US, it would be a new agreement, and would have to be signed, tabled in Parliament and reviewed by Parliamentary committees before any implementing legislation. If harmful clauses remain, there would still be strong community opposition and the majority in the Senate is likely to reject it again.

The Australian government should not waste further time and resources on trying to resurrect the dead TPP, but instead should develop fairer trade policies which will actually deliver benefits to most Australians.

**Take action: tell the Trade Minister not to revive the zombie TPP [here](#).**

## Successful Trade and Privatisation forum in Sydney

This [forum](#) on August 31 was sponsored by the Public Services International and AFTINET. 20 activists from unions and community groups in Australia and New Zealand heard from Michael Whaites (PSI), Dr Patricia Randal (AFTINET), Kate Lee (Union Aid Abroad) and Michelle Higelin (ActionAid Australia).

Participants discussed how trade in services clauses in the TPP, RCEP, TISA and other agreements promote competitive deregulation and privatisation of essential services, the negative impacts on access to services, workers' rights, women's rights and the environment, and strategies to organise together against these issues.

The forum speakers were recorded and we hope to make the video available on our website soon.

## Pacific Island Seasonal worker program needs stronger union role

So far the Seasonal Worker Programs (SWP) for Pacific Island and Timor-Leste workers in Australia have been kept separate from trade agreements like PACER-Plus. Stand-alone agreements such as the Seasonal Worker Program for horticultural workers can be adjusted, and as Nic Maclellan argues in his [Development Policy](#) article, there is strong evidence that significant change is needed.

The fundamental imbalance of power between employers and non-citizen workers has been highlighted in the 2008 [Deegan inquiry](#) into Visa 457 skilled workers; the 2016 [Joint Committee on Migration report](#) into the Seasonal Worker Program; and the 2016 Senate employment references committee report, appropriately titled "[A National Disgrace](#)."

SWP participants struggle with unreasonable deductions, unreasonable overtime and piece rates, overcrowded accommodation and above-market rate charges for accommodation and transport. The horticulture industry relies on casual labour, grey nomads and backpackers, and union density is low.

In October 2015 the National Union of Workers in Australia and Vanuatu's National Workers Union signed an agreement to coordinate action for seasonal workers, but union engagement is resisted by governments and [employer bodies](#).

Now more than ever, it is important to keep temporary migrant labour arrangements out of trade agreements, and support actions to empower workers and their unions to stop abuses.

## **US corporates demand even stronger ISDS rights in new NAFTA**

The formal renegotiation of the North American Free Trade Agreement began on August 16, 2017 in Washington DC. [The US NAFTA objectives](#) were published on July 17, 2017.

In an [open letter](#) to US Trade Representative Robert Lighthizer, over 100 US trade associations urged stronger Investor-State Dispute Settlement as part of the "NAFTA modernisation", such as ensuring intellectual property is defined as a "protected investment" and guaranteeing that all sectors are afforded the same protections and access to ISDS. This is code for ensuring that governments can be sued if they regulate to make medicines more affordable and regulate tobacco advertising for public health reasons.

It further suggests extending the enforcement period of ISDS provisions to at least 10 years after any potential termination of NAFTA, to "ensure that American investment is appropriately and fully protected."

The corporations note the US has only faced 18 ISDS cases under NAFTA and has won every single one of them, while US investors have used ISDS provisions in 40 cases with Canada and Mexico, winning several.

## **Queensland procurement policy not contrary to trade agreements**

The Queensland government procurement policy to give preference to small local suppliers does not contravene Australia's current trade agreements, despite Trade Minister Ciobo's claims to the contrary. Each of these agreements have exceptions which allow some preference to small and medium-sized enterprises.

A recent bipartisan [report](#) of the Joint Select Committee on Government Procurement, *Buying into our Future*, recommended that governments use procurement rules to support small and medium firms providing local jobs and industry development. Our major trading partners including the US, Japan and Korea do the same.

The Committee also recommended that Commonwealth procurement guidelines should consider the benefits to the economy from local employment and taxes paid, and that during

trade negotiations the Australian Government should not enter into any commitments that could undermine their ability to support Australian businesses.

The recommendations were supported by government and non-government members of the committee, and they should be implemented.

## **No legislation before WTO procurement negotiations finished**

The Australian government began negotiations to join the WTO Government Procurement Agreement (GPA) in 2015. Now, the Coalition government is attempting to rush through implementing legislation for the Agreement before the negotiations are even finished. AFTINET has described this as 'like signing a blank cheque', which defies proper parliamentary process. The Parliament has never passed implementing legislation for an unseen agreement before.

The [report](#) of the government-dominated committee reviewing the Government Procurement Judicial Review legislation recommended that the legislation go ahead. This contradicts earlier recommendations made by both government and opposition members in the [report](#) of the Joint Select Committee on Government Procurement.

Labor members have called for a delay until the outcomes of the negotiations are known, and Greens members have recommended against the legislation in a dissenting report.

Only 45 of the 164 WTO members have joined the WTO GPA, because most governments want to retain their ability to use procurement to develop local industries.

AFTINET has set out the reasons Australia should not join the WTO GPA, and the Australian Government's current commitments and exemptions on government procurement in trade agreements, [here](#).

## **Handy summary of all trade deals August 2017**

The Australian government's announcement of bilateral talks with the Pacific Alliance of Chile, Peru, Colombia and Mexico brings the total number of current trade negotiations to ten. They are: Trans-Pacific Partnership (TPP), Regional Comprehensive Economic Partnership (RCEP), Trade in Services Agreement (TiSA), PACER-Plus, three ongoing WTO negotiations, and free trade agreements with India, the EU, Peru, Hong Kong, Indonesia and the Pacific Alliance.

Most of these agreements are seeking to replicate the failed TPP. Read our handy two-page summary of all trade deals [here](#).

## **Singapore FTA changes echo TPP on ISDS, temporary workers and government procurement**

The government-dominated Joint Standing Committee on Treaties released a report on amendments to the Singapore FTA. Concerningly it supports changes that are bad precedents for other trade agreements.

There are some specific exclusions in the ISDS chapter for regulation on tobacco, the PBS, Medicare, therapeutic goods, gene technology regulation, Indigenous culture and the decisions of the Foreign Investment Review Board. However the general safeguards for other regulation are similar to [those in the TPP](#), and are inadequate. Environment and labour rights have not been specifically excluded from legal action by foreign corporations.

It expands the number of vulnerable temporary migrant workers and removes labour market testing, proving that vulnerable workers are still being used as [bargaining chips](#) in these secret deals. It also expands access by Singaporean companies to state government procurement, at a time when Commonwealth and state government [procurement rules](#) are changing to enable consideration of the economic benefit for local firms in government procurement.

## **Economist slams ISDS in RCEP**

Economist Smitha Francis article in the Indian journal [Business Today](#) strongly criticises India's continuing participation in the RCEP negotiations because of the challenge to India's sovereignty from the proposed Investor-State Disputes Settlement process.

Dr Francis explains how the RCEP WTO-plus provisions on tariffs, investment, intellectual property and government procurement would mean that India would lose policy space for industry development and would not improve trade balances and levels of foreign investment.

## **Speculative investor profits from ISDS privatisation case**

An [international tribunal recently ordered Argentina](#) to pay US \$324 million to shareholders in the airline Aerolineas Argentina which was nationalised in 2010. At the time the company was in massive debt and considered worthless. But the shareholders were approached by litigation funder Burford Capital, which put up US\$13 million to fund an ISDS claim for US\$1.6 billion, under an investment agreement between Argentina and Spain. In return Burford Capital was to receive 40 per cent of any damages awarded. It has hit the jackpot – US\$140 million, even though it was never a shareholder in the airline.

As of January 2017, of the 767 ISDS cases in the United Nations Conference on Trade and Development (UNCTAD) [database](#), at least [59 were brought](#) against Argentina. Argentina has paid out [\\$980 million in ISDS awards](#) since 2002, in addition to the millions it spent to defend itself in arbitration.

## Development, not PACER-Plus

Adam Wolfenden from the Pacific Network on Globalisation has written an excellent [opinion piece](#) questioning why [PACER-Plus](#) is so high on the priority agenda at the annual Pacific Island Forum Leaders Meeting in Samoa this month.

PACER-Plus, the trade deal that supposedly aims to increase regional integration, does not include [Papua New Guinea](#) or [Fiji](#) (the Pacific's two largest island economies), Palau, Republic of the Marshall Islands or the Federated States of Micronesia. After holding off for some months, Vanuatu will [reportedly](#) now sign the deal.

Adam writes, *“What is needed is not greater Forum resources going into watching over those governments who have signed to ensure they complete ratification but time and space for Pacific governments to assess the full implications of this deal and make a clear, rationale decision that reflects the interest of the people.”*