



BULLETIN - April 2020

Inside this edition:

1. [Introduction](#)
2. [258 Community Groups Call on WTO to focus on COVID-19, global systems stumble](#)
3. [Global corporations prepare for ISDS actions against COVID-19 regulations and threat to climate regulation in expansion of Energy Charter Treaty](#)
4. [Cancel Sovereign Debt for Low Income Countries in pandemic, say Australian CSOs](#)
5. [ITUC Survey finds global trade framework failing under COVID-19 stress](#)
6. [Australia needs to step up medical aid for Pacific Island nations, drop PACER-Plus](#)
7. [4-Corners Amazon report questions e-commerce, govts move on Big Tech amid COVID-19](#)
8. [ASEAN secretary general says RCEP deal to be signed in late 2020](#)
9. [Factsheet: Trading away our Services? How trade rules impact public and essential services](#)
10. [Centre Alliance urges fed govt to use purchasing power for local jobs in COVID-19 response](#)

1. [Introduction](#)

Dear Members,

The COVID-19 pandemic is overwhelming health systems and economies around the world, and impacting on trade and the global trading system. Australia, like every country, was poorly prepared in terms of supplies of Personal Protective Equipment, ventilators and other equipment. Australia's government, like many others, has had to intervene in ways that [contradict the neoliberal trade framework](#) in an effort to manage the health and economic impacts.

AFTINET and many of its member organisations joined 258 civil society organisations from 150 countries that endorsed a letter to the WTO calling for other trade negotiations to cease and for the WTO to focus on ensuring that medicines and medical equipment are available to all countries, especially low income countries. The letter was sent earlier than expected on April 17 when the WTO brought forward its electronic meeting. Endorsements sent after that date will still be added to the letter and we will update the version on our website.

Notably, the G20 group of nations and the World Trade Organisation have failed to respond to the pandemic in a coordinated way. The US – China rivalry has only intensified during this crisis.

But global corporations are preparing to launch ISDS cases against government regulation needed to fight the pandemic. The low-key Energy Charter Treaty, the single biggest source of ISDS cases, is attempting a major expansion in Africa and Asia, even during the pandemic.

Despite COVID-19, negotiations for the Regional Comprehensive Economic Partnership Agreement continue, still without India, and with the other 15 countries aiming to sign in November 2020.

As well, the sponsors – including Australia - of the plurilateral negotiations in the WTO on e-commerce are pushing this process forward. Australia has also concluded negotiations for a Digital Economy Agreement with Singapore.

E-commerce has been booming during the pandemic, and India, Indonesia, and France have made substantial moves to tax the entire sector, targeting the big US companies which have no taxable entities in their countries.

AFTINET has made a submission to the parliamentary inquiry on trade with the Pacific Islands and has produced a new 2-page factsheet on how trade rules impact on essential and public services which is available [here](#).

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Thanks and keep safe.

The AFTINET Team

2. 258 Community organisations call on World Trade Organization to focus on access to life-saving medical supplies for COVID-19, as global systems stumble

[AFTINET is among 258 organizations](#), including global and national union federations, development advocates, women's groups, consumer and environmental groups from more than 150 countries that have endorsed a [letter to government members of the WTO](#). The letter urges members of the WTO to stop all trade negotiations during the COVID-19 outbreak and refocus on ensuring access to medical supplies and saving lives.

The letter notes that, despite the overwhelming need for governments around the world to focus their full efforts on saving lives during the coronavirus pandemic, some governments, including Australia, are still pushing for new trade negotiations to proceed by electronic means in the WTO, when many developing countries cannot meaningfully participate in them

Meanwhile, WTO intellectual property rules that grant monopoly patents on medicines and medical devices for 20 years can be an obstacle to ensuring affordable access for all in a pandemic. Exceptions to this rule are difficult to implement. The letter asks the WTO to remove all obstacles in existing agreements that hinder timely and affordable access to medical supplies, such as lifesaving medicines, devices, diagnostics and vaccines, and ensure the ability of governments to take whatever steps are necessary to address this crisis.

The letter also states that the WTO should not return to “business as usual” after the crisis, as governments must recognize that the COVID-19 pandemic necessitates a fundamental re-think of trade rules, including those that can encourage monopolies and reduce affordable access to all forms of medical supplies, putting lives at risk.

WTO Members met electronically on Friday to discuss whether to continue negotiations amid the pandemic. The WTO later issued a [statement](#) saying that informal discussions would continue but there was no agreement to proceed with binding decisions.

The WTO has postponed until next year its June Ministerial Meeting, which would have celebrated its 25th anniversary.

Alternative temporary WTO Disputes process debated but may commence soon

Over the past two years the United States has blocked the appointment of new judges to the WTO's Appellate Body, [allegedly to attempt to force reform](#) of the WTO's dispute settlement process, but in reality to undermine the entire WTO disputes system. On December 10, 2019, the [terms of two](#) of the three remaining Appellate Body members expired and the Appellate Body could no longer hear appeals. This would prevent WTO members achieving a final resolution to a current trade dispute.

In January 2020, the European Union's 28 countries, plus 15 other WTO member countries including Australia and China, declared their intent to establish a voluntary alternative [interim appeal arrangement](#).

This may provide a temporary solution but it remains to be seen whether its [legality under WTO rules will face challenges](#) and, if it survives, how many of the 164 WTO members will agree to use it, given the current hostility of the USA.

[3. Global corporations prepare for ISDS actions against COVID-19 regulations and threat to climate regulation in proposed expansion of Energy Charter Treaty](#)

How ISDS could be used by foreign investors to gouge profits from COVID-19 pandemic

The [Trans National Institute is predicting](#) that global corporations could use ISDS to claim billions in compensation because of government regulation to save lives during the pandemic.

This would be a repeat of the corporate gouging of Argentina during its economic meltdown in 2002. Back then, forty-two transnational investors initiated ISDS actions claiming US\$16 billion for lost profits while the country suffered a 28 per cent fall in Gross Domestic Product.

The United Nations Conference on Trade and Development (UNCTAD) confirmed recently that there are already more than [1000 ISDS claims world-wide](#). *Law360*, a specialised lawyers' magazine, said in 8 April 2020 "[For arbitration and litigation funders, the past few weeks may mark the beginning of a boom](#)".

Indeed [investment lawyers](#) are already readying their corporate clients for the [opportunities](#). On 26 March 2020, international arbitration [law firm Aceris Law](#) told its clients "*While the future remains uncertain, the response to the COVID-19 pandemic is likely to violate various protections provided in bilateral investment treaties ("BITs") and may bring rise to claims in the future by foreign investors*". Several other elite law firms released warnings to investors.

The Peruvian government has already been warned that the suspension of the collection of toll fees for the country's road network -a measure the government took in the context of the COVID crisis- could result in [several ICSID claims](#).

The lawsuits could seek to get compensation for actions of governments like Spain, which on [14 March 2020 passed a decree](#) that allows the government to "intervene and temporarily occupy industries, factories, workshops, farms or premises of any nature, including privately owned health centres as well as those that develop their activities in the pharmaceutical sector". The [Italian government](#) is now entitled to requisition of private medical equipment to serve a public function.

Foreign investors could allege that [Italy](#) and Spain are breaching the *direct expropriation* standard of investment treaties by allowing the requisition of private corporate property and equipment. The mandatory lock-down of all commercial activities and the seizure of private production lines could be interpreted by investors as *indirect expropriation*.

International law allows States to defend their actions with an argument of necessity or extreme circumstances (*force majeure*). However, academics have warned "[the plea of force majeure is a very strict one, and States have rarely been successful when invoking it as a matter of international law](#)". This line of defence has [not proved sufficient in the past](#) to stop lawsuits or successful and expensive claims by investors. In 11 out of the 14 cases where Argentina used the state of necessity as a defence, arbitration tribunals rejected the argument.

By the end of 2018, States worldwide had been ordered or agreed to pay investors in disclosed ISDS cases a staggering US\$88 billion. Millions of dollars of taxpayers' money have been diverted away from funding for public health, access to food, and employment creation.

The \$88 billion awarded to foreign investors and investment lawyers as a result of ISDS awards until 2018 is 18 times the [budget of the World Health Organisation for 2020](#).

The TNI study urges that governments should take urgent action to make sure that transnational corporations and investment lawyers do not become beneficiaries of this pandemic, at the expense of people's well-being and health.

- Suspend all trade and investment treaty negotiations.
- Take all necessary steps to terminate (unilaterally or [multilaterally](#)) existing treaties.
- Institute a comprehensive review (cost-benefit analysis) of their current and planned investment agreements.
- Withdraw [consent](#) to ISDS, to [limit immediate exposure](#) to investor lawsuits.
- Default on the payment of outstanding debts as a result of ISDS awards. Or, at least, discuss ISDS debt relief and/or debt restructuring with creditors.

Energy Charter Treaty quietly expands ISDS reach into low income countries

The Energy Charter Treaty (ECT) is the fossil fuel industry's powerful secret weapon. It is now on the brink of a massive expansion into Africa, Asia and Latin America, threatening to bind yet more countries to corporate-friendly energy policies.

[Silent Expansion](#), a briefing published by Corporate Europe Observatory (CEO), the Transnational Institute (TNI) and Southern and Eastern Africa Trade Information and Negotiations Institute (SEATINI), unpacks the major challenge posed to efforts to address global warming, poverty and democratic development choices by this expansion.

The Energy Charter Treaty came into force in 1994, at the height of the global corporate hubris, and protection of investor rights is its cornerstone. It has 53 member states, mainly in Europe and the Middle East. It enables resource and energy companies to sue governments in international tribunals if they can argue that a change in law or policy harms their investment.

By March 2020, the ECT accounted for at least 129 lawsuits against governments, making it the most-used treaty in ISDS cases. So far governments have been [ordered to pay US\\$52 billion](#), and claims still in process add up to a further US\$32 billion.

While the ECT promises to attract foreign investment and end energy poverty, the report presents evidence that it is used to stop climate action, and efforts to protect energy consumers from price-gouging or failure to supply energy.

Fourteen countries, mainly in Africa, are now poised to ratify the ECT, and a further 18, mainly in Africa and Asia, have signed the Energy Charter as the first step in the process.

AFTINET has endorsed an [open letter](#) warning against the expansion of the treaty and calling for ISDS to be removed from it.

4. Cancel Sovereign Debt for Low Income Countries to Tackle Coronavirus Crisis, Say Australian CSOs

A group of Australian civil society organisations (CSOs) released a [statement](#) on April 8, 2020, calling for the Australian Government to support the cancellation of external debt payments in 2020 for Low Income Countries to help them fight the coronavirus. The statement was sent to Finance Minister Mathias Cormann, and to Australian representatives at the IMF and the World Bank.

Organisations endorsing the statement included Jubilee Australia, Action Aid Australia, Caritas Australia, AID/WATCH, Union Aid Abroad-APHEDA and AFTINET.

The statement called for the Australian government to use its influence at the G20 and at the IMF to push for:

- The permanent cancellation of all bilateral, multilateral and private debt due in 2020 for vulnerable countries, with no accrual of interest and charges and no penalties.
- The provision of additional, fresh emergency finance, given as grants not loans, that does not create more debt. The statement said that an [additional US\\$73.1 billion](#) of emergency grants will be needed to help low income economies as they respond to the crisis in 2020.
- A process under UN auspices to be agreed in the longer term, to support systematic, timely, and fair restructuring of sovereign debt.

The Australian statement was coordinated with the publication of [an international petition signed by over 100 organisations with the same demands](#). The cancellation of debt repayments is estimated to free up US\$25.5 billion to fight coronavirus in 2020 alone.

5. ITUC Survey finds global trade framework failing under COVID-19 stress

Friday March 27, 2020: [The International Trade Union Confederation](#) (ITUC) reported on its [first Global COVID-19 survey](#) of 109 trade unions in 86 countries, including 28 out of 36 OECD countries and fifteen [G20](#) countries.

It found early warnings of plummeting exports in industries such as textiles, where garment workers are at economic risk as border restrictions grow and production is cancelled or postponed due to lack of demand from importing countries. Health workers, transport workers and the retail and service sectors are among those hardest hit by the pandemic due to their risk of exposure as well as a shortage of personal protective equipment.

Despite the needs of millions of people in lock down, income support and cash payments are only in place in 12% of countries.

The [ITUC call](#) on the [G20](#) leaders stresses that global coherence must be assured through working with the International Labour Organisation, World Health Organisation, Organisation for Economic Cooperation and Development, International Monetary Fund and World Bank. However, the survey shows that governments and businesses are failing to cooperate as the global economy absorbs the shocks of massive layoffs.

The ITUC said that support for developing economies must prioritise health services for all and pay for the foundations of universal social protections including unemployment income, child protection, maternity protection and pensions.

6. Australia needs to step up medical aid for Pacific Island nations, drop PACER-Plus

[Australia's policy to the Pacific Island nations](#) has been erratic over the last decade. The focus from 2009 was to impose the PACER-Plus [free trade agreement](#) onto the region. Negotiations dragged through to 2017, but three years later it has still not been ratified by most Pacific Island Countries and is not in force. The COVID-19 pandemic underlines the need for a profound re-think of the relationship.

The Pacific Partnership Calling, based at the Edmund Rice Centre in Sydney, is focussed on the threat of climate change. On April 2, 2020, it produced a [briefing paper](#) on the COVID-19 pandemic in the region and Australia's response. The paper shows that the Australian government [cut total health funding to the Pacific](#) by 33%, hampering the ability of already weak health systems and called for an immediate boost to health and development aid.

[AFTINET submission on Pacific Island trade](#) urges government to acknowledge flaws in PACER-Plus and prioritise climate and development issues

Australian government ministers have initiated four separate [Parliamentary Inquiries](#) into Australia's diplomatic, defence and trade relationships with the Pacific Islands. This shows that the government is worried by the deterioration in its relationships with the Pacific.

[AFTINET's submission](#) to the inquiry on trade relationships notes that Fiji and PNG have not signed the PACER-Plus free trade agreement with Australia and New Zealand since it was completed in 2017. Only Australia, New Zealand and two Pacific Island countries have so far ratified it. The agreement requires eight countries to ratify, so it is not yet in force.

Fiji and PNG make up over 80% of the Pacific Islands economic output, so their absence means it is not an effective agreement. They have not signed PACER-Plus because they say the deal is [lopsided](#) and does not meet their development needs. Pacific Island countries already have tariff-free access to Australia. PACER-Plus mainly advantages Australia and New Zealand through reducing Pacific Island tariffs on imports and less controls on foreign investment.

The AFTINET submission recommends that the Australian government cease trying to promote Pacer-Plus in its current form, which excludes countries with over 80% of Pacific Island economic output and is not an effective regional agreement. Instead the government should conduct a fundamental review of the terms of Pacer-Plus, based on listening to the real concerns of Pacific Island countries about the impacts of climate change as well as imbalances in the trade relationship.

[7. 4-Corners program on the dominance of Amazon raises more doubt on e-commerce trade deals, as govts move to regulate Big Tech amid COVID-19 pandemic](#)

[The ABC TV 4-Corners program](#) on April 6, 2020, [Amazon: What They Know About Us](#) focused on the impact of Amazon Marketplace and the use of data to create a powerful global monopoly.

4-Corners was re-broadcasting a [BBC Panorama program](#) screened in the UK on February 17, 2020.

The program showed how Amazon home devices that listen and respond to questions (Alexa) can now record private conversations. These can be used as a stream of personal data to be analysed and sold for marketing even more products at individuals. In addition to privacy breaches and abuse of data the program also exposed very serious anti-competitive practices, which have enabled the company achieve a near-monopoly market dominance in marketing many products.

The obvious conclusion is that government needs to investigate and possibly regulate these practices, but e-commerce trade deals, promoted by the Australian government, are heading in the opposite direction.

Australia is co-sponsoring a WTO plurilateral negotiation on e-commerce and has also concluded a new [Digital Economy Agreement with Singapore](#) (DEA) which are both heavily influenced by the big tech companies.

[Australia and Singapore](#) conclude the text of the DEA on March 23. There is a summary on the [DFAT website](#) but the full text will not be released until after it has been legally checked and signed, which could take at least 1-2 months. The agreement will replace the e-commerce chapter in the Singapore-Australia FTA.

The Singapore DEA will deregulate cross-border data flows and could reduce the ability of both current and future governments to regulate big tech companies in the public interest. This is despite a series of scandals about [data privacy](#) and [anti-competitive practices](#) by those companies and despite current and emerging recommendations from the [Australian Consumer & Competition Commission \(ACCC\) report](#) which recommended more, not less, regulation of the big tech companies.

In February 2020, AFTINET made a submission about these negotiations which is [here](#). An oped which summarises the issues is [here](#). We must ensure that trade agreements do not prevent governments from regulating to protect the public interest.

One example of regulation required to protect privacy is the 2018 European Union [General Data Protection Regulation](#). The [California Consumer Privacy Act](#), which came into force on January 1, 2020, has similar but slightly different provisions.

The tech companies are fighting back against such regulation, as well as promoting deregulatory trade rules. Facebook, Google, Comcast, AT&T and Verizon [all donated \\$200,000 to create a \\$1m fund to oppose the California Consumer Privacy Act](#).

AFTINET has [called for the release of the new Singapore text](#) and will do a submission to the JSCOT review to expose the agreement to public debate.

[India, Indonesia increase taxes on Big Tech, amid COVID-19 crisis](#)

India imposed a sweeping new tax on digital goods and services on April 1, 2020, closely followed by an Indonesian move on April 7. Both countries noted the rapid increase in online activity due to the COVID-19 pandemic shutdowns on physical contact between people.

The Indian government used its 2020 Budget to impose the 2 per cent tax on all goods and services sold online in India by companies that do not have a taxable presence in India. The threshold for sales is low, at US\$267,000.

The [new Indonesian government regulation](#) states that the companies will be charged value added tax (VAT) on taxable intangible goods and/or services sold through electronic platforms.

This follows French moves to tax revenues of digital conglomerates and similar measures being considered in other European countries.

All of these measures are attempts to collect taxes from tech companies that can avoid tax by not having a commercial presence in countries where they do large amounts of profitable business, which has been expanding during the pandemic.

A group of tech industry associations representing major US companies including [Google, Facebook and Microsoft](#) urged US Trade Representative Robert Lighthizer to try to have the Indian taxes delayed or withdrawn.

[8. ASEAN secretary general says RCEP deal to be signed in late 2020](#)

ASEAN Secretary-General [Dato Lim Jock Hoi](#) has reaffirmed that RCEP members intend to sign the mega-agreement in late 2020.

Lim's comments came as ASEAN Economic Ministers met for a Retreat in Vietnam on Wednesday 11 March, with discussions reportedly including plans for the finalisation of the RCEP negotiations. Lim said the text of the agreement will be finalised in May, followed by "legal scrubbing".

India's participation in the agreement was still under discussion amongst ASEAN members. Vietnamese Minister of Industry and Trade Tran Tuan Anh was quoted as saying that "among RCEP members, India has not yet reached an agreement on opening up market with partner countries and it also has some domestic issues that need further discussion."

Previous media reports have suggested that India will not [re-join the negotiations](#).

[ASEAN Parliamentarians for Human Rights call for more transparency in RCEP negotiations](#)

[ASEAN Parliamentarians for Human Rights](#), a regional network of current and former parliamentarians, has [criticised](#) the lack of transparency in the RCEP negotiations and called for the released of the RCEP text and for governments to conduct open and inclusive public consultations.

Teddy Baguilat, former Philippine parliamentarian and board member of ASEAN Parliamentarians for Human Rights, criticised proposals to include investor state dispute settlement (ISDS) provisions in the RCEP, which enable corporations to sue governments for policy decisions that impact on their investments. The latest reports suggest that ISDS will not be included in the agreement, however, member governments have not ruled out the inclusion of ISDS in future RCEP negotiations.

APHR has called on governments to officially exclude ISDS mechanisms from all RCEP negotiations including future negotiations after the agreement has been signed.

9. Factsheet: Trading away our Services? How trade rules impact public and essential services

Everyone should have access to high quality, affordable and reliable public and essential services. Yet, trade agreements can impact on the way that our essential services are managed and can threaten the provision of quality public services like healthcare and education.

AFTINET's new factsheet [Trading away our Services? How trade rules impact public and essential services](#) explains how trade rules affect services, which services are impacted and how trade agreements can undermine the provision of quality public services. It calls for a trade system that supports governments to provide high quality, affordable and reliable public and essential services.

10. Centre Alliance calls on federal government to use its purchasing power to support local jobs in corona virus response

On April 17, 2020, Centre Alliance Senator Rex Patrick today [called on](#) the federal government to give greater weighting to the criteria of Economic Benefit to Australia in existing Commonwealth Procurement Rules so that the benefits of local employment can be fully valued and used to improve opportunities for local firms.

Senator Patrick said that in 2018-19 the Commonwealth entered into 78,150 contracts with a combined value in excess of \$64 billion, which is very significant purchasing power that should be a key part of any COVID-19 recovery strategy.

AFTINET has [participated in the ongoing debate](#) about the extent to which trade agreements prevent both federal and state governments from giving preference to local firms in government purchasing.

Senator Patrick is calling for the government to raise the weighting of the 'Economic Benefit to Australia' Assessment for Government procurement and establish clear benchmarks to guide procurement officials in both federal government procurement and joint state-federal projects.

See the full media release [here](#).