BULLETIN November 2020

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1. Introduction

Dear Members,

The 15-nation Regional Comprehensive Economic Partnership was signed online on November 15, 2020. Links to critical statements from AFTINET and other community organisations are below. AFTINET is analysing the text, and will host a zoom seminar on December 15 at 12.30pm. See graphic and link below.

The COVID-19 pandemic continues to spread with second and third waves impacting hard on health and economies in many countries, particularly the USA and Europe. A vigorous struggle has opened up in the World Trade Organisation between rich nations who have signed up with several drug manufacturers for early access to any vaccine for their own populations, and poorer countries led by South Africa, India and China, trying to change WTO rules to enable universal, low-cost access to any vaccines. Public universities are developing the potential vaccines, but drug companies that manufacture them will have 20-year monopoly patents to control prices.

Australia is still on the wrong side of this vital argument.

The PACER-Plus free trade agreement for Australia, New Zealand and only six small Pacific Island nations will come into force in December, without Fiji and PNG, which comprise eighty per cent of Pacific Island economic output .

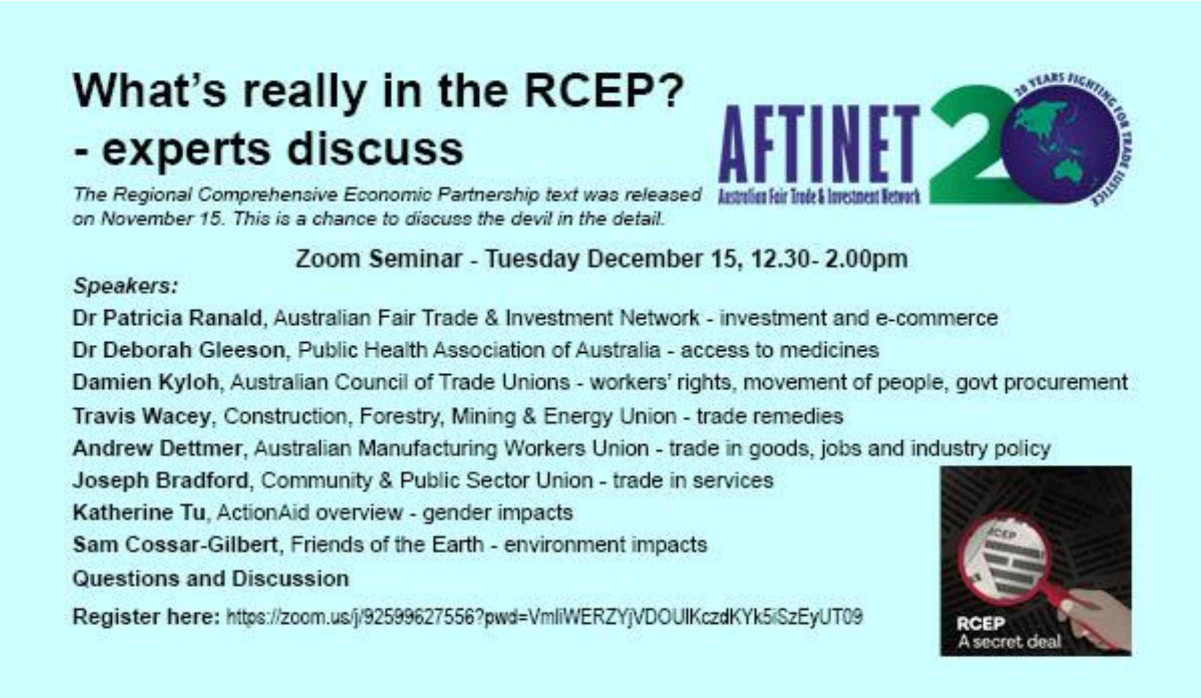
Investor-State Dispute Settlement claims against governments over carbon emission reduction policies are looming. The fight against ISDS within the Energy Charter Treaty, mainly in Europe, is intense. Australian subsidiaries of foreign mining companies are being used for forum shopping to make claims against developing countries.

We rely on your support to continue our campaigns. If you have not already done so, you can renew your AFTINET membership here, and you can buy the great AFTINET 20th Anniversary cloth banners or T-Towels with Wilcox and Tandberg cartoons here.

Please share items from this Bulletin with your networks and friends.

Thanks and keep safe.

The AFTINET Team



Register here: https://zoom.us/j/92599627556?pwd=VmliWERZYjVDOUlKczdKYk5iSzEyUT09

2. RCEP trade deal could impede-post COVID local industry recovery and ignores labour rights and environmental standard

The giant Regional Comprehensive Economic Partnership trade deal (RCEP) was signed on November 15, 2020, by Australia, New Zealand, China, Japan, South Korea and the 10 ASEAN countries (but without India) with great fanfare about its claimed economic benefits. India left the negotiations in November last year, which means the agreement is worth less to Australia, since Australia already has bilateral or regional free trade agreements with all the other RCEP countries.

But the deal was completed before the COVID-19 pandemic, and has not been revised in the light of lessons from the pandemic. Like previous trade deals the RCEP restricts local industry policies.

"The pandemic has taught us that we need to depend less on imports and increase our local capacity to produce medical equipment, vaccines and other essential products. Instead the RCEP rules encourage all countries to specialise in a narrow range of products and services and import everything else. This suits global corporations but will increase dependence on global production chains and restrict governments from developing local industries," said Dr Ranald in a media release.

"India left the deal because of concerns about the RCEP's potentially negative impact on local industry development, which should sound warning bells. India's absence also means there will be almost no increase in Australia's export opportunities, since Australia already has free trade agreements with all of the other RCEP member countries," said Dr Ranald.

"The RCEP also has no commitments to any labour rights or environmental standards, increasing the danger of a race to the bottom on those standards," said Dr Ranald. "The deal includes countries like China and Myanmar where there is mounting evidence of labour rights and human rights abuses. But there are no provisions to deal with issues like forced labour or child labour, and no mention of climate change."

"The government is claiming that the main benefit of the agreement is that it writes a common set of legally binding trade rules for the region. But many of these rules go far beyond traditional trade issues. They open up essential services like health, education, water, energy, telecommunications, digital and financial services to private foreign investors and restrict the ability of future governments to regulate them in the public interest," said Dr Ranald. "Governments need to have the flexibility to deal with crises like pandemics and climate change."

As usual, the text was only released after signing, when it cannot be amended, and there has been no independent economic, social or environmental assessment of its likely impacts.

"AFTINET and other community organisations will make submissions and lobby parliamentarians and Senators to look past the spin and consider the real costs of the RCEP to workers and communities."

Civil Society Organisations mobilised to speak out against the RCEP. Dr Patricia Ranald's explainer article on the RCEP text is here. ActionAid launched a photo petition. Asia Pacific Forum on Women, Law, and Development (APWLD) launched its #NoRCEP video on November 13. You can find the video on Youtube, Facebook, Twitter and share on your channels with #NoRCEP #RCEP hashtags.

ACTU President Michele O'Neil said on November 13, "This is one of the biggest trade deals in history but the Morrison Government doesn't know if it will create a single job in Australia. With unemployment nearing 8 per cent and still in the depths of a historic economic downturn we need an independent assessment of the value of this deal for Australian workers.

"The Australian trade union movement supports expanding exports and trade deals that are fair. Despite Government claims, past trade deals have delivered negligible benefits for the Australian economy and left Australian workers worse off".

Michele O'Neil elaborated on these concerns on ABC Radio National Breakfast on November 16.

RCEP impact on Developing Countries – regional webinar report

Just a few days prior to the RCEP signing, economic experts, business owners, civil society organisations and parliamentarians expressed their concerns about its impact on developing countries in a regional webinar.

The webinar was organised by APWLD, Public Services International (PSI), and Indonesia for Global Justice (IDJ).

UNCTAD Senior Economist Rashmi Banga presented analysis showing that for most ASEAN countries imports post-RCEP will rise more than their exports, leading to worsening of their balance of trade with respect to other RCEP members. "ASEAN countries can only benefit from RCEP if they can really use the potential on Regional Value Chains which should link with the Global Value Chains. But mostly in regional cooperation, such as RCEP, most ASEAN countries will lose the preferential access, and that access will go to more efficient producers and exporters. But how many countries in ASEAN can really compete with China?", she added.

Jomo Kwame Sundaram, former Assistant Director General for Economic and Social Development in the UN Food and Agriculture Organisation, explained that the disruption of economies is not only due to COVID-19 but also the undermining of cooperative multilateral forums like the WHO which affects most countries. "If we are serious about trade, especially in this difficult time, we should rethink how you can reconfigure the world and develop new capacities of our own economies, including much more consistent with sustainable development objectives and more egalitarian ways".

Kate Lappin, Asia Pacific Regional Secretary for the global federation of workers in public services, Public Services International, noted that governments during the COVID-19 pandemic had taken emergency measures which breach the trade rules in RCEP and other free trade deals. Further, she said that free trade rules shift the weight of who has power in the economy away from workers and into the hands of global corporations.

Jayen Mehta, Senior General Manager, Amul Milk Cooperative, India, explained how signing the RCEP could have led to loss of livelihood for 50 million rural milk producers and about US$40 billion in revenue loss yearly to farmers. "A grassroots movement led by millions of milk producers and farmers in India including nationwide protests forced India to withdraw from RCEP negotiations", he stressed.

3. Australia increases COVID-19 vaccine support to Pacific Islands and SE Asia, but opposes trade rule changes on vaccines

The Australian government recently announced new spending of A$500 million over three years to provide COVID-19 vaccines and immunisation technical support to Papua New Guinea, Solomon Islands, Vanuatu, Fiji, Samoa, Tonga, Tuvalu and Kiribati in the Pacific, and Indonesia, Timor-Leste, Cambodia, Laos, Myanmar, the Philippines and Vietnam in south-east Asia.

The government's new commitment is in addition to its international aid budget, rather than drawing from it as earlier vaccine commitments had. This is welcome, but it came shortly after Australia had opposed a waiver of intellectual property rules in the World Trade Organisation for all COVID-19 medical needs.

WTO rules give pharmaceutical companies 20 years of patent monopolies to charge high prices on new medicines and vaccines, with some exceptions for low income countries. The exceptions are difficult to use and pharmaceutical companies have lobbied to retain their monopolies during the pandemic, meaning that governments have to negotiate with them about prices for COVID-19 vaccines.

Australia's newest funding amounts to A$167 million per year for three years, and at current costing of the cheapest vaccine at A$30 per person for the two doses required, this would buy 5.57 million vaccinations per year.

There are 10 million people in the Pacific Island states, and 547 million people in the eligible ASEAN states. A vaccination rate of just 10 per cent would require 111 million doses, costing well over US$1 billion. So Australia's new commitment would enable immunisation of the Pacific Island and Timor-Leste populations over two years, but make little impact in the ASEAN states.

4. PACER-Plus will not deliver claimed benefits and could cause harm, say critics

The controversial PACER-Plus trade deal between Australia, New Zealand and initially 14 Pacific Island countries will come into force for only eight countries in December 2020.

Fiji and PNG, representing over 80 per cent of Pacific Islands economic activity, did not sign it in 2017, saying it would mainly benefit Australia and New Zealand and would restrict local development. It has taken three years for Australia, New Zealand, and six smaller countries (Samoa, Kiribati, Cook Islands, Tonga, Solomon Islands and Niue) to ratify it. Nauru, Tuvalu and Vanuatu are yet to ratify.

Pacific Island countries already have zero tariff access for their exports to Australia and New Zealand. PACER-Plus mainly reduces tariffs for Australian and New Zealand exports to the Pacific Islands and reduces regulation of foreign investment.

Radio NZ reported that Australia and New Zealand have welcomed the deal and said it would strengthen regional Pacific ties.

But Adam Wolfenden from the Fiji-based Pacific Network on Globalisation commented that the deal benefited Australia and New Zealand more than the small island developing states

Wolfenden pointed out the absence from the agreement of two of the Pacific's largest economies, Papua New Guinea and Fiji, which he said spoke volumes about the quality of the deal.

"The language from Papua New Guinea and Fiji has been incredibly strong. PNG referred to it as being completely lopsided in Australia and New Zealand's advantage. Fiji has called some of the clauses a disaster for their industries. To their credit they have done their assessment and realised that to be in the PACER-Plus isn't in their interest," he said.

5. South Africa, India urge WTO to amend monopoly patent rights to ensure fair access to Covid-19 vaccines but Big Pharma pushes back

On October 2, 2020, India and South Africa asked the World Trade Organisation to waive some provisions in its TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement to make vaccines and treatment more accessible to low-income countries, reported Pharmalot.

The two countries argue that unless a waiver is issued there are “significant concerns” that diagnostics, medicines and vaccines will not be “available promptly in sufficient quantities and at affordable prices to meet global demand,” according to their submission to the WTO’s TRIPS Council.

Wealthy nations such as the USA, the UK, Germany, France, and Australia have signed deals with various drug makers for hundreds of millions of doses of vaccines that are still being tested. Poorer countries lack the means to place such orders and global health officials fear that unequal access will cause further immeasurable suffering and the coronavirus will not be contained.

“It is crucial that other member governments of the WTO support this as we need to ensure that vaccines, drugs, and other medical tools needed for tackling COVID-19 can be scaled up by countries and their manufacturers without facing protracted negotiations for licenses,” said Leena Menghaney, who heads the Doctors Without Borders access campaign in South Asia.

Specifically, India and South Africa have proposed waiving some rules that govern patents, industrial designs, copyrights, and protection of undisclosed information, a reference to trade secrets.

“Internationally, there is an urgent call for global solidarity, and the unhindered global sharing of technology and know-how in order that rapid responses for the handling of Covid-19 can be put in place on a real time basis,” their submission argued.

The waiver would allow countries around the world to manufacture lower-cost products, explained Jamie Love of Knowledge Ecology International, an advocacy group that focuses on access to medicines and patent rights.

On October 15, 408 Civil Society Organisations from around the world, including AFTINET, called on the World Trade Organisation's TRIPS Council to support the South African and Indian proposal to waive the rules on patents, trade secrets, industrial designs and copyright for COVID-19 technology, such as PPE, test kits, medicines, vaccines, masks, and ventilators.

The 164-member TRIPS Council considered the Waiver Proposal on 15-16 October. According to *Politico*, during a three-hour discussion, 16 members, including Egypt, Indonesia and Argentina, argued that current flexibilities in the agreement won't guarantee timely access to vital supplies during the pandemic.

But other members — including the EU, USA and the UK and Australia— opposed the waiver.

The TRIPS Council delayed a decision until its next meeting in early 2021. AFTINET made a media release on October 26, 2020, criticising the Australian government for opposing the Indian and South African proposal at the WTO.

The USA, the European Union and other wealthy countries again objected to the waiver proposal at a WTO meeting in Geneva on November 19, and on November 22, the G20 limited itself to calling for voluntary contributions to assist in funding developing countries to buy vaccines.

UN Human Rights Experts on November 9 called on the 31st Special Session of the General Assembly to welcome the petition by South Africa and India of October 2, 2020, to waive WTO provisions

The Experts called on States to join the COVAX Global Vaccines Facility and to put aside misplaced individual initiatives to monopolize vaccine or supplies, and to recognise that voluntary pledges like COVID-19 technology access pool are not enough in view of the current situation.

They urged Big Pharma to respect the significant public funding for COVID-19 vaccine research and development, and to refrain from invoking their intellectual property rights and prioritizing economic gains.

"There is no room for nationalism or profitability in decision-making about access to vaccines, essential tests and treatments, and all other medical goods, services and supplies that are at the heart of the right to the highest attainable standard of health for all," they said.

"Unfortunately, it appears that some Governments have undertaken to secure vaccines for their citizens only. Isolationist health policies and procurement are in contradiction with international human rights standards". Rich countries with 13 per cent of the world's people have secured 51 per cent of possible vaccine production.

Prominent global health initiatives have strongly supported the South African and Indian initiative. These include Marisol Touraine, Chair of the Unitaid Executive Board and former French Minister of Health, Leena Menghaney, South Asia Head of Médecins Sans Frontières' Access Campaign, and Dr Bernard Pécoul, *Executive Director of the Drugs for Neglected Diseases Initiative.*

Big Pharma pushes back

The International Federation of Pharmaceutical Manufacturers & Associations opposes the WHO COVAX Facility and compulsory licensing and prefers to retain monopoly patents and negotiate prices with governments, a process which is not affordable for many low income countries.

The Gates Foundation is the key funder of Gavi and CEPI, as well as being a co-leader in the World Health Organisation's COVAX Facility and Advanced Market Commitment funds. While this private funding is most welcome, it is based on current WTO intellectual property rules that give private companies monopoly rights on new medicines for 20 years, with exceptions that are difficult to use even in a pandemic.

Gates pushed the University of Oxford to deliver its leading COVID-19 vaccine candidate to a partnership with AstraZeneca, as *Bloomberg* and *Kaiser Health News* recently reported. This changed the university's distribution model from an open-license platform, designed to make its vaccine freely available for any manufacturer, to an exclusive license controlled by AstraZeneca.

"If we change the way in which you regulate the industry, or the ways in which you want medicines or vaccines to be produced and delivered," says K M Gopakumar, legal adviser to the Third World Network, who is based in India, "it's definitely going to affect these companies' business model—and also the investments of Gates Foundation. So they are using their money to reinforce the status quo."

The Gates Foundation put US$250 million of its US$2.5 billion Strategic Investment Fund into its work on COVID-19, including investments in Gilead, owner of the COVID-19 treatment drug Remdesivir, and CureVac, a German company working on a COVID-19 vaccine.

6. Human Rights Watch sounds alarm over "vaccine nationalism" for COVID-19 pandemic

A new report written in October 2020 by Human Rights Watch (HRW) – *Whoever Finds the Vaccine Must Share It* - shows the grave danger of failure to provide COVID-19 vaccines universally and fairly, as the global community witnesses a third wave of the pandemic in the northern winter.

In September 2020, Oxfam International analysed available information on deals made for five of the nine vaccine candidates that were in the final phase ("phase 3") of clinical trials at that time. They estimated that 51 per cent of the doses were reserved for high-income countries including Australia, Hong Kong & Macau, Israel, Japan, Switzerland, the UK, the US, and the European Union, even though they represent only 13 per cent of the world's population.

The Third World Network has shown through its "VaxMap" that the expertise to manufacture vaccines is limited and highly skewed toward rich countries. Large parts of Africa, Asia, and Latin America do not have any significant manufacturing capacity and will likely depend on imports.

The HRW report argues that open and non-exclusive licensing would unleash the potential of scientific research that uses public money to maximize public benefit, preventing any one company from holding or controlling access to the knowledge required to manufacture vaccines.

The HRW report recommends that governments ensure transparent and affordable access to vaccines for all by:

- Supporting the Indian and South African proposals to waive some WTO rules to remove restrictions to access for low income countries
- supporting and implement the WHO Technology Access Pool to share knowledge about vaccines and cooperate to expand manufacturing capacity and distribution to low income countries
- not supporting deals with pharmaceutical companies that undermine equitable access to vaccines based on public health need.

7. ISDS threat to coal phase-out needed to meet Paris emission reduction target

'Raising the cost of climate action?', a new report from the International Institute for Environment and Development issued on October 4, 2020, includes a focus on coal-fired power stations covered by investment treaties which contain Investor-State Dispute Settlement (ISDS) provisions.

At least five coal-fired power stations in Australia are in the list of the world's 257 foreign-owned coal plants, which must be retired early in order to put the planet on track to keep temperature rise below 1.5°C above pre-industrial levels. These five are protected by ISDS agreements that Australia has with Hong Kong, Canada and Japan, and which do not have exclusions for such claims. They are:

- Mount Piper Power Station, opened 1993, owned by CLP Group, Hong Kong
- Millmerran Power Station, opened 2002, partly owned by Ontario Teachers Pension Plan, Canada
- Loy Yang B Power Station, opened 1993, owned by Chow Tai Fook Enterprises Limited, Hong Kong
- Yallourn-W Power Station, opened 1973, owned by CLP Group, Hong Kong
- Bluewaters Power Station, opened 2009, owned by Kansai Electric and Sumitomo Corporation, Japan.

The report found that Indonesia, with 12 coal-fired power stations covered by ISDS, could face claims starting at US$7.9 billion, based on their valuation, but not counting "future earnings," which have been used to build ISDS claims to billions.

ISDS enables foreign investors, including shareholders, to sue states over conduct they believe breaches international investment protection rules, and can include actions needed to cut emissions. The US Westmoreland coal company is suing Canada because its Alberta Province plans to phase out coal-powered energy.

Possible government action on climate change could include the early retirement of coal-fired power stations and oil refineries, not exploiting coal, oil and gas reserves, and scrapping pipelines and other fossil fuel transport infrastructure.

These are the measures needed to fulfil the climate commitments governments have signed up to under the Paris Agreement.

The study's authors Kyla Tienhaara, Canada research chair in economy and environment at Queen's University, and IIED's Lorenzo Cotula, urge terminating old investment treaties, developing innovative drafting approaches for any new treaties, and radically modernising the Energy Charter Treaty, which plays a significant role in protecting foreign-owned coal power plant assets.

8. Australian mining companies suing developing countries for billions is shameful, say community groups

"There is a pattern emerging of Australian mining companies suing developing countries for billions of dollars in unfair international tribunals," AFTINET Convener Dr Patricia Ranald said in a media release on October 27, 2020, and in an article published on the Michael West website.

"Barrick PD Australia, owner of the Porgera goldmine in Papua New Guinea, despite a documented record of human rights and environmental abuses, is suing the PNG government in an international tribunal because its mining license has not been renewed," said Dr Ranald. The company is a subsidiary of the giant Canadian Barrick Gold corporation.

"The Australian Kingsgate company is suing the Thai government after it closed the Chatree goldmine when increased levels of manganese and arsenic used in processing the gold were found in nearby residents," said Dr Ranald.

"Australian mining company Tethyan Copper Company Ltd, also a 50 per cent subsidiary of Canadian company Barrick Gold, sued Pakistan over a licensing dispute and in 2019 won US$5.8 billion in compensation. The Pakistan award made headlines around the world because the compensation payout was more than 25 times the US$220 million the company had invested in the project and included an unknown payout for 'lost future profits'. The amount is almost equivalent to the US$6 billion emergency loan from the International Monetary Fund (IMF) granted just before the award to deal with Pakistan's economic crisis, and potentially cancels any benefit from the IMF loan," said Dr Ranald.

Dr Ranald explained that the companies are using Investor-State Dispute Settlement (ISDS) processes in trade and investment agreements that Australia has with developing countries.

Barrick Gold is a Canadian company, and Canada does not have such agreements with PNG or Pakistan, so it has used Australian subsidiary companies to launch the claims.

"ISDS has been excluded from the Australia's current trade negotiations with the European Union and from the giant Regional Comprehensive Economic Partnership negotiations with 14 Asia Pacific countries. ISDS should also be excluded from all Australia's bilateral investment treaties and other trade agreements," said Dr Ranald.

9. Share new Friends of the Earth video clip on the danger of ISDS claims against COVID-19 pandemic measures

Friends of the Earth have produced a 2 minute video clip on the threat of Investor State Dispute Settlement claims against government actions to contain the pandemic.

The COVID-19 pandemic is the biggest health and economic crisis in a generation. Some governments are taking extraordinary measures to fight the pandemic, in order to save lives, protect jobs, and avoid economic disaster. But the little-known Investor State Dispute Settlement system, or ISDS, included in many trade deals, could pressure governments to roll back public interest measures, or pay millions in compensation to corporations.

ISDS allows foreign companies to sue governments for measures that might impact their profits. ISDS cases could arise from COVID-19 responses, such as restrictions requiring businesses to close, the use of private hospitals, making medicines and tests affordable, and debt restructuring.

If we work together, we can ensure that public money is kept out of the hands of private companies, and instead is spent where it is most needed: protecting people from the COVID-19 pandemic. Watch the video and share it widely!