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**Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade on the expansion of the Comprehensive and Progressive Agreement for Trans Pacific Partnership (CPTTP) membership**

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## Introduction

AFTINET is a national network of 60 community organisations and many more individuals supporting fair regulation of trade, consistent with democracy, human rights, labour rights and environmental sustainability.

AFTINET supports the development of fair trading relationships with all countries, based on the principles of human rights, labour rights and environmental sustainability. We recognise the need for regulation of trade through the negotiation of international rules.

AFTINET supports the principle of multilateral trade negotiations, provided these are conducted within a transparent and democratically accountable framework that recognises the special needs of developing countries and is founded upon respect for democracy, human rights, labour rights and environmental sustainability. In general, AFTINET advocates that non-discriminatory multilateral rules are preferable to preferential bilateral and regional negotiations that discriminate against other trading partners.

AFTINET welcomes the opportunity to make a submission to this inquiry.

## Summary: why the CPTPP should not be expanded

The CPTPP was signed in 2018 by 11 countries: Australia, New Zealand, Japan, Chile, Peru, Mexico, Canada, Malaysia, Singapore, Brunei and Vietnam, after the US withdrew in 2017. The remaining 11 rebadged the agreement as the CPTPP and suspended some of its most controversial clauses.

The CPTPP's 30 chapters intrude into more areas of regulation normally subject to democratic national decision-making processes than any previous trade agreement. These include corporate rights to sue governments (Investor-State Dispute Settlement or ISDS), restrictions on government regulation of essential services like aged care and state regulation of carbon emissions, temporary movement of people, reduced capacity for local industry development, restrictions on government procurement policy and regulation of product standards.

These controversial aspects of the CPTPP have influenced the fact that, after three years, four of the 11 signatories have still not ratified the agreement. In this context, expansion of the agreement seems premature.

Twenty-two of the original TPP-12 provisions were suspended, but not removed, in the CPTPP. The rationale for suspending but not removing them was that the US may re-join. Many of these provisions are intellectual property provisions that increase monopolies on the most expensive biologic medicines, which would delay the availability of cheaper forms of these medicines for an additional three years. Public health experts have warned that the longer monopolies and delay in availability of cheaper medicines could cost the PBS hundreds of millions of dollars per year.

The US Biden administration is not likely to re-join the CPTPP anytime soon. However, if the US does re-join in future, US pharmaceutical companies will lobby for the suspended clauses to be reinserted, which would be against the interests of Australia and other TPP countries. The UK, which wants to join, is also likely to demand stronger monopolies on biologic medicines.

Other countries which have expressed interest are Thailand, Indonesia, the Philippines and Taiwan. Australia is negotiating an FTA with the UK, and already has bilateral FTAs with Thailand, Indonesia, and with the Philippines through the ASEAN FTA. The expansion of the CPTPP to include these countries would not provide significant additional market access for Australian exports.

An application from Taiwan would present considerable diplomatic obstacles since Taiwan is not recognised as a separate state entity by most CPTPP members, including Australia.

Overall, there are significant risks to Australia's public health costs if the US re-joins or the UK joins the CPTPP, and there are no significant market access gains for Australia from other additional countries joining the CPTPP. The CPTPP should not be expanded or used as a model for other agreements.

## Why the CPTPP should not be expanded or used as a model for other agreements.

The CPTPP was signed in 2018 by 11 countries: Australia, New Zealand, Japan, Chile, Peru, Mexico, Canada, Malaysia, Singapore, Brunei and Vietnam. The withdrawal of the US in January 2017 killed the original 12-nation Trans-Pacific Partnership (TPP-12). The remaining 11 rebadged the agreement as the CPTPP and suspended some of its most controversial clauses on medicine monopolies.

However many other harmful provisions remain. The CPTPP's 30 chapters intrude into more areas of regulation normally subject to democratic national decision-making processes than any previous trade agreement. These include corporate rights to sue governments (Investor-State Dispute Settlement or ISDS), restrictions on government regulation of essential services like aged care and state regulation of carbon emissions, temporary movement of people, reduced capacity for local industry development, restrictions on government procurement policy and regulation of product standards.

The agreement has chapters on labour rights and environmental standards, but these are not fully enforceable in the same way as other chapters in the agreement. These issues are summarised below, after a discussion of the accession process for new members.

### Only seven of eleven CPTPP signatories have ratified the CPTPP

Since the CPTPP was signed in 2018, Australia and six other countries have ratified the deal, which came into force on December 30, 2018. But four other signatories still have not ratified it after three years. The Malaysian government is still assessing its impact on industry development,<sup>1</sup> and may not ratify. After years of social unrest, which included opposition to the CPTPP, Chile is in a process of revising its constitution, which may include stricter evaluation of whether trade agreements encroach on democratic sovereignty<sup>2</sup> The Chilean Senate has postponed consideration of approval of the CPTPP pending this process<sup>3</sup>. These delays signal that many aspects of the CPTPP are still seen as controversial. Peru and Brunei have not ratified the agreement. The push to expand the CPTPP seem premature when four of the original signatories have not yet ratified.

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<sup>1</sup> Loh, J. (2020) "CPTPP: Good That Malaysia Is Cautious?" 21 November, *The ASEAN Post*, <https://theaseanpost.com/article/cptpp-good-malaysia-cautious>.

<sup>2</sup> Hulsbosch, M. (2020) "Chile's plebiscite: Optimism, yet there remains a long road ahead to achieve social reform," *Modern Diplomacy*, November 5, <https://moderndiplomacy.eu/2020/11/05/chiles-plebiscite-optimism-yet-there-remains-a-long-road-ahead-to-achieve-social-reform/>.

<sup>3</sup> EMOL (2021) "Gobierno Renueva Suma Urgencia del TPP11 en el Senado: Da 15 días para su Debate", March 30, <https://www.emol.com/noticias/Nacional/2021/03/30/1016466/Gobierno-renueva-urgencia-TPP11.html>.

Australia already has or is negotiating bilateral agreements with the US, UK and with other countries wishing to join the CPTPP.

The US Biden administration has been critical of many aspects of the CPTPP, including ISDS<sup>4</sup>, and the US Trade Representative has said that the administration is giving priority to the pandemic, local industry development, infrastructure and renewable energy<sup>5</sup>. The CPTPP is not mentioned in the USTR trade policy agenda published in March 2021<sup>6</sup>.

However, if the Biden or another US administration did decide in future to re-join the CPTPP, it would face strong lobbying from pharmaceutical companies to reinstate suspended clauses for stronger medicine monopolies in the CPTPP, which would delay the availability of cheaper medicines and be against the interests of Australia and other CPTPP members. See the section below on medicine monopolies.

The UK applied to join the CPTPP in February 2021. Scholars have argued that the admission of the UK would detract from Australia's broader regional strategy which includes the CPTPP as a regional Trans-Pacific Agreement, based on membership of APEC<sup>7</sup>.

Other countries which have expressed interest are Thailand, Indonesia, the Philippines and Taiwan. Australia is negotiating an FTA with the UK, and already has bilateral FTAs with Thailand, Indonesia, and with the Philippines through the ASEAN FTA. The expansion of the CPTPP to include these countries would not provide significant additional market access for Australian exports.

An application from Taiwan would present considerable diplomatic obstacles since Taiwan is not recognised as a separate state entity by most CPTPP members, including Australia.

CPTPP suspended clauses: longer monopolies on medicines could return if US re-joins the agreement or if the UK joins

Twenty-two of the original TPP-12 provisions have been suspended, but not removed. The rationale for suspending but not deleting them was that the US, the largest CPTPP economy, could re-join. Many of these provisions are intellectual property provisions that increase monopolies on the most expensive biologic medicines, which would delay the availability of cheaper forms of these medicines for an additional three years. US pharmaceutical companies lobbied the US government

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<sup>4</sup> Hoyama, T., and Fang, A. (2021) Can Biden return the US to TPP? Does it matter?, *Nikkei*, April 1,

<sup>5</sup> Tai, K. (2021) *Remarks on Trade policy, the Environment and Climate Change*, April 15, Washington, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2021/april/remarks-ambassador-katherine-tai-trade-policy-environment-and-climate-change>.

<sup>6</sup> US Trade Representative (2021) *2021 Trade Policy Agenda and 2020 Annual Report of the President of the United States on the Trade Agreement Program*, March. Washington, <https://ustr.gov/sites/default/files/files/reports/2021/2021%20Trade%20Agenda/Online%20PDF%202021%20Trade%20Policy%20Agenda%20and%202020%20Annual%20Report.pdf>.

<sup>7</sup> Ravenhill, J. (2021) "Australia's Asia-Pacific strategy endangered by UK CPTPP accession," 2 March, *East Asia Forum*, Canberra, <https://www.eastasiaforum.org/2021/03/02/australias-asia-pacific-strategy-endangered-by-uk-cptpp-accession/>.

for these provisions and would lobby for them again if the US re-joined the CPTPP. Public health experts have warned that the longer monopolies and delay in availability of cheaper medicines could cost the PBS hundreds of millions of dollars per year<sup>8</sup>.

The suspension of these provisions identifies them as unacceptable to all current TPP countries, yet they could be resurrected if the US re-joins the agreement. Australia has never before signed a trade agreement containing essentially unacceptable provisions that could be re-activated if an outside party re-joins.

In addition to the danger from the US, the UK has longer monopolies on biologic medicines. Before the UK left the European Union, it supported 3-5 years' extra data protection monopoly in the intellectual property proposals that the EU published as part of the Australia-EU FTA negotiations<sup>9</sup>.

The Australia-UK FTA negotiations are less transparent than the EU negotiations and the UK has not published its detailed proposals, but has said in a strategy document that it wants to protect its existing standards for intellectual property<sup>10</sup>, which include 3-5 years' longer monopoly on biologic medicines than exists in Australia. This would delay the availability of cheaper medicines which could cost the PBS hundreds of millions of dollars per year<sup>11</sup>. The UK is likely to make this demand in its application to join the CPTPP.

### The CPTPP includes ISDS: global corporations can sue governments in unfair international tribunals

The CPTPP contains ISDS provisions that are the same as the original the TPP-12. All trade agreements have government-to-government dispute processes. ISDS is controversial because it is an optional, separate dispute process that gives additional legal rights to a single foreign investor (rights not available to local investors) to sue governments for compensation. ISDS gives increased legal rights to global corporations which already have enormous market power, enabling them to bypass national courts and sue governments for millions of dollars in unfair international tribunals over changes in law or policy, even if they are in the public interest.

These tribunals have no independent judiciary, precedents or appeals, and are based on legal concepts not recognised in national systems and not available to domestic investors. The "safeguards" for public interest legislation are inadequate, and governments can only clearly exclude

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<sup>8</sup> Gleeson, D., *et al* (2017) "The Trans-Pacific Partnership is back: experts respond," November 14, <https://theconversation.com/the-trans-pacific-partnership-is-back-experts-respond-87432>.

<sup>9</sup> Gleeson *et al*, (2018) "Planned trade deal with Europe could keep medicine prices too high," *The Conversation*, September 21, <https://theconversation.com/planned-trade-deal-with-europe-could-keep-medicine-prices-too-high-102836>

<sup>10</sup> UK Department for International Trade (2020) *The UK-Australia Free Trade Agreement: the U.K.'s strategic approach*, 17 July, <https://www.gov.uk/government/publications/uks-approach-to-negotiating-a-free-trade-agreement-with-australia/uk-australia-free-trade-agreement-the-uks-strategic-approach>.

<sup>11</sup> See Gleeson *et al*, 2017 footnote 8 above.

tobacco regulation from ISDS cases. This exclusion resulted from tobacco companies' use of ISDS to undermine public health laws in Australia and elsewhere.

Community campaigning against ISDS meant that the Howard government refused to include ISDS in the Australia-US free trade agreement. The US-based Philip Morris company wanted to claim billions in compensation for Australia's plain packaging law in 2012. The company could not sue under the US-Australia free trade agreement, but it found a Hong Kong-Australia investment agreement which included ISDS, shifted some assets to Hong Kong and used ISDS to claim billions in compensation from the Australian government. The international tribunal took over five years to decide that Philip Morris was not a Hong Kong company, and another two years to decide that the Australian government had to pay half of its \$24 million legal costs<sup>12</sup>.

More legal experts and legislators have condemned flaws in the ISDS system as the number of cases has increased to 1,061<sup>13</sup>, including cases against health, environment, indigenous rights, minimum wages and other public interest laws. Even the EU and the US are now negotiating agreements without ISDS. The two institutions that oversee ISDS arbitration systems are conducting ongoing reviews which have also identified serious flaws in the system. For the latest evidence on ISDS see the summary of AFTINET's submission to the 2020 review of ISDS attached as Appendix 1.

Expansion of the CPTPP would expand the number of countries from which global corporations could launch ISDS cases against Australia. If the US re-joined this would be especially dangerous, since global corporations based in the US are amongst the most frequent users of ISDS.

### Trade in Services: governments restricted from regulating essential services

The trade-in-services chapter is unchanged from the TPP-12. The structure of the chapter treats regulation of services as if it were a tariff, to be frozen at existing levels or reduced over time, and not to be increased in future, known as the "ratchet" structure. The negative list structure means that all services are included, unless specifically exempted or reserved. Exemptions are intended to be reduced over time. The exemptions do not apply to ISDS, and do not prevent ISDS cases on exempted services.

The negative list and ratchet structure are not acceptable, because they are specifically intended to prevent governments from introducing new forms of regulation, which are seen as potential barriers to trade. But this structure ignores the need for democratic governments to respond to changed circumstances, like the re-regulation of the financial sector following the Global Financial Crisis, and the need for new regulation of carbon emission levels and energy markets in response to climate change. The structure can also prevent governments from responding to failures of privatisation and deregulation, as occurred with the need to re-regulate the provision of Australian vocational education services.

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<sup>12</sup> Ranald, P. (2019a) 'When even winning is losing. The surprising cost of defeating Philip Morris over plain packaging' *The Conversation*, 27 March, 2019 <https://theconversation.com/when-even-winning-is-losing-the-surprising-cost-of-defeating-philip-morris-over-plain-packaging-114279>.

<sup>13</sup> UNCTAD (2022) *Investment Dispute Settlement Navigator*. Geneva: UNCTAD, <http://investmentpolicyhub.unctad.org/ISDS>.

The CPTPP fails to exempt or reserve Aged Care services, which means regulation is frozen at current levels<sup>14</sup>. In the context of the recommendations of the Royal Commission into Aged Care Quality and Safety, it is unacceptable that aged care services have not been reserved from CPTPP trade-in-services rules which freeze regulation at current levels and could prevent increases in quality standards and staffing levels recommended by the Royal Commission. It is also unacceptable that state regulation of carbon emissions and other forms of pollution have been included in Australia's commitments<sup>15</sup>, when increased regulation is required to reduce carbon emissions.

### Temporary movement of people: more workers vulnerable to exploitation

This chapter is unchanged from the TPP-12. AFTINET supports Australia's permanent migration system which has contributed to our vibrant multicultural society. Permanent migrants have the same rights as other workers in Australia because they have permanent residency and cannot be deported if they lose their employment.

The CPTPP commits Australia to accepting unlimited numbers of temporary workers from Canada, Mexico, Chile, Japan, Malaysia and Vietnam as contractual service providers in a wide range of occupations, and removes labour market testing to establish whether there are local workers available. Temporary migrant workers are more vulnerable to exploitation than permanent migrant workers. The fact that they are tied to one employer and face deportation if they lose the job means that these workers have no effective rights in the workplace. Recent studies have provided even more evidence that exploitation is widespread, including underpayment of wages, long hours and health and safety breaches. Australia has made far more extensive commitments for entry of contractual service providers than have other CPTPP countries.

Temporary migration had increased to over 800,000 workers before the pandemic and numbers of permanent migrants have decreased as a proportion of total migrants<sup>16</sup>.

The pandemic has further exposed the vulnerability of temporary workers, since the government has refused them access to social security payments and other forms of social support. There is now more public debate about the balance needed in Australia's migration policies between temporary and permanent migration, the need for labour market testing to ensure that temporary workers are only used when there is a genuine shortage of local workers, and the need for more skills training for all workers in Australia.

Expansion of the CPTPP would pre-empt this debate by further entrenching removal of labour market testing and increased numbers of temporary workers in a trade agreement.

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<sup>14</sup> Department of Foreign Affairs and Trade (2015) CPTPP Chapter 8, *Cross-border trade in services, Annex II*, page 7, <https://www.dfat.gov.au/sites/default/files/annex-ii-australia.pdf>.

<sup>15</sup> Department of Foreign Affairs and Trade (2015) CPTPP Chapter 8, *Cross-border trade in services, Annex II*, page 22, <https://www.dfat.gov.au/sites/default/files/annex-ii-australia.pdf>.

<sup>16</sup> Allan Fels and David Cousins (2020) 'The Migrant Workers' Taskforce and the Australian Government's Response to Migrant Worker Wage Exploitation', *Journal of Australian Political Economy*, 84, (December 2019/ January 13-45. [https://128f2a8c-7e2b-db29-c5ed-c863dde6f97c.filesusr.com/ugd/b629ee\\_e19802d05ca44b0ea1f58cbdce9b5c88.pdf](https://128f2a8c-7e2b-db29-c5ed-c863dde6f97c.filesusr.com/ugd/b629ee_e19802d05ca44b0ea1f58cbdce9b5c88.pdf)

## The CPTPP does not support post-pandemic industry development and government procurement to support local firms

The CPTPP was completed before the COVID-19 pandemic which exposed the overdependence on imports and the need for more local manufacturing capacity for essential health equipment like masks and ventilators. The government has since announced that government action is needed to assist other strategic manufacturing capacity<sup>17</sup> to boost the economic recovery, and there is cross-party support for this. But the CPTPP rules discourage local industry development policies.

Government procurement policies that support local firms are an important part of local industry development. But the CPTPP locks in international access to government procurement with few exceptions. This contradicts recommendations made by the recent report of this Committee which recommended that government procurement policies have more flexibility to support local industry development<sup>18</sup>.

## Technical Barriers to Trade (TBT): threats to food labelling and product safety standards

The CPTPP includes new commitments for Australia to mutually recognise product conformity assessment procedures in other TPP countries. This raises the question of how to maintain and improve Australia's relatively high standards in areas like food regulation and building product standards. Harmonising standards may not be in the public interest.

Australia introduced a form of country-of-origin food labelling after the 2015 imported infected frozen berries scandal, and more regulation may be needed in future. After numerous reports of dangerous imports of asbestos products and flammable building cladding, a Senate inquiry recommended stronger regulation to ensure that imported building products conform to Australian standards<sup>19</sup>. The CPTPP commitments to recognise other countries' conformity assessment procedures may impede future governments from regulating in these areas.

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<sup>17</sup> Sas, N. and Exposito, B. (2020) Australia's manufacturing pivot in a post-coronavirus world as COVID-19 creates 'new era' for the economy. 19 April, *ABC News*. <https://www.abc.net.au/news/2020-04-19/scott-morrison-government-coronavirus-covid19-manufacturing/12153568>

Birmingham, S (2020) Trading Australia towards the future, Speech at the National Press Club, 17 June, Canberra. <https://www.trademinister.gov.au/minister/simon-birmingham/speech/trading-australia-towards-future>.

<sup>18</sup> Joint Standing Committee on Foreign Affairs, Defence and Trade (2020) *Report of the inquiry into the implications of the COVID-19 pandemic for Australia's foreign affairs, defence and trade*, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Foreign\\_Affairs\\_Defence\\_and\\_Trade/FADTandglobalpandemic/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/FADTandglobalpandemic/Report).

<sup>19</sup> Senate Economics References Committee (2017) Interim report: protecting Australians from the threat of asbestos, November 22, Canberra. [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Economics/Non-conforming45th/Interim\\_report\\_asbestos](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Non-conforming45th/Interim_report_asbestos).

ISDS disputes are not excluded from the TBT chapter. Foreign investors are able to use ISDS to claim compensation for changes to food labelling requirements, or changes to building product conformity standards after the CPTPP came into force. The wine and spirits annex could restrict future options for mandatory alcohol health warnings like those for pregnant women<sup>20</sup>, and such regulation could also be open to ISDS cases.

### Labour Rights and environmental standards not legally enforceable in the same way as the rest of the agreement

These chapters are unchanged from the TPP-12. Labour law experts have criticised the labour chapter because much of it is aspirational rather than legally binding. For example, the clause on forced and child labour only commits governments to “recognise the goal” of eliminating forced and child labour. The enforcement process for those few provisions which are legally binding is more qualified, lengthy and convoluted than in other chapters of the agreement. These processes have not proven effective in other agreements<sup>21</sup>. The chapter is not specifically exempted from ISDS cases, and there is no reference to labour regulation in the claimed ISDS safeguards. This means that future changes to labour laws could be the subject of ISDS disputes.

Environmental law experts have criticised the environment chapter for its weak environmental standards, which are not fully enforceable. Only the international environmental agreement on trade in endangered species has enforceable commitments. The text does not refer to climate change, but only to voluntary measures for lower emissions<sup>22</sup>.

The non-binding nature of commitments and weak enforceability in the environment chapter contrast sharply with the legal rights of corporations to sue governments over domestic laws, including environmental laws, under the provisions for ISDS described above.

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<sup>20</sup> O'Brien, P., and Gleeson, D. (2015) “Trans-Pacific Partnership Agreement – Alcoholic Beverages and Health Information/Warning Labels”, November, found March 18, 2016 at <https://tpplegal.files.wordpress.com/2015/12/tpp-and-alcohol-health-warnings-summary-nov-2015.pdf>.

<sup>21</sup> International Trade Union Confederation (2015) Trans-Pacific Partnership Labour Chapter scorecard: fundamental issues remain unaddressed, November, Brussels. [https://www.ituc-csi.org/IMG/pdf/trans\\_pacific.pdf](https://www.ituc-csi.org/IMG/pdf/trans_pacific.pdf).

<sup>22</sup> Sierra Club (2015) TPP Text Analysis: Environment Chapter Fails to Protect the Environment, <https://www.sierraclub.org/sites/www.sierraclub.org/files/uploads-wysiwig/tpp-analysis-updated.pdf>

## Appendix 1: Summary of the AFTINET submission to the DFAT review of ISDS and Bilateral Investment Treaties, July 2020

All trade agreements have government-to-government dispute processes. ISDS is controversial because it is an optional, separate dispute process that gives additional legal rights to a single foreign investor (rights not available to local investors) to sue governments for compensation in an international tribunal if they can claim that a change in law or policy will harm their investment. Because ISDS cases are very costly, they are mostly used by large global companies that already have enormous market power, including tobacco, pharmaceutical, agribusiness, mining and energy companies.

The number of reported ISDS cases has been increasing rapidly and is 1,023 as of December 2019.

Scholars have identified that ISDS has suffered a legitimacy crisis that has grown in the last decade, with lack of confidence in the system shared by both civil society organisations and by a growing number of governments.

Criticisms of the structure of the system include the power imbalance which gives additional legal rights to international corporations that already exercise enormous market power, the lack of obligations on investors and the use of claims for compensation for public interest regulation.

ISDS Arbitrators are not independent judges but remain practising advocates with potential or actual conflicts of interest. Criticisms of the process include lack of transparency of proceedings, length of proceedings, high legal and arbitration costs and lack of precedents and appeals leading to inconsistent decisions, Third Party funding for cases as speculative investments, and excessively high awards based on dubious calculations of expected future profits.

There have been increasing numbers of claims for compensation for public interest regulation. These include regulation of public health measures like tobacco regulation, patents on medicines, environmental protection, reduction of carbon emissions and regulation of the minimum wage.

Developing countries have been burdened with legal costs and compensation payments amounting to billions of dollars, which can be equivalent to a large proportion of the government's budget. A recent example is the award of US\$5.5 billion to Australian company Tethyan against Pakistan, when Pakistan was experiencing a severe economic crisis and had just received an emergency loan of about US\$5 billion from the IMF. This was also a forum shopping exercise, as the majority owner of the mine was a Canadian company that used its Australian subsidiary to sue because Australia, unlike Canada, has a bilateral investment agreement with Pakistan. The same Canadian mining company has used another Australian subsidiary to launch a case against Papua New Guinea.

Huge awards against developing countries and the use of Australian BITS in forum shopping contradict Australia's commitments to human rights, undermine its aid and development programs, and harm Australia's reputation and relationships with developing countries.

The Clive Palmer threat to use the Singapore-Australia FTA to sue the Australian government shows that current changes in ISDS provisions to prevent forum shopping are not adequate in preventing it.

Some governments are withdrawing from ISDS arrangements, the EU and the US are now negotiating trade agreements without ISDS, and the system is being reviewed by the two institutions which oversee ISDS arbitration systems.

Legal experts and UNCTAD, the body responsible for monitoring ISDS, have recognised the danger of ISDS cases against a wide range of governments' actions taken during the COVID-19 pandemic, and have recommended means of preventing such cases.

Current revised clauses in ISDS provisions in the CPTPP and other agreements are not effective in protecting the rights of governments to regulate since the exclusions only prevent cases in a narrow range of areas, omitting important public policy areas like the environment, workers' rights and Indigenous land rights.

The full submission with references is at

<http://aftinet.org.au/cms/sites/default/files/200929%20AFTINET%20DFAT%20ISDS%20%20submission%20final.pdf#overlay-context=node/1929>.

