BULLETIN November 2022

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1. Introduction

Dear Members,

Please save the date for the on-line AFTINET AGM at 5.30 pm on December 7. Special guest speaker will be Alison Rahill, prominent anti-modern slavery campaigner.

The Labor government has tabled the enabling legislation for the Australia-UK FTA and the India Interim agreement prior to the Joint Parliamentary Standing Committee reports on these agreements. AFTINET will lobby MPs about our concerns with these agreements.

AFTINET has attended a Dept of Foreign Affairs and Trade (DFAT) briefing about the proposed Indo-Pacific Economic Framework (IPEF) and produced a submission to DFAT about IPEF.

Trade news was dominated by Investor-State Disputes Settlement (ISDS) reports, starting with Clive Palmer threatening to sue Australia, the Canadian owners of the Keystone XL pipeline project suing the United States, and the Chilean government trying to stop the ISDS clauses in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) from applying to it. British campaign group Transform Trade highlighted British corporations using ISDS against developing country governments.

The inequality of COVID-19 vaccinations has been highlighted by a World Bank Group executive just as Pfizer has announced it will increase its COVID-19 vaccine prices by over 300 per cent in early 2023.

AFTINET is working with the Australian COVID-19 vaccine campaign group to press the Australian Labor government to support the extension of the June WTO decision for a partial waiver on patent monopolies on COVID-19 vaccines to cover tests and treatments at the December meetings of the World Trade Organisation.

AFTINET relies on your support to continue our campaigns. If you have not already done so, you can renew your AFTINET membership here, and / or donate here.

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

Thanks and keep safe.

The AFTINET Team

2. Save the date - AFTINET AGM December 7, 5.30pm

The AFTINET Annual General Meeting for 2021-22 will be held online on Wednesday, December 7, 2022, at 5.30pm. Members will receive a formal notification and zoom link within the 21 days notice as legally required. Special guest speaker will be Alison Rahill, anti-modern slavery campaigner, who will explain the links between modern slavery laws which attempt to hold corporations accountable for slavery in their production chains and the need for government commitments to labour rights in trade agreements.

3. Government tables enabling legislation for Australia-UK FTA and India interim agreement before JSCOT reports on November 17 and 18

Home Affairs Minister Clare O'Neil introduced the enabling legislation for the Australia-UK FTA and the Interim India-Australia Economic Cooperation Agreement in the House of Representatives on October 27, during the budget sitting week.

The Customs Tariff Amendment (Australia-United Kingdom Free Trade Agreement Implementation) Bill and the Customs Tariff Amendment (India-Australia Economic Cooperation and Trade Agreement Implementation) Bill 2022 were introduced with a very brief introduction, then debate was adjourned.

Minister O'Neil said, "The Joint Standing Committee on Treaties is currently considering this agreement and is scheduled to report in mid-November. This bill is being introduced now to give parliament more time to consider the amendments required to implement this agreement."

The JSCOT reports will be tabled on November 17 and 18, before parliament sits on November 21-December 1. The introduction of the legislation before the JSCOT reports appears to be aimed at pushing the enabling legislation through quickly in that sitting, with little chance to consider the

JSCOT report. AFTINET's submission on the UK agreement is [here]() and on the interim India agreement is [here.]()

AFTINET will write to MPs with a summary of our concerns and ask for appointments in Canberra in the sitting week of November 21, to try to ensure that MPs have all relevant information about the agreements.

4. AFTINET submission to DFAT on the Indo-Pacific Economic Framework (IPEF) and negotiations to be held in Australia in December

As reported in our last Bulletin, the US-initiated Indo-Pacific Economic Framework (IPEF) announced its negotiating objectives on September 9 and negotiations are underway. This is not a conventional trade agreement, as the US is not offering any extra access to their domestic markets.

IPEF is the economic arm of the US economic and strategic rivalry with China in the region. The US is not part of the Regional Comprehensive Economic Partnership (RCEP) of the ten ASEAN countries plus five other countries including China, nor the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) of 11 Pacific Rim countries.

In theory IPEF is partly about lifting labour rights and environmental standards in the region, developing alternative supply chains to those involving China and addressing corruption and tax issues. However the agreements may not be legally enforceable.

The governments involved are the United States, Australia, Brunei Darussalam, Fiji, India, Indonesia, Japan, Republic of Korea, Malaysia, New Zealand, Philippines, Singapore, Thailand and Viet Nam. They hope to attract others, including more Pacific Island countries in addition to Fiji.

See more detail on our website.

DFAT has since called for submissions and has held consultations in several cities with unions, civil society and business groups.

This is more extensive consultation than under the previous government and we hope that this is the beginning of the implementation of the new government's more transparent trade policy. However, the IPEF governments including Australia have agreed to keep the negotiating documents secret for five years after the negotiations finish, which is not compatible with a more open process.

It has now been confirmed that negotiations will be held in Australia in December. We have asked for civil society groups to be able to present our views to negotiators and hope to be able to hold a public forum to prompt wider community discussion about IPEF.

AFTINET's submission is here. It sets out our positive agenda for a more transparent process, including access to negotiating texts. We also advocate for fair trade based on enforceable labour rights and environmental standards, and inclusion of women, Indigenous People and people with disabilities. The submission also argues for the exclusion of negative features of previous trade agreements, like longer medicine monopolies, deregulation of essential services and rights of corporations to sue governments (ISDS).

5. Clive Palmer uses Singapore FTA to revive ISDS claim against Australia

Australian mining magnate and political player Clive Palmer has used his Singapore company, Zeph Investments, to notify the Australian government on October 20, 2022, of its intention to seek compensation over a legal dispute with the WA government about its proposed Balmoral South iron ore project in the Pilbara region of Western Australia.

Palmer had sued the Western Australian government in the High Court over this issue for a claim of A$30 billion, a case that failed in October 2021. This new claim is expected to be even greater. He signalled a similar gambit back in December 2020, but did not follow through at that time.

The claim will be based on the Investor-State Disputes Settlement (ISDS) provisions of the Singapore-Australia Free Trade Agreement (SAFTA), which allows a Singapore (but not a local) investor to sue Australia if a new law or policy reduces the value of its investment.

Palmer is claiming compensation from the Commonwealth because the WA government passed legislation terminating his legal dispute over the Balmoral South iron ore project, which had been running since 2012.

The original WA dispute was with Minerology, an Australian-based company, but Mineralogy is now owned by Zeph investments, registered in Singapore in 2019. This ownership arrangement enables the absurd claim that Palmer is a Singaporean investor.

This is the same "forum shopping" tactic that was used by the US Philip Morris tobacco company when it shifted assets to Hong Kong and used a Hong-Kong-Australia investment agreement to try to sue the Australian government for billions of dollars over Australia's plain packaging law in 2011.

It took over five years and $12 million of taxpayers' money in legal costs for the ISDS tribunal to decide that Philip Morris was not a Hong Kong company and thus to dismiss the case.

The new Palmer claim exposes again the unfairness of the ISDS system. The Singapore-Australia FTA ISDS provisions have clauses which are intended to safeguard against forum shopping, but the Australian government will have to argue before a tribunal that the case not proceed, and so will still incur legal costs. The lack of precedents in the ISDS system means there is no guarantee that the tribunal will decide in the government's favour.

This is yet another example of why ISDS should be excluded from all trade agreements.

Australian Attorney-General Mark Dreyfus said in a statement that the government planned to "vigorously" fight Palmer's claim. It is Labor policy to remove ISDS provisions from existing FTAs where possible, and this case should spur the government into action.

Zeph Investments has 90 days to lodge the claim after giving notice. So far, the claim is not listed on the United Nations Conference on Trade and Development (UNCTAD) database.

6. Pfizer to boost price of COVID-19 vaccine in USA by 300 per cent

According to a Reuters report, Pfizer official Angela Lukin says that the company will sell the COVID-19 vaccine through normal commercial channels, in a single-dose vial, and it will be priced at US$110 – US$130 per dose for adults.

Pfizer began selling the vaccine to the US government at US$19.50 per dose in 5-dose vials, under a contract for 100 million doses. The price increased to US$30.50 per dose in the latest contract in mid-2022. Lukin said that the company is waiting for US government contracts to expire and existing US supplies to run out. Unless the Biden Administration obtains further funding from Congress, government stocks of the vaccine will run out by early 2023. Republicans are blocking the new funding for now.

Pfizer argues that citizens will still get the vaccine for free, but that instead of the taxpayer paying for it, it will be paid for by health insurance companies and employers. But about 30 million US residents are uninsured, and the Biden Administration will be challenged to ensure that they have access to future boosters, treatments and vaccines. Huge numbers will not have access to COVID-19 vaccines as cases again spike in the coming winter.

Pfizer may try to impose any price it achieves in the USA on the rest of the world. In May, Pfizer said it expected its COVID-19 vaccines to bring in about $32 billion in sales for 2022, and reported a 61 per cent increase in profits.

7. Shocking map of our unvaccinated world

In an article for *Pandemic*, Philip Schellekens, a Senior Advisor at World Bank Group, reports there are 2.5 billion unvaccinated people in October 2022. They have not had their first shot. A staggering 90 per cent live in the developing world and 71 per cent in the poorer half of the world. Tracking the COVID-19 unvaccinated across countries rich and poor highlights the regressive outcome of the global vaccination campaign so far.

- **Across World Bank income groups**, we see large disparities that reflect the combined effects of population size and vaccination status. High Income Countries represent 0.3 billion (10 per cent) of the unvaccinated, Upper-Middle-Income Countries 0.5 billion (19 per cent), Lower-Middle-Income Countries 1.2 billion (49 per cent), and Low-Income Countries 0.5 billion (22 per cent).
- **The developing world** accounts for 2.2 billion (90 per cent) of the unvaccinated. Note that the developing world is made up by UMICs, LMICs and LICs – in other words, all countries of the world except the rich ones or the HICs.
- **The poorer half of the world** claims 1.7 billion (71 per cent) of the unvaccinated. Note that the poorer half of the world consist of the LMICs and LICs, which together represent just over 50 per cent of the global population.
- **Sub-Saharan Africa** makes up 34 per cent of the world's unvaccinated and South Asia 21 per cent.

The regressive outcome sometimes attracts the reaction of "so what?", often asserting myths that Schellekens debunks:

- "People don't want to get vaccinated"
- "Developing countries don't need vaccines because infection fatality risk is low thanks to their young demographics"
- "It is too late as developing country populations are already mostly infected and have built their own immune defences"
- "Developing countries have other pressing health needs that require prioritization".

But the pandemic is not over, despite wishful thinking and aspirational declarations to the contrary. The virus is still widely circulating and provoking outbursts that present large risks to vulnerable populations, including the unvaccinated and under-vaccinated. Vaccination remains an important instrument to protect individuals from the risk of severe COVID.

This regressive outcome is an ignominy because all people deserve care, but clinical and public health deserts are all too common as are easily preventable deaths. But with struggle and effort, it is possible to bend the arc and overcome the "failures of imagination" so shockingly demonstrated in the trajectory of the COVID-19 pandemic so far, Shellekens eloquently asserts.

Read the full article with its effective graphics here.

8. Chilean Senate ratifies CPTPP, President Boric wants side-letters to neutralise ISDS

The Chilean Senate ratified the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) on October 11, by 27 votes to 10, amid strong protests from 200 worker and civil society organisations. The Chamber of Deputies had ratified it back in April 2019.

President Gabriel Boric has to execute the ratification, but won't do so until he has negotiated side letters with other CPTPP countries, to ensure that Chile is not subject to Investor-State Dispute Settlement (ISDS) claims from investors from those countries.

Rightist and the Democratic Socialist Coalition want the CPPTP to come into force immediately for Chile, while the President and politicians from the left wing parties which support him want the side letters first.

The CPTPP involves 11 countries: Australia, Brunei Darussalam, Canada, Chile, Malaysia, Mexico, Japan, New Zealand, Peru, Singapore, and Viet Nam. Australia and New Zealand have exchanged side letters agreeing not to allow ISDS claims from their corporations.

The CPTPP came into force for Australia in December 2018. On October 7, after years of critical debate the Malaysian Cabinet decided to ratify it just before dissolving parliament and calling an election, prompting criticism from civil society groups. Brunei Darussalam has yet to ratify.

9. Transform Trade reports expose British companies suing developing countries

The UK-based *Transform Trade - People centred trade* report and its associated legal research report – *Foreign Investment, Human Rights and the Climate in the UK – Asymmetric Legal Protection* – hit two powerful themes – people's action is transforming international trade and can do much more; and British law enables British corporations to cruelly exploit ISDS in bilateral investment agreements for super profits.

The first report focuses on communities working in sectors that export to the UK and other global markets, and recommends reforms that build on current initiatives for ethical investment, more transparent supply chains, alternative ownership models like cooperatives, and better national legislation and UN agreements to reduce or eliminate unfair trade.

The second report reveals the hard edge of British capital in today's global trading system.

"There is a huge disparity between the legal rights afforded to UK companies investing abroad, and the legal responsibilities placed on them to respect human rights and the climate in their overseas operations. This amounts to an unacceptable double standard in the treatment of corporations compared to those people whose rights are violated," it concluded.

The UK has 93 Bilateral Investment Treaties (BITs) in force containing Investor-State Dispute Settlement (ISDS) provisions, with countries ranging from Singapore and China to impoverished Senegal, Bangladesh, and war-torn Yemen. Of the published ISDS cases the UK is the third most frequent home country of corporations seeking damages against other governments. In the last decade, UK corporations have brought 66 ISDS claims and the number is increasing. As well, the UK is hosts the highest number of "third party funders" of ISDS cases, who finance other corporations to make ISDS claims.

ISDS claims are for alleged lost future profits because of a new government law or policy, and can impoverish poor countries. Even the threat of ISDS claims often makes governments back away from action in the public interest.

In 2021 World Natural Resources brought a case against the Republic of Congo (recognised by the UN as a Least Developed Country) for US$450 million. In the same year, Anglo-American brought a case against Colombia over a Constitutional Court suspension of a coal mine expansion which involved diverting a river, impacting on the ecosystem and water supply to the local indigenous communities, who had initiated the court action.

In contrast, UK law relating to British companies upholding human rights when investing overseas is strikingly undeveloped, and in relation to climate change is almost non-existent. As a result in the last decade there have been only 17 such cases, and all failed at an early stage or were settled out of court.

10. Fossil Fuel corporations use ISDS against climate action - podcast

This 41 minute podcast from *the Conversation* explains how an obscure investment provision in many trade agreements is being used by the fossil fuel sector to block action to cut carbon emissions.

The podcast explores the potential for Investor-State Dispute Settlement (ISDS) clauses in investment and trade agreements to jeopardise global efforts to save the climate – costing countries billions of dollars in the process.

In April 2022, a summary report by the UN's Intergovernmental Panel on Climate Change singled out ISDS clauses saying that they may "limit countries' ability to adopt trade-related climate policies" and stick to their commitments under the 2015 Paris Agreement.

In a recent study, Prof Kyla Tienhaara and her colleagues estimated that countries could face up to US$340 billion in financial and legal risk from cancelling fossil fuel projects covered by ISDS clauses.

Some countries are more vulnerable than others because of the nature of the contracts they've entered into. Mozambique, with its large gas and coal reserves, is particularly so.

An analysis of 29 of the country's mega-projects for gas, coal and hydrocarbons found that the vast majority are covered by ISDS clauses. This means that "the company can directly go and initiate an arbitration against Mozambique" if it feels a government policy has negatively affected its investment.

In 2016, Italy banned oil drilling up to 12 nautical miles off its coast, which blocked the UK Rockhopper Exploration's drilling of the offshore Ombrina Mare field in the Adriatic Sea. Rockhopper successfully sued Italy using ISDS in the Energy Charter Treaty.

There is a fight back against ISDS, including moves to reform the Energy Charter Treaty, and many countries are moving to limit their risk from ISDS climate arbitration.

11. Keystone XL pipeline company proceeds with $15 billion ISDS claim against US government for environmental regulation

An international arbitration panel appointed on September 21 will hear the claim of TransCanada Corporation for $15 billion compensation against the US government because it revoked a permit for the Keystone XL pipeline, claiming it would cause environmental damage. The pipeline is opposed by Native American, farmer and other local communities because the pipeline aimed to transport to the US Gulf Coast up to 830,000 barrels per day of highly corrosive crude oil extracted from tar sands in Alberta, Canada. It would traverse more than a thousand rivers, streams, lakes and wetlands across six US states.

The claim was made under Investor-State Dispute Settlement (ISDS) provisions in the North American Free Trade Agreement (NAFTA) and the US-Mexico-Canada Agreement (USMCA). It follows a previous claim made in 2016 by the same company when the Obama administration revoked the licence, which was subsequently restored by the Trump administration, then revoked again by the Biden administration. The pipeline would also create new demand for intensified carbon-intensive tar-sands extraction and processing in a context where the US, Canada and other governments are phasing out fossil fuels to reduce carbon emissions.

The $15 billion claim includes future lost profits and is three times the existing investment in the project. This is another example of fossil fuel companies' strategic use of ISDS to claim massive amounts of compensation to discourage government regulation which seeks to reduce environmental damage and carbon emissions.

12. AFTINET in the Media

On October 5 AFTINET's media release on the Indo-Pacific Economic Framework (IPEF) secrecy document was quoted in The Mandarin.