



BULLETIN April 2023

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1. Introduction

Dear Members,

After three years, AFTINET is at last able to hold our fundraising Trade Justice Dinner, and we hope to see many members and supporters living within reach of Sydney at the Cyprus Club in Enmore on Tuesday May 16, for delicious Greek food with our Guest Speaker, Assistant Trade Minister Senator Tim Ayres.

AFTINET has campaigned persistently against Investor-State Dispute Settlement (ISDS) in trade agreements since it was founded in 2000. We had a victory this month when Australia and the UK agreed that they would not allow ISDS cases against each other through the UK’s membership in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

Echoing AFTINET’s concerns, the Indian government has given notice to terminate 68 Bilateral Investment Treaties with ISDS clauses in them, and to negotiate new investment agreements with less rights for investors and more safeguards for government rights to regulate.

But at the same time Clive Palmer used his Singapore-based mining companies to use ISDS in the Australia – New Zealand – ASEAN Free Trade Agreement to sue Australia for \$300 billion, an absurd case, but one that will cost millions to defend. This underlines the urgency of implementing the Labor government’s policy to remove ISDS from trade agreements.

Meanwhile, the US-initiated Indo-Pacific Economic Framework of 14 countries has held a negotiating round in Bali, and the US Trade Representative has published summaries of some US asks.

The COVID-19 pandemic continues, and the World Health Organisation (WHO) is now negotiating a Pandemic Preparedness Treaty to try to avoid the gross loss of life due to unequal access to vaccines, tests and treatments during COVID. In early March, 204 eminent global figures wrote an open letter on the [third anniversary](#) of the declaration of the COVID-19 pandemic by the World Health Organisation (WHO), calling for governments to act now, starting with embedding human rights in the proposed WHO treaty.

AFTINET does not receive any corporate or government funding, and 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 to AFTINET [here](#).

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

Thanks and keep safe.

The AFTINET Team

2. AFTINET Trade Justice Dinner 2023

We hope you'll join us for an evening of delicious Greek food, entertaining speakers and great company at the return of our annual fundraising dinner. All proceeds will support AFTINET's trade justice campaigns.

6pm, Tuesday May 16, 2023

Meraki Restaurant, Cyprus Club, 76 Stanmore Road, Stanmore 2048

Directions: The club has car parking for 200. Bus routes 423, 426, 428, 430 from Martin Place via Railway Square stop at the corner of Enmore Rd and Stanmore Rd, 5 minutes' walk from the club, as does 355 from Bondi Junction.

\$79.50 per person

Vegetarian/Vegan options | Bar Available

Please pay by Wed May 10, 2023 <https://www.trybooking.com/CGRZM>

Special guest speaker: Senator Tim Ayres



Assistant Minister for Trade and Assistant Minister for Manufacturing

Tim was elected as a Senator for New South Wales in 2019. During the 46th Parliament, he was Chair of the Senate Standing Committee on Finance and Public Administration and Member of the Foreign Affairs, Defence and Trade Joint Standing Committee. His office also hosted parliamentary forums on trade justice issues organised by AFTINET.

Before entering Parliament, Tim spent twenty-four years in the trade union movement, representing the interests of workers across a variety of sectors including manufacturing, defence, food processing, aviation and metal industries.

He held several elected leadership roles in the Australian Manufacturing Workers' Union, including NSW State Secretary.

3. Campaign victory: Australia and the UK agree not to apply ISDS in Trans-Pacific deal

Foreign investor rights to sue government (Investor-State Dispute Settlement - ISDS), which was excluded from the recent Australia-UK Free Trade Agreement, will not apply between Australia and the UK when the UK joins the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

In early April the UK government published an [explanatory document](#) which confirms that “In light of the investment relationship the UK has with Australia and New Zealand, we have agreed to disapply the ISDS provisions in CPTPP between our countries.”

Strong community opposition in Australia and the UK led to the exclusion of ISDS from the Australia-UK Free Trade Agreement, but this would have been reversed if both countries agreed to apply the ISDS provisions in the 11-member CPTPP.

If ISDS had not been excluded, British companies would have been able to sue the Australian government over law or policy changes, including regulation of carbon emissions and other environmental standards. There have been increasing numbers of ISDS cases by fossil fuel companies against [regulation of carbon emissions](#).

Since the late 1980s, British companies have lodged [90 claims](#) against foreign governments using ISDS provisions – the third-highest number after US and Dutch companies. British oil and gas miner [Rockhopper Explorations](#) recently won £210 million plus interest (about A\$360 million) in compensation for lost future profits over Italy’s 2015 ban on oil and gas drilling within its territorial seas. UK-based fossil-fuel investors in Australia include [Anglo American](#), [BP](#) and [Shell](#).

AFTINET successfully [campaigned](#) for side letters between Australia and the UK that would rule out ISDS cases between the two countries. Australia already has a similar [side letter](#) with New Zealand.

4. Clive Palmer using ASEAN Free Trade Agreement to sue Australia for \$300 billion shows need for ISDS to be removed from trade agreements

In early April, it was confirmed that Clive Palmer is claiming [\\$300 billion in an international tribunal](#) to compensate for legislation passed by the Western Australian Parliament to [remove his ability to extract damages from the state regarding the Balmoral South Iron Ore Project](#) in the Pilbara. His claim has already failed in the High Court.

Palmer is using Investor-State Dispute Settlement (ISDS) clauses in [Australia’s 2010 free trade agreement with New Zealand and ten ASEAN countries](#). ISDS enables foreign (but not local) investors to claim damages from governments if they can argue that a change in law or policy has reduced their future profits. Palmer shifted company assets to Singapore to claim his company is a Singapore entity.

The Labor government has [reaffirmed its policy](#) to exclude ISDS in new trade agreements and to review its inclusion in existing agreements.

In a media release, AFTINET said, “The Clive Palmer ISDS case shows Labor needs to do more to implement its policy against ISDS and to review its inclusion in existing agreements.

“It is absurd when an essentially Australian company is able to bypass a High Court decision and launch a claim for \$300 bn against the Australian government from Singapore,” said Dr Ranald.

“A [review of the ANZ-ASEAN agreement](#) is now underway but it is too late to prevent this case, which will cost the government millions to defend, like the [Philip Morris case](#) against tobacco regulation.

“The Palmer case shows the urgency of swift implementation of government policy against ISDS.”

See Dr Patricia Randal’s analysis in [The Conversation](#).

5. US agenda revealed at IPEF talks in Bali

The US Trade Representative Katherine Tai has published summaries of US proposals at the recent Bali round of negotiations for the Indo-Pacific Economic Framework (IPEF), revealing US pressure on the other 13 states to adopt US standards. At the same time the US Congress is yet to determine the IPEF agenda on the “digital economy”.

[IPEF](#) includes the US, Australia, Brunei, India, Indonesia, Japan, the Republic of Korea, Malaysia, New Zealand, the Philippines, Singapore, Thailand, Fiji and Vietnam.

[Katherine Tai](#) told a congressional committee on March 24 that global rules around digital trade are out of date but that efforts to advance them through negotiations like IPEF are inhibited because Congress has yet to enact its own regulations, particularly on topics like data privacy.

“Our ability as negotiators to take forward steps is going to be impacted by and really limited by how far you as legislators have been able to go in terms of establishing regulatory frameworks that are critical to the digital economy,” Tai told Rep [Suzan DelBene](#) (D-Wash).

Mega tech companies have been prominent in creating the digital trade agenda in IPEF. Current trade rules favour deregulation of data flows and digital companies despite recent cyber hacking of customer data, rapid development of Artificial Intelligence (AI) and other examples, which show that more, rather than less regulation is needed.

The [official US summaries](#) of their inputs at Bali on March 13-19, 2023, covering Agriculture, Services Domestic Regulation and Customs and Trade Facilitation, revealed that IPEF states would have to invest heavily in online systems that will benefit exporters of goods and services from the advanced economies in the group – the US, Australia, New Zealand, Japan and South Korea.

This focus could distort spending priorities of low-income IPEF member states who may wish to prioritise education, health and climate action, for example, ahead of trade.

The Agriculture section aims to expand export and import of food in the region, while saying that governments should be able to ensure health for plants, animals and communities, and food security. The emphasis is on transparency in import licensing procedures for agricultural products and certification requirements, to ensure that any requirements for importation are clearly communicated to regional agricultural producers. The purported concern to promote food security in the region is undercut by talk of “disciplines” against export restrictions.

The Services Domestic Regulation section is an extension of the December 2021 Joint Statement Initiative on Services Domestic Regulation by some World Trade Organisation (WTO) member states, which is a ‘coalition of the willing’ that has agreed on new standards with limited participation of developing nations. Its goal is to enable US service providers to use online systems to acquire all licenses and authorisations needed to operate in another country.

Customs and Trade Facilitation also aims to reduce red tape and costs by requiring governments to make all their forms available online and to receive them, and other supporting documents

electronically. Governments must also process pre-arrival information in a single window with a view to releasing goods upon arrival.

The Good Regulatory Practices proposal aims to expand on-line access to relevant information, including information about registries of existing laws, the procedural requirements of regulatory authorities, websites where draft regulations are posted and comments accepted, and the acceptability of electronic documentation, where appropriate.

The US plans to release summaries of other aspects of IPEF Pillar 1 - Trade, including on labour rights and environmental standards.

6. India asks 68 countries to renegotiate ISDS in Bilateral Investment Treaties

The [Times of India](#) has reported that India has issued termination notices to 68 countries for Bilateral Investment Treaties (BITs) with a request to renegotiate on the basis of the model agreement formulated in 2015.

These 68 BITs were based on a 1993 model which had been amended in 2003. Alarmed at actions taken against it using the Investor-State Dispute Settlement (ISDS) provision in these BITs, the Indian government developed a new model for investment treaties in 2015. India has a further six BITs under the old model, but these are not yet open for a notice of termination. There are two BITs negotiated since 2015, on the new model, and these are in force.

Minister of State for External Affairs Rajkumar Ranjan Singh said the government has signed a host country agreement with the Permanent Court of Arbitration (PCA) for establishing a regional office in India. His Ministry is now working with the United Nations Commission on International Trade Law (UNCITRAL), the PCA and other agencies to develop their capacity to manage international arbitration challenges.

Under the [2015 model](#), the controversial Most Favoured Nation clause was removed, and the scope of clauses on National Treatment and Fair and Equitable Treatment is considerably narrowed.

Although ISDS – which allows investors to initiate international arbitration against states and thereby bypass domestic courts entirely – has been retained, access to ISDS comes only *after* the exhaustion of the relevant domestic courts for the resolution of an investment dispute.

The 2015 model provides an exhaustive list of economic, environmental and social measures which are exempt under the treaty. This includes taxation, intellectual property rights and measures to protect macroeconomic stability.

The current move to terminate 68 BITs follows a 2016 attempt to terminate 57 BITs. The India-Australia BIT was terminated by India on March 23, 2017, but it has an extraordinary grandfather clause that means its provisions apply to investments made before that date for another 15 years. [The Indian Adani coal company](#) threatened to use ISDS to sue the Australian government if its investments made before the termination were harmed by government regulation.

The Interim Australia – India Economic Partnership Agreement signed in 2022 did not have an Investment Chapter and so did not contain ISDS. AFTINET is campaigning to have [ISDS excluded](#) from the current negotiations for the Australia – India Comprehensive Economic Cooperation Agreement. The Labor government has a [policy](#) to exclude ISDS from new trade agreements and to review ISDS clauses in previous agreements.

7. AFTINET calls for human rights, labour rights and environmental standards in Southeast Asia Strategy 2040

The Department of Foreign Affairs and Trade (DFAT) has called for submissions for the Government's proposed [Southeast Asia Strategy 2040](#).

Despite the long-term time frame of the strategy, there is no reference so far to inequality in the region or to human rights, labour rights or environmental standards.

The strategy will not take the form of a legally enforceable trade agreement, but is likely to be a series of Memoranda of Understanding to increase Australian trade and investment in the region. The strategy will include topics like supply chains, green economy/environment, agriculture and digital trade. These will sit alongside trade agreements like the Australia-ASEAN-NZ FTA and the Regional Comprehensive Economic Partnership (RCEP).

The [AFTINET submission](#) argues that the strategy should include the [Government's goals](#) consisting of justice and equality, sharing the benefits of increased trade and investment, and the need to reduce carbon emissions.

The submission notes that seven of the ten ASEAN countries are also involved in the Indo-Pacific Economic Forum (IPEF). This is also not a traditional trade agreement. However, human rights, labour rights and environmental standards are included in the negotiating goals, even if it is not clear how they will be implemented.

The submission provides evidence of deficits in both commitments and implementation of human rights and labour rights in some ASEAN countries, and serious violations, including imprisonment and unlawful killings in Myanmar, Cambodia, the Philippines, and Indonesia (West Papua).

The submission recognises that ASEAN trading partners include developing countries and least developed countries and that they will require cooperation and support to implement these standards over time, including specific support from Australia's Official Development Assistance programs.

These commitments should ultimately be incorporated into legally enforceable trade agreements with the same access to dispute settlement as other chapters in those agreements.

8. "Never again" response to COVID-19 pandemic profiteering, world figures warn

The [People's Vaccine Alliance](#) issued a [letter](#) by 204 eminent global figures on March 11, 2023, the [third anniversary](#) of the declaration of the COVID-19 pandemic by the World Health Organisation (WHO), calling for governments to act in four ways:

- **Support a Pandemic Accord** at the WHO that embeds equity and human rights in pandemic preparedness and response. To do so, it must commit governments to waive relevant intellectual property rules automatically and ensure the sharing of medical technology and knowledge when a Public Health Emergency of International Concern is declared.
- **Invest in scientific innovation and manufacturing capacity in the Global South** through projects like the mRNA Technology Transfer Hub established by WHO and partners. Governments, companies, and international institutions should provide political, financial, and technical support to these initiatives to maximise production and supply for all.
- **Invest in global common goods.** Public funding delivered miracles in the COVID-19 pandemic. But publicly financed medical innovations should be used to maximise the public benefit, not private profits. They should not be locked behind patents. All governments should invest more in public research and development, and place strict requirements for

publicly funded medical technologies developing from that investment to be affordable and accessible to everyone, everywhere.

- **Remove the intellectual property barriers that prevent knowledge and technology sharing.** Governments at the World Trade Organization (WTO) took too long and did too little to address this barrier for COVID-19 vaccines. WTO members should move to approve an intellectual property waiver for COVID-19-related vaccines and extend that decision to cover COVID-19 tests and treatments.

The Nobel laureate Joseph Stiglitz, former first lady of South Africa and Mozambique Graça Machel, former UN secretary general Ban Ki-moon, Timor-Leste President Jose Ramos Horta, and Helen Clark, former Prime Minister of New Zealand, are among the signatories who called on governments to “never again” allow “profiteering and nationalism” to come before the needs of humanity, in the wake of the coronavirus pandemic.

These current and former presidents and ministers, Nobel laureates, faith leaders, heads of civil society organisations and health experts say COVID-19 vaccines and treatments had been [developed with public funding](#) but that pharmaceutical companies had exploited them to “[fuel extraordinary profits](#)”.

Instead of distributing vaccines, tests and treatments based on need, companies [sold doses](#) to the “richest countries with the deepest pockets”, the letter says. Research estimates that at least 1.3 million lives could have been saved in the first year of the vaccine rollout alone. “That lives were not saved is a scar on the world’s conscience,” the letter continues.

“With these [four] actions, world leaders can begin to fix the structural problems in global health that have held back the response to COVID-19, HIV / Aids, and other diseases,” says the letter. “It is time to embed justice, equity and human rights in pandemic preparedness and response. Only then can we truly turn the page on this chapter of history and say, ‘Never again.’”

The four demands echo those from AFTINET and public health, church, and development organisations in a letter to the [Albanese Labor government in February](#). [The Guardian](#) reported on the letter.