



BULLETIN

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Introduction

Dear members,

The JSCOT and Senate inquiries continue as we move closer towards a parliamentary vote on the TPP-11 implementing legislation. AFTINET presented [evidence](#) to the TPP-11 Senate Inquiry hearing on July 30 and has coordinated a [letter](#) signed by 49 community organisations, which has been sent to all Labor parliamentarians. The letter shows how the TPP-11 gives more rights to global corporations and contradicts Labor policy which opposes ISDS, supports the government's right to provide and regulate essential services, opposes removal of labour market testing for temporary overseas workers, and supports fully enforceable labour rights and environmental standards, and the use of government procurement to encourage local industry development.

The FOI request by Senator Rex Patrick finally forced the government to reveal the \$39 million in legal costs spent to defend Australia against the ISDS case brought by Philip Morris over the tobacco plain packaging law. The serious problems with ISDS led to its exclusion from the recently-signed EU-Japan Economic Partnership Agreement, and its inclusion in the EU – Canada Comprehensive Economic and Trade Agreement is still causing obstacles to ratification by EU states. In other news, the RCEP negotiations face continuing concerns over secrecy, impact on

medicine prices, and on manufacturing and services. Finally, Trump's destructive tariffs have provoked retaliatory tariffs, opening up a trade war.

Happy reading.

49 community organisations ask Labor politicians to oppose TPP-11 implementing legislation

AFTINET has coordinated a [letter](#) endorsed by 49 community organisations showing how the TPP-11 contradicts Labor Policy. The letter has been sent to all Labor parliamentarians.

The letter explains that, following US withdrawal from the original Trans-Pacific Partnership (TPP-12), a rebadged version of the agreement has emerged, known as the TPP-11. The TPP-11 suspends, but does not delete, some of the worst clauses on longer monopolies on biologic medicines, but these could be resurrected if the US returns to the agreement. The TPP-11 still contains the following provisions, all of which contradict Labor's [Trade Policy](#) Platform:

- [special legal rights for foreign investors to bypass national courts and sue governments](#) in unfair international tribunals if they could argue that a change in law or policy harmed their investment, known as Investor-State Dispute Settlement (ISDS).
- Restrictions on [the ability of future governments to regulate essential services](#) and to restore regulation in the event of the failure of deregulation or privatisation.
- Increases in the numbers of [vulnerable temporary migrant workers](#) from TPP countries without first testing if local workers were available.
- Lack of enforceable [labour rights](#) and [environmental standards](#). The chapters on labour and environment were weak and not legally enforceable in the same way as other chapters in the agreement.

The letter asks Labor parliamentarians to vote against the TPP-11 implementing legislation when it comes before the parliament in the coming months. Letters are also being sent to Greens, Centre Alliance and independent parliamentarians.

Canadian union leader blasts phony labour chapter in TPP-11

[Canadian union leader Lana Payne](#), from the manufacturing union Unifor, has blasted the Canadian government for its claim that the Trans-Pacific Partnership – 11 is more “progressive” than the original TPP-12. Payne said the labour chapter is even weaker than in the original TPP-12.

Originally drawn up by US negotiators, the TPP labour chapter includes legal tests that had already failed when used by a panel of arbitrators overseeing an historic labour dispute between the US and Guatemala. The panel found that none of the documented labour violations in Guatemala (including the murder of union organisers) occurred “in a manner affecting trade” or that the events in question were “sustained or recurring” — two critical tests outlined in the chapter. As a result, Guatemala faced no trade penalty or trade sanction.

Payne argued that keeping these legal tests in the TPP-12 and TPP-11 makes it very unlikely that any government would be subjected to trade penalties if they violate labour rights.

When the TPP-11 was settled in March this year, another specific TPP-12 clause was suspended. It had allowed government and other public entities that purchase goods and services to require contractors to comply with basic labour standards as a condition of procurement.

As well, the TPP-11 deleted ‘action plans’ or ‘side letters’ with Brunei, Malaysia, and Vietnam, initiated by the US, which required more organising and bargaining rights for workers in those

countries. Payne said that overall, labour rights in the TPP-11 are weak, and in practice not legally enforceable in the same way as other chapters in the agreement.

RCEP talks continue amid community opposition – medicines, ISDS, jobs, secrecy

On July 1, [Regional Comprehensive Economic Partnership trade ministers](#) met in Tokyo in an effort to maintain political momentum to reach an agreement by the end of 2018. The RCEP involves the 10 ASEAN countries, plus China, India, Japan, South Korea, Australia and New Zealand.

The Ministers ordered RCEP negotiators meeting later on July 17-27 to improve their market access offers to enable an outcome to be announced at the November ASEAN Summit.

[Negotiations for the proposed RCEP began in 2012](#), and have struggled over tariffs, trade in services and investment rules, as well as protection for intellectual property rights. Japan and South Korea have led the push for wording from the Trans-Pacific Partnership, which increases corporate monopoly rights on medicines and includes investor-state dispute settlement (ISDS) to allow foreign investors to sue governments over public interest laws and policies.

As the formal RCEP negotiations were underway in Bangkok – July 17-27 - the [Jakarta Post](#) reported that an expert study by the [Trans National Institute](#) (TNI) has found that the RCEP negotiations since 2013 have failed transparency and public participation tests. There has been a failure to release draft texts, no independent social economic and environmental impact assessments and corporate interests have had privileged access to influence negotiations while members of Parliament and the public do not have such access. The authors of the TNI report argue that, with a global trade war looming and public faith in corporate globalization at an all-time low, secrecy in trade deals cannot be accepted. People have a right to know what is being negotiated in their name. See the short video from Friends of the Earth [here](#).

[Representatives from over 80 civil society groups](#) met in Bangkok, but were allowed only a brief meeting with some negotiators on July 17, with no access to draft texts. [They held a public event on July 20](#) to denounce secrecy and pro-corporate provisions in the RCEP. [Regional civil society](#) also gathered in Hyderabad, India, on July 25, to reject RCEP, and launch a new report titled [Reclaiming Public Services – how cities and citizens are turning back privatisation](#), which documents how ISDS cases have been used to prevent governments from reversing privatisation disasters. On July 27, the [Japanese Trade Minister](#) announced that only two further RCEP chapters had been concluded – customs procedures and trade facilitation, and government procurement.

Leena Manghaney from Doctors without Borders (MSF) wrote in the [Bangkok Post](#) that, after six years and 23 rounds of RCEP negotiations, Japan and South Korea are still proposing stronger monopolies in addition to the standard 20 year monopoly for new medicines.

She said that India has long been called the "pharmacy of the developing world", using flexibilities under existing WTO rules to supply affordable generic versions of medicines patented elsewhere. But this model is under threat from the Japanese and South Korean proposals.

These proposals would further delay the availability of cheaper generic forms of medicines for half of the world's population in the 16 RCEP countries, which include several of the poorest countries in the region.

The article urged India and the ASEAN countries to stand firm against such proposals. [AFTINET and public health groups in Australia](#) and other RCEP countries have also urged the Australian and other governments to oppose them.

Finally revealed: government legal costs of \$39 million in Philip Morris ISDS case

Centre Alliance [Senator Rex Patrick](#), late on Friday June 29, succeeded in obtaining the [total legal costs](#) to Australia of defending its tobacco plain packaging laws in the case brought by Philip Morris tobacco company against the Australian Government under investor-state dispute settlement provisions.

The cost was \$38,984,642.97.

Senator Patrick said he is blown away by this mammoth cost to the taxpayer. "This is exactly why Australia must stop signing up to Free Trade Agreements with these insidious ISDS provisions in them."

In 2012 the High Court determined the tobacco plain packaging law was constitutional. But Philip Morris had also shifted some assets to Hong Kong, claiming to be a Hong Kong company, and used the ISDS provisions in an obscure investment agreement between Australia and Hong Kong to try to bypass the High Court's decision.

The case was heard by a tribunal of investment lawyers meeting in Singapore.

"Thankfully Australia won the case because the tribunal found it was not truly a Hong Kong company, but only after four years and \$39 million in legal costs," said Senator Patrick.

"I accept the Government had to defend the matter, but if we hadn't signed up to the Hong Kong agreement with ISDS provisions in it then there would not have been a tribunal hearing. Imagine what health outcomes could have been achieved with that \$39 million."

Senator Patrick ran the case in the Administrative Appeals Tribunal because both the Australian government and Philip Morris refused to divulge the costs at the time of the decision in 2016, and then the Turnbull government appealed the Information Commissioner's decision that the costs should be revealed. Sydney Barrister Mandy Tibbey and Solicitor Stephen Blanks prosecuted the case *pro bono*.

The TPP-11 agreement, which is currently being examined by a Senate inquiry, has ISDS provisions. It exposes Australian taxpayers to tens of millions of dollars in legal fees and potentially billions in damages in the event that the Australian parliament makes changes to laws that don't suit foreign companies. The European Union no longer includes ISDS provisions in its trade negotiations, including the current talks with Australia, because the European Court of Justice found them to be incompatible with EU law and national sovereignty.

ISDS causes problem for EU-Canada agreement, not in new EU-Japan agreement

AFTINET has previously reported on [decisions in 2017 and 2018 by the European Court of Justice](#) which found that foreign investor rights to sue governments in international tribunals (ISDS) was incompatible with national sovereignty and EU law. This means the European Parliament cannot decide to ratify agreements containing ISDS, and that each national government has to vote on ratification of agreements if they contain ISDS. These decisions followed strong European public opposition to ISDS.

Since these decisions, fearing that national parliaments will oppose deals containing ISDS, the [EU has decided not to include ISDS](#) in its recently-begun negotiations with Australia and New Zealand.

The CETA between Canada and the EU was finalised in 2016, before the European Court decisions, and included ISDS, but had not been ratified. To prevent rejection of the whole agreement by national parliaments, the European Council took a decision to apply the non-ISDS parts of the agreement provisionally from September 21, 2017. Canada has also agreed to this arrangement. This means that tariff reductions and other chapters of the agreement have been applied from that date. However, all EU national parliaments must ratify the whole agreement, including ISDS, before CETA with can be formally concluded by the European Council.

According to the official [EU website](#), as of 20 June 2018, only 10 of the 27 EU states had ratified CETA with ISDS, and the [Italian government](#) has recently announced that its majority in the Parliament will oppose ratification.

If any states fail to ratify, only the non-ISDS parts of the agreement will continue to apply on a provisional basis. This is yet another demonstration of the growing opposition to ISDS in trade agreements.

The [EU-Japan Economic Partnership Agreement](#) was signed in Tokyo on July 17, and it does not include ISDS, but set aside “investment protection standards and investment protection dispute resolution” for separate future negotiation.

Explainer: Where is the Trump trade war heading and what’s the alternative?

July 25, 2018: The US Trump administration is escalating its America First strategy of using its power as the world’s strongest economy to get more benefits for US corporations from individual trading partners, in the hope of domestic political advantage in the mid-term Congressional elections due in November 2018. But there are long-term consequences for the global economy and the global trading system.

The biggest exporters in the world – Europe, China, Japan – are alarmed at the escalation of tariffs and threats of more tariffs by the US, and they are prepared to hit back with their own higher tariffs. So the trade war has now begun.

So far, the tariffs – taxes on imports - are relatively small in scope, but this is definitely only the beginning. Australia has so far avoided any direct impact, but the [weakening Australian dollar](#) is an indirect impact.

On June 1, the US imposed a 25 per cent tariff on Chinese steel and a 10 per cent tariff on Chinese aluminium imports. Then on July 6, the US imposed a 25 per cent tariff on a wider range of Chinese exports, from farming ploughs to semiconductors and airplane parts. In response China imposed a 25 per cent tariff on US\$34 billion of soybeans, pork and other imports from the USA.

On June 1, the US imposed similar tariffs on the €6.4 billion of steel and aluminium from the European Union, and in response on June 22 the EU imposed tariffs on €2.8 billion worth of U.S. goods, including steel and aluminium products, farm produce such as sweetcorn and peanuts, bourbon, jeans and motor-bikes.

[Canada and Mexico](#) were also hit by the US steel and aluminium tariffs on June 1. Mexico retaliated on June 6, with tariffs on US\$ 3 billion worth of US steel, pork, apples, potatoes, bourbon and cheeses. On July 1, Canada imposed tariffs up to 25 per cent on US\$12.5 billion of steel, aluminium and agricultural imports from the USA.

[Japan has been hit](#) with the US steel and aluminium tariffs. It has suggested retaliation with tariffs on US\$450 million of US imports, but they have not so far been applied.

The US is preparing to escalate tariffs further on US\$200 billion in trade with China, in response to the Chinese counter-tariffs. On top of that, President Trump has said he is prepared to impose tariffs on all Chinese imports – worth about US\$500 billion.

Trump has also floated a proposal for a 20 or 25 per cent tariff on European automobiles and auto parts, and in response the EU has suggested it could hit US\$300 billion of US auto imports with a 25 per cent tariff.

At the G20 meeting in Argentina, the [International Monetary Fund warned](#) that the currently applied tariffs would shrink global trade and reduce global economic growth by 0.5 per cent of US\$450 billion, by 2020, and that the impact of the additional threatened tariffs would be far greater.

[US Treasury Secretary Steve Mnuchin](#) told the Europeans at the G20 meeting: "If Europe believes in free trade, we're ready to sign a free trade agreement with no tariffs, no non-tariff barriers and no subsidies. It has to be all three".

Ironically, the formula of no tariffs, no non-tariff barriers and no subsidies is the fundamentalist neo-liberal free trade program, urged on others but seldom completely applied by industrialised economies in practice. The US has never applied all of these rules to its own economy. For example, the US continues to pay extensive agricultural subsidies to individual farm businesses and has many non-tariff regulations at the Federal and state government level, for local industry development. These range from government procurement policies that favour local firms to the use of locally-built and staffed ships for coastal trade. Australia has been one of the few economies to apply most of the neo-liberal agenda, at the expense of manufacturing industry and a more diverse economy.

The Trump tariffs appear to be a negotiating gambit aimed at a re-balancing of global trading patterns. As indicated in Mnuchin's statement about a free trade deal with Europe, the goal is to enhance the US economy at the expense of major trading partners, after which the tariffs would be withdrawn. Trump's [meeting](#) last week with European Trade Commissioner Jean-Claude Juncker revealed this tactic, with an agreement to begin discussions about de-escalating some aspects of the tariff war and discussing other trade issues.

[China, Japan, India, Canada and the European Union](#) have lodged formal disputes with the US in the World Trade Organisation, over the steel and aluminium tariffs. The US has made the preposterous claim that the tariffs are justified by national security concerns. Trump has also hinted that the [US could withdraw from the WTO](#).

The WTO is the global trade institution with 164 members, which was intended in theory to develop a rules-based trading system that places some restraints on the power of the largest industrialised economies and allows participation by medium-sized economies like Australia and smaller developing economies. The WTO has a disputes and appeals process which is intended to prevent trade wars. The Trump administration has undermined the disputes process by blocking the appointment of members of its appeals panel.

In practice, the WTO has been dominated historically by the most powerful industrialised players, the US, the EU and Japan. More recently, emerging economies like Brazil, Russia, India, China and South Africa (the BRICS) have exerted more bargaining power. They and less-developed economies have rejected fundamentalist policies and demanded flexibilities that allow them more room for development.

This has led to a stalemate in WTO negotiations with very few agreements reached since 2003. Instead of trying to negotiate with all WTO members, the industrialised countries have developed bilateral and regional agreements in which they have greater bargaining power, like NAFTA and the

TPP, and sectoral agreements like the Trade in Services Agreement (TiSA). Trump is moving away from these deals in favour of a more naked exercise of US bilateral bargaining power.

We need fair trade rules as an alternative to both neoliberal fundamentalism and Trump-style unilateralism. Such rules should apply to all countries and potentially restrain the market domination of the most powerful players. The WTO in its current form is not playing this role.

Trade can improve peoples' lives if it is part of an economic policy that delivers employment and higher living standards in an environmentally sustainable society that rejects discrimination and respects human rights. This need not mean a return to high tariffs, but should enable expanded trade combined with active industry policies that deliver a range of jobs in manufacturing, services, agriculture and other sectors, supported by high quality education, health and other services.

Trade rules should be negotiated openly and democratically in a system that includes all governments and provides for the specific needs of developing countries. Trade agreements should not prevent governments from regulating in the public interest. They should not strengthen monopolies on medicines nor give additional legal rights like ISDS to global corporations that already have enormous market power. Finally trade agreements should be based on internationally agreed upon and fully enforceable labour rights and environmental standards to counter the global race to the bottom on these standards.

TPP-11 at Sydney Original Politics in the Pub, Friday August 31

High Noon for the TPP-11? An evening with **Dr Patricia Randal**, Australian Fair Trade & Investment Network (AFTINET)

Friday, August 31, 6.30-8.15pm, Harold Park Hotel, Cnr Wigram Rd & Ross St, GLEBE 2037.

The TPP-11 without the US is being reviewed by joint parliamentary and Senate committees before parliament votes on the implementing legislation in September. Community groups are campaigning for the Senate to block the implementing legislation. Come to hear the latest and how you can support the campaign.

Health for All or Health for Some? Globalisation and Health in Australia and beyond, Canberra September 13-14

This workshop is one of a series in the lead up to the 4th People's Health Assembly to be held in Bangladesh from the 15th-18th November 2018. [Speakers](#) include experts on health issues in trade agreements.

It is open to all those concerned with creating a fairer Australia and ensuring that our health systems and policies relating to the broad determinants of health (including fiscal policy, education, environment, urban planning) are working to create a more equitable Australia and global environment.

Date: Thursday 13 to Friday 14 September 2018

Venue: Yarramundi Cultural Centre, Canberra, ACT

Info and Registration: Participants must register at <https://phaa.eventsair.com/peh-sig-workshop-health-for-all-or-health-for-some/registration/Site/Register>