



## AFTINET BULLETIN: April 2016

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### **Introduction**

Welcome to the April edition of AFTINET's regular Bulletin.

In coming weeks there are TPP and trade justice events planned for Sydney, Melbourne and Perth – you'll find all the details below and we hope you can join an event near you. If you are in Sydney, you can [book now](#) for our annual Trade Justice Dinner on May 17.

Also in this edition you will find all the latest news on the TPP and its connection with labour rights in an election context. We have also put together an explanation of the role of trade agreements in the current steel making crisis and an examination of the ways which companies can use trade agreements to undermine Australian High Court decisions.

Thanks for your continued support.

## Upcoming events



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### SYDNEY

#### **TPP Public forum, April 20:**

*Will the TPP survive the US and Australian elections?*

12.30-2pm, Wednesday April 20

Macquarie Room, NSW Parliament House

Full details including list of speakers [here](#).

#### **May Day March, May 1:**

Say no to the TPP at the Sydney May Day March.

11am, Sunday May 1

Belmore Park, near Central Station

AFTINET Convener Pat Ranald will be speaking.

More details [here](#)

#### **Trade Justice Dinner, May 17:**

AFTINET's annual Trade Justice dinner is coming up!

6pm May 17

The Hellenic Restaurant, 251 Elizabeth Street

Special guest speaker: Kelvin Thomson MP

\$66 per person or \$528 per table of 8

More details and booking form [here](#)

## MELBOURNE

### **TPP Public Forum**

7pm Thurs 21 April

Lower Melbourne Town Hall

This event is organised by the TPP unions and community roundtable. [More details here](#)



## PERTH

### **Public forum: TPP and RCEP trade deals**

*Who will benefit from new trade rules?*

6pm, Thursday 28 April

SSTU WA, 150-152 Adelaide Tce, East Perth

More details [here](#).

## **Record number of TPP submissions to JSCOT inquiry**

The Joint Standing Committee on Treaties Inquiry into the TPP received a record number of 175 substantial submissions, most of which are critical of the deal. These can be found on the JSCOT website [here](#).

The inquiry also received over 11,000 critical messages, which have not yet been registered on the website. These record numbers reflect the strong community criticism and opposition to the TPP.

Our assessment of the costs and benefits of the TPP concludes that the TPP is not in the public interest and asks the committee to recommend against the implementing legislation.

[Read AFTINET's submission here](#)

## **Next steps in TPP parliamentary process**

It is still highly likely that Australia will go to the polls on July 2 for a double dissolution election, meaning public hearings and the JSCOT report would be delayed until August or later.

We are updating our website and other materials to urge all parliamentarians in the context of the election to support a vote against the TPP implementing legislation when it comes before Parliament. We will also produce a comparison of political parties' trade policies.

## Labour rights, the upcoming election & the TPP

Sliding living standards, wage stagnation for working people and rising wealth inequality will be big issues as the next Australian Federal Election approaches.

While the election has not yet been officially called, the battle lines are being drawn on industrial relations.

Unions have called for a [rise in the minimum wage](#) to restore some balance and empower working people. They are also campaigning hard against impending attacks on the penalty rates earned by workers on low wages.

In contrast, the Coalition Government has spent [\\$80 million dollars](#) on a Royal Commission into investigating unions while spending little energy or funds scrutinising [corporate corruption](#) and continues to push for the anti-union ABCC to be re-established.

And while their tax policy remains vague, the Turnbull Government looks set to [cut corporate taxes](#) while [refusing to supply](#) the public education and health funding needed to provide essential public services to ordinary people.

The Trans-Pacific Partnership (TPP) trade deal between Australia, the US and 10 other Pacific Rim countries will set global rules that will further tip the balance of power into the hands of the already wealthy and big corporations – and away from working people.

### The TPP: Extra rights for corporations

The TPP sets rules in favour of global corporations – such as by giving them extra rights to sue governments if they can argue that a change in law or policy “harms” their investment.

This means that foreign corporations will be able to bypass national courts and sue Australian governments in unfair international tribunals. This could include over laws or policies that would be to the benefit of working people.

For example, the French [Veolia company](#) is currently suing the Egyptian government over a local government contract dispute in which they are claiming compensation for a rise in the minimum wage.

### No effective protection for labour rights

In an increasingly competitive and globalised world it’s clear that workers everywhere need more protection of their rights, pay and conditions than ever.

The TPP was an opportunity to set enforceable rules for a positive outcome for working people around the world, but it was a missed opportunity.

Instead, despite promises, the labour rights chapter in the TPP is not [effective or enforceable](#) – leaving workers to compete with each other in a destructive global race to the bottom.

Indeed, the TPP does not even ban the trade of products manufactured by forced, child or slave labour.

## Extra temporary workers

The TPP is set to expand the numbers of temporary overseas workers in Australia, but provides no extra protections for their rights and removes the requirement to test whether local labour is available.

Given Australia's current [culture of exploitation](#) of temporary overseas workers, this is likely to only lead to more of the same. Local workers are also vulnerable to having their wages and conditions undermined by unscrupulous employers taking advantage of temporary workers who face deportation if they lose their jobs.

## Are trade agreements to blame for steelmaking crisis?

News that steel mining company Arrium has been placed into administration has left almost 7,000 Australian workers worrying about their future, 2000 of them in the SA town of Whyalla.

Opposition Leader Bill Shorten has reacted to the news by [calling for](#) a nationwide plan to save the Australian steel industry, and some [SA government MPs](#) have also urged government action.

Under the Shorten plan, federal, state and local governments would use Australian steel for infrastructure projects and introduce a range of other measures like increasing quality control and enforcing anti-dumping laws to restrict unfair competition from low quality imports, mostly from China.

But the Coalition Government's Trade Minister Steve Ciobo [told](#) *The Australian* a plan like that was "actually in direct breach of quite a number of our trade agreements that we have in place."

This is partly true. There are government purchasing rules in some of our trade agreements against giving preference to local suppliers, because this discriminates against foreign suppliers.

This is just one of the ways in which trade deals can limit the ability of Governments to regulate to ensure a diverse economy with a variety of jobs. The TPP, which is currently under review by a parliamentary committee, contains similar government purchasing rules.

But the China free trade agreement does not, because the Chinese government itself wanted to retain the flexibility in government purchasing. This means local content purchasing policies would not breach that agreement.

Even where trade agreements do have such rules, there are always exceptions. For example, in the 2004 negotiation of the US-Australia FTA, the US exempted its steel industry from government purchasing rules, but the Howard Coalition government did not. All the agreements allow local preference for defence contracts.

Trade agreements do, to some extent, restrict the way governments can respond to crises facing our industries. And certainly they have had a role in creating the problem in the first place, by opening up the Australian market to substandard, cheaper steel. But they also play a more complex role - they are often used by governments as an excuse not to act.

In the case of the steel industry crisis, the Australian Government could implement local purchasing policies and take the risk of facing some trade disputes, but not from the China FTA and not for defence contracts. It could also re-negotiate existing agreements to ensure that governments could act to support strategic industries, and not ratify future agreements with such rules. The review of the US FTA in May should be an opportunity for the government to amend its government purchasing rules. The restrictive government purchasing policies in the TPP are one among many reasons why the Senate should not pass the TPP implementing legislation.

## High Court the final authority? Think again

By Dr Patricia Ranald | First published in *Fairfax Media* online: view the original [here](#)

Remember the Doyle's Creek corruption scandal in NSW involving Eddie Obeid and coal mining licences?

In 2013, the NSW Independent Commission against Corruption found that there had been corrupt conduct relating to the granting of mining licences to Nucoal and other mining companies and the [NSW government](#) cancelled the licences.

Nucoal, a US-based company, demanded compensation of more than \$900 million in Australia's High Court, claiming the decision to cancel its licence without compensation was unconstitutional and had reduced the value of the company. The [High Court](#) found in April 2015 that under Australian law Nucoal was not entitled to compensation.

Now [Nucoal](#) is attempting to bypass this decision, using the 2004 US-Australia free trade agreement to exert pressure on the federal government to pay compensation.

John Howard refused to have provisions in the AUSFTA enabling foreign investors to bypass national courts and sue a government directly for damages in international tribunals, known as investor-state dispute settlement or ISDS. So Nucoal is pressuring the US government to put a case to the Australian government that the denial of compensation has violated the general investment terms of the agreement. This could result in a formal complaint from the US government demanding trade sanctions against the Australian government.

Last week [The Australian](#) reported that the CEO of the US Chamber of Commerce in Australia has announced that the US government will raise the issue in a closed-door review of the AUSFTA to be held in May.

He also used the opportunity to argue in support of ISDS provisions in other trade agreements like the Trans-Pacific Partnership, which would enable companies like Nucoal to sue the Australian government directly without having to persuade their own governments to take action.

The TPP trade deal between Australia, the US and 10 Pacific Rim countries has yet to be approved by the US Congress and other parliaments. [Strong US public opposition](#) has forced all US presidential candidates to oppose it, and Congress will not vote on it until after the November presidential election. The current [Australian parliamentary inquiry](#) has received a record number of submissions, most of which are critical of ISDS.

The Nucoal case has echoes of the US-based [Philip Morris company tobacco case](#) against plain packaging legislation. When tobacco companies failed to win compensation in Australia's High Court, Philip Morris shifted some assets to Hong Kong, claimed to be a Hong Kong company and used ISDS in an obscure Hong Kong investment agreement to sue the Australian government for billions of dollars in an international tribunal. It took the tribunal over four years and reportedly cost the Australian government [\\$50 million in legal fees](#) before a decision in December 2015 that Philip Morris was not a Hong Kong company and the case should not proceed. However, the substantive issue about compensation was not tested.

[Polls](#) show that the majority of Australians oppose ISDS in the TPP. They oppose the idea that a global tobacco company or a global mining company should have special legal rights to sue governments for damages over domestic law after our High Court has determined they have no right to damages, and that the government has to spend tens of millions of dollars defending the case.

The Panama Papers scandals show that global companies already have enormous power to both evade taxes and engage in corrupt conduct to influence governments.

Governments must have the right to regulate in the public interest without the risk and costs of being sued by global corporations. Instead of enabling corporations to challenge future government regulation, governments should be ensuring that they have the capacity to act to regulate corporate behaviour in the public interest.

*Dr Patricia Ranald is Research Associate, University of Sydney and convener of the Australian Fair Trade and Investment Network.*

## **Rush to finish trade deals before election undemocratic**

Trade Envoy Andrew Robb recently [stated his intention](#) to complete the secret negotiations on the India FTA in the next six weeks.

However, this could violate the [Caretaker Convention](#), which states that governments should not finalise trade deals in the election period, which is likely to be from May 11 to July 2.

Final negotiations for the PACER-plus trade agreement are also scheduled in June, and ongoing bilateral negotiations around the WTO Government Procurement Agreement are in their final stages.

Concluding a secret trade agreement during the caretaker period would be highly undemocratic. Since the release of the text does not occur until after legal checking, which usually takes a month, the full agreement would not be available until after the election.

This means the Government would be able to publicise the purported benefits of the deal before the election but avoid any public scrutiny of both the benefits and the costs until after the election.

AFTINET has written to both Trade Minister Ciobo and Shadow Trade Minister Wong to ask for assurances that none of these deals will be finalized before the election. You can read these letters and AFTINET's media release [here](#).

## What's next for trade deal giants RCEP and TISA?

The TPP has been finalised and the text has finally been exposed, but two other giant trade deals are still being negotiated behind closed doors: the ASEAN-centred '[Regional Comprehensive Economic Partnership](#)' (RCEP) and the [Trade In Services Agreement](#) (TISA) which mainly brings together the EU and industrialised countries.

Here's a brief summary of where they are up to:

### RCEP

The next round of RCEP negotiations are scheduled for the end of this month in Perth with further negotiations scheduled for Auckland June 12 to 18 and an RCEP trade ministers meeting August 1-7.

AFTINET is linking with similar groups in RCEP countries to demand a more open and democratic process and to oppose harmful proposals like stronger monopolies on medicines, ISDS and increases in temporary workers. AFTINET convener Dr Pat Ranald will be travelling to WA to attend stakeholder meetings and will be speaking at a public forum on the 28<sup>th</sup> of April – [details here](#).

### TISA (Trade in Services Agreement)

These negotiations involve mostly industrialised countries led by the US and Europe, with a minority of developing countries. [Leaked documents](#) have revealed that global services corporations are driving the agenda for deregulation and privatisation of services.

It's no secret that many negotiators are aiming for consistency between the TISA and the TPP, so now that we have the [TPP text](#), we can look out for potential devils in the detail that might be in both agreements.

The goal is that the deal will conclude by the end of this year but this may not happen. Some developing countries involved in negotiations may not agree to including TPP-style standards pushed by industrialised countries like Australia, South Korea and Japan.

## Australia-US FTA 10 year review shows little benefit and many costs

DFAT invited at short notice submissions for a 10 year review of the AUSFTA, which was implemented in 2005. The review is extremely limited as it is conducted behind closed doors and will not consider changes to the text, discussing only the implementation of the agreement.

All of the peer-reviewed academic studies of AUSFTA, including those done by the Productivity Commission, have concluded that the potential economic benefits of the agreement were oversold, with actual economic outcomes for Australia either minuscule or negative. However the agreement required substantial changes to Australian law and policies which benefited US corporations at the expense of Australian citizens. These included extension of monopolies on copyright from 50 to 70 years, and other changes

which favoured copyright holders over consumers, reductions in the regulation of Australian content in new forms of audio-visual media and limits on the regulation of essential services like energy and water services. It also required limits on local content in government procurement and the establishment of joint committees to review policies in relation to the pricing of medicines, quarantine, and food labelling.

In the context of the limited time frame and limited scope of the review, AFTINET has made a short submission which summarises and references all of these studies. You can download it [here](#).

### **More news from our website**

50+ US orgs urge Congress to dump TPP: More than 50 influential health, religious and labor groups in the US have written to Congress to call for the TPP trade deal to be rejected. [Read more...](#)

Huffington Post: We've Had Enough With Failed Trade Policies: It's no surprise to actor and climate change activist Mark Ruffalo that the United States' trade policy has become such a huge transpartisan issue during the US elections. [Read more...](#)

The choice is not between the TPP or no trade. The choice is not between TPP or no trade, writes Public Citizen's Lori Wallach for the *Huffington Post*. [Read more...](#)

330 Kiwis ask to have their say on TPP in person. More than 330 New Zealanders have asked to give their views on the TPP in person to the NZ parliamentary committee as public hearings kick off this week - showing huge public opposition to the deal. [Read more...](#)

Deceitful, disrespectful and dangerous: OceanaGold in El Salvador. A [new study](#) has found that Australia-based mining company OceanaGold's attempts to reshape its image in El Salvador through a company-sponsored foundation are "deceitful, disrespectful and dangerous." [Read more....](#)

Growing TPP opposition in the US Congress. It's not new news that it will be a huge challenge for President Obama to get Congress to support the TPP. [Read more...](#)

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