



## AFTINET BULLETIN: February 2016

### *Inside this edition:*

- **Another big year ahead**
- **TPP: Crunch time in Parliament**
- **TPP: Take action**
- **Philip Morris loses plain packaging case on a technicality, but ISDS dangers remain**
- **India FTA coming soon**
- **Push for RCEP “convergence” with TPP**
- **Record number of ISDS cases in 2015**

### **Another big year ahead**

Another year has started and once again we want to thank all of our members for continuing to campaign alongside us every step of the way.

Last year was a big year: the text of the Trans-Pacific Partnership deal was finally agreed and released, and the China free trade agreement was implemented.

This year promises to be even bigger. The TPP will be reviewed by parliamentary committees over the next few months before Parliament votes on the implementing legislation.

Australia and India may conclude a bilateral agreement in the next few months, which will then have to go through the Parliamentary process.

PACER-plus negotiations with the Pacific Islands and the 16-nation RCEP deal are still ongoing.

The flawed and dangerous TPP continues to be by far our greatest concern. It's crunch time in Parliament and over the next few months we will be ramping up our campaign, asking MPs and Senators to vote NO to the TPP's implementing legislation.

As always, we'll be bringing you regular bulletins so you can stay informed and continuing to publish up to the minute news on our website and through our social media channels.

This year we've enlisted some extra help with our communications and want to welcome back Jemma Williams, who has worked previously with AFTINET, and will be working with Dr Patricia Ranald. We've seen a swell in support over the past year and want to say a big thank you to all our members who have helped by spreading our campaign efforts far and wide.

Together we're having a big impact on the trade debate here in Australia. We'll continue to hold the Government to account and stand up for fair trade based on human rights, labour rights and the environment.

## **TPP: Crunch time in Parliament**

The TPP's formal signing ceremony held in Auckland this month masked the fact that there's a long road ahead if the agreement is ever to be ratified.

Here in Australia, it signals the start of the parliamentary process – the TPP and its [National Interest Analysis](#) was tabled in Parliament this week. The National Interest Analysis was done by the Department of Foreign Affairs and Trade, which negotiated the agreement, and is not independent.

This starts a process where the TPP will be examined by parliamentary committees before its implementing legislation will be put to a vote.

The Government has a majority in the Joint Standing Committee on Treaties, which will [receive submissions](#) until the 11<sup>th</sup> of March and report at the end of June. However, a Senate inquiry without a government majority is likely to be more critical of the agreement.

With Labor, Greens and independents together holding a majority in the Senate, there's still a chance that the TPP legislation could be voted down.

The process will take a couple of months and we're expecting that the vote won't be held in Australia until after June.

Elsewhere, the TPP is also facing opposition.

In the United States, the situation is looking bad for TPP supporters. All of the main Presidential candidates on both sides of politics do not support the deal, and Congress will not vote on it until after the November Presidential election.

In Canada, the new Trudeau Government signed the deal but has made it clear that [doesn't mean](#) they are committing to ratify it. They are reportedly taking their time to consult with stakeholders and hold a parliamentary debate before ratification.

In New Zealand, there is massive public opposition and thousands blocked the streets of Auckland to protest at the signing ceremony.

## News wrap

Opposition to the TPP continues to build in Australia and AFTINET and its members contributed to plenty of critical news coverage around the TPP's ceremonial signing last week.

AFTINET Convener Dr Pat Ranald published an [op-ed in the Fairfax press](#) on the Parliamentary process calling on the Senate to reject the implementing legislation. We've included a full copy in this bulletin.

Our calls for a truly independent assessment of the TPP made headlines in the [Fairfax press](#) and [ABC news online](#). AFTINET spoke at a cross-party forum in Parliament House and presented a [letter](#) endorsed by 59 organisations, which together represent around two million Australians and a broad cross-section of our society. Campaign groups GetUp and Sumofus also presented a petition signed by 305,000 people.

Trade Minister Andrew Robb hit back at AFTINET by attacking our broad coalition of supporters on [ABC Radio National Breakfast](#). Mr Robb said we were the "usual suspects" opposed to trade, and [we countered](#) by emphasising that our opposition is to the fact that the TPP is *not* mainly about trade – we're opposed to extending monopoly rights for global corporations and investor rights to sue governments. This was picked up in [The Guardian](#), which reported that Robb had rejected our calls for a TPP cost-benefit analysis.

When Minister Robb finally tabled the TPP in Parliament this week, he was [criticised](#) for refusing to agree to our calls for an independent assessment of the deal and the Fairfax press again [reported](#) on the strong community opposition to the deal, citing AFTINET's recent letter.

Trade Minister Robb has announced his [retirement](#) at the next election, but will continue in his position until then.

## Trans-Pacific Partnership faces a rocky road through Parliament

By Dr Patricia Ranald

*Originally published on 03/02/2016 in [Fairfax Media](#)*

The signing ceremony on February 4 in Auckland for the Trans-Pacific Partnership is mainly a public relations exercise.

It masks the fact that for Australia and most TPP countries, the public debate and parliamentary process to pass implementing legislation, leading to final ratification of the deal, is just beginning, and it will be a rocky road.

After six years of secret negotiations, the 6000-page text was released on November 5, 2015, but was still subject to "legal scrubbing". The scrubbed text was only released last week, with not enough time to check it before the ceremony. We do know that US corporate interests had been furiously lobbying to get last-minute changes. No wonder the 2015 Senate report which criticised this secret and undemocratic process was called Blind Agreement.

The TPP text is likely to be tabled in the Australian Parliament soon, and examined by parliamentary committees over several months before Parliament votes on the implementing legislation.

The TPP will have almost no economic benefits for Australia, because we already have free trade agreements with nine of the twelve Pacific Rim TPP countries. A World Bank study has estimated that it will result in a minuscule 0.7% increase in Australian GDP after 15 years.

President Obama has said the TPP allows the US to "write the rules for the region." But what benefits US corporate interests is not necessarily in the interests of the majority in the US, let alone in other countries. The New Zealand Labour Party leader with refreshing honesty says the TPP threatens national sovereignty.

The TPP gives foreign investors the right to sue governments over future public interest regulation, known as Investor-State Dispute Settlement. The Trans-Canada company announced in January that it is using ISDS provisions in the North American Free Trade Agreement to sue the US government for \$15 billion because it decided not to proceed with the controversial Keystone tar sands pipeline for environmental reasons.

Nobel prize-winning economist Joseph Stiglitz argues that ISDS could be used to undermine regulation required to stabilise financial markets, and undermine regulation to combat climate change pledged by governments in the long-awaited Paris agreement.

Evaluations by public health experts and Doctors without Borders (MSF) show that the TPP also extends and locks in monopoly rights for global pharmaceutical corporations to delay cheaper versions of costly biologic drugs. Copyright experts argue that it locks in copyright monopolies for global media and IT companies which criminalise copyright breaches and restrict future governments from responding to consumer rights and changing technologies. The Productivity Commission and the ACCC have condemned these extensions of monopolies under the guise of free trade.

Strong popular opposition to the TPP in the US has resulted in both Democrat and Republican presidential candidates condemning the TPP. Key Congress members have predicted that Congress will not vote on the TPP implementing legislation until after the presidential elections in November, and that they will seek further concessions from other governments through what is known as the certification process.

This process enables the US Congress to vet other countries' implementing legislation to see if it meets US interests. If not, US demands that the legislation be changed before final ratification. A recent study revealed how this worked in the US-Australia FTA in 2004. After the Australian Parliament had passed the implementing legislation, the US government demanded further changes to copyright law in November 2004 when the two governments were about to exchange formal letters for the ratification of the agreement, saying the agreement would not be ratified without the changes. The Howard government gave in to this blackmail and agreed to push through additional legislation.

It would be foolish for the Australian Parliament to rush to approve implementing legislation before the US Congress has done so, as it may then face demands for further concessions.

We must hold the majority in the Senate accountable to scrutinise all these issues and demand independent evaluations of the economic, health and environmental impacts of the TPP to judge if it is in the public interest. If it is not, the Senate should block the implementing legislation.

## **TPP: Take action**

The coming months are absolutely critical if we are to convince Labor, independent and Greens Senators to vote NO to the TPP's implementing legislation, and therefore block the deal.

We're campaigning for an independent, unbiased assessment to be done and in the absence of this for all MPs and Senators to vote no to the deal.

Now is the time to take action - here's what you can do:

### **Ask your MP and Senators to vote NO**

Labor, independent and Greens Senators hold the key to stopping the TPP from getting through Parliament.

You can use our website to send a customisable email directly to your local MP and the Senators in your state.

[Send a message to your MP and Senators here](#)

You can also help spread the message far and wide by sharing the link on social media or [forwarding our action email](#) to your networks.

### **Visit your MP or Senator**

There's nothing more effective than a face-to-face meeting with your Senator or MP. With the vote in Parliament looming, now is the time to organise a meeting with your MP or Senator.

We've developed [a kit](#) to guide you through the steps you need to take to organise a meeting, including a sample letter to send to your MP, talking points and a briefing paper.

### **Make a submission**

The Joint Standing Commission on Treaties inquiry is [currently accepting submissions](#) on the TPP until the 11<sup>th</sup> of March, and is likely to report at the end of June.

We expect that a Senate Inquiry will also soon open for submissions.

AFTINET will be preparing some points to help with preparing submissions for both of these inquiries, which we will email to members.

## Spread the word

We've just published a new leaflet: [TPP: Crunch time in Parliament](#)

You can [download it](#) from our website or you can contact us to order some hard copies. They are free, but if you have a large order you need posted we just ask for a contribution towards the postage costs. Please [contact us](#) for more information.

If you are a member organisation, we have written an article you can display on your website or include in an email to members. You'll find a link to it [here](#).

As always, you can also follow us on [Facebook](#) and [Twitter](#) for the latest updates and share them around.

## Philip Morris loses plain packaging case on a technicality, but ISDS dangers remain

Anti-tobacco public health campaigners got an early Christmas present with the news that an ISDS tribunal finally ruled in favour of Australia's argument that the US Philip Morris tobacco company was not a Hong Kong company and therefore could not use a Hong Kong-Australia investment agreement to sue Australia over our plain packaging law.

The company had shifted some assets to Hong Kong and claimed to be a Hong Kong company because John Howard's Coalition government had not agreed to ISDS in the Australia-US Free Trade Agreement, and it could not sue under that agreement.

However, the technical decision took over four years of hearings and reportedly cost the Australian Government \$50 million dollars in legal fees. As Kyla Tienhaara argued in the [Fairfax media](#), the substantive case about whether governments have the right to regulate tobacco advertising was not heard.

It is also thanks to public health campaigning that the TPP contains an option for governments to completely exclude future tobacco regulation from ISDS cases. However, there is no such clear exclusion for other forms of health, environmental and public interest legislation. The general "safeguards" in the agreement have similar weaknesses and loopholes as in previous agreements which have not prevented foreign investors from launching cases against governments. As Kyla says in her article, this time. Australia has dodged the ISDS bullet, but that doesn't mean that we will be bullet-proof if the TPP is implemented.

## India FTA coming soon

The Government wants to conclude a free trade agreement with India in the next few months. As we reported in our previous Bulletin, India is still seeking a removal of labour market testing for some workers and easier access to Australia for students and IT workers. Australia is already in the midst of a crisis in terms of exploitation of temporary migrant workers, as we have seen in the recent [7-Eleven scandal](#) and other revelations of underpayment in [many other industries](#).

There is no intention to include any mention of labour rights or protections for these increased numbers of temporary workers, who will be vulnerable to exploitation.

## **Push for RCEP “convergence” with TPP**

When Trade Minister Andrew Robb signed the TPP he told [the Fairfax press](#) that he was now setting his sights on the Regional Comprehensive Economic Partnership (RCEP). The two deals combined would create “a vast trade agreement architecture” for the world, he said.

As RCEP talks continue in Brunei this week, Robb is not the only one pushing for the RCEP and for it to set similar rules as the TPP does.

RCEP includes the 10 ASEAN countries, including Japan and Korea, who are both also signatories to the TPP. They want to see some convergence between the deals, including stronger monopolies on life-saving medicines and inclusion of foreign investor rights to sue governments over domestic legislation (ISDS).

Previously India and a number of other RCEP countries had been strongly opposed to both stronger monopolies on medicines and ISDS, but this could be changing.

As we reported in our last Bulletin, India has developed a new model for ISDS clauses, which have more restrictions on foreign investors’ rights to sue governments than those present in the TPP and other trade deals. However, India seems to have been pressured to water down some of its restrictions in a more recent version.

This model has been released publicly by the Indian Government and may be tabled in the talks. The next talks are scheduled for April 22-29 and will be held in Perth. We will be consulting with members there about organising a community education forum or other event in Perth at that time.

## **Record number of ISDS cases in 2015**

As the world prepares for a massive expansion of the ISDS thanks to the TPP, startling new information has come to light: it’s [been revealed by UNCTAD](#) that foreign investors launched 70 new ISDS cases against governments last year, more than any prior year.

This is twice the number of new cases than were launched just five years earlier. The total number of outstanding cases is now almost 700.

They also report that foreign investors have launched more ISDS cases in each of the last five years than in the first three decades of the ISDS system combined, and that more than half of all concluded cases have resulted in either settlement or loss for the government involved.

US investors are the most frequent users of ISDS. John Howard’s Coalition government did not agree to ISDS in the Australia US free trade agreement but it is in the TPP, which is why the Philip Morris company had to use an obscure Hong Kong Australia investment agreement when it sued Australia over our plain packaging law. The TPP will expose Australia directly to claims from US investors.