



## BULLETIN February 2013

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## Women and Globalisation: The Trans-Pacific Partnership Seminar

*"The problem with the free trade logic is that it puts trade above people's lives and shifts government focus from the welfare of people to the promotion of exports and imports."*

**Vandana Shiva, Feminist and trade activist**

Trade agreements can create global rules which mean higher prices for medicines and for seeds used by women farmers, privatisation of public services and less ability for governments to make laws to protect women's rights.

AFTINET is holding a Seminar on Women, Globalisation and the Trans Pacific Partnership Agreement (TPPA) on March 5 at 12.15pm.

This coincides with International Women's Day and negotiations for the TPPA being held in Singapore.

Hope to see you there!



## Women and Globalisation: The Trans-Pacific Partnership Agreement



*Never heard of the Trans-Pacific Partnership Agreement being negotiated by Australia, the US and nine Asia Pacific countries? Think that trade agreements don't affect women's rights? **Think again!***

**Trade agreements can create global rules which mean higher prices for medicines and for seeds used by women farmers, privatisation of public services and less ability for governments to make laws to protect women's rights.**

The Australian Fair Trade & Investment Network (AFTINET) presents a special seminar to mark the lead-up to International Women's Day and the 16th Round of the Trans-Pacific Partnership Agreement (TPPA) negotiations being held in Singapore.

### Speakers:

Dr Elizabeth Hill, Department of Political Economy, Sydney University – *Women, Globalisation and Development*

Dr Patricia Ranald, AFTINET – *The Trans-Pacific Partnership: where is it up to and what are the issues for women?*

Kelly Nichols, Doctors Without Borders - *TPPA threats to access to affordable Medicines for women and other vulnerable groups*

**12:15-1.30pm - Tue 5 March 2013 - Waratah Room**

**NSW Parliament House**

**6 Macquarie Street, Sydney NSW**

**Free entry**



*"The problem with the free trade logic is that it puts trade above people's lives and shifts government focus from the welfare of people to the promotion of exports and imports."*  
**Vandana Shiva, Feminist and trade activist**



## **AFTINET Membership Renewals**

A big thank you goes out to all our members for their continued support for AFTINET in 2012. AFTINET had a busy year and achieved a great deal thanks in no small part to the financial contributions and generous donations from you, our members.

**We are asking for your continued support by renewing your membership for 2013.**

You can renew your membership via Electronic Funds Transfer (ETF) to **Acc No: 1033 9684. BSB: 06 2005**. Please ensure to **include your name in the transfer** so we can identify your payment.

Alternatively, if you have not received a copy of the renewal form, please contact the office and we will send you one that you can fill out and return to us by fax or post.

Our subscription system has a common renewal date for all members – membership runs from 1 January to 31 December of each year. AFTINET does not accept government or corporate funding. We rely on donations from supportive individuals like you, please consider making a donation.

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### **Why the Philip Morris case raises the alarm for rural health and wider public health concerns**

Dr Patricia Ranald

*This article was published in the online news journal Crikey on 25<sup>th</sup> January 2013. See the original article [here](#).*

The tobacco company, Philip Morris, is suing the Australian government in an international tribunal under the terms of an obscure Australia-Hong Kong investment agreement, alleging that Australia's 2011 tobacco plain packaging legislation will harm its business and that it deserves to be compensated with millions, if not billions of dollars.

The plain packaging legislation had the support of all parties in the Australian Parliament. Tobacco companies, including Philip Morris, then challenged the legislation in the High Court and lost. They alleged that the legislation was a violation of the Australian Constitution because it was an acquisition of their intellectual property on unjust terms, and they deserved compensation.

The High Court found in 2012 that there was no acquisition of property, that plain packaging was justified as a public health measure and that the tobacco companies did not deserve compensation. See <http://www.austlii.edu.au/au/cases/cth/HCA/2012/43.html>

Despite the democratic passage of the legislation through the Parliament and its validation by the highest Australian court, Philip Morris is still seeking to overturn these democratic decisions using a process contained in an obscure Hong Kong-Australia investment agreement.

Known as investor-state dispute settlement, this process allows a single foreign investor to sue government for damages in a specially constituted international tribunal if a law or policy 'harms' their investment.

And why Hong Kong? Philip Morris is a US-based company, but the US-Australia free trade agreement does not have investor-state dispute settlement, which was hotly debated during the negotiations in 2004, and even the Howard government did not agree to it. Philip Morris rearranged its assets to become a Hong Kong investor in Australia, so that it could use the process in the Hong Kong agreement. See <http://aftinet.org.au/cms/sites/default/files/Leesburg%20Ranald%20forum%20paper%20090912.pdf>

Why does Philip Morris think it can win after losing in the Australian High Court?

Quite simply, the rules of international investment tribunals suit international investors, because they lack the transparency and independence of national court systems. The hearings and transcripts are not made public unless both parties agree. The tribunals lack judicial independence, since advocates can also be arbitrators, and arbitrators are paid by the hour. There is no system of precedents, and no appeals, so decisions lack consistency. And the tribunal's main focus is whether the investor has been harmed, not whether the legislation is in the public interest.

A recent study by the Transnational Institute in Amsterdam has documented many case studies of these problems, with cases involving public health and environmental regulation. Even if investors lose, governments have to pay millions in arbitration costs and legal fees. See <http://www.tni.org/ProfitingFromInjustice.pdf>

As the Phillip Morris case progresses, information only emerges if the tribunal publishes its rulings on procedural matters, which it did in December. See [http://www.pca-cpa.org/showpage.asp?pag\\_id=1494](http://www.pca-cpa.org/showpage.asp?pag_id=1494).

So we discover that the Australian Government requested that the hearings to be open to the public (and for transcripts of those proceedings to be published). But Philip Morris refused to agree. So under the rules the request was denied.

Clearly it believes that its own case would suffer if exposed to public scrutiny. The government is publishing its own submissions on a public website [www.ag.gov.au/Internationallaw/Pages/Investor-State-Arbitration—Tobacco-Plain-Packaging.aspx](http://www.ag.gov.au/Internationallaw/Pages/Investor-State-Arbitration—Tobacco-Plain-Packaging.aspx)

The Government is challenging the jurisdiction of the tribunal, as well as the substantive issues. Future hearings are scheduled for February, July and September, so it promises to be a long drawn out process. Since both the arbitrators and advocates are paid by the hour, this means the legal fees alone will amount to millions of dollars.

Given this experience, it is no wonder that the Australian government now has a policy to oppose investor state disputes in any trade agreement. It is sticking to this policy in the Trans-Pacific Partnership Agreement (TPPA) negotiations with the US, New Zealand and eight other Asia-Pacific countries, and in its negotiations for the Korea-Australia free trade agreement.

### **Rural health concerns**

Some farmers' organisations have been lobbying the government to abandon this policy for the Korea free trade agreement, because they want the agreement to be concluded quickly, to give them greater access to Korean markets. See <http://www.beefcentral.com/p/news/article/2413>

This is a mistaken and short-sighted argument, which if successful would come back to haunt rural communities. Investor-state disputes would mean that Australian public policies in areas like regulation of land use, quarantine rules and low medicine prices through the Pharmaceutical Benefits Scheme and other policies which benefit Australia's rural communities could be challenged, at a cost of millions to the taxpayer.

Two recent cases lodged under the investor dispute rules of the North American Free Trade Agreement demonstrate the potential harm to rural communities.

A US mining company is suing the Quebec provincial government for \$250 million over their decision for a moratorium on hydraulic fracking for coal seam gas. Farmers in NSW have influenced the NSW government to have a similar moratorium to examine the environmental and land use implications of hydraulic fracking.

If Australia agrees to ISDS, the NSW decision could be challenged by a single foreign investor. See <http://www.thestar.com/news/canada/politics/article/1288637-ottawa-faces-250-million-suit-over-quebec-environmental-stance>

The second case involves the cost of medicines. US pharmaceutical company Eli Lilly has lodged a claim against a Canadian decision to deny a patent for a "copycat" drug, and to allow cheaper generic versions of the drug on to the market. This benefits both Canadian consumers and the Canadian public health system.

If Australia agrees to ISDS, foreign pharma companies could challenge our patent laws and even the procedures of our Pharmaceutical Benefits Scheme, which ensures that medicines remain affordable to all. Affordable medicines are vital to public health in rural communities. See <http://www.theglobeandmail.com/report-on-business/industry-news/the-law-page/eli-lilly-fights-canadas-move-to-strip-drug-patent/article6082557/>

Investor state dispute rights are a threat to national democracy and sovereignty, and should continue to be excluded from all trade and investment agreements.

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### **AFTINET lobbies MPs in lead-up to Trans-Pacific Partnership (TPPA) negotiations in Singapore March 4-12**

The 16<sup>th</sup> round of TPPA negotiations will be held in Singapore from March 4-12, 2013. Further negotiations are expected in May, July and September, with remaining areas of disagreement to be referred to a Meeting of TPPA Ministers to be held at the APEC meeting in Bali in the first week of October. This means the agreement is not likely to be completed until after the Australian election date of September 14.

Dr Patricia Ranald from AFTINET and Andrew Dettmer, National President of the Australian Manufacturing Workers Union, went to Canberra on February 4- 5 to meet with representatives of the Department of Foreign Affairs, Ministers and Members of Parliament to discuss the latest developments.

A short briefing paper was prepared which noted the main points of disagreement after three years and 15 rounds of negotiations. The major areas of disagreement include enforceable labour rights and environmental protections, investor-state disputes, stronger patent rights for medicines, reducing the ability of governments to regulate medicine prices, extending

copyright at the expense of consumers, reducing the ability to regulate government procurement, and reducing or abolishing local content rules in film and television and other media.

The briefing paper urged the government to continue to support policies on enforceable labour rights and environmental protections, and to oppose the other proposals listed above which would reduce the ability of government to regulate in the public interest and which were not consistent with the government's policy in all of these areas. It also asked for the text of the agreement to be made public before signing by Cabinet.

We met with Trade Minister Craig Emerson, who assured us that there was no change in policy in the key areas outlined above. We also met with the newly appointed Parliamentary Secretary for Trade, Kelvin Thompson. We met with six other Ministers and/or advisors.

Senators Doug Cameron and Claire Moore organised a briefing of back bench ALP Caucus members which was attended by 15 Caucus members and eight staffers of those who could not attend. We also met with some individual back benchers.

We met with Senator Peter Whish-Wilson, the trade spokesperson for the Greens.

We attempted to get an appointment with Julie Bishop, the shadow Liberal National Coalition spokesperson on trade, or her adviser, but were not successful.

Overall, our visit succeeded in alerting key Ministers and Members of Parliament to the proposals in the TPPA which would reduce the ability of government to regulate in the public interest and which were not consistent with the government's policy, and in seeking their commitment not to support these proposals.

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### **AFTINET and health organisations make submission to the IP Australia review of pharmaceutical patents**

AFTINET, the Public Health Association of Australia, the Australian Federation of AIDS Organisations, Palliative Care Australia and the Asia Pacific Network of People Living with HIV, have made a submission to the review of pharmaceutical patents because the issue of patents and medicine is a key issue in the Trans-Pacific Partnership Agreement (TPPA) negotiations. The US is demanding much stronger patent laws which would allow pharmaceutical companies to charge high prices for medicines for longer periods. Our submission argues that there is no evidence to justify stronger patent laws, and that the Australian government should reject such requests in the TPPA. See the submission [here](#).

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### **Consultations begin on the Regional Comprehensive Economic Partnership (RCEP) free-trade agreement: submissions due April 5**

In Canberra we had our first meeting with Michael Mugliston, Australian chief negotiator for the RCEP, involving the 10 ASEAN countries, Japan, China, Korea, India, Australia and New Zealand. The statement of principles for these negotiations was finalised in September 2012 and is published on the DFAT website, with calls for submissions by April 5, 2013.

See <http://www.dfat.gov.au/fta/rcep/#submissions>

The Australian Government will conduct a stakeholder consultation process on the RCEP with Australian organisations. It is not yet clear whether there will be a consultation process in other countries or for the negotiations as a whole, or whether negotiating rounds will allow for this. The first round of formal negotiations will begin in May 2013, aiming for completion in 2015.

Because the US is not involved, intellectual property and medicines, and investment issues may be less of a problem. But this agreement might have more impacts on manufacturing. Issues of offshoring of services and movement of temporary workers may also be raised. There will be resistance to the inclusion of labour rights and environment protections. Trade Minister Emerson has said that Australia will advocate for labour rights and environmental protections in the agreement.

See: [http://www.trademinister.gov.au/releases/2012/ce\\_mr\\_120901.html](http://www.trademinister.gov.au/releases/2012/ce_mr_120901.html)

The RCEP statement of guiding principles is at:

<http://www.asean.org/images/2012/documents/GuidingPrinciplesandObjectivesforNegotiatingtheRegionalComprehensiveEconomicPartnership.pdf>