



BULLETIN - March 2019

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1. Introduction

Dear Members,

Our strategy meetings in Sydney and Melbourne during February were very positive, and focused on the proposed Regional Comprehensive Economic Partnership, and the proposed European Union – Australia Free Trade Agreement. Much will turn on the outcome of the coming Federal Election, in which AFTINET will produce a scorecard of the main parties on trade justice policies.

There is the strong prospect of a change of Federal Government, opening up the possibility of significant improvement in Australia's trade policies.

Australia and Indonesia finally signed a Free Trade Agreement on March 4, but only then did the text become public, allowing some kind of genuine assessment of its costs and benefits. AFTINET will analyse the text and develop a draft submission for the JSCOT inquiry process which should follow. Like the Peru FTA, the Indonesia FTA is an opportunity for Labor to apply its new trade policy, and AFTINET will campaign for this.

Regional Comprehensive Economic partnership ([RCEP](#)) negotiators met in Bali in February and Ministers met in Cambodia on March 2. Both meetings faced concerted protests over farmers rights and worker rights. This will be our major campaign in 2019. See our latest RCEP leaflet [here](#), and our new petition [here](#).

A major struggle over international e-commerce erupted with the rich countries pushing a corporate liberalisation agenda at Davos in late January, and the Indian government pushing

back with a draft e-commerce national development policy in February. Initially this will play out on the fringes of the WTO.

The Australian government completed the legal requirements to join the WTO Government Procurement Agreement before the JSCOT inquiry. AFTINET has made a submission to JSCOT strenuously arguing that none of the exceptions for Small and Medium Enterprises should be bargained away - a distinct prospect in the EU – Australia FTA talks.

The AFTINET Team

2. Indonesia FTA: Labor should reject harmful clauses, says AFTINET

[Dr Patricia Ranald's article](#) in *The Conversation* explains that the new Indonesia - Australia Comprehensive Partnership Agreement has no independent assessment of costs and benefits. There are no chapters committing both governments to United Nations standards for labour rights and the environment to prevent a race to the bottom. But it does have a chapter allowing foreign investors to sue governments if they can argue that a new law or policy has harmed their investment (ISDS).

And it greatly increases the number of working holiday visas to be issued to Indonesian workers despite the evidence that many of these workers face grave exploitation in Australia.

All of these issues contradict the new Labor Party trade policy.

Media Release March 4, 2019: “The Indonesia FTA has been signed without any public scrutiny of the text and without any independent assessment of its overall costs and benefits,” AFTINET Convener Dr Patricia Ranald said today.

“As usual, before signing the agreement the government has released only a summary of positive news about market access benefits for Australian industries without the detailed text, which will only be released on the DFAT website after the signing later today. The government has refused to conduct an independent assessment of the economic, social and environmental impacts of the agreement,” said Dr Ranald.

“As with all trade deals, the devil will be in the detail. We are deeply concerned that the text will contain harmful provisions including:

- [special rights for global corporations to bypass national courts and sue governments for millions of dollars in unfair international tribunals](#) if they can argue that a change in law or policy would harm their investment, known as ISDS;
- increased numbers of [temporary migrant workers, who are vulnerable to exploitation](#), as shown by both research and media reports, without testing if local workers are available,” said Dr Ranald.

“The next steps are for the treaty to be reviewed by the Joint Standing Committee on Treaties and for the parliament to vote on implementing legislation before it can be ratified. AFTINET will analyse the text and make submissions to the Committee. But the likely calling of the Federal Election in April will dissolve this Committee before its work is finished, and the review will not be completed until after the election,” said Dr Ranald.

“Labor adopted policy at its [national conference](#) and in a [draft Bill](#) that rejects these harmful proposals, and pledges to renegotiate them if it wins government. The policy also pledges to conduct independent assessments of the economic, social and environmental impacts of all trade agreements. We call on Labor to implement this policy,” said Dr Ranald.

3. RCEP Protests at Bali negotiation, Cambodia Ministerial

On Monday February 25, 2019, members of SERUNI women's organization, Front Perjuangan Rakyat (FPR), Papuan Student Alliance, and People Over Profit-Indonesia confronted the 25th meeting of the Trade Negotiating Committee of the Regional Comprehensive Partnership Agreement at The Westin Resort, Bali Indonesia. [See video here.](#)

Dewi Retno of women's group SERUNI explained that the highly secretive RCEP "will worsen widespread poverty, injustice, and inequality through its numerous chapters that mainly cater to the needs of transnational corporations."

The protesters argued:

- The RCEP Services and Investment chapters will promote the contractualisation of labor, would mean a race to the bottom for wages and labor standards, and would promote forced migration and labor export.
- The RCEP Intellectual Property chapter will violate farmers' rights by facilitating corporate ownership of seeds while restricting seed access to poor peasants and farmers.
- The Investor-State Dispute Settlement (ISDS) provision in the RCEP will further deregulate destructive and extractive mining operations that harm the environment and the indigenous peoples and farmers who depend on the land.
- The RCEP Investment and Intellectual Property chapters will restrict public access to health services and access to cheap, life-saving medicines by extending patent rights and allowing big pharmaceutical companies to monopolize drug production.

See AFTINET's media statement on the Bali RCEP talks [here](#).

As the RCEP Ministers met in Cambodia on March 2, 2019, many farmers and other civil society organisations from India, Malaysia, the Philippines and Indonesia urged that the Ministers reject proposals on [intellectual property \(IP\) on seeds](#) and plants.

Farmer groups stress that they should not give in to pressure from some countries at the 16-country RCEP talks to take on intellectual property obligations that go beyond World Trade Organisation commitments. Australia was singled out for pushing to apply in the RCEP the 1991 Act of the International Convention for the Protection of New Varieties of Plants (UPOV 1991 Convention).

Nothing must affect the right of farmers to freely save, use, exchange and sell farm saved seeds/propagating material, the farmers said. It warned that the UPOV system will reduce household income available for food, healthcare or education.

[Sign the AFTINET PETITION](#) to the Senate against damaging clauses in the proposed RCEP (Regional Comprehensive Economic Partnership) and in favour of enforceable workers' rights and environmental standards. See more information, including a printable flyer, [here](#). You can print a hard copy of the Petition [here](#).

4. Indian draft National e-Commerce Policy breaks new ground

February 27, 2019: Rich countries including Australia decided at the recent World Economic Forum meeting at Davos to push for an E-Commerce Agreement in the World Trade Organisation. [Their formula is for 'free digital trade'](#), for rules that suit global digital

corporations – notably Google, Amazon, Microsoft and Apple. This push has been strongly criticised by [consumer and civil society groups](#).

The Indian government has now published for comment a [draft National e-Commerce Policy](#) which aims to maximise Indian economic development while protecting the privacy and rights of individual Indian citizens. This policy has emerged against strong pressure from the global digital giants, and directly confronts their initiative at Davos.

The draft asserts that we are already in the Fourth Industrial Revolution where data is itself ‘capital’, data is a powerful resource like oil, and so data, while belonging to individuals whose rights must be protected, is also a collective asset for national development. And India, having a population of 1.35 billion, should be a data super power.

Hence the abuse of data is a major threat to the privacy of users, fair competition in the market, rights of marginalized sections of society, sustainability of Micro Small and Medium Enterprises and start-ups and regulatory space and security of countries.

The National e-Commerce Policy would limit foreign investors to only creating e-commerce platforms, not owning the goods and services sold on them. It would:

- restrict the export of data generated by devices installed in public space, and data generated by users in India by various sources, including e-commerce platforms, social media, search engines etc
- restrict the use of Indian data stored abroad by a company
- greatly integrate the government agencies of Customs, the Reserve Bank and India Post to ensure that customs duties continue to be levied on imports generated by e-commerce, a provision that directly confronts the Davos initiative
- intensify government support for e-commerce infrastructure in India itself, so that cloud storage and fibre-optic networks could connect the entire country including remote areas, and enable more development of Indian software and Artificial Intelligence capacities
- take firm action against sale of counterfeit and pirated goods through e-commerce

5. Eminent economists warn against new e-commerce initiative for WTO

February 13, 2019: Chakravarthi Raghavan, an esteemed author of several books on the WTO, and Jomo Kwame Sundaram, former United Nations Assistant Secretary General for Economic Development, have [issued a sharp warning](#) to developing countries about the e-commerce initiative recently launched at Davos by a group of rich country governments, including Australia.

They warn first that the idea of an agreement between a minority of World Trade Organisation members on e-commerce, which has not been endorsed by the majority, would be unlawful and undemocratic, allowing a small group of WTO countries to impose their view on the majority.

They warn that the initiative aims to consolidate the power of global technology corporations to gain access to new foreign markets, secure free access to others’ data, accelerate deregulation, casualise labour markets, and minimize tax liabilities. The negotiations are intended to diminish the right of national authorities to require ‘local presence’, a prerequisite for the consumer and public to hold suppliers accountable.

Global corporations want to divert more business through e-commerce platforms. They argue that this will not only reduce domestic market shares, as existing digital trade is currently dominated by a few TNCs from the United States and China, but also reduce sales tax revenue which governments increasingly rely upon with the earlier shift from direct to indirect taxation.

Instead of this threat of 'data colonialism', Raghavan and Jomo are urging developing countries and civil society organisations to create a development-focused and jobs-enhancing digitization strategy.

Developmental digitization will require investment in countries' technical, legal and economic infrastructure, and policies to:

- bridge the digital divide; develop domestic digital platforms, businesses and capacities to use data in the public interest;
- strategically promote national enterprises, e.g., through national data use frameworks;
- ensure digitization conducive to full employment policies;
- advance the public interest, consumer protection, healthy competition and sustainable development.

They urge international institutions like the WTO to support this approach, which could also apply in other agreements [like the RCEP](#).

6. Experts warn of TPP-11 downsides for ASEAN countries and South Korea

February 25, 2019: Last month the eleven members of the now-operational Comprehensive and Progressive Trans-Pacific Partnership invited other interested states to join. So far, seven of the original eleven have ratified. Aspiring new members must have bilateral talks with each of the eleven founder members and all eleven would have to agree to their joining.

[Eijas Ariffin, writing in the ASEAN Post](#), has warned that developing countries in the TPP-11 could lose out to the developed country exporters as zero tariffs extend to 95 per cent of traded goods: "According to the Asian-Pacific Resource & Research Centre for Women (ARROW), it is the developed countries that will see the largest increase in domestic value-added exports instead".

Ariffin warned Peru, Chile, Malaysia, and Brunei not to rush to ratify the agreement.

[Malaysia is actively assessing](#) the compatibility of the TPP-11 with its national development strategy, and may decide not to ratify.

South Korea has been on the sidelines of the TPP process since talks began way back in 2008. Now it would have to accept the terms of the eleven members, rather than expect to negotiate for acceptance of its own interests. [A professor of law at Seoul National University](#) has concluded: "Simply, accepting all demands from as many as 11 key states would be probably unacceptable to South Korea. More so, given the slowdown of the national economy and deteriorating job market and a general election coming up."

7. European Civil Society condemns EU backflip on Climate Accord and trade

Thursday February 21, 2019: Both a European parliamentary trade committee and French President Macron are doing a backflip on earlier decisions that support for the Paris Climate Accord of 2015 is a pre-condition for any new trade agreement. This policy was applied in

the recently finalised EU-Japan Free Trade Agreement. But it will not apply in the new trade talks with President Trump which will focus on steel and automobiles.

Support for the Paris Climate Accord is a pre-condition for the current EU-Australia Free Trade Agreement negotiations, but the danger is the Morrison government might seize this opening.

[Sixty-two prominent Global and European citizen organisations](#) came out on February 18, 2019, saying: “As civil society groups, we call on the European Commission, national governments and EU parliamentarians to use every political and financial tool at their disposal to speedily and justly end the fossil fuel age now. We must avoid the chaos, droughts and rising tides of 1.5 degrees or more of global warming, and bring about a safer, fairer, and cleaner Europe.

“Thousands of citizens – especially school children – are currently marching in the streets demanding immediate action from decision makers on climate change.

“As a minimum, EU decision makers must keep their word, uphold the Paris Agreement and not mandate new trade negotiations with the USA.”

But next day, February 19, 2019, the [EU Parliament’s committee for international trade](#) voted 21 to 17 to drop the requirement about the Paris Accord to enable talks with the USA. This is likely to be endorsed by the full parliament in mid-March.

A French Treasury official supported the move by the European Parliament, saying that President Macron’s demand regarding the Paris Climate Accord did not apply to the ‘limited’ talks with Trump, but only to ‘comprehensive’ agreements.

8. AFTINET submission on Australia joining the WTO Government Procurement Agreement

February 10, 2019: AFTINET’s [submission](#) to the JSCOT Inquiry on Australia joining the WTO Government Procurement Agreement argues that the government has not presented any independent assessment of the costs and benefits of Australia joining the agreement, that would justify Australia’s accession. If the Committee recommends that accession should proceed, the Committee should note in its report that the EU has indicated in its conditions of accession that it will seek removal of exemptions for small and medium-sized enterprises (SMEs) through the GPA review process.

The Committee should recommend that future governments retain and strongly defend the exemptions for SMEs, and all other exemptions, including exemptions for Aboriginal and Torres Strait Islander businesses, in Australia’s conditions of accession.

The Committee should also recommend that governments retain and strongly defend exemptions for SMEs, and Aboriginal and Torres Strait Islander businesses and other exemptions in the EU-Australia FTA negotiations.

The Commonwealth government should undertake a training program for procurement officers to ensure that they are aware of and can implement the full range of SME and other procurement exemptions in the WTO GPA and Australia’s other trade agreements, and that they are aware of broader definitions of value-for-money and economic benefit.

9. US-China trade war threatens a new cold war

February 5, 2019: Chinese and US trade negotiators meet in Washington again next week to try to reach an agreement to avoid a massively escalated tariff war from March 1. Without a deal, US punitive tariffs on US\$200 billion of Chinese imports will go up from 10 per cent to 25 per cent, and China is likely to respond in kind. The US is [blocking appointments](#) to the World Trade Organisation appeals body, and threatening to leave the 164-member WTO.

The tariff wars have already slowed economic growth in both China and the US, [with impacts on other economies](#). According to the [International Monetary Fund in January 2019](#), the tariff wars have contributed to “risks to global growth tilt[ing] to the downside” and its global economic growth forecast has been downgraded since October 2018.

Sydney Morning Herald International Editor [Peter Hartcher](#) argues that there are three positions within the White House, from which President Trump will choose:

- The "traditionalists", including Treasury Secretary Steve Mnuchin, who will settle for China buying a lot more US products.
- The "structuralists", including Trade Representative Robert Lighthizer, who also want China to change intellectual property law, market access laws and to end the “privileged treatment” of Chinese state-owned enterprises.
- The "decouplers", led by Commerce Secretary Wilbur Ross, who believe that the two systems are irreconcilable. Hartcher reports that Ross has been urging US CEOs to take investments out of China. This is combined with threats of a new [cold war](#) and escalation of the [nuclear arms race](#).

China has refused to abide by [international court rulings](#) on its claim to islands, reefs and shoals in the South China Sea, but still claims to support [multilateral trade rules](#) through the WTO.

The US is trying to impose a global shut out of the Chinese communications technology company Huawei, and has initiated the arrest of its Chief Finance Officer in Canada. China has retaliated by arresting Canadians in China.

With the two biggest economies in the world in conflict, everyone will suffer economically, and the possible political and even military fallout could be catastrophic.

The lack of Australian public debate and government political initiative to manage these threats is astonishing. Both the Coalition and Labor formally support a “rules-based international order” but cannot confront the reality that the US has abandoned that approach.

While Australia’s trade discussion is about where to sell more beef, or whether Australian prosecco can still use the name, the entire edifice of post-World War II “free trade” is under threat.

US demands to ‘reform’ the WTO are aimed to reduce the number of countries that are classified as “[less developed nations](#)” who might claim differential treatment, and to expand corporate power over their global supply chains and markets. If it continues, the US blocking of appointments to the WTO appeals body will paralyse the WTO at the end of this year.

Australia should reject both US and Chinese unilateralism and a new arms race. Australia should support fairer multilateral trade rules through the WTO, including differential treatment for developing countries, and rules that support rather than undermine human rights, labour rights and environmental sustainability. Such change would allow the vast

majority of poorer countries to have a genuine development pathway, and ensure that trade improves fairness and environmental sustainability for all countries.

10. US mining company KCA sues Guatemala for US\$300 million

February 4, 2019: US mining company Kappes, Cassidy & Associates' (KCA) made a US\$300 million arbitration claim last December against Guatemala to the World Bank's [International Centre for Settlement of Investment Disputes \(ICSID\)](#) over alleged violations of the Central America-Dominican Republic Free Trade Agreement (CAFTA-DR). [Eleven international organisations have condemned the suit.](#)

Since 2011, the communities of San José del Golfo and San Pedro Ayampuc have denounced the potential environmental and health impacts of KCA's Progreso VII Derivada gold mine project. In 2016, Guatemala's Supreme Court suspended KCA's operations over failure to consult with Indigenous people, which the Ministry of Energy and Mines and the company have appealed to the Constitutional Court. Instead of respecting Guatemala's democratic and judicial processes, KCA's ISDS action pressures the government to restart the mine, or otherwise pay the company hundreds of millions of dollars in lost potential profits.

Local communities have maintained a peaceful encampment, known as 'La Puya', and have resisted repeated violent eviction attempts, [suffering repression by state and private security forces](#). They argue that KCA and the state have failed to credibly evaluate the impact that the gold project would have on water supplies in a region with high levels of naturally-occurring arsenic.