



BULLETIN - March 2020

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1. [Introduction](#)

Dear Members,

Negotiations for the Regional Comprehensive Economic Partnership Agreement are continuing, with the latest reports suggesting that India is not planning on re-joining negotiations and the other partner countries will sign the agreement in late 2020.

The final text of the RCEP e-commerce chapter was leaked in February and shows a much more cautious approach to e-commerce, most likely because of concerns amongst developing country partners about the social and economic risks. The remaining text remains secret and won't be released until after the agreement is signed.

AFTINET has made submissions to the DFAT on the ongoing negotiations for a plurilateral agreement on e-commerce, raising concerns about the substantial human rights and regulatory risks of the agreement. We also made a submission on the proposed Australia-UK free trade agreement. See below for more information.

This is AFTINET's 20th anniversary of fighting for trade justice! We will be holding several events to celebrate throughout the year and look forward to continuing to work with you all as we advocate for a trade system that is underpinned by human rights, labour rights and environmental sustainability.

The AFTINET Team

2. [AFTINET 20th Anniversary Dinner May 20, 6pm, save the date](#)

This year is our 20th anniversary of fighting for trade justice.

Save the Date to help us celebrate!

AFTINET 20th Anniversary dinner
Wednesday May 20, 6pm
Club York is at 95-97 York St, Sydney 2000.

(Near the corner of Market St, 5 mins walk from Town Hall station)

Featuring videos, surprise guests and a birthday cake!

Booking details available soon!

3. RCEP update: e-commerce chapter leaked and Parliamentary Forum 24 March

Progress of negotiations

Negotiations for the Regional Comprehensive Economic Partnership are ongoing and the most recent advice from DFAT is that RCEP partner countries remain committed sign the deal at the end of 2020.

There have been mixed reports about India's participation in the agreement. [Australia](#) and [Japan](#) have stated that they hope India will re-join the negotiations and India [announced](#) in late January that it would conduct a cost-benefit analysis of the deal before making a final decision.

However, India did not take up an invitation from the 10 ASEAN countries to attend an RCEP meeting on [February 3-4](#) and recent [articles](#) suggest that India is not planning on re-joining negotiations.

E-commerce chapter leaked

The final unscrubbed text of the RCEP's e-commerce chapter was leaked in late February and shows a much more cautious approach to e-commerce than Australia's recent free trade agreements, including the Trans-Pacific Partnership.

According to [legal analysis](#), the e-commerce chapter is not enforceable by state-state dispute settlement; there are no provisions that restrict access to source code; and rules relating to the cross-border transfer of data and that prohibit the use of local presence requirements are subject to a self-judging public policy test and a national security exception.

This demonstrates that broad concern about the social and economic impact of e-commerce rules remains, particularly amongst developing countries who make up a significant proportion of RCEP member countries.

The remaining chapters of the RCEP remain secret and the full RCEP text will not be made public until after the agreement has been signed.

Parliamentary Forum on trade transparency and the RCEP, Canberra

AFTINET will hold a parliamentary forum on trade transparency and the RCEP agreement on **Tuesday 24 March, 12-1pm at Parliament House Canberra.**

The forum will provide an update on the RCEP negotiations and lack of transparency throughout the negotiations and will include presentations addressing the impact of the RCEP on public health, workers' rights, and women's rights.

Please email campaign@aftinet.org.au if you would like to attend the event.

4. JSCOT Inquiry into trade agreement process expected soon

We expect the Joint Standing Committee on Treaties (JSCOT) to announce an inquiry into the trade agreement process soon. We will inform members of the details as soon as this happens.

AFTINET has consistently raised concerns about the lack of transparency and democratic accountability in trade negotiations. Under our current trade agreement process:

- Trade negotiations are secret and negotiation text are not publicly released;
- Civil society consultation is inconsistent and inadequate;
- The final texts of trade agreements are not released until after they are signed and there are no independent economic, social or environmental assessments of the text; and
- Parliament can only vote on the implementing legislation, not the full agreement.

AFTINET will develop a draft submission to address these flaws, will share this with members in the coming weeks and seek media coverage. This will be an important opportunity for AFTINET members

and supporters to promote public and parliamentary debate about the lack of transparency and democratic accountability in trade negotiations.

5. ISDS updates

Updated summary of latest evidence on investors suing governments (ISDS)

Read AFTINET's updated [summary](#) of the latest evidence on global corporations suing governments (ISDS).

In recent years, number of ISDS cases has increased to 983 reported cases as of July 2019 and more evidence has come to light about the flaws in the ISDS system.

The critical debate has affected all sides of politics, more governments are withdrawing from ISDS arrangements and the EU and the US are now negotiating agreements without ISDS.

The institutions which oversee ISDS tribunals have acknowledged many of their flaws and are now conducting reviews of the system.

Read our updated [summary](#) for an overview of the risks of ISDS, information about new ISDS cases and to find out why the Australian government should not include ISDS in trade agreements.

British American Tobacco uses trade law to try to freeze plain packaging legislation in the Netherlands

British American Tobacco's [submission](#) to the Dutch government in response to its plans to introduce new plain packaging legislation for cigarettes has included a veiled threat of arbitration under international trade law.

The submission claims that The Netherlands' plain packaging legislation violates international trade law and suggests that a case could be brought under either ISDS provisions in the Netherlands' Bilateral Investment Treaties or the WTO's state-to-state dispute settlement body to pressure the Netherlands government not to proceed with the new legislation.

There is extensive evidence that ISDS cases, or threats of ISDS cases, can lead to regulatory chill. For example, New Zealand delayed the implementation of its [tobacco plain packaging legislation](#) until after the Philip Morris case against Australia was concluded.

Expert claims ISDS provisions for Mexico in NAFTA 2.0 are neo-colonial and could undermine action on climate change

An [article](#) by Manuel Perez-Rocha, an associate fellow at the Institute for Policy Studies, has argued that the ISDS provisions in the new NAFTA agreement are neo-colonial and give extensive powers to big polluters, which could restrict government's ability to act on climate change.

While the US and Mexico have exempted themselves from ISDS provisions, the US can still bring ISDS cases against Mexico in the energy sector and some other infrastructure sectors.

Perez-Rocha highlighted the environmental risks of ISDS, arguing that ISDS cases have been used by fossil fuel companies in Mexico and throughout Latin America to challenge environmental regulation and community resistance to mining projects.

He also argued that the inclusion of ISDS for Mexico will also make it more difficult for the Mexican government to reverse legislation implemented in 2013 that facilitated the privatization of the energy sector.

6. Plurilateral negotiations on e-commerce update – submission and factsheet

Read AFTINET's new [submission](#) to DFAT on the ongoing negotiations for a plurilateral agreement on e-commerce. The submission demonstrates how e-commerce rules in trade agreements can extend the power of technology giants like Google and Facebook while undermining human rights. The submission raises specific concerns about how e-commerce rules could undermine policy reforms recommended by the ACCC into digital platforms inquiry and identifies human rights risks across a range of policy areas, including:

- privacy rights and consumer protections;

- anti-competitive and discriminatory practices;
- cybersecurity and security standards for electronic transmissions;
- financial services;
- corporate tax avoidance and evasion; and
- workers' rights.

AFTINET has also released a short [factsheet](#) that provides a brief overview of the social, human rights and economic risks of e-commerce rules.

For more information on the plurilateral negotiations read our article in [Michael West Media](#), which reveals how big tech companies are lobbying negotiators during regular and secret talks in Geneva and discusses the risks that the negotiations pose to privacy and consumer rights and Australia's ability to regulate the digital economy.

7. Australia-UK free trade agreement update and submission

Read AFTINET's new [submission](#) to DFAT on the on the proposed Australia-UK free trade agreement. The submission outlines concerns relating to:

- The lack of transparency and democratic accountability in trade negotiations
- The inclusion of Investor-State Dispute Settlement provisions
- The inclusion of rules that extend intellectual property rights on patents and copyright
- The potential impact of the trade in services provisions on essential services
- The potential risks of government procurement provisions
- The potential risks of electronic commerce provisions
- The potential impact of provisions relating to trade in financial services
- Compliance with International Human Rights and Labour Rights law and Environmental standards

The UK officially left the EU on 31 January and [news reports](#) have suggested that the UK government plans to begin official trade negotiations with non-EU countries quickly.

There have been suggestions that an Australian free trade agreement with the UK could be completed by the end of the year and Australian Trade Minister Simon Birmingham has stated that Australia is "at or near the very front of the queue" in upcoming trade negotiations and that we are "ready to roll as soon as they are happy to begin the process."

However, the UK will have to manage negotiations with the EU and US, which will likely slow progress in its negotiations with Australia.

The UK Foreign Minister, Dominic Raab, visited Australia in February but official negotiations were not announced during this visit. AFTINET will continue to monitor discussions between the UK and Australia about the commencement of negotiations.

8. Pacific Islands burdened by unfair PACER-Plus Trade Deal say Pacific community groups

The Pacific Island Countries (PICs) are taking on disproportionate binding commitments in exchange for false promises of benefits from the regional free trade deal known as PACER-Plus according to new analysis released from the Pacific Network on Globalisation (PANG).

The release of the analysis and accompanying briefs examines the technicalities and promises of the two Arrangements included in PACER-Plus – The [Arrangement on Labour Mobility](#) and the [Development and Economic Cooperation Arrangement](#).

Adam Wolfenden, PANG's Trade Justice Campaigners explained that PACER-Plus and these Arrangements offer little by way of actual benefit for the Pacific. Australian and New Zealand development assistance money has been diverted to ensure implementation of the trade deal and there is an annual meeting about labour mobility with no binding commitments. But Pacific countries had to make binding commitments to reduce tariffs and regulation of investment. He noted that the deal was so bad that an [Australian Parliamentary Committee](#) recommended that

some development assistance go towards monitoring the anticipated negative impacts of the deal on government revenue, health and gender equality.

Of fourteen Pacific Island Countries, Fiji and Papua New Guinea, which produce over 80% of Pacific Island output, did not sign the deal, and only Australia, New Zealand, Samoa and Kiribati have ratified it. The deal requires eight countries to ratify before it can be implemented.

Four new [Parliamentary Inquiries](#) into Australia's trade, diplomatic and defence relationships with Pacific have been announced by the Trade, Defence and Foreign Affairs Ministers, indicating that the government is concerned about these relationships. See AFTINET's media release [here](#).

AFTINET will draft and circulate a submission to the Trade Inquiry.