



BULLETIN

May 2018

Inside this edition:

- **Introduction**
- **Say no to TPP-11 on June 15: Sydney rally**
- **Canadian court ruling sparks renewed criticism of ISDS in NAFTA, and why mining companies promote ISDS**
- **UNCITRAL meetings on ISDS dominated by arbitration industry**
- **EU-Australia FTA talks have quietly dropped ISDS**
- **JSCOT parliamentary report says PACER-Plus could harm Pacific Island economies**
- **Government should reject Trump's threats to affordable medicines**

Introduction

Dear members,

As the TPP-11 has been tabled in Australia parliament, AFTINET is in campaign mode. The deal is clearly not in the public interest, and we are calling on opposition parties to reject the TPP-11 implementing legislation and block the deal. We will be rallying outside an upcoming inquiry meeting on June 15 – read on for more details. Also in this edition: updates on ISDS, a JSCOT parliamentary inquiry slams the PACER-Plus deal, and we call on the Turnbull government to stand up to Trump's threats to affordable medicines.

Say no to TPP-11 on June 15: Sydney rally

The TPP-11 has been tabled in Parliament and is being reviewed by a joint committee dominated by the government before consideration of the implementing legislation. We have succeeded in getting a Senate Inquiry on which the government does not have a majority, and we are campaigning for the Senate to reject the TPP-11 implementing legislation.

The government-dominated joint committee is meeting at 1 Bligh St, Sydney, on June 15. If you will be in Sydney at that time, please join us for a [rally](#) outside the meeting.

Friday June 15 12.30-1.30 pm
Farrar Place, Sydney
opposite cnrs Bent & Bligh Streets, City

(nearest station Circular Quay)

Even if you can't attend, you can share our [Facebook event](#) with your networks, or download and share our [printable flyer](#).

Canadian court ruling sparks renewed criticism of ISDS in NAFTA, and why mining companies promote ISDS

A Canadian Federal Court has [ruled in favour](#) of US company Bilcon, which won its case for millions in damages from Canada via ISDS provisions in NAFTA, after its proposed quarry in an environmentally sensitive area was rejected in 2007. The Federal court found that it had no jurisdiction to overrule the ISDS decision, even though the decision had the potential to undermine Canada's environmental assessment process. This has promoted environmental groups to renew their calls for Canada to scrap ISDS in NAFTA renegotiations, which are currently underway with the US and Mexico.

University of Ottawa law professor Amir Attaran commented on the case, saying 'as environmentalists, our worst fears have been confirmed that NAFTA can override Canada's right to protect its own environment...'

Canada has already been sued 41 times under the ISDS chapter in NAFTA. This has cost the country [more than \\$300 million](#). So why has the Trudeau government supported ISDS [so vehemently](#), to date? A [new book](#) by Canadian writer Joyce Nelson sheds light on this question. In the global 'arbitration game', companies – increasingly backed by hedge fund money – are using ISDS clauses to bully governments over policies that may undermine their profits. Over 60% of the world's mining and energy companies are based in Canada, and the [majority](#) of Canadian ISDS cases involve these two sectors.

This book is a timely reminder of the dangers of ISDS in the TPP-11 of which Canada is a member. Ratification of the TPP-11 would expose future Australian regulation of mining and energy to ISDS cases from Canadian companies like Chevron, owner of the huge [Gorgon LNG project](#) in Western Australia.

UNCITRAL meetings on ISDS dominated by arbitration industry

As public opposition to investor-state dispute settlement (ISDS) grows, the law firms, tribunalists, hedge funds and private equity firms who benefit financially from ISDS are scrambling to protect it.

Melinda St. Louis from Public Citizen's Global Trade Watch has published a [summary](#) of the recent United National Commission on International Trade Law (UNCITRAL) meeting on ISDS reform, which demonstrated the one-sided nature of ISDS 'reform' discussions.

Public Citizen's Global Trade Watch were one of many civil society groups not granted official observer status at the April 2018 meeting in New York. However, St. Louis was able to attend the meeting as part of another civil society group. She noted that, of the non-government observer organisations who were invited, 37 out of 44 were private lawyers.

St. Louis writes, "The takeaway from the UNCITRAL's process for its so-called "reform" discussions thus far is that lawyers making millions in ISDS cases are welcomed, while the voices

of the millions of people whose lives are harmed by ISDS cases brought by multinational corporations are barely an afterthought.”

AFTINET’s [summaries](#) of past UNCITRAL meetings on ISDS reform are available to read on our website.

EU-Australia FTA talks have quietly dropped ISDS

Last week [SBS news](#) reported that the European Union has [authorised negotiations](#) for a free-trade agreement (FTA) between the EU and Australia, as well as the EU and New Zealand. Australian Trade Minister Steve Ciobo told SBS News that he hopes the FTA negotiations will commence ‘very soon’. But what Ciobo did not mention, although it is significant, is that the EU mandate for negotiations does not include investor-state dispute settlement (ISDS).

Two recent EU legal decisions give context for the mandate excluding ISDS. Firstly, on May 2017, the Court of Justice of the European Union (CJEU) [determined](#) that provisions in ISDS must be voted on by all EU Member States. And secondly, in March 2018, the European Court of Justice [ruled](#) that ISDS between two EU member states was incompatible with EU law, as it undermined sovereignty. The EU has now adopted a “fast track” strategy which leaves out ISDS, allowing the European Commission to finalise trade deals without individual state votes, fearing that national parliaments would reject ISDS.

Why would the Australian government refuse to mention this significant fact? Perhaps it is because they know there is increased public opposition to ISDS, and yet they are [persisting](#) with its inclusion in the TPP-11 and other agreements.

JSCOT parliamentary report says PACER-Plus could harm Pacific Island economies

The Joint Standing Committee on Treaties [report](#) on the PACER-Plus deal between nine Pacific Island countries, Australia and New Zealand, reflects many of the criticisms made by [AFTINET](#), unions, public health and aid and development organisations. The report admitted that the absence of Papua New Guinea and Fiji ‘significantly diminishes’ the value of the deal, and that the deal could have harmful impacts on vulnerable Pacific Island economies. There have been no independent studies of the economic impacts of the deal.

PNG and Fiji make up over 80% of the combined GDP of Pacific Island economies, but both countries declined to join the deal, stating that the deal is skewed towards Australia and New Zealand. Of the Pacific Island economies, PNG and Fiji are the only two with enough bargaining power to refuse the deal. Others may share their views, but the deal is tied to the aid budget.

Business journalist Nic Maclellan [observed](#) that although the JSCOT report recommends the deal be ratified, it is a ‘telling critique of the treaty’. The report notes that Pacific Island economies already have tariff free access for their exports to Australia, meaning all market access benefits will flow to Australia and NZ. Secondly, the development assistance in PACER-Plus comes from the existing aid budget. The JSCOT report notes that it is unclear how PACER-Plus would provide additional benefits to Pacific Island economies.

AFTINET Convener Dr Patricia Randal commented, “given that the Report says that the deal could cause considerable harm to vulnerable Pacific Island economies, it is surprising that it still recommends approval of the implementing legislation”.

The implementing legislation is likely to be tabled in parliament soon.

Government should reject Trump's threats to affordable medicines

US President Donald Trump has [declared](#) his intention to end 'freeloading' and [force US trading partners to increase prices](#) for US pharmaceutical exports. Both [New Zealand](#) and [Canada](#) have rejected this announcement, but there have been no statements from the Australian government. This is a direct threat to Australia's affordable medicine policies, guaranteed through the Pharmaceutical Benefits Scheme (PBS). The PBS keeps medicine prices down by regulating for lower wholesale prices to pharmaceutical companies, and then subsidising retail prices to consumers.

Trump's strategy for higher prices could be achieved through US bargaining to re-join the Trans-Pacific Partnership, or through bilateral talks based on the 2005 Australia-US Free Trade Agreement. TPP-11 clauses relating to higher prices for biologic medicines were only suspended after the US pulled out of the TPP in 2017. They could be revived if the US re-joins the deal.

The US is the only comparable industrialised country which does not have a comprehensive system for regulating medicine prices, and it is trying to use trade agreements to remove our regulation. The Turnbull government must reject this move.