



## BULLETIN - May 2019

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### 1. [Introduction and election outcomes](#)

Dear Members,

We welcome Sophie Hardefeldt, our new analyst/campaigner, who brings to AFTINET her rich experience of working on trade justice issues in Britain.

The election results are in and the LNP Coalition has been returned to government with a majority of at least 2 seats, with some seats still in doubt and the Senate count incomplete. Simon Birmingham will remain Trade Minister. This means that we are unlikely to see a shift in trade policy without substantial public pressure.

The LNP government will continue with a secretive trade negotiation process and it remains supportive of provisions that could undermine human rights and the environment such as those that give foreign investor rights to sue government (ISDS), strengthen medicine monopolies, deregulate services, and increase the number of vulnerable temporary workers.

We will intensify our campaigning to oppose the harmful policies of the LNP government. The government will probably not have a majority in the Senate, which means that Labor, the Greens and Centre Alliance may be able to amend or block legislation in the Senate. Therefore, we will continue to campaign to keep the Opposition Labor, Greens and Centre Alliance accountable to act on their policies and to oppose the implementing legislation for harmful trade deals in the Senate.

The next round of negotiations for the Regional Comprehensive Economic Partnership (RCEP) will take place in Melbourne from 28 June-3 July, 2019. AFTINET will be holding a public forum on Monday 1 July and a rally on Tuesday 2 July. Further information below.

**Save the date: AFTINET's annual fundraising dinner will be held in Sydney on Tuesday 30 July.** The guest speaker will be Isabel McIntosh a former Lock the Gate activist who has campaigned with AFTINET against the rights of global corporations to sue governments (ISDS). Isabel will speak about the environmental impacts of trade and investment agreements. More information to come.

*The AFTINET Team*

## **2. Next round of RCEP Negotiations, Melbourne 28 June – 3 July, 2019: take action**

The next round of negotiations for the Regional Comprehensive Economic Partnership (RCEP) will take place in Melbourne from 28 June-3 July, 2019. Join our events to support the campaign against damaging provisions in the RCEP:

**Public forum, Monday 1 July, 6:30-8:30pm**

**Victorian Trades Hall, 54 Victoria St Carlton**

**Speakers:** Michele O'Neil, ACTU, Deborah Gleeson, La Trobe Uni, Thuy Nguyen Phuong, ActionAid Vietnam, Jane Kelsey, Auckland Uni, plus more to come!

**Rally, Tuesday 2 July, 12:30-1:30pm**

**Melbourne Convention Centre, meet at the Polly Woodside at South Wharf.**

We will share more information on social media about the events in the coming weeks!

## **3. RCEP materials and actions**

Find out more about how the RCEP could undermine human rights and the environment and sign our petition calling on the Senate to oppose the damaging provisions in the RCEP:

- Read and share our short leaflet [here](#).
- Read our longer [explainer](#) here.
- Read our [handy summary](#) with the latest evidence on ISDS, including history, tribunals, costs, recent cases, governments withdrawing and reviews by ISDS governing bodies.
- Sign and share our petition calling on the Senate to oppose damaging clauses in the proposed RCEP agreement and to support the inclusion of enforceable workers' rights and environmental standards. Sign the petition [here](#) and share it with your networks on social media.

## **4. Government failure to cancel old Indonesian investment deal leaves Australia open to being sued over tobacco regulation and other public interest laws**

May 22, 2019: [Legal academics](#) have confirmed that the recent [Indonesia trade deal](#) has no provisions to cancel the old 1993 [Indonesia-Australia bilateral investment agreement](#), which will remain in force alongside the new agreement.

Investor-state Dispute settlement (ISDS) gives [special legal rights to foreign investors](#), enabling them to bypass national courts and sue governments for millions of dollars of compensation in international tribunals if they can claim that a change in law or policy will harm their investment. The older versions of ISDS in bilateral investment agreements had no exceptions for public interest law. That is why the [Philip Morris tobacco company](#) chose the 1993 Australia-Hong Kong investment agreement when it sued Australia over our 2011 plain packaging law.

The failure to cancel the old Indonesian deal is exceptional because Australia has agreed to [terminate earlier investment](#) agreements upon entry into force of newer agreements with [Chile](#), [Hong Kong](#), [Mexico](#), [Peru](#), [Uruguay](#) and [Vietnam](#). The claim is that the new deals have more safeguards and exclusions for specific public health [regulation](#), including tobacco regulation.

Cancelling the old agreements in favour of the new ones could make it more difficult for corporations to claim compensation for these laws

The [government summary](#) of the new Indonesia deal is misleading, because it does not mention the failure to cancel the old deal, but claims credit for more public interest safeguards in the new agreement.

The new Indonesia agreement does contain a [more recent version of ISDS](#) which claims to have more safeguards and more transparent procedures. But it only specifically excludes some areas of health regulation. These are Medicare, the Pharmaceutical Benefits Scheme, the Therapeutic goods Authority and the Gene Technology Regulator.

But curiously, tobacco regulation, which has been excluded in the TPP-11 and in other new agreements, is **not** specifically excluded. Indonesia has a tobacco industry, and was a party to a [WTO state-to state complaint](#) against Australia's plain packaging law. If a future government decided to strengthen tobacco regulation, for example on vaping, an ISDS claim against it from an Indonesian-based company would not be excluded.

Other more general safeguards will not prevent ISDS cases against changes in other public interest regulation, like environmental laws to address climate change or new industrial laws

The 1993 Indonesia agreement has no exclusions at all. This means that corporations will have a choice of using ISDS in the old agreement, which has no exclusions and less transparency, rather than ISDS in the new agreement, which has some exclusions. Obviously, they are likely to choose to use the old agreement, which has less defences for government. This makes a nonsense of the exclusions the government is claiming credit for. The government should own up and cancel the old agreement

The new Indonesia deal will be reviewed by a parliamentary committee soon. Labor, the Greens and Centre Alliance should implement their policies against ISDS by opposing both the old and new versions of ISDS and voting against the implementing legislation for the agreement.

## **5. Investor-state dispute settlement updates**

### **Adani's threat to sue should not deter decisions to protect the environment says legal expert**

*May 9, 2019:* UNSW legal researcher Dr Jonathan Bonnitcha has [confirmed](#) AFTINET's concerns that the Adani mining company could use the Investor-State Dispute (ISDS) process in the India-Australia Bilateral Investment Treaty to claim compensation of billions of dollars from the Australian government if its mining licence is cancelled for environmental reasons.

### **Report shows mining companies use ISDS to undermine indigenous rights and environment in Latin America**

*8 May, 2019:* A new [report](#) by the Institute for Policy Studies, MiningWatch Canada, and the Center for International Environmental Law examines all 38 known Investor-State Disputes that have been brought by mining companies against governments in Latin America. The companies are using special rights in trade and investment agreements to sue governments in international tribunals for billions of dollars in compensation for court decisions, laws and public policies that they claim reduce the value of their investments. Many of these laws and policies protect indigenous land rights, health or the environment.

### **International protest at US mining company claim for \$300 million against Guatemala**

*May 2, 2019:* AFTINET has joined with organisations from Guatemala and 226 other national and international organisations to sign a [letter](#) delivered to Guatemalan and US authorities denouncing an ISDS claim for \$300 million dollars by the US mining company Kappes, Cassidy and Associates (KCA).

### **Study shows Investment tribunals make governments pay foreign investors for democratic reforms**

*April 29, 2019:* An [academic study](#) by Jonathon Bonnitcha and Zoe Williams has systematically analysed Investor-state dispute Settlement (ISDS) cases in which foreign Investors have successfully

argued that they should be compensated for new laws or policies resulting from changes of government or other democratic pressures.

### **US company attempt to sue Australian government lapsed but still cost \$44,000**

*April 24, 2019:* [The Guardian](#) reported that US energy company APR has failed in its attempt to use the US-Australia Free Trade Agreement (AUSFTA) to sue the Australian government for compensation because of an adverse court decision.

### **Sharpening clash as UN body reviews investor rights to sue governments (ISDS)**

*April 8, 2019:* The Transnational Institute has [published a sharp critique](#) of the [UNCITRAL Working Group III](#) process, which met last week but will be ongoing in 2019. UNCITRAL is one of two institutions which oversee ISDS tribunals.

### **UN experts say ISDS undermines human rights as governments meet to review it**

*April 4, 2019:* A group of seven Special Rapporteurs in the United Nations system have told another UN body – the UN Commission on International Trade Law (UNCITRAL) - [that Investor-State Dispute Settlement in trade agreements need systemic reform](#), not only procedural improvements.

### **Oz mining company Kingsgate to pursue ISDS case against Thailand**

*April 2, 2019:* Despite winning a [political risk insurance payout](#) of US\$58.5 million from Zurich Insurance Australia, the Australian mining company Kingsgate Consolidated has decided it will also [pursue compensation from the Thai government](#) for the closure of its Chatree gold mine in 2016.

## **6. US-China tariff wars not the answer to an unjust global trading system**

*May 15, 2019:* Grace Blakeley argues in the [New Statesman](#) that the latest Trump policy of 25% tariffs on more Chinese imports and China's retaliation could result in global recession, and will not fix the unjust neo-liberal model of trade agreements that has not delivered promised benefits. She argues in recent longer [report](#) for more equitable national economic policies and a fairer global trading system.

## **7. Developing countries defend WTO rules and dispute settlement system in the face of US actions and call for more priority for development**

*May 16, 2019:* Ministers from 17 key developing WTO countries met in Delhi on May 14. In a [statement on WTO reform](#), issued after the meeting, they defended the WTO multilateral trading system based on consensus of 164 WTO members, while identifying multiple challenges facing it.

The statement defends the WTO government-to-government dispute settlement process as a central element in providing security and predictability for the multilateral trading system. Without naming the US, the statement criticises its actions in blocking appointments to the WTO dispute settlement Appellate Body, which could paralyse the dispute settlement process by December 2019. They urge the vacancies to be filled without delay while discussions continue on other issues relating to the functioning of the dispute settlement mechanism.

In a veiled swipe at the US unilateral imposition of tariffs outside WTO rules, which has resulted in retaliation from China and others, the statement urges all WTO Members to adopt measures that are compatible with WTO rules to avoid putting the multilateral trading system at risk.

The statement asserts that international trade is not an end in itself but a means of contributing to raising standards of living, including through WTO rules for Special and Differential Treatment for developing and Least Developed Countries. The statement also rejects proposals by the US and some other industrialised countries to weaken these rules and argues that they must be preserved and strengthened in both current and future WTO agreements.

The statement gives the example of the Agreement on Agriculture, which still contains imbalances and inequities that allow industrialised countries to continue unfair subsidies for their agricultural exports like cotton. The agreement makes it difficult for developing countries to provide support for their small farmers. The statement urges further flexibilities for Least Developed and Net Food Importing Developing Countries.

The statement urges all WTO member countries to work towards strengthening the WTO by promoting development and inclusivity for the benefit of all Members

#### **8. Revised NAFTA means higher costs for medicines for Canada and Mexico**

*May 21, 2019:* A new [study](#) of the health impacts of the revised NAFTA Agreement, (renamed the US-Canada Mexico Agreement or USMCA) by Dr Deborah Gleeson and other health experts shows the influence of the US pharmaceutical industry on the negotiations. These companies already have 20 years of monopoly patents on new medicines.

The USMCA contains extensions of monopoly patents beyond 20 years for all medicines, delaying the production of cheaper medicines. It also extends a separate monopoly on data protection for biologic drugs, which are the most expensive drugs increasingly used to treat cancer and other serious illness. Data protection delays the availability of data for production of cheaper versions of these medicines. These extensions are based on existing US laws. For Canada the data protection monopoly has been extended from eight to ten years, and for Mexico from zero to ten years. Canadian studies show that this will raise medicine costs for their health system by between CDN\$169 million-\$305.8 million per year. The costs will be even greater for Mexico.

The authors conclude that the USMCA will increase medicine costs for Canada and Mexico, and that it places new, extended, and enforceable obligations on public regulators that increase the power of corporate interests during the development of new regulations. For these reasons they argue that the USMCA should not be used as a model for other agreements.

#### **9. TPP-11 ratification faces opposition in the Chilean parliament, Malaysia taking time to review**

*April 18, 2019:* Following a [Bloomberg](#) report that the Chilean parliament had delayed the vote on ratification of the TPP-11 agreement, [Luciana Ghiotto](#) reports that there is no parliamentary consensus in favour of the deal. Two parliamentary commission reviews focused on agricultural and labour issues, have rejected the agreement, and it has now been referred to a third commission for constitutional review.

Ghiotto reports that there has been a groundswell of popular opposition and that both major parties, despite a history of support for trade deals, are divided about specific provisions in the TPP, including medicine monopolies and foreign investor rights to sue governments (ISDS). Left and other progressive parties are opposed. Read the full article [here](#).

Malaysia is still in [no hurry](#) to ratify the TPP-11 and is reviewing its compatibility with national [development](#) strategies.

The TPP-11 has been ratified and implemented by Australia, Canada, Japan, Mexico, New Zealand, Singapore and Vietnam. Malaysia, Chile, Peru and Brunei have yet to ratify it.

#### **10. UNCTAD calls for a new multilateralism and a global green new deal**

*April 16, 2019:* A New [report](#) from UNCTAD critiques the failings of the existing multilateral order to establish a stable global economy that facilitates prosperity for all. Against the backdrop of persistent global poverty, rising inequality, the imminent climate crisis, and a global economy that remains inherently unstable 10 years after the 2008 financial crisis, the report calls for a new approach to multilateralism that is genuinely democratic and works towards the realisation of “shared prosperity and a healthy planet”.

This is consistent with what trade justice campaigners, including AFTINET, have long argued - that the current trade and investment regime is incompatible with global action to address poverty and inequality and with the policy reform necessary to combat the climate crisis and keep global warming below 1.5 degrees. As the UNCTAD report makes clear, we need a new approach to trade and investment policy.

To find out more about our alternative vision for trade see Dr. Pat Ranald's article [Time for progressive fair trade policies](#) and Centre for Future Work Director, Jim Stanford's presentation [What Does Progressive Trade Policy Look Like](#).

### **11. Indian farmers continue struggle against corporate ownership of seeds**

*May 14, 2019:* A [new article](#) by Shalini Bhutani, a legal researcher and policy analyst based in New Delhi, India, looks at the role that international trade rules have played in expanding intellectual property (IP) rights for global seed and biotech corporations and undermining farmers' right to collect and use seeds.

Amid debates about legal cases brought by [PepsiCo](#) against Gujarat-based farmers for alleged illegal use of the company's 'registered variety' of potato plants, Bhutani brings attention to the global struggle between farmers and corporations that has played out in international forums like the World Trade Organisation (WTO) and regional trade agreements like [the Regional Comprehensive Economic Partnership \(RCEP\)](#) that is currently being negotiated between 16 countries in the Asia Pacific region.

Leaked drafts of the of the RCEP reveal it would force countries to sign onto the International Convention for the Protection of New Varieties of Plants (UPOV), which would increase IP rights for corporations.

Bhutani argues that India has a history of resisting these international rules. She states that the Indian government's support for international agreements that aim to protect farmers' rights such as the [United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas](#) is important, but may not be enough to combat the corporate assault on farmers' rights.

### **12. Civil society groups oppose Big Tech e-commerce initiative in WTO**

*April 3, 2019:* AFTINET has joined with over three hundred labour unions, consumer advocates and environmental organizations from all continents to send a letter on April 1, 2019, to World Trade Organization member nations expressing a "profound and urgent opposition" to talks that would establish new rules on digital trade.

The [letter](#) argues that binding rules in the agreement would allow big tech firms to "consolidate its exploitative business model". It also raised issues on labor rights and tax avoidance by such firms.

The letter details how Big Tech companies would access markets globally; extracting and controlling personal, social, and business data around the world; locking-in deregulation and evading future regulation; accessing an unlimited supply of "gig economy" labor stripped of its rights; expanding its power through monopolies; and evading the payment of taxes. The proposed rules thus represent a grave threat to development, human rights, labor, and shared prosperity around the world.

"We thus urge WTO members to abandon their push for digital trade negotiations in the WTO and focus urgently on transforming global trade rules for shared prosperity for all", the letter concluded.

Australia has just signed the TPP-11 and Free Trade Agreements with Indonesia and Hong Kong which have e-commerce chapters reflecting the demands of Big Tech.

### **13. Parliamentary Committee says Australia should join the WTO Procurement Agreement**

*April 1, 2019:* The Joint Standing Committee on Treaties has produced [Report 185](#) recommending that Australia accede to the revised WTO Procurement Agreement (GPA). There is no implementing legislation because the only required legislation for accession was the Government Procurement (Judicial Review) Act which was passed in October 2018 with other implementing legislation for the TPP 11.

This means there will be no separate opportunity for the whole parliament to debate the WTO Procurement Agreement, which reflects the lack of democracy and accountability in the current trade agreement process.

The [AFTINET submission](#) noted that no independent assessment was provided of the economic costs and benefits of the agreement. AFTINET also noted that the EU has signalled that it regards

Australia's exemptions for small and medium-sized enterprises (SMEs) and Indigenous enterprises as discriminatory, and may seek to reduce them in future.

The Committee report noted, as it has done in previous inquiries, that reliable quantitative data on the benefits of the Agreement would assist the Committee in its deliberations (para 3.52)

The report also urged the Australian Government to resist any future pressure from other governments to weaken the exceptions Australia has gained, particularly for SMEs and Indigenous businesses (para 3.53).

The Report claims that Australian State and Territory governments are currently largely compliant with GPA commitments, with minor changes to procurement rules required for implementation, that each state and territory supports Australia's accession to the GPA, and all have said that they will take the necessary steps to ensure their procurement policies and procedures comply with the GPA commitments by January 1, 2019 (paras 3.48-49).