



## **BULLETIN**

### **October 2018**

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#### **1. Introduction**

Dear Members,

It has been a bad month for those of us opposing the Trans-Pacific Partnership-11, with the ALP caucus majority indicating they will support it despite eight years of opposition from civil society groups. We ask that if you have not yet done so, to [contact](#) your Senator by October 15, urging them to oppose the TPP-11. Labor parliamentarians have faced backlash from unions and workers after the caucus majority decision on September 11 to support the TPP-11.

Pharmaceutical monopolies continue to come under criticism as a recent article by public health experts confirms the EU is seeking stronger medicine monopolies in the EU-Australia trade agreement, which would delay the availability of cheaper versions.

US community campaigning against ISDS has resulted in a partial victory in the revamped NAFTA. ISDS will be phased out between the US and Canada, and limited to cases of government takeover of assets between the US and Mexico.

An ISDS tribunal has claimed that Ecuadorian national court decisions were invalid and ordered Ecuador to pay compensation to oil company Chevron despite the fact that the company polluted the Amazon and damaged the health of indigenous communities.

Tanzania this month rejected ISDS, passing legislation that local courts shall be used to resolve investment disputes.

Negotiators from RCEP countries are due to meet in Auckland from October 17-24 and civil society organisations will attend a [conference](#) on October 19-20 to discuss alternative progressive trade policies.

Save the date for AFTINET's Annual General Meeting on Wednesday 14 November at 5.30pm at Level 7, 321 Pitt Street Sydney. Guest speaker Arthur Rorris from South Coast Labour Council will speak about the impact of trade agreements on regional communities— more detail to come.

Happy reading.

## **2. Huge backlash against Labor decision on TPP-11: send a message by October 15**

Many civil society groups were hoping that the Labor-dominated Senate Standing Committee Inquiry would hand down a report on 18 September blocking the TPP-11 implementing legislation. But after the Labor caucus majority [decision](#) on September 11 to support the TPP-11 the report supported the legislation despite admitting it was contrary to Labor policy. Rex Patrick, the Centre Party member of the Committee, opposed the legislation.

We thank those Labor MPs and Senators who spoke out against the TPP-11, and to Greens and Centre Alliance MPs and Senators who are [opposing](#) the legislation. Thanks to all members and supporters who have sent messages. If you have not already done so you can send one [here](#).

There has been a huge [backlash](#) from unions and civil society groups opposing Labor's decision with thousands of [messages](#) sent to Labor MPs and Senators. The [ACTU](#), [AMWU](#), [ETU](#), [AMIEU Newcastle & Northern Branch](#), [MUA](#) and [National Union of Workers](#) condemned the Labor caucus decision. The ETU has also produced a critical short social media [video](#) on the TPP-11 which we ask you to share.

On September 16 GetUp sent a [social media message](#) to its supporters urging them to send a message to Senators to say no to the TPP-11 implementing legislation. ActionAid sent also a [social media message](#) to its supporters urging them to send a message to Senators to say no to the TPP-11 implementing legislation.

The legislation has passed through the House of Representatives, and will likely go to the Senate in the week of October 15, after the Senate legislation committee report on October 10. If you have not already done so, please send a message to Senators [here](#).

## **3. New NAFTA deal to phase out ISDS: partial victory for community campaigning**

On October 1 [Politico](#) reported that the revamped NAFTA [deal](#) between the US, Mexico and Canada will phase out ISDS between the US and Canada altogether after three years and limits the scope for ISDS cases between Mexico and the US to cases of direct government takeover of assets. We will publish more analysis of the new NAFTA deal, now called the United States-Mexico-Canada Agreement, as it becomes available.

ISDS enables foreign investors to bypass national courts and sue governments in international tribunals if they can argue that a change in law or policy has harmed their investment.

This victory follows year of community campaigning against ISDS in trade agreements, resulting in strong community opposition reflected by state governments and legal experts.

In February 2016 the bipartisan [National Conference of State Legislatures](#) declared that it “will not support investment chapters that provide greater substantive or procedural rights to foreign companies than US companies enjoy under the US Constitution.”

In October 2017, more than [200 prominent law professors and economists](#) signed an open letter arguing that ISDS undermines the rule of law and urging the US government to oppose ISDS in its renegotiation of NAFTA.

On March 21, 2018, US Trade representative Robert Lighthizer confirmed in [evidence](#) to the US House Ways and Means Committee that the US was seeking to remove ISDS from NAFTA, saying that it was not the job of the US government to provide a political risk insurance policy for investors. He argued that investors were protected by state-to-state disputes processes and did not require ISDS.

It is ironic that the Australian government is agreeing to ISDS in the TPP-11 when the US is moving away from it.

#### **4. Ecuador and Tanzania suffer under ISDS**

We see once again that Investor-State Dispute Settlement, like that contained in the TPP-11, is enabling giant corporations to sue governments over laws which attempt to protect people and the environment. International arbitration methods often trump domestic courts, follow no set of precedent, appoint arbitrators from pools of corporate lawyers rather than independent judges, and have no appeal mechanisms.

AFTINET [reported](#) on a tribunal which [ruled](#) that Ecuador’s judicial system had no right to deal with a claim for damages brought by indigenous communities against the Chevron oil company for pollution of the Amazon and damage to the health of local communities by its subsidiary, in the period 1964-92.

In 2011 the Ecuador Supreme Court awarded damages of US\$9.5 billion against Chevron for claims of pollution. Chevron initiated an ISDS claim against the government of Ecuador, alleging that an agreement signed in 1995 prevented claims for environmental damage.

The Tribunal decided on 30 August that the Ecuadorian government should have stopped the indigenous community claim going to court, must now stop any legal action, and pay Chevron compensation and costs. The company is claiming billions and the amount will be determined by the tribunal.

As reported in [The East African](#) Tanzania [this month](#) has rejected the undemocratic and non-transparent practices of international arbitration as a method for resolving investor-state disputes (ISDS).

Tanzania’s National Assembly on September 17 passed legislation that Local Courts shall be used to resolve disputes arising out of contracts with investors in public-private projects (PPPs), instead of international arbitration.

The decision comes in the wake of community pressure and several cases which have proven damaging to Tanzania’s economy and civil society. These include three cases of the Tanzanian public power company Tanesco defending itself against the UK’s Hong Kong branch of Standard Chartered Bank. There are also various claims against Tanzania from international companies like Barrick Gold who claim profit loss from law reforms in the country’s mining sector.

Kilangi is reported as explaining there is “no neutral ground” in international arbitration, as it favours international companies over countries; “as confidence and trust wane, many developing countries are considering using their own legal systems.”

## **5. RCEP targets and text still secret in leadup to October meeting**

The public [statement of RCEP Ministers](#) from 16 countries following their meeting at the end of August advised negotiation targets would be achieved by the end of 2018, but gave no details on what those targets were for the Regional Comprehensive Economic Partnership Agreement.

This is consistent with the secrecy and lack of accountability of these negotiations. The only hints of the issues were in media reports.

The Japanese daily [Mainichi](#) said that the package included four elements: market for goods, services, investment and intellectual property rights. It quoted anonymous officials from RCEP countries, who appeared to have different views of the package.

An official from an ASEAN country said the difficulties between China and India are the main stumbling block for the negotiations to be concluded. Indian Minister of Commerce and Industry said India has expressed concern as they continue to face some social challenges in terms of poverty as well as having a large population based on agriculture.

Negotiators from RCEP countries are due to meet in Auckland from October 17-24. Civil society organisations will attend a [conference](#) in Auckland on October 19-20 to discuss alternative progressive trade policies before the RCEP meeting. SPSF representative Clare Middlemas will attend.

## **6. Escalation of US – China trade wars will harm workers globally**

Trade wars are [intensifying](#) between the US and China in the lead up to early November mid-term Congressional elections. As the US tries to gain domestic political advantage, the latest round of retaliatory measures between the world’s largest economies will mean repercussions for workers around the world, who are already most disadvantaged by unfair trading systems.

The most recent instalment on 18 September was escalation of tariffs on US\$200 billion worth of imports (about half of total Chinese imports) which began on 24 September and will increase again on 1 January 2019. China has announced tariffs on \$US60b worth of US goods, also from September 24. Trump says if this goes ahead he will increase tariffs on another \$US267b worth of Chinese goods, bringing the total to \$US517 billion in goods – or all Chinese goods sold in the US.

The result for Australia could be [less](#) demand for our exports, a weakening dollar and the possibility our markets will be flooded with displaced imports from the US and China, threatening local industry. This could in turn have repercussions for local jobs. Similar impacts will be felt in other countries, especially developing countries.

AFTINET [says](#) the global trade system is broken. We need to change trade rules which currently benefit industrialised countries and entrench inequality for the Global South. We need an open democratic trade system that includes all communities, based on human rights, labour rights, and environmental sustainability. Until we have fairer trade rules, ordinary workers will suffer the collateral damage of these power struggles.

## 7. EU-Australia trade agreement could mean higher medicine prices

A recent [article](#) in The Conversation by public health experts confirms that the EU is seeking stronger monopolies on medicines, including the most expensive biologic medicines used to treat cancer and other life-threatening diseases. This would delay the availability of cheaper versions of those medicines. If Australia agrees, these provisions would have the likely effect of extending the period for which the government pays higher prices for these medicines.

Under the Pharmaceutical Benefit Scheme (PBS), the government subsidises the cost of medicines to make them affordable. If Australia caves to EU pressure, taxpayers' funds will be used to continue paying higher prices for expensive biologic medicines for longer through the PBS. The authors found that the cost of biologic medicines [totalled](#) more than \$2 billion in 2015-16 alone, and that this could be reduced by 24%, or \$480 million per year if cheaper forms of these medicines had been available sooner.

The authors urge the Australian government not to agree to EU demands for longer medicine monopolies, which would result in higher costs and fewer resources for other key health needs. AFTINET has consistently argued against using medicine monopolies as a bargaining chip in trade agreements.