



BULLETIN

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Introduction

Dear Members,

Our campaign on the Trans-Pacific Partnership-11 continues apace, with our online [message](#) calling on MPs and Senators to vote against the implementing legislation. The JSCOT reported on August 22, and there are two Senate inquiries to come, reporting on September 18 and October 10. We expect the vote in the Senate soon after that.

AFTINET Convenor Dr Patricia Ranald wrote a myth-busting exercise on the TPP-11, which was published by on-line economics writer Michael West. The new Malaysian government is now debating whether to ratify the TPP-11, with strong internal calls to gracefully step away now.

ISDS continues to come under criticism, with a global campaign to defend Walter Aduviri, a Peruvian indigenous leader against a Canadian mining project, now appealing a punitive sentence, and a Columbia University study showing no benefits but huge risks from ISDS.

Happy reading.

Tell Federal MPs and Senators: vote NO to TPP-11

[TPP-11 vote coming soon - tell Federal MPs and Senators to say no](#)

The original TPP-12 trade deal between the US Australia and 10 other Pacific Rim countries could not proceed after the US withdrew in 2017.

Australia and Japan led the push for the TPP-11 without the US, which was signed in March 2018. Some clauses have been suspended, pending the US re-joining in future. But the deal still gives more rights to global corporations and reduces government rights to regulate in the public interest.

On August 22, the TPP-11 implementing legislation was supported by a Joint Parliamentary Committee on which the government has a majority. But community campaigning has also resulted in two Senate Inquiries on which the government does not have a majority.

Parliament will vote on the implementing legislation after the two Senate Committees report in September - October 2018. It can be stopped if the majority in the Senate say no. ACTU President Michele O'Neil has published an oped in [Fairfax media](#) urging parliament to reject the TPP-11.

The TPP-11 is a bad deal that gives more rights to [global corporations to sue governments](#), restricts government regulation of [essential services](#) and encourages privatisation, [lacks enforceable protections for labour rights and vulnerable temporary migrant workers](#), and [lacks enforceable environmental regulation](#).

[Send a message to your local Federal MP and non-government Senators to say no to the TPP-11](#)

Greens initiate second Senate inquiry into TPP-11: submissions due September 10

August 30, 2018: The Australian Greens have initiated a second Senate inquiry, this time by the Senate Legal and Constitutional Affairs Legislation Committee, into the TPP-11 implementing legislation (the two Customs Bills introduced into the House of Representatives on August 23). The inquiry website is [here](#).

Submissions are due September 10 and can be submitted electronically on the website or sent to the Committee by email at seniorclerk.committees.sen@aph.gov.au. This Committee will report on October 10.

The implementing legislation is the only point at which parliament has a chance to vote on the TPP-11 at all, and all the arguments about the flaws in the TPP-11 from previous submissions apply. The AFTINET draft submission is [here](#).

TPP-11 flawed Victorian study shows small benefits without assessing costs

In late 2017 the Victorian government commissioned a study by private consultants of the impact of the TPP-11 on Victorian export firms. The study became a late [submission](#) to the JSCOT inquiry and mentioned in the ALP critical remarks on the JSCOT [report](#) (p.86).

Below is a link to a critical evaluation of the findings of that study, which found only modest improvements in market access for some Victorian export sectors, because Australia already has bilateral free trade agreements with all but two of the TPP-11 countries.

In summary, the study confirms our analysis that the market access gains from the TPP-11 are minimal, and does not evaluate any of the costs. [Download pdf of 2-page critique](#)

Malaysian government MPs call for withdrawal from TPP-11

August 27, 2018: Three MPs who are part of the new Pakatan Harapan parliamentary majority in Malaysia have denounced the TPP-11 as “progressive in name only”, and called on the incoming government to withdraw from it, rather than go ahead to ratify it.

Writing in [Free Malaysia Today](#) on August 17, 2018, Wong Chen, MP for Subang, Nurul Izzah Anwar, MP for Permatang Pauh, and Charles Santiago, MP for Klang, argued that the TPP “doesn’t add any benefits for the poor, terminally ill, women or even governments”.

They focused on the provisions for medicine patents, and the impact of the threat of Investor-State Dispute Settlement cases on the progressive policies of the new government, including fairer labour laws, especially for women, and access to medicines.

On August 15, Professor K S Jomo, a member of new Malaysian Prime Minister Dr Mahathir Mohamad’s Council of Eminent Persons, publicly called for the new government to decline to ratify the TPP-11. On the same day, the [Straits Times](#) published a longer commentary on the TPP-11 by Martin Khor, adviser of the Third World Network, also arguing against Malaysia’s ratification of the TPP-11.

TPP-11: corporate favours masquerading as free trade

Dr Patricia Randal's article *TPP 11: Corporate Favours Masquerading as Free Trade* was published on investigative journalist Michael West's [website](#) on August 22.

Bad for workers, bad for taxpayers, bad for the environment, bad for Australia. The latest iteration of the Trans-Pacific Partnership is a boon for multinational corporations, writes Patricia Randal. They might have rebadged it with a sassy name but this trade deal is a gift for Big Pharma and other global titans merely masquerading as free trade.

The government is peddling a series of myths about the TPP-11*, myths which are repeated in its Joint Standing Committee on Treaties [report](#) (JSCOT) which was released today.

Myth 1: The TPP-11 is a different and better version of the TPP-12 from which the US Trump administration withdrew two years ago, because some clauses have been suspended and it has been rebadged as the “Comprehensive Progressive” TPP.

Fact: Only 22 clauses, mostly about medicine and copyright monopolies, have been suspended out of 30 chapters, but these clauses remain in the text, pending the US rejoining the agreement.

Many of the them involve giving pharmaceutical companies an additional three years of data protection monopolies over expensive biologic medicines, used to treat cancer and other

serious illnesses, which would delay the availability of cheaper versions of these drugs, and cost our public health system [hundreds of millions per year](#).

Most governments never wanted this US policy and only agreed to it in order to get access to the US market. Pharmaceutical companies, which are the [most profitable in the world](#), already have 20 years of monopoly plus five years of data protection on new medicines in Australia.

The extra three years of monopoly could be revived if the US decides to re-join the agreement.

Australia has never before signed an agreement containing essentially unacceptable suspended clauses that could be resurrected in future.

Myth 2: Australia must support the TPP-11 as a symbol of free trade against the rising global tide of protectionism

Fact: Even with the suspended clauses, the TPP-11 text still entrenches existing medicine and copyright monopolies in an international agreement, making it more difficult for governments to reduce them in future.

The [Productivity Commission](#) has correctly argued that it may be desirable to reduce such costly monopolies in future, and that using trade agreements to entrench monopolies is the opposite of free trade.

Most of the TPP-11's chapters give greater rights to global corporations that already have enormous market power, while reducing the ability of governments to regulate them in the public interest.

All trade agreements have government-to-government dispute processes. But the TPP-11 also gives special legal rights to individual foreign companies to bypass national courts and sue governments for compensation in unfair international tribunals if they can argue that a change in law or policy harmed their investment. This known as Investor-State Dispute Settlement.

Critics like former [High Court Chief Justice French](#) have noted ISDS tribunals have no independent judiciary, precedents or appeals.

Australia's experience of being sued by the US Philip Morris tobacco company using an obscure Hong Kong investment agreement to claim compensation for our plain packaging legislation has meant that tobacco regulation alone has been clearly excluded from ISDS cases in the TPP-11.

But the necessity for this specific tobacco exclusion shows that the weak general "safeguards" in the TPP-11 will not prevent cases against other public interest regulation, which governments will have to defend.

Even when governments win such cases they lose a lot. It took over four years and [\\$39 million in legal fees](#) for the ISDS tribunal to find that Philip Morris was not a Hong Kong company. There are now over 850 known cases, with increasing numbers against health, environment and even indigenous land rights law and policy.

Less well known is the impact of the trade-in-services chapter and related chapters which restrict the ability of future governments to [regulate essential services](#) and to restore regulation in the event of the failure of deregulation or privatisation.

These chapters treat regulation of services as if it were a tariff to be frozen at existing levels, and not to be increased in future, known as the ratchet structure. All services are included unless

specifically exempted. The exemptions only apply to government-to-government disputes. They do not prevent ISDS cases being taken on exempted services.

This structure ignores the need for democratic governments to respond to changed circumstances like the re-regulation of the financial sector following the global financial crisis, or indeed the current Royal Commission into the banks.

New forms of regulation are needed to reduce carbon emission levels and change energy markets in response to climate change. The ratchet structure can also prevent governments from re-regulating in response to privatisation failures.

For example, the dramatic failure of and deregulation and privatisation of vocational education services in Australia resulted in fraud against students and the government. The current government had to act to re-regulate the sector late in 2016. If the TPP had already been implemented, without very specific exclusions for private vocational education services, the ratchet structure could have prevented such re-regulation.

Even if such exemptions existed for government-to-government disputes, they would not have prevented ISDS disputes. A private vocational education company from a TPP country could have argued that the value of its investment had been reduced by re-regulation, and could have launched an ISDS case for compensation.

Myth three: The TPP protects workers' rights and the environment

Fact: The TPP-11 increases the numbers of vulnerable temporary migrant workers from TPP countries and removes the obligation to test if local workers are available. These temporary migrant workers have less rights than permanent migrants because they are tied to one employer and can be deported if they lose the job, exposing them to super-exploitation, as revealed by numerous [media reports](#), [academic studies](#) and [parliamentary reports](#).

The TPP-11 does not contain fully enforceable [labour rights](#) and [environmental standards](#). The chapters on labour and environment are weak and not legally enforceable in the same way as other chapters in the agreement.

Myth Four: The TPP-11 will create significant economic growth

Fact: Australia already has free trade agreements with all but two of the TPP-11 countries (Canada and Mexico), so the additional market access for Australian products is very limited.

The government has refused to undertake independent studies of the economic, health, environmental and other impacts of the TPP-11 in Australia despite advice from key bodies like the Productivity Commission, public health and environmental experts.

International predictive [econometric studies](#) of the TPP-12 with very favourable assumptions showed GDP growth of only 0.7% by 2030. Similar studies of the [TPP-11 without the US](#) show even smaller GDP growth of 0.5%.

These predicted tiny benefits have not been assessed against the cost of other impacts discussed above.

**The TPP-11 after US withdrawal includes Australia, Canada, Mexico, Peru, Chile, Japan, Malaysia, Singapore, Brunei, Vietnam and New Zealand.*

The politics of it

The [report](#) of the government-dominated Joint Standing Committee on Treaties (JSCOT) on the Trans-Pacific Partnership (TPP-11) has predictably recommended in favour of the implementing legislation, with some critical comments by the minority of Labor members.

Community concern has also succeeded in getting a Senate inquiry, which will report on September 18. The government does not have a majority on this inquiry, and it is likely to be more critical. Community organisations are advocating for the Senate majority to reject the TPP-11 implementing legislation because it increases corporate rights at the expense of communities and the environment.

JSCOT report backs TPP-11, Labor critical but community groups urge Senate to say no

[Media Release](#), August 22, 2018

“The [report](#) of the Government-dominated Joint Standing Committee on Treaties has predictably recommended the endorsement of the TPP-11 implementing legislation,” AFTINET Convener Dr Patricia Ranald said today.

“However, ALP committee members made the following critical comments: (pp 85-95)

- Insufficient information to stakeholders and parliament before the TPP-11 was signed
- No independent analysis of the costs and benefits of the TPP-11
- The inclusion in the TPP-11 of ISDS provisions which permit foreign corporations to bypass national courts and to sue governments in international tribunals over changes to domestic laws leave Australia vulnerable to lengthy legal disputes with foreign corporations. Labor will not agree to ISDS provisions in new trade agreements and will seek to remove these provisions from existing trade agreements.
- Labor is opposed to the removal of labour market testing for temporary contractual service providers covering over 450 trades and professions from TPP-11 countries which would mean an increase in temporary migrant workers vulnerable to exploitation without first testing if local workers were available.

“The ALP critical comments reflect the strong opposition to the TPP-11 from the majority of substantial [submissions](#) from a wide range of community organisations and academic experts, and over 1200 individual short messages,” said Dr Ranald. “These included public health groups, unions, environment groups, aid and development organisations and retirees. These groups urged the committee to oppose the implementing legislation.”

AFTINET represents over 60 community groups which opposed the TPP-11. They successfully lobbied for a Senate inquiry on the TPP-11 that will report on September 18, 2018.

“The Opposition and minor parties have a majority on the Senate inquiry. We hope its report on September 18 will be a more independent and critical assessment of the TPP-11 and will recommend against the implementing legislation,” said Dr Ranald.

“We will be urging the Senate to block the TPP-11 implementing legislation.”

Columbia University study finds ISDS costs outweigh benefits for many governments

August 14, 2018: A recent [study](#) published by the Columbia University Centre for Sustainable Investment evaluates the costs and benefits for states of investor-state dispute settlement (ISDS) provisions in trade and investment agreements. It concludes that expected benefits in terms of increased levels of foreign investment have not clearly materialized, whereas the costs have been unexpectedly high.

South Africa, India and Indonesia have cancelled many existing investment treaties. Brazil, which has attracted high levels of foreign investment without investment treaties, has developed an investment promotion strategy which does not include ISDS.

Indonesia FTA completed but text remains secret until after signing

September 3, 2018: Australian Prime Minister Scott Morrison and Indonesia's President Joko Widodo have announced the completion of talks for an FTA but as usual we won't see the text until after it is signed in two months' time, and the text can't be changed.

Australia's Department of Foreign Affairs and Trade issued a rosy four-page summary of the agreement which as usual highlights the gains for Australian exporters. It claims that 99 per cent of Australia's exports to Indonesia by value will be tariff-free and / or have higher quotas. Many Australian exports continue to be affected by quotas, meaning gains in those areas will be limited.

Australian services investors will be allowed to increase their ownership of companies in Indonesia to 67 per cent. This covers TAFE, Universities, Hospitals, Aged Care, Telecommunications, Transport, Wastewater, Construction, Mining and related services, and other Professional Services. Australian investors will be able to own 100 per cent of 3-5 Star hotels.

Indonesia gains tariff-free access for 99 per cent of its exports to Australia, with no quotas. It also gains access to most services in Australia, with some exceptions that Australia has also listed in other trade deals. Working Holiday Visas for seasonal Indonesian workers in Australia will increase from 1,000 per year to 5,000 per year. As usual, there is no independent assessment of the costs and benefits of the deal. As ACTU President Michele O'Neil says in her oped in the [Fairfax media](#), the full text is likely to reveal that the deal will deliver more benefits to corporations than to most Australians.

Australian prawn farmers claim biosecurity undermined by trade considerations

August 10, 2018: [The ABC](#) reported that until recently, Australia had been free of the deadly white spot prawn disease which is harmless to people but has the potential to wipe out both farmed and wild prawns. Quarantine border checks were intended to prevent the disease from being imported in raw prawns.

The ABC reported that, despite an outbreak of the disease in Queensland in 2016 documented by [Four Corners](#), the Federal government had not revealed that two of 101 retail samples taken from Melbourne and Sydney retail outlets in May and June 2018 returned strong positives for

white spot disease, while another four returned weak positives. In 2016, seven prawn farms at Logan, near the Gold Coast, had to destroy all their stock.

More than a \$100 million of taxpayer money has since been spent on compensation, clean-up, monitoring and increased border security.

Containers of imported prawns are now required to be tested for the virus at the country of origin and again when they reach Australia, but the recent Melbourne and Sydney evidence shows this may not be effective. The Australian Prawn Farmers Association wants imported raw prawns to be cooked before release into the market. They see this as taking white spot virus as seriously as foot-and-mouth disease in cattle. They feel they have been sacrificed in trade deals.

Global support for Peruvian Indigenous leader following ISDS case against indigenous land rights

August 9, 2018: The Canadian mining company Bear Creek recently won an [ISDS case](#) against Peru and was awarded US\$37 million in compensation and costs. The government had refused a mining license because the company had not sought full and informed consent from indigenous people, resulting in mass protests against the mine in 2011. AFTINET has been using this case as an example of how ISDS can undermine indigenous rights.

The protests were led by local indigenous leader Walter Aduviri, who was later sentenced to 7 years in jail and a heavy fine. Human rights groups are supporting his appeal against the sentence to the Peruvian Supreme Court.

Following a request from the Peruvian human rights and environmental organization [DHUMA](#), together with international organizations such as The Democracy Centre and Mining Watch Canada, 50 organisations, including AFTINET, have signed [a letter](#) asking the Peruvian Supreme Court to overturn the jail sentence and fine. The letter also makes more general criticisms of ISDS and calls on mining and other international companies to respect indigenous rights.