



BULLETIN - September 2019

Inside this edition:

1. [Introduction](#)
2. [AFTINET submissions on trade and investment agreements with Indonesia and Hong Kong](#)
3. [AFTINET joins ACTU to call for a delay in ratification of trade and investment deals with Hong Kong](#)
4. [RCEP updates](#)
 1. [New AFTINET fact sheet on the environmental impacts of trade agreements](#)
 2. [Investor-state dispute settlement updates](#)
 3. [EU leaders threaten to block trade deal with Brazil over Amazon fires](#)
 4. [Trump intellectual property demands on China based on distorted system says expert](#)
 5. [Report says regulate tech giants but Australian govt leading deregulation push at WTO](#)

1. [Introduction](#)

Dear Members,

Negotiations for the Regional Comprehensive Economic Partnership (RCEP) continue, with negotiations and ministerial meetings taking place in China and Indonesia over the past two months. Official statements continue to assert that negotiators are aiming to conclude the deal by the end of 2019. However, media reports indicate that progress has been slow, with India's Commerce Minister absent from the Ministerial meeting in Beijing and tensions between Japan and South Korea further undermining the trade talks.

AFTINET continues to campaign against damaging provisions in the RCEP, calling on the government to remove provisions that could undermine human rights, workers' rights and environmental sustainability. If you haven't already done so, please [Sign the Petition](#) to the Senate against damaging clauses in the proposed and in favour of enforceable workers' rights and environmental standards.

AFTINET has also made submissions to the Joint Standing Committee on Treaties on trade and investment agreements with Indonesia and Hong Kong. See below for more information.

The AFTINET Team

2. [JSCOT inquiry into trade and investment agreements with Indonesia and Hong Kong](#)

AFTINET has made submissions to Joint Standing Committee on Treaties on the [Indonesia-Australia Comprehensive Economic Partnership](#) and the [trade and investment agreements with Hong Kong](#). We have recommended against ratification of both agreements.

Indonesia Agreement issues of concern:

- The inclusion of Investor-State Dispute Settlement provisions and the failure to cancel the previous Indonesia-Australia investment Agreement

- The inclusion of increased number of temporary workers who are vulnerable to exploitation
- No commitment to international human rights, labour rights or environmental standards
- The potential impact of the trade in services chapter on essential services
- The potential risks of the electronic commerce chapter
- The lack of independent evaluation of the economic and social impacts of the agreement

Hong Kong Agreement issues of concern:

- The inclusion of Investor-State Dispute Settlement provisions
- No commitments to human rights, labour rights or environmental standards
- The potential impact of the trade in services chapter on essential services
- The potential risks of the electronic commerce chapter
- Technical barriers to trade
- The lack of independent evaluation of the economic and social impacts of the agreement

Dr Patricia Ranald gave evidence at JSCOT public hearing

Dr Patricia Ranald gave evidence at the JSCOT hearing into both the Indonesian and Hong Kong Agreements on Monday 26 August, reiterating the concerns identified in our Submissions relating to no commitments to human rights, labour rights or environmental standards, the inclusions of ISDS, the risk of trade in services and e-commerce provisions and the potential for temporary migrant worker provisions to increase the number of temporary workers' at risk of exploitation. The transcript of the hearing is available [here](#).

3. AFTINET joins ACTU to call for a delay in ratification of trade and investment deals with Hong Kong

September 2. AFTINET has joined with the ACTU, APHEDA and other Union and community groups to stand in solidarity with workers' and pro-democracy protesters in Hong Kong.

AFTINET Convener Pat Ranald spoke at a rally held in Sydney on Monday 2 September and called on the government not to ratify the recently signed trade and investment agreements with Hong Kong until human rights abuses against democracy protesters have been resolved.

Dr Ranald highlighted that lack of provisions committing governments to protect human rights, workers' rights or environmental standards in the Hong Kong agreement. She called for all trade agreements to include enforceable provisions that ensure governments uphold these fundamental rights.

The rally followed calls from [The Australian Council of Trade Unions](#) (ACTU) at a public hearing of the Joint Standing Committee on Treaties on 27 August for the government to delay passing of the implanting legislation for the Agreements.

ACTU President Michele O'Neil argued that "At a time of growing international uncertainty around trade, it is important that Australia treads cautiously with regard to an agreement with a territory that is experiencing significant political upheaval and instability."

The ACTU also criticised the potential social impacts of the agreements and O'Neil asserted that "The agreement has serious issues. It restricts the ability of governments to administer essential services like schools, hospitals, water and power in the public interest. And it lets foreign companies sue Australian Governments in offshore trade tribunals for making laws they don't like."

These criticisms reflect the concerns identified by AFTINET in our [submission](#) to the JSCOT hearing and in the evidence provided by Dr Patricia Ranald at the public hearing on Monday 26 August.

The trade minister, Simon Birmingham, has dismissed the ACTU's call for a delay, stating that it would be "[foolish](#)" to delay ratification.

4. RCEP updates

August 26. Indonesian Civil Society Groups protest RCEP trade deal

[Indonesian civil society groups](#) protested against the RCEP trade agreement last Friday, arguing that the agreement promotes corporate rights over people's rights. The protest coincided with intersessional RCEP negotiations that took place in Jakarta from 23-25 August.

Protesters criticised the lack of consideration about the potential negative social impacts of the agreement, pointing to the failure to include provisions that addressed human rights and the violation of Indonesian workers' rights by foreign investors. They said the RCEP "will legalize the deprivation of people's right over their economic justice and will aggressively provide protection and facilitate the freedom of investment and trade for corporation."

Civil society groups also criticised the RCEP for pushing liberalisation, restricting government's ability to regulate to ensure people's rights and livelihood, and including ISDS provisions that enable corporations to sue governments for policy decisions that impact on their profits.

August 7. India urged to maintain local industry protection and be prepared to quit RCEP as bilateral talks continue

Amiti Sen writing in the [Hindu Business Line](#) argues that India had a clear mandate at the recent Beijing RCEP negotiations to refuse further concessions and say no to any pact which does not meet its needs. The Indian Commerce Minister met with local industry and farmers' groups and sent a more junior official to the Beijing meeting to argue the case. Sen argues that demands from other RCEP governments were likely to increase India's existing trade deficit with China, South Korea, Japan and some ASEAN countries.

In a separate [report](#) a government official said bilateral talks with RCEP governments were ongoing but "it was made clear to all partners that India cannot be part of an agreement that would give its industry and farmers a raw deal. The discussions on what India wants from its partners and what it can give will continue,"

August 5. RCEP Ministerial Meeting makes little progress as Indian minister absent and Japan and South Korea clash

The official [statement](#) from the RCEP Ministerial Meeting held on August 2-3 said the RCEP talks "must keep the momentum towards concluding negotiations within the year." But actual progress of the negotiations is slow.

Ministers welcomed the conclusion of annexes on telecommunications, financial and professional services, but the number of completed chapters remained at seven. There are still deep divisions over market access and tariff levels.

The Indian Commerce minister did not attend but sent a more junior official, following [meetings with Indian industry groups](#) which expressed opposition to proposed RCEP tariff cuts, and the Indian [Economic Times](#) reported that India is still insisting on greater access for cross-border movement of its IT professionals, which is opposed by other governments.

The [Japan Times](#) reports that South Korea took the unusual step of raising a bilateral trade dispute with Japan at the ministerial meeting. Japan announced before the meeting that it will revoke South Korea's preferential status as a trade partner for the purchase of products that could be diverted for military use, citing security reasons. This is in retaliation for disputes over fish products and a South Korean court decision last year that ordered some Japanese companies to pay damages to Koreans who were victims of forced labour during Japan's 1910-1945 colonial rule of the Korean Peninsula. Seoul has retaliated, saying that it would remove Japan from its own "white list" of countries entitled to receive preferential treatment.

Because the RCEP is guided by the ASEAN-style consensus-based approach, a bilateral disagreement between any member states can prevent the entire deal from moving forward.

The ministers will meet again in Bangkok in September. The [Bangkok Post](#) reported that the Thai Commerce Minister said the deal is not likely to be signed until mid-2020.

5. New AFTINET fact sheet on the environmental impacts of trade agreements

AFTINET has released a new [fact sheet](#) on the impact that trade and investment agreements can have on the environment and our ability to address climate change, including by

- encouraging the expansion of harmful forms of international trade, which can increase greenhouse gas emissions
- facilitating an expansion in the production of dirty commodities like fossil-fuels or palm oil
- promoting carbon-intensive agriculture
- restricting governments' ability to implement policies needed to protect the environment and to transition to a low-carbon economy
- restricting the transfer of green technology

The Fact Sheet calls for a new, sustainable, approach to trade policy that is compatible with Australia's obligations under international environmental law, including the Paris Agreement.

6. Investor-state dispute settlement updates

August 22. Canadian government ordered to pay more than US\$7m in ISDS case

The Canadian government has been [ordered to pay US\\$7 million](#) plus compound interest from 2007 to US concrete company Bilcon, which sued the government using ISDS in the North American Free Trade Agreement (NAFTA).

August 19. Media reports suggest companies could use ISDS against a future UK Labour government

[The Financial Times](#) is reporting that a future UK Labour government could face a flood of ISDS claims if it were to attempt to nationalise utility services. The report comes after the Labour Party announced its plan to nationalise the energy grid and other utilities if it were elected in the next general election, and warned that compensation could be below market value.

August 14. New video shows how ISDS is threatening democracy in Armenia

A new 16-minute [video](#) by UK organisations Global Justice Now and War on Want documents the threat that ISDS is posing to democratic protest in Armenia.

August 13. ClientEarth Says ISDS threatens climate action

In a [submission](#) to the UNCITRAL review of investor-state dispute settlement (ISDS), ClientEarth, an environmental law organisation, has detailed the threat that ISDS poses to action on climate change.

July 24. Academic argues ISDS ruling against Pakistan shows global economic governance model is broken

Canadian academic Kyla Tienhaara argues in an [article in the Conversation](#) that a recent ISDS ruling, which ordered Pakistan to pay US\$5.8 billion to mining company Tethyan Copper, is a sign that the global economic governance model is broken.

July 16. South Korean Prime Minister considers abolishing ISDS

[Media reports](#) from South Korea have suggested that South Korean Prime Minister Mr. Lee Nak-Yeon is considering abolishing ISDS from Korean Trade agreements. The reports state that Prime Minister Lee Nak-Yeon made the remark in the National Assembly while responding to a lawmaker, Mr. Song, at the plenary session of the Budget and Accounting Committee.

7. EU leaders threaten to block trade deal with Brazil over Amazon fires

August 27. [European Union](#) leaders have threatened to block the ratification of the recently signed trade deal between the EU and the Mercosur countries of Brazil, Argentina, Uruguay and Paraguay in response to Brazil's handling of the Amazon forest fires.

French President [Emmanuel Macron](#) and Irish Prime Minister [Leo Varadkar](#) have both criticised Brazil's President Jair Bolsonaro's response to the fires, with Macron labelling the fires an "ecocide" and called for an international response to the crisis.

Varadkar also expressed his concern about the fires, stating that "there is no way that Ireland will vote for the EU-Mercosur free trade agreement if Brazil does not honour its environmental commitments."

8. Trump intellectual property demands on China based on distorted system says expert

August 8. Stephen Grenville from the Lowy Institute, formerly with the OECD, argues in [The Interpreter](#) that Australia should not uncritically join US attacks on Chinese theft of intellectual property (IP) on patents and copyright in debates about reform of the World Trade Organisation. He says that the current system is "so distorted by vested interests that the main beneficiary may be the army of patent lawyers and the legal process which support them."

Grenville reinforces many of the criticisms made by AFTINET and other community groups that the current IP framework offers ever longer monopolies to vested interests, like copyright protection to Mickey Mouse long after the creator died, and 'evergreening' of pharmaceutical patents to extend their life beyond the 20 years of monopoly they already have.

He reminds us that when America was at the same stage of development that China now is, it copied English cloth-weaving technology without paying IP royalties and its citizens read English books (famously, Charles Dickens) without paying copyright fees.

Grenville argues that China should pay legitimate IP charges, but before Australia gets "too righteous about China's predatory actions, we might recall that we are promoting an imperfect system which is heavily weighted in favour of IP owners such as the US, and against countries which are predominantly IP users such as China and Australia."

He concludes that Australia should not support Trump's bilateral mindset and that reinforcing US objectives on IP is problematical. Australia's interests are multilateral, and it should support those interests in the debate about reform of the World Trade Organisation.

9. Report says regulate tech giants but Australian govt leading deregulation push at WTO

July 29. After an 18-month inquiry, the Australian Competition and Consumer Commission (ACCC) which is independent of government, has produced a [Report on Digital Platforms](#) with 23 recommendations for regulation to protect consumer privacy, prevent extremist and misleading digital content, address the market dominance of Facebook and Google and support public interest journalism.

The report comes just days after Facebook had to pay a [record \\$7.1 billion fine](#) to settle a US government case against its privacy practices.

The Australian government has said that Facebook and Google need to be more accountable and there is a need for reform, but there will be a 12-week consultation period before the government announces its final response. The tech giants have [criticised](#) the Report.

But Australia, Japan and Singapore are leading secret talks in the World Trade Organisation, supported by Google and Facebook, for a legally binding agreement between mostly industrialised WTO member countries that would deregulate cross-border data flows and restrict national regulation of the tech giants. Australia is also supporting [similar proposals](#) in the Regional Comprehensive Economic Partnership between 16 Asia-Pacific countries. The deregulatory framework of these talks appears to conflict with the recommendations of the ACCC report, and has been criticised by [community organisations](#) and [unions](#).