



BULLETIN November 2023

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1. **Introduction**

Dear members,

Thank you to everyone who attended AFTINET's 23rd AGM on November 8. Clare Middlemas, our guest speaker, spoke about workers' rights and the just transition to a low carbon economy.

Clive Palmer has given notice of his third ISDS case against the Australian government. He is using a different trade agreement, the Singapore-Australia Free Trade Agreement (FTA), to claim A\$69 billion in additional compensation over the refusal of his Waratah coal mine permit.

Trade Ministers from the 14 IPEF countries met this week in San Francisco to sign an agreement on supply chain cooperation (IPEF pillar two). However, despite the aim to finalise the entire IPEF agreement in San Francisco, the other 3 pillars on trade, environment and anti-corruption have not been signed. It is uncertain whether talks will continue next year due to the US presidential election.

At the end of October, it was reported that EU-Australia negotiations for an FTA had collapsed. The issues of market access for Australian agricultural products and EU demands to stop Australian producers using [Geographical Indications](#) such as prosecco proved to be too difficult to overcome, meaning a deal will likely be off the table until 2025.

In other ISDS news, Patricia Ranald's Saturday Paper article explained how Clive Palmer has used ISDS provisions in the Australia-New Zealand-ASEAN FTA to sue the Australian government for almost \$340 billion. She notes that ISDS provisions are increasingly used to sue governments for climate policy. UN Special Rapporteur David Boyd makes the same point in his report, describing ISDS as a major barrier to climate action and human rights. Campaigners have also warned against this in letters to the US and the UK and Canada, warning of the financial risks and threat to climate policy.

In medicines access news, the latest draft of the World Health Organisation (WHO) Pandemic Agreement was released at the end of October. It retains key provisions on intellectual property waivers, but the weak language has led to concerns over its enforceability. The long-awaited US COVID report was also released, but despite hopes it would create a pathway for a TRIPS Waiver extension, it didn't make recommendations, meaning a decision on whether to extend the waiver will likely be further delayed.

In critical mineral updates, the Philippine Supreme Court stopped mining at two Indonesian nickel mines until Pala'wan Indigenous community concerns are addressed. In the US, Indonesia's poor human rights and environmental record has prompted concerns over a potential critical mineral deal with Indonesia. The deal with the US would grant Indonesia preferential tax incentives, adding to criticism that a rush to mine critical minerals threatens important safeguards.

Amid likely IPEF negotiation delays, there has been growing public debate on Big Tech regulation. The US suspended the IPEF digital economy negotiations and pulled some demands at the WTO that were seen to favour Big Tech monopolies. Māori groups have also criticised the negotiation process, arguing that there is not enough direct representation of indigenous peoples or comprehensive protections of Indigenous peoples' rights.

AFTINET does not receive any corporate or government funding and relies on your support to continue our campaigns. If you have not already done so, you can renew your AFTINET membership [here](#), and/ or donate to AFTINET [here](#).

Thank you,

The AFTINET Team

2. AFTINET AGM guest speaker

AFTINET 23rd AGM was on 8 November 2023. Thank you to everyone who attended and the continuing support of our members.

Clare Middlemas, Senior International Officer at the Australian Council of Trade Unions (ACTU), was the guest speaker. Clare has over a decade's experience in the trade union movement representing workers at the state, national and international levels, including trade and investment, international labour standards, labour migration, and business and human rights.

Clare discussed the ACTU's work to support workers' rights and the just transition to a low carbon economy. Watch her speech [here](#).

3. Clive Palmer uses another trade agreement to sue Australia again, for \$A69 billion over refusal of Waratah coal mine permit

Billionaire Clive Palmer has [given notice to the Australian government](#) that his Singapore-based company Zeph investments is using the Investor-State Dispute Settlement (ISDS) process in the Singapore-Australia FTA to claim an additional A\$69 billion in compensation because the Queensland Court refused permits for its Waratah coal mining project in North Queensland. The permits were refused for [environmental reasons, including their contribution to increased carbon emissions](#).

This case would be the third that Palmer has launched against the Australian government for a total of over A\$409 billion. Palmer is suing over the issue of the Waratah coal mine permit refusal in two separate cases using ISDS provisions in two different trade agreements.

Prior to this case, Palmer used ISDS in the ASEAN-Australia-New Zealand FTA for two claims against the government. The first is a [claim for almost A\\$300 billion](#) over the Western Australian Government decision about an iron ore mining licence which he had appealed to the High Court and lost. The second claim is for A\$43 billion and is over the refusal of the environmental permit for the same Waratah coal mine in North Queensland.

ISDS is a process included only in some trade agreements which allows foreign investors to sue governments for compensation if they can argue that a law or policy decision harms their future profits, even if the decision is made for public interest reasons. Having registered Seph investments in Singapore, Palmer can lodge claims under trade agreements between Australia and Singapore.

The ISDS system is so full of loopholes compared with national legal systems that it does not prevent companies from [making multiple claims](#) over the same decision under different trade agreements. Palmer's strategy is clearly to maximise costs to the government.

The Labor government has a policy to exclude ISDS in new agreements and to review it in existing agreements. Palmer's third case makes the removal of ISDS in existing agreements more urgent.

4. IPEF supply chain deal signed but trade, environment and anti-corruption talks not completed

Trade Ministers from the 14 countries of the Indo-Pacific Economic Framework (IPEF) who met this week in San Francisco have signed an agreement to improve supply chain cooperation, known as IPEF Pillar 2. [Reports](#) indicate IPEF heads of government may announce on Friday that the environment and anti-corruption pillars have made progress, and that talks on the trade pillar may continue. However, there is uncertainty about whether IPEF negotiations will continue during the US presidential election campaign next year.

IPEF is a US initiative to divert supply chains away from China and towards US allies in the region. It is not a traditional trade agreement. There are no tariff reductions or other market access to the US or other markets, and thus no enforcement through trade penalties, because there is bipartisan opposition to providing increased access to the US market.

IPEF has generated contradictory pressures which have agreement on the other three pillars, especially the trade pillar. The trade pillar is like a mini trade agreement and contains controversial chapters on digital trade, environment and labour standards. US groups are pressing for labour and environmental standards to be enforceable through some kind of dispute process. However, IPEF developing countries are reluctant to agree to this in the absence of tangible trade gains in the form of access to the US market. Melinda St Louis from [US Public Citizen](#) has said that the proposed trade pillar "did not live up to promises of worker-centered trade."

Digital trade is even more of an obstacle to agreement. In the context of the US national debate about how to regulate Artificial Intelligence, privacy and cyber security risks, civil society and congressional Democrats [have pushed back against](#) IPEF digital trade deregulation proposals from Big Tech companies which would undermine national regulation of data flows, source code and algorithms. The US has [suspended its participation](#) in talks on these issues until national policy decisions. This means the trade pillar, which includes digital trade, cannot be finalised.

The looming US presidential election means that the Biden administration may be [reluctant](#) to finalise any further agreements which could become an election issue for Republicans in the highly polarised US presidential race.

AFTINET supports enforceable labour and environmental standards and is opposed to digital deregulation which would limit the ability of governments to regulate Big Tech companies. While the [IPEF Pillar 2 supply chain agreement](#) does discuss the importance of labour rights and

environmental standards, its labour commitments are weaker than those on supply chain cooperation.

The supply chain agreement will be tabled in Parliament and reviewed by the Joint Standing Committee on Treaties, to which AFTINET will make a submission. However, since there are no tariff changes there will be no legislation, and no parliamentary debate. Cabinet will make the decision to ratify it. This underlines the flaws in the current trade agreement process, which is under review by the Joint Standing Committee on Trade Investment and Growth. See AFTINET's submission to the review [here](#) and AFTINET's preliminary analysis of the supply chain text [here](#) which was released in September, following campaigning from IPEF [civil society groups](#), including AFTINET.

5. Australia-EU free trade deal: talks collapse

Australian and EU negotiators have confirmed that they cannot reach agreement for an FTA before the EU parliamentary election period begins next year. This means any future negotiations are unlikely to resume before 2025.

The EU was unwilling to grant significantly more market access for Australian beef, sheep meat, sugar and dairy and was demanding Australian producers cease using terms known as [Geographical Indications](#), like prosecco and feta, claiming these should only apply to products made in certain areas of Europe. Australian Trade Minister Don Farrell [said](#) the European offer was not acceptable.

Negotiations, which began under the previous government in 2018, have prioritised agricultural exports. The EU also sought an extra [three years](#) of data protection monopolies on medicines for its pharmaceutical companies in addition to the 20-year patent monopolies on all new medicines. This would have delayed access to cheaper medicines and cost Australian taxpayers [hundreds of millions](#) of dollars per year. Community organisations campaigned against this, but its removal was not confirmed. EU demands for additional deregulation and market access for essential services and government procurement were also contentious issues in the negotiations. However, positive aspects were the exclusion of [ISDS](#) and EU policy to include fully enforceable international standards on labour rights and the environment.

6. Other ISDS updates: Clive Palmer's use of ASEAN trade deal to sue Australia scrutinised in trade policy inquiry, UN Report finds ISDS "catastrophic", US and Canada at risk from ISDS and US civil society call for Biden to terminate ISDS provisions in US trade agreements

Saturday Paper article: Clive Palmer's use of ASEAN trade agreement to sue Australia for \$340 billion scrutinised in trade policy inquiry

Dr Patricia Ranald's [article](#) in the Saturday Paper explains how Clive Palmer has registered his company Zeph Investments in Singapore and is using the Australia-New Zealand-ASEAN FTA to make multiple claims against the Australian government of almost \$340 billion, in addition to the \$A69 billion case under the Singapore-Australia FTA described above.

Palmer's ISDS cases based on the refusal of a [permit for his Queensland Waratah coal mine](#), also described above, join a growing list of examples of fossil fuel companies using ISDS in some trade agreements to sue governments when they regulate carbon emissions to address climate change. The Science [journal](#) and the Intergovernmental Panel on Climate Change have found that these cases are a threat to climate action. The EU Commission proposed the collective exit of EU member countries from the Energy Charter Treaty, [describing](#) the ISDS provisions as "outdated" and "not aligned with our EU Climate Law and our commitments under the Paris Agreement."

Submissions [from AFTINET](#) and other organisations to the Parliamentary Inquiry on trade policy argue that the government must implement its policy against ISDS to prevent future such cases, by continuing to exclude ISDS from future agreements and a speedy review of ISDS in existing agreements.

UN Special Rapporteur: ISDS has "catastrophic" impacts on environment and human rights

The UN Special Rapporteur on human rights related to a safe, clean, healthy and sustainable environment, David Boyd, has released a [report](#) on ISDS. It found that ISDS has been “weaponised” by international investors leading to the violation of human rights and undermining the rule of law.

Boyd’s report finds that there is overwhelming evidence that ISDS is a major barrier to addressing climate change. ISDS negatively impacts human rights, such as the right to life which rely on effective climate change mitigation. ISDS claims have been made against Canada and the Netherlands for their plans to phase out fossil fuels. Governments may be liable to fossil fuel companies for [\\$340 USD billion in future ISDS cases](#) for acting on their Paris Agreement commitments.

Claims in the billions are increasing. Boyd argues that the ISDS system as a whole is “perpetuating extractivism and economic colonialism.” The majority of ISDS claims are from the global North against countries in the global South. In 2021 [three Australian](#) iron ore mining corporations sought \$37 USD billion from the Congo, three times the State’s 2021 GDP.

The report recommends specific government action including terminating investment agreements with ISDS, negotiating the removal of ISDS in other trade agreements and refusing to include ISDS procedures in new agreements. Read David Boyd’s report and his full list of recommendations [here](#).

UK and Canada at “huge financial risk” from ISDS provisions in CPTPP

The UK has recently joined the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), its largest trade agreement since Brexit. However, [campaigners](#) have warned that controversial ISDS provisions in the CPTPP will mean that Canadian investors will be able to sue the UK, and vice versa, leaving both countries vulnerable to lawsuits and preventing climate action.

The UK has particularly been identified of being [at risk](#) from ISDS claims as Canadian companies have proved to [aggressively use](#) ISDS, especially related to environmental or energy policies.

An [open letter](#) by UK and Canadian civil society asks Rishi Sunak and Justin Trudeau to sign side-letters which would exclude ISDS provisions from applying between the countries. Following community campaigning, the UK has signed [similar side-letters](#) with Australia and New Zealand.

200+ US civil society groups call for Biden to terminate ISDS provisions in US trade agreements

In an [open letter](#) addressed to President Biden, Public Citizen, AFL-CIO, Sierra Club and other civil society organisations argue that ISDS gives corporations “an unfair advantage over sovereign nations” which “prioritizes corporate rights over those of governments, people and the planet.” The letter criticises the judicially flawed “unaccountable” ISDS tribunal process.

They have warned that ISDS provisions could undermine the Inflation Reduction Act (IRA), a landmark piece of US legislation containing A\$250 billion in investment to accelerate the US’ transition to net zero.

The US Government, like the Australian government, has committed not to pursue agreements with ISDS, but has been slow to review ISDS in existing agreements. The letter calls for urgent termination of ISDS provisions in its existing agreements.

[7. IPEF negotiations: US government responds to demands to regulate big tech in WTO and IPEF negotiations and Māori demand direct representation and comprehensive protections for rights of Indigenous peoples](#)

US government responds to demands to regulate big tech in WTO and IPEF negotiations

Amid ongoing public debate about how to better regulate the technology industry the US has withdrawn some digital trade demands at the WTO made in 2019. Those advocating for tighter controls on Big Tech have said this is a positive step in defining global digital standard-setting and pushing back at US tech industry lobbyists’ use of trade deals to undercut government regulation.

The US' 2019 proposals, which were heavily influenced by the US tech industry, included demands for free cross-border data flows and the prohibition of national requirements for data localisation and review of software, algorithms, and source code. This would have undercut governments' ability to regulate to protect consumer and human rights in the context of Artificial Intelligence, cyber security threats and data abuse scandals such as the 2014 [Facebook-Cambridge Analytica scandal](#).

This development feeds into a larger [global fight to define digital standard-setting](#). The EU, China and the US have all forwarded diverging models of digital regulation, and all want their approach to be the one which defines the standards that govern the digital space. Many see the US leading on negotiations for a new trade agreement, IPEF, as a way for the US to forward its vision for digital standard-setting.

However, the digital economy section of IPEF has been one of the most contested. Concerns that the US technology industry is aggressively trying to [shape the agreement](#) led to US lawmakers warning that "some Big Tech interests seek to use their lobbyists and money to hijack IPEF negotiations to impose binding rules branded as 'digital trade' that may derail [] government action." The US responded by [announcing](#) the suspension of negotiations on digital trade rules in IPEF earlier this week, pending debate on a US domestic regulatory framework.

Campaigners are hopeful that the US dropping some WTO demands and suspending IPEF digital trade rules negotiations, despite the opposition of Big Tech, is a positive step forward in ensuring the US digital standard-setting contains adequate regulation and protections against Big Tech overreach.

Māori demand direct representation and comprehensive protections for Indigenous peoples

Despite requests, Māori Indigenous peoples have said in the recently released Ngā Toki Whakarururanga [position paper](#) that they have been denied direct independent sovereign representation in negotiations in the IPEF negotiations.

Ngā Toki Whakarururanga, a Māori collective advocating for Māori trade interests, say this is inconsistent with obligations in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). A [previous December 2022 position paper](#) from the same group argued that the presence of Indigenous peoples' rights in the IPEF trade agreement chapter on 'inclusion' is meaningless if Indigenous peoples are excluded from direct representation in negotiations.

The latest [position paper](#) argues not only for direct representation in negotiations, but that there should be a "comprehensive carveout" in the scope of the agreement across each IPEF pillar "to ensure that state parties retain the policy space to meet their domestic and international obligations to Indigenous Peoples in their territories."

Indigenous communities, including Aboriginal and Torres Strait Islander peoples, continue to be some of the most [marginalised groups](#). Trade agreements have [historically undermined](#) Indigenous peoples' access to their rights, further marginalising them.

The UN Special Rapporteur on the Rights of Indigenous Peoples Victoria Tauli-Corpuz criticised previous trade agreements for the [prioritisation corporate rights over human rights](#), particularly for Indigenous peoples.

8. Medicines access updates: WHO Pandemic Draft retains key provisions and US report fails to move TRIPS waiver extension negotiations forward

Despite push to water down provisions in WHO Pandemic Agreement, the latest draft retains key provisions

The [latest draft](#) of the WHO Pandemic Agreement was released at the end of October. There were concerns it would continue the trend of weakening provisions. However, it has retained some key commitments, notably to waive some intellectual property rules during pandemics, but worries remain about the [vague language and weak enforceability](#) of the agreement.

The Pandemic Agreement aims to ensure more equitable access to medicines in a future global health emergency. However, lobbying from pharmaceutical companies and other “[vested interests](#)” has resulted in a gradual rollback from this goal in the subsequent drafts of the agreement.

The initial [zero draft](#) of the Pandemic Agreement promisingly proposed temporary waivers of intellectual property rules which gave pharmaceutical companies 20-year patents on new health products and led to [vastly inequitable](#) health outcomes during the COVID pandemic.

The next draft of the agreement, the Bureau’s text, included [options to weaken commitments](#) and reject temporary waivers of intellectual property rules. The language, rather than committing countries to action, emphasises that countries are acting voluntarily and “[within their capabilities](#)”.

The latest Pandemic Agreement draft crucially [retained text](#) on temporary waivers of intellectual property rules. It also kept provisions intended to benefit countries that share information about threatening pathogens and other important, but more contested, provisions. However, there are [real concerns](#) over weak language that could make it easy for countries to avoid commitments, especially given strong lobbying by the pharmaceutical industry.

US COVID TRIPS report released but fails to move TRIPS waiver extension negotiations forward

WTO negotiations, which commenced more than 3 years ago, on temporarily waiving some intellectual property rules for COVID products like vaccines, treatments and tests have hit multiple roadblocks. Most recently a decision has been delayed in anticipation of a [report](#) commissioned by the US. The report, released in October, has been [criticised](#) for failing to create a pathway to resolving negotiations as was hoped, likely delaying a decision until February 2024.

This [report](#) comes nearly 3 years after the original landmark “TRIPS waiver” proposal was [tabled](#) to temporarily suspend intellectual property rules on COVID products. It is also over a year after a much-reduced version of the waiver, which applied only to vaccines, was agreed. This waiver contained a commitment that countries would make a decision on expanding the waiver to other products within 6 months, which is now long overdue.

There were initially hopes that a decision on the waiver extension would happen at the WTO Ministerial Conference in early 2024 but [officials now seem doubtful](#). While COVID is no longer considered [an international emergency](#), for many lower income countries it remains a serious issue.

9. Critical minerals updates: backlash over US-Indonesia critical mineral deal due to poor environmental and human rights record and ‘business as usual’ for critical mineral mining threatens Indigenous rights

Potential US-Indonesia critical minerals agreement prompts backlash over Indonesia’s poor environmental and human rights record

The US, concerned with reliance on imports from China amid growing global demand for critical minerals, has been aggressively developing its critical mineral supply chains over the last years. However, a bipartisan group of senators have recently criticised the Biden administration for pursuing a critical mineral deal with Indonesia. They argue that Indonesia’s poor labour and environmental record should preclude it from a special trading relationship with the US.

Over the last 30 years the US has become increasingly [import dependent](#) for critical minerals. During the same period, China has begun to dominate supply chains. This prompted urgent US action to develop new supply chains. Last year the US passed the Inflation Reduction Act (IRA), a substantial [A\\$589 billion](#) initiative intended to incentivise critical mineral production and trade. Under the agreement, companies from countries that the US has FTAs with, like Australia, will receive tax incentives for critical mineral imports. But this means that if the US finalised a trade deal with Indonesia, companies based in Indonesia would, controversially, receive the same benefits.

In an [open letter](#) to the US Trade Representative, nine senators expressed “concerns regarding Indonesia’s standards for labor rights, environmental protection, safety, and human rights.” The

Business and Human Rights Resource Centre found significant [abuses in all stages of Indonesia's critical mineral production](#).

Australia's critical mineral strategy aims for Australia to be a "world leader" in Environmental, Social and corporate Governance (ESG) performance. Australia has stronger ESG standards than other countries which many feel should differentiate it from Indonesia in receiving IRA tax incentives. But, even for Australia, the rush to critical minerals mining risks undermining important safeguards.

The current critical mineral agreement discussions between the US and Indonesia suggests a willingness to backslide on standards in the name of maintaining critical mineral competitiveness.

'Business as usual' critical minerals mining threatens to undermine Indigenous peoples' rights

The [Philippine Supreme Court](#) ordered two mining companies to cease operations at a nickel mine until Pala'wan Indigenous community concerns be addressed. The Pala'wan community have fought since 2005 against nickel mining in an environmentally protected area of cultural significance.

Critical minerals, such as nickel, lithium, cobalt and copper, are essential for technologies needed for a green transition, including electric cars, solar panels and batteries. However, the boom in demand has led to concerns that critical mineral mining, similarly to extractive industries more generally, will continue to be linked with human rights violations, particularly for indigenous peoples.

Critical mineral supply and processing is currently heavily concentrated in a few countries, most significantly in China. Australia, however, is one of the few countries with significant reserves and is in the midst of negotiations with the EU, US and others about critical mineral agreements with the aim to become a renewable energy "superpower."

More than [half](#) of global critical mineral projects overlap with Indigenous lands. The Australian federal government outlines 'First Nations engagement and benefit sharing' and environmental standards as key actions within its [critical minerals strategy](#). However there has been a [push](#) from the mining industry towards 'streamlining' by removing regulation, risking vital safeguards.

The mining lobby is attempting to take advantage of the receptive context for critical minerals to push a greenwashed narrative about mining. This risks a 'business as usual' approach to mining which does not prioritise protections for Indigenous peoples and the environment.