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& Investment Network Ltd

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## AFTINET Bulletin 124, 20 February 2006

If you would like to contribute to the Bulletin, please contact Jemma Bailey at [jbailey@piac.asn.au](mailto:jbailey@piac.asn.au) or on (02) 8898 6500. Our website is <http://www.aftinet.org.au>.

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1. **AFTINET campaign planning evening on Tuesday 7 March: All members welcome**

AFTINET's annual campaign planning evening is soon approaching. All AFTINET members are wanted and welcome! Come along and help us plan our campaigns for 2006.

**When:** 5:30 – 7:30pm, Tuesday 7 March  
**Where:** Conference Room on Level 11, PSA House  
160 Clarence Street Sydney.

This year will be a busy and important year for trade justice campaigning. There is an accelerated timetable for WTO negotiations and strong concerns that the Government will increase Australia's commitments on essential services in the WTO trade in services agreement (GATS). Negotiations are coming to the pointy end in the proposed Australia-China FTA and we have much community education and campaigning work to plan to demand that our concerns about human rights and environmental standards in China and Australia are not sidelined from the negotiations. Also, the negative impacts of the US FTA on social policies and medicines are starting to show. On the evening, we will have a brief run down on each of these campaigns and small group brainstorming sessions on campaign ideas.

Please come along so we can plan the coming year together! **We would also like to get contributions from AFTINET members outside of Sydney.** Please contact Jemma to discuss the campaigns or ideas for our planning.

As part of our planning process, we also invite feedback and suggestions about how AFTINET functions as a network. Are you happy with the level of research and campaign materials that AFTINET distributes? What could we do to help you more to campaign on trade justice issues in your local communities?

For more information about the campaign planning meeting or if you cannot come and want to contribute ideas, contact Jemma Bailey at [jbailey@piac.asn.au](mailto:jbailey@piac.asn.au) or phone (02) 8898 6500. Please RSVP to Jemma.

## **2. Take action: Pressure Trade Minister Vaile about the impact of the US FTA on Australia's medicines policy**

The Australian and US governments will conduct an annual review of the US FTA in March. The review is a good opportunity to raise the public debate again about the impact of the US FTA on social policies and to let Trade Minister Mark Vaile know that the community is still monitoring the US FTA.

In our last bulletin, we included a number of articles on the so-called 'progress' of the USFTA. Since the agreement came into force on 1 January 2005, Australia's exports to the US have actually fallen and imports to Australia from the US have risen. On top of this poor economic performance, Trade Minister Mark Vaile has indicated that the Government may bow to US pressure to overturn the amendments to the US FTA legislation made by the ALP on access to medicines. The ALP's amendments were designed to limit 'evergreening', that is, attempts by large pharmaceutical companies to delay the entry of cheaper generic medicines by lodging spurious patent claims.

In the lead up to the US FTA review, we are asking AFTINET members to write to Trade Minister Mark Vaile to highlight concerns about US plans to lobby the Australian Government to remove the ALP's 'evergreening' amendment. Many of you participated in the campaign during the negotiations and it is important that we keep up the campaign's momentum now that the impacts of the US FTA are starting to show.

As a guide, here are some more detailed points you can include in your letter to Trade Minister Vaile:

I am concerned about reports that the US Trade Representative plans to lobby for the removal of the 'evergreening' amendment and for other changes to Australia's medicines policy at the upcoming joint review of the US FTA in March.

I believe the evergreening amendment must be retained. The US FTA implementing legislation inserted a new section into the Therapeutic Goods Act that requires generic medicines producers to give prior notice to patent holders of their intention to produce cheaper drugs and to certify that such production would not infringe a patent. This requirement for prior notice before the production of generic drugs makes it easier for patent holders to raise legal objections to extend patents and delay the appearance of cheaper drugs on the market. In the US, patent holders

have used such legal delaying tactics aggressively, even when they have no prospect of winning the case. The high prices of patented drugs mean that six months or a year's delay can result in billions of dollars of additional revenue for large pharmaceutical companies and a lag in affordable medicines for consumers.

The evergreening amendment addresses this problem by requiring that patent holders who want to commence legal action have to certify that they do so in good faith, that they have reasonable prospects of success and that they will proceed without unreasonable delay. Damages may be claimed if the court finds that the legal action does not conform to these reasonable requirements.

Pharmaceutical companies have been using such aggressive legal tactics to extend patent rights and delay the production of generic medicines in the US. Without the evergreening amendment, we could see the spurious extension of patents happening in Australia too. That is why pharmaceutical companies are lobbying for its removal, and why the government should not give in to this pressure.

The loss of the evergreening amendment would have a long-term impact by delaying the availability of cheaper generic drugs. It is the PBS comparison of the price of newer drugs with cheaper generic drugs of the same medical effectiveness that keeps the prices of prescribed medicines three to ten times lower here than they are in the US.

I am also gravely concerned that the US government is also pressuring to change the Australian Government's policy for a 12.5% cut in the reference pricing of generic drugs. We strongly urge you not to bow to such pressure and to ensure that Australia's policies on affordable medicines are retained.

It is of particular concern that Australian medicines policy is being put at risk at a time when the trade figures have revealed an increased trade deficit in the first year of the US FTA. The government claims that there may be no clear economic benefits from the agreement for five to ten years. If this is the case, medicines policy should not be put at risk in the meantime and the Government should consider giving 6 months notice to withdraw from the US FTA.

You can send your letter to Trade Minister Vaile at:

Mark Vaile  
Minister for Trade  
Parliament House  
Canberra ACT 2600  
[mark.vaile.mp@aph.gov.au](mailto:mark.vaile.mp@aph.gov.au)

And copy the Department of Foreign Affairs and Trade at [us\\_fta@dfat.gov.au](mailto:us_fta@dfat.gov.au).

### **3. WTO disputes panel rules against regulation of genetically engineered crops**

Last week, a preliminary ruling of the WTO disputes panel found that the EU had violated trade rules by delaying the entry of genetically modified (GE) crops to US markets. The facts of the case are that the US, Canada and Argentina challenged regulations in the EU that delayed the commercialisation of GE crops until further scientific evidence proved the safety, or not, of GE crops.

The WTO disputes panel found that the EU regulations violated a WTO trade

agreement. This ruling indirectly challenges the UN Cartagena Protocol on Biosafety, which allows countries to take a precautionary approach to regulating GE crops where scientific uncertainty exists.

This ruling has potentially major implications for the democratic rights of governments, including Australia, to set their own environmental and health regulation where there is scientific uncertainty about a new technology.

### **World trade agency rules for US in biotech dispute**

New York Times, 8 February 2006

By Andrew Pollack

The United States won a closely watched trade dispute yesterday when the World Trade Organisation ruled that the European Union breached international rules by restricting imports of genetically modified crops and food made from them. The decision, which was not made public but was discussed by federal trade officials, also represents a victory for the agricultural biotechnology industry, which for years has been battling opposition to its products from consumers and governments in Europe and some other countries.

The ruling by a three-person panel at the Geneva-based trade body is not expected to flood Europe with biotech foods. But American government and industry officials said it would help discourage other countries from adopting similar barriers and would set a precedent that countries must have sound scientific reasons for rejecting genetically modified crops. Some countries have feared they would lose exports to Europe if they were to grow the crops. "One of the reasons we brought the case was because of the chilling effect the E.U.'s actions had on the adoption of biotechnology," a United States trade official told reporters yesterday.

... The United States, joined by Canada and Argentina, filed a complaint against the European Union in 2003, claiming that a moratorium on approvals of genetically modified crops that Europe adopted in 1998 violated a food trade treaty that requires regulatory decisions to be made without "undue delay" and to be based on science. The three countries also complained that six European countries - Austria, France, Germany, Greece, Italy and Luxembourg - violated trade rules by banning even biotech crops that had been approved by the European Commission.

Europe had argued that it did not have a moratorium but that it just took time to weigh the possible risks to health and environment posed by genetic engineering. It said it needed to take a "precautionary" approach to regulation as opposed to Washington's "laissez-faire" stance. The trade organization panel appears not to have challenged Europe's regulatory process for biotech crops. Rather, it said Europe failed to follow its own procedures, resulting in undue delay of decisions.

The panel ruled in favor of the United States regarding the bans by the six countries. It also ruled in favor of the United States on 23 of 27 specific crops, according to L. Val Giddings, a biotechnology industry consultant who said he had been briefed on the ruling. Genetically modified crops, mainly corn, soybeans and cotton containing bacterial genes that provide resistance to herbicides or insects, are widely grown and consumed in the United States but rarely in Europe.

American biotechnology, food and agriculture groups hailed the ruling. "This is a good, clear signal to the world that Europe was wrong," said Leon Corzine, chairman of the National Corn Growers Association. He said about \$300 million a year in corn exports to Europe were lost as a result of the moratorium.

But consumer and environmental groups opposed to biotech crops condemned the finding. "The World Trade Organization, with its secretive decision-making processes, is unfit to decide what we should eat or what farmers should grow," Alexandra Wandel, trade coordinator for Friends of the Earth Europe, said in a statement.

#### **4. UN paper raises concerns about opening up trade in services for developing countries**

The UN Conference on Trade and Development (UNCTAD) has released a paper that warns that the WTO's approach of 'one-size-fits-all' trade liberalisation does not necessarily lead to growth and development in poor countries.

The paper explores some of the problems that have arisen from opening up services sectors, such as displacement of local firms by large foreign services corporations, the loss of jobs in those services industries and negative impact on access to essential services, such as health, education and culture. UNCTAD recommends that opening up services only assists development where there are appropriate national regulatory frameworks for liberalisation. The Paper states "the conclusion from available evidence is that a 'one-size-fits-al' approach is inappropriate in dealing with services trade liberalisation."

This is an important piece of research in the face of accelerated WTO negotiations following the WTO Ministerial Meeting in Hong Kong. The Hong Kong Declaration changed the process of GATS negotiations to a 'plurilateral' negotiating process which will increase the pressure on countries to open up essential services sectors to foreign investment.

The paper is available from UNCTAD's website: [www.unctad.org](http://www.unctad.org), search for document TD/B/COM.1/77.

#### **5. Boliva calls for removal of water from trade agreements**

On 10 February, the Bolivian government called for water to be withdrawn from the GATS negotiations and other free trade agreements. The demand is contained in a Ministerial Declaration, drafted by the Bolivian Government. This Declaration will be taken to the World Water Forum to be held in Mexico in March. NGOs from around the world are calling sympathetic governments to support this declaration.

The relevant parts of the draft Declaration follow:

We claim as our own the words of the UN Committee on Economic, Social and Cultural rights which in November 2002 stated that: "Water is a limited natural resource and a public good fundamental for life and health. The human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realization of other human

rights.”

We endorse: “The right to water clearly falls within the category of guarantees essential for securing an adequate standard of living, particularly since it is one of the most fundamental conditions for survival (...) The right to water is also inextricably related to the right to the highest attainable standard of health (...) and the rights to adequate housing and adequate food (...) The right should also be seen in conjunction with other rights enshrined in the International Bill of Human Rights, foremost amongst them the right to life and human dignity.” (CESCR 2002)

In order to meet the Millennium Development Goals, we commit to prioritizing investment in water from our national public budgets. We call on the international aid community (World Bank, Regional Development Banks and Bilateral Government agencies) to support the initiatives of developing countries without any conditions based on the privatization of drinking water and basic sanitation services. We consider that management and control of water needs to be in a sphere that is public, social, community-based, participative and not based on profit. All local, national and international public institutions have a responsibility to ensure these conditions.

We call for the withdrawal of water from all free trade agreements such as the WTO and regional Free Trade Agreements and reaffirm the sovereign right of each country to regulate their hydrological resources in all its uses and services. We urge the suspension of any negotiation on drinking water and basic sanitation services within GATS (the General Agreement on Trade in Services of the WTO) and call for the withdrawal of water in all its uses and services from the jurisdiction of Bilateral Investment Treaties.

## **6. AFTINET membership renewals**

We are currently processing the AFTINET membership renewals for 2006. You should have received a membership renewal form and AFTINET materials in the mail recently. If you have not received this information, we may have an incorrect address for you. Please contact our administration officer, Alex Price-Randall, on [alex@piac.asn.au](mailto:alex@piac.asn.au) or 8898 6500, if you have not yet received a membership renewal form.

## **7. Melbourne forum: World Trade Organisation 101 workshop**

The Australian Centre for Democracy and Justice ([www.democracyandjustice.org](http://www.democracyandjustice.org)) have organised a forum to unravel the mysteries of the WTO, provide a critical analysis of what goes on behind its closed doors, and explain why you should care. The World Trade Organisation makes the rules for global trade, but increasingly its rules are affecting the domestic laws of many of the world's countries. However few people know much about the WTO. What is it? Why does it exist? Who runs it? Who sets it's agenda? Who is it accountable to?

When	7pm Tuesday 21st February 2006
Who	Mike Cebon (Global Trade Watch) and Jagjit Plahe (Monash University)
Where	Evatt Room, Trades Hall (cnr Lygon St and Victoria St Carlton)
Cost	\$5