



## BULLETIN August 2020

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### 1. Introduction

Dear Members,

The health and economic crises from the COVID-19 pandemic are intensifying, but there is a lack of international cooperation to contain the coronavirus, to buttress public health systems and rebuild employment for hundreds of millions of people thrown out of work. US politics and the US-China trade war are significant factors in this failure.

As the race for a vaccine speeds up, Big Pharma are resisting calls for suspending patent rights to ensure that treatments and vaccines are freely available to everyone in the world, while signing lucrative contracts to provide expected vaccines to the US. The Australian government has reportedly expressed support for the COVAX initiative to reduce treatment and vaccine costs for poor countries, but is not listed as a supporter on its website. There has been no debt cancellation for the poorest countries, only debt service deferral for 2020.

AFTINET organised a webinar and made a submission to a parliamentary inquiry on the impact of the pandemic and the need to review trade rules. Despite strong efforts by global civil society and developing countries, and the World Health Organisation, there has been no substantive review of trade rules from the World Trade Organisation, nor from the biggest current regional trade negotiation, the 15-state Regional Comprehensive Economic Partnership.

As well, Big Tech is pushing ahead with its effort to use trade agreements to impose their data monopolies on the international community. ISDS cases continue to mount.

AFTINET has made submissions to two current trade policy inquiries, on the trade agreement process and on the five-year review of the China – Australia FTA (ChAFTA).

AFTINET relies on your support to continue our campaigns. Please share items from this Bulletin which are also linked to our [website](#), [Facebook](#) and [twitter](#).

Help us celebrate our 20<sup>th</sup> anniversary by [buying our T-Towels](#) featuring brilliant Tandberg and Wilcox cartoons.

You can renew your membership [here](#) or donate [here](#).

Thanks and keep safe.

*The AFTINET Team*

## 2. **Unique t-towels with Tandberg and Wilcox cartoons for AFTINET Anniversary only \$20!**

**If trade deals are so good,  
why can't we see them  
before they're signed?**



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## 3. **AFTINET Submissions to Inquiries into Trade Agreement Process and China FTA**

The full AFTINET submission to the **Joint Standing Committee on Treaties (JSCOT) review of the trade agreement process** is [here](#), with a summary below.

Trade agreements are legally binding, with dispute processes that can result in trade penalties, and are difficult to revoke. They have commitments not only on tariffs, but on laws and policy that

should normally be decided through open democratic parliamentary processes, including investor rights to sue governments, and essential services like medicines, energy, water, and on digital trade, temporary workers, local industry policy, government procurement and product standards. The COVID-19 pandemic has exposed flaws in trade policy including over-dependence on imports of essential health products and lack of local manufacturing capacity.

The process for negotiating, signing and ratifying trade agreements should be subject to the highest levels of public debate, scrutiny and democratic accountability to ensure that the benefits outweigh the costs.

But this is not the case. The current trade agreement process is secretive and lacks democratic accountability. Texts of agreements are not released until after they are signed and DFAT consultation processes are limited by lack of access to the text. There is no independent assessment of the economic, social and environmental impacts of agreements before signing and parliament only votes on the enabling legislation, not the whole agreement.

The World Trade Organisation multilateral negotiations and the EU provide examples of more open and accountable processes, including release of negotiating texts, and the publication of final texts before they are signed.

AFTINET recommends:

- Greater involvement of parliament in the decision to commence negotiations, release of negotiating texts and regular consultations on negotiations with all stakeholders during negotiations
- The Australian government should follow the example of WTO multilateral negotiations and the European Union and should release the final text of agreements for public and parliamentary discussion before they are signed.
- After release of the final text, there should be comprehensive independent studies of the economic, regional, health, gender and environmental costs and benefits of agreements, which should be published before they are signed.
- Legal experts agree that there is no constitutional barrier to Parliament playing a greater role in the treaty decision-making process. After release of the text, the independent assessment of the costs and benefits of the agreement and JSCOT review, Parliament should then decide whether the Executive should approve the agreement for signing.
- If the agreement is approved by Parliament, and following approval of signing by the Executive, Parliament should then vote on the enabling legislation before ratification.
- There should be public reviews of trade agreement outcomes five years after entry into force with independent assessments of economic, regional, health, gender and environmental costs and benefits.

AFTINET's full submission to the **DFAT five-year Review of the China FTA** is [here](#). ChAFTA has not met the expectations predicted by the government.

AFTINET criticised the lack of human rights and labour rights in China when ChAFTA was first proposed. Trade and diplomatic tensions between China and Australia have since increased in the context of the US-China trade wars. However, some cooperation continues through international institutions like the WHO and the WTO, which is essential in the context of the COVID-19 pandemic. AFTINET will not be drawn into cold war rhetoric but will continue our criticism of the lack of human rights and labour rights in China, and of those provisions in the ChAFTA that are not in the interests of workers and communities in Australia and China.

Both governments have allowed preferential tariff and other market access arrangements without any enforceable commitments to implement the fundamental ILO Conventions on labour rights.

There are no enforceable obligations to implement agreed UN environmental standards, including actions to reduce carbon emissions.

The ChAFTA included an unprecedented range of provisions to increase numbers of temporary workers who are vulnerable to exploitation because they can be deported if they lose their employment. In the context of the pandemic the Australian government has compounded this exploitation by excluding from government assistance those who cannot return home.

The ChAFTA includes Investor-State Dispute Settlement (ISDS), which allows a single foreign investor to sue a government if a change in law or policy can be claimed to harm their investment. ISDS rules could result in cases from Chinese companies claiming compensation for Australian government actions during the pandemic that reduced their profits but were essential to save lives.

The ChAFTA commitments on investment and trade-in-services are lopsided. Commitments to reduce regulation of services could also limit the scope of governments to respond to changes like privatisation failures, climate change and the pandemic.

The ChAFTA provisions on product standards are ambiguous and there have been examples of substandard products entering Australia. These range from fabricated steel products, building materials containing asbestos, rail car components containing asbestos, and most recently faulty facemasks and faulty COVID-19 testing kits. These provisions should be reviewed to ensure conformity to Australian standards.

There has been no independent assessment of the economic costs and benefits of the ChAFTA. In terms of trade and investment flows, the ChAFTA has not met government expectations of “hundreds of thousands of jobs” from increased exports. There have been some increases in exports of agricultural products and processed food, but Australia still has a large manufacturing trade deficit with China. The largest increases in Australian exports have come from unprocessed mineral and energy exports that were already tariff-free before the ChAFTA.

There were also predictions of economic growth resulting from increased investment in both countries. In fact there have been declines in both Chinese investment in Australia, and Australian investment in China.

## **Recommendations**

- That the government review the ChAFTA to seek inclusion of legally enforceable labour rights. based on the ILO Conventions on basic labour rights, and to include commitments to the adoption and implementation of UN International Environment Agreements, including the Paris Climate Agreement
- That temporary workers who have lost their employment in Australia should have access to the same government assistance as other workers.
- That the MoU on Investment Facilitation, and the side letter removing mandatory skills assessment should be cancelled, and commitments to remove labour market testing for skilled or semi-skilled workers should be removed
- That Investor-State Dispute Settlement (ISDS) provisions should be removed.
- That the government change its services commitments in ChAFTA to a positive list rather than a negative list structure, ensure that public services are clearly defined and clearly excluded from services commitments, and that services commitments do not impede governments from regulating in the public interest.
- That the relevant clauses in ChAFTA should be clarified to ensure that products exported to Australia meet Australian standards. Border inspection resources should also be increased.
- That the government support policies to reduce dependence on global production chains and enable local manufacturing of essential health equipment, medicines and other strategic

industries. Such initiatives could both assist in expanding employment in response to the economic crisis caused by the pandemic and could also address the climate crisis.

#### **4. AFTINET submission on the impact of the COVID-19 pandemic on trade policy**

AFTINET's submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade inquiry into the impact of the COVID-19 pandemic is [here](#).

The submission criticises the inflexibility of neoliberal trade rules which have been exposed by the pandemic, like over-reliance on global production chains which suit the needs of global corporations but hinder local industry development policies and reduce the right of governments to regulate in the public interest. It argues for trade policy flexibility to enable governments to act in the public interest in crises like the pandemic and more generally. It makes specific recommendations on:

- the need for trade policy to address the specific needs of developing countries
- local industry development and capacity to produce medical equipment, medicines, renewable energy and infrastructure
- trade policy should not strengthen medicine monopolies and should support affordable access to medicines
- trade policies should not allow global corporations to sue governments over actions taken during the pandemic, or over other public interest measures
- changes needed to rules on trade in services and digital trade
- legally binding commitments on labour rights and environmental standards, including emissions reductions
- a more open and democratically accountable process for trade agreements.

#### **5. No ISDS in proposed UK – Japan FTA; Australian mining companies to sue Poland and PNG; Cardinals, Bishops condemn ISDS**

It appears that the Japanese and British governments will not be sued by UK and Japanese corporations under the terms of [a proposed free trade agreement](#) which they want to conclude by January 1, 2021. That is when the United Kingdom is expected to finally break with the European Union, with or without a trade agreement.

According to a [report in the Japan Times](#), the two governments “are studying a plan of not including an investor-state dispute settlement (ISDS) system in the bilateral trade deal they are currently negotiating”. The Japanese government wanted ISDS provisions, as it has in the CPTPP, but British opposition to ISDS may reflect public opposition in both Britain and Europe to cases in which corporations have sued governments over policies to [reduce coal-powered energy](#) and to end [privatisation of health services](#).

Meanwhile, Canadian company Barrick Gold [announced](#) on July 10 that its Australian subsidiary, [Barrick Australia Pty Ltd](#), is invoking the investor-state dispute settlement (ISDS) provisions of a bilateral investment treaty between Papua New Guinea (PNG) and Australia over the PNG government’s refusal to grant an extension of the company’s expired permit at the controversial Porgera Joint Venture gold mine in the PNG highlands.

Barrick Niugini launched a judicial review of the government’s decision in the PNG National Court on April 28, claiming lack of procedural fairness among other things. Court-ordered negotiations failed, and the court is now set to rule on Barrick’s petition later in July.

Barrick is now turning to international arbitration before the PNG court has even ruled on the case, which looks like an attempt to pressure the PNG court.

The Porgera mine has long been implicated in [serious human rights abuses](#) against neighbouring Indigenous Ipili and Engan peoples.

A [2018 report by human rights experts](#) documented these abuses and recommended that the company compensate the Indigenous people. The ISDS case is an attempt to deflect this responsibility and instead claim that the company deserves compensation.

On June 30, 2020, [Prairie Mining, an Australian company](#) using third-party funding from another Australian company, Litigation Capital Management, announced an investment treaty claim against Poland over the failure to gain a licence for two coal projects. LCM will get a profitable investment return if Prairie Mining wins the case.

Prairie Mining said its claim for compensation may include its historic expenditure on the projects, lost profits, damages and accrued interest. No dollar amount has been stated, but previous similar cases have resulted in awards of billions.

Prairie Mining's [2019 Annual Report](#) shows that the company has no other mining projects than these two in Poland, and that it has cash reserves of just A\$7 million.

This is yet another example of a mining company using ISDS to claim compensation for decisions of national courts, in the hope of making a huge financial gain, and of the speculative third party funding industry which profits from such claims.

### [Cardinals call out ISDS as corporate 'secret weapon' and call for enforceable regulation of global corporations](#)

In a [blunt statement issued on July 6, 2020](#), Cardinal Jean-Claude Hollerich of Luxembourg, and Cardinal Charles Maung Bo of Yangon, Myanmar, added their names to a [statement by 110 Catholic Bishops](#) calling on governments to better regulate private corporations, and said the European Union must lead the way.

“And when their interests are at risk, multinational companies have a secret weapon they can use: the [Investor-State Dispute Settlement \(ISDS\)](#) mechanism, a private tribunal system through which they can bring to court any state, claiming back lost benefits because states passed social or environmental laws”, the cardinals said.

“This profit-driven system and the throwaway culture it brings needs to be challenged, now more than ever, in a time when the pandemic has upended our certainties and provided the opportunity to re-assess our world system and spark a just transition”.

## **6. India to stay out of RCEP and review all FTAs**

Following [a recent meeting](#) chaired by Prime Minister Narendra Modi, and an assessment of the outcomes of all India's free trade agreements by the Commerce & Industry and Finance Ministries, the Indian government has created four working groups to [develop a new trade strategy](#) to boost foreign investment and exports, an official said to the *Economic Times*.

Under significant pressure from civil society and from business, India opted out of the Regional Comprehensive Economic Partnership in [November 2019](#).

“All options are on the table... There is a view that if any trade agreement has not worked out as expected, we should also look at exiting such a deal,” one official said, adding that a final call on the future strategy for such arrangements would be taken at the highest level.

## 7. COVID-19 vaccine explainer – TRIPS, C-TAP, COVAX, Gavi, CEPI; but Big Pharma has its own plans, while the European Parliament wants open access

The World Trade Organisation Trade-Related Intellectual Property Rights agreement entrenches [20-year monopolies for new medicines](#) before cheaper versions can be produced. However there are some provisions that allow governments to import or manufacture cheaper versions before patents have expired in a national emergency. This was a result of public protests at the cost of Anti-Retroviral drugs during [the Aids pandemic](#) in 2002-04.

Under TRIPS, [compulsory licensing and government use of a patent](#) without the authorization of its owner can only be done under a number of conditions aimed at protecting the interests of the patent holder.

Global pharmaceutical companies have consistently sought to limit WTO exceptions to the 20-year monopoly on new medicines, and have used [bilateral and regional trade agreements](#) like the Trans-Pacific Partnership agreement and the US-Mexico-Canada agreement to extend monopolies.

C-TAP, COVAX, CEPI and Gavi are different initiatives to stop patent rights in TRIPS from blocking treatments and vaccines for COVID-19 from being universally available at low cost. C-TAP seeks voluntary suspension of patent rights, or suspension as part of public funding for research and development of treatments and vaccines. COVAX, CEPI and Gavi are market mechanisms that leave patent rights intact by using donations to reach production agreements with drug manufacturers to provide treatments and vaccines to poorer countries at low cost.

### COVID-19 Technology Access Pool - C-TAP

The [COVID-19 Technology Access Pool](#) (C-TAP) was launched in May 2020 through the World Health Organisation to compile, in one place, pledges of commitment made under the [Solidarity Call to Action](#) to voluntarily share COVID-19 health technology related knowledge, intellectual property and data. Thirty-eight governments have endorsed the call, but not yet Australia. The [US disassociated itself](#) from the patent-sharing concept in the C-TAP project set out in the World Health Assembly resolution in May 2020.

### COVAX – COVID-19 Vaccine

The [COVAX Facility](#) forms a key part of the global collaboration to accelerate the development, production, and equitable access to COVID-19 tests, treatments, and vaccines under existing patent rules. COVAX is co-led by Gavi, the Coalition for Epidemic Preparedness Innovations (CEPI) and WHO, working in partnership with developed and developing country vaccine manufacturers. COVAX aims to accelerate the development and manufacture of COVID-19 vaccines at a lower cost.

On July 15, 2020, 75 countries submitted expressions of interest to protect their populations and those of other nations through joining the COVAX Facility. These 75 countries, who would finance the vaccines from their own public finance budgets, will partner with up to 90 lower-income countries that could be supported through voluntary donations to Gavi's COVAX Advance Market Commitment (AMC). Together, this group of up to 165 countries represents more than 60% of the world's population, including more than half of the world's G20 economies. Australia has [reportedly expressed interest](#), but was not listed amongst the 75 countries on the COVAX website. The fund has raised US\$600 million against an its target of US\$2 billion.

### Coalition for Epidemic Preparedness Innovations - CEPI

[CEPI](#) is a partnership between public and government bodies, private pharmaceutical companies, philanthropic, and civil organisations, launched at the World Economic Forum in Davos in 2017, to develop vaccines to stop future epidemics. It was initiated by the Bill & Melinda Gates Foundation.

Australian former public service head Jane Halton is Chair of the CEPI Board, which is based in Norway. CEPI co-ordinates with the WHO and is working on a COVID-19 vaccine initiative.

### **Gavi – the Vaccine Alliance**

[Gavi is an older, more general partnership](#) to make vaccines available, between the World Health Organization, UNICEF, the World Bank and the Bill & Melinda Gates Foundation, launched in 2000. It plays a critical role in strengthening primary health care (PHC) and is committed to the Sustainable Development Goal (SDG) of Universal Health Coverage.

### **Gilead applies for monopoly patents on remdesivir in Argentina**

[US pharmaceutical giant Gilead](#) has filed five patent applications for a 20-year monopoly on the manufacture and commercialisation of the drug remdesivir in Argentina. Remdesivir is the first drug approved globally to treat people infected with COVID-19. If Argentina rejects the patent, it would be a significant step toward Argentina manufacturing remdesivir locally at a reduced price.

The monopoly rights granted by patents would allow Gilead to set excessively high prices, as it has already done with sofosbuvir, a drug that cures hepatitis C. Patent rights are reinforced in many trade agreements.

[Gilead set a price of US\\$390](#) for each application of the drug for the US and other developed countries. This is almost 400 times higher than its manufacturing cost, which, according to a [study by the University of Liverpool](#), is less than one dollar per unit.

In June 2020, [Gilead signed voluntary licensing agreements](#) for remdesivir with pharmaceutical manufacturers based in India and Pakistan. According to estimates from the [Institute of Clinical and Economic Review \(ICER\)](#), the price for the generic versions from the two producers in India authorized by Gilead - Hetero Labs and Cipla - that will be available to the 127 Lower Middle Income Countries, would not exceed US\$80 a dose.

Argentine public health campaigners see \$80 dollars a dose as extremely expensive. They believe that Gilead has targeted most of countries in South America to get the biggest profit, and Argentina is one of them.

### **[European Parliament strongly backs WHO effort for equitable access to COVID-19 vaccines](#)**

In an overwhelming vote on July 10, 2020, the European Parliament [supported the World Health Organization initiative](#) to create the Technology Access Pool (C-TAP), which would collect patent rights, regulatory test data, and other information that could be shared for developing drugs, vaccines, and diagnostics to combat Covid-19 and ensure they are accessible to all.

The European Commission and many EU states are yet to embrace the WHO initiative and the European parliament's vote – 526 in favour, 105 against and 50 abstentions – puts significant pressure on them to join in.

The [International Federation of Pharmaceutical Manufacturers & Associations](#) and many pharma executives [opposed](#) the WHO project. They have a history of defending their 20-year monopolies, and have tried to entrench and extend them through [bilateral and regional trade agreements](#).

Jaime Vidal, senior policy advisor for European projects at Health Action International, [told](#) the Knowledge Ecology International advocacy group that the resolution strives for access that “will not be a EU-first or U.S.-only affair, but a global, universal one.”

The vote reflects mounting anxiety that too many fractured efforts will emerge as individual countries seek to secure Covid-19 medical products, and seeks to ensure equitable access for all.

## 8. Civil society groups urge G20 Finance Ministers to cancel debt and increase health care in low income countries

Finance Ministers of the world's richest countries met at the [G20 on July 19, 2020](#), to discuss [how to respond to the #Covid19 pandemic](#). [Sixty-four countries](#) spend more on debt repayments than healthcare. The Covid-19 crisis could mean 500 million more people are pushed into poverty. In 2020 the [group of 76 poorest countries](#) are due to spend:

- \$18.1bn on bilateral debt payments to other governments
- \$12.4bn to multilateral institutions such as the IMF and the World Bank
- \$10.1bn to external private creditors such as banks and hedge funds.

That is a staggering total of **\$40 billion** which could easily and instantly be diverted to spending on healthcare instead.

[210 Civil society groups](#) asked the G20 to support:

- *The cancellation of debt payments to bilateral lenders and the IMF and World Bank for up to four years, and at least until a debt workout process exists.*
- *The cancellation of debt payments to private lenders rather than those lenders be bailed out by IMF loans.*
- *Ensuring unmanageable debt is brought to sustainable levels over the long term through a fair and transparent process for restructuring and further debt stock cancellation, such as a global debt workout mechanism, and the promotion of binding rules on responsible lending to prevent future crises.*

However, the G20 limited itself to deferral of debt servicing - the Debt Service Suspension Initiative - and as of July 18, 2020, 42 countries had an estimated US\$5.3 billion of 2020 debt service deferred for 2020. The G20 Finance Ministers will reconsider the situation at a meeting in October 2020.

## 9. EU Court decision on data privacy standards hits Facebook, could impact trade deals

The Court of Justice of the European Union [ruled on July 16](#) that EU data agencies must suspend data transfers to any country where the EU standards for data privacy cannot be met. It ruled that one particular arrangement, [the US Privacy Shield](#), failed to meet the standards, and this has a direct impact on Facebook.

The ruling also may also have implications for [digital trade chapters in trade agreements](#) like the Australia-Singapore Digital Economy Agreement and current WTO negotiations, which propose deregulation of data flows across borders without adequate privacy safeguards. See AFTINET's submission on these issues [here](#).

Austrian privacy activist Max Schrems had bought a case that European data was not protected from surveillance by US security agencies, based on the 2013 revelations of Edward Snowden of National Security Agency collection of European communications data.

The decision will have "direct, meaningful impacts on the ability of firms established in the EU to conduct business globally, and a particular impact on the largest commercial relationship in the world," the Information Technology Industry Council's senior manager of policy, Alexa Lee, [wrote in a blog post](#) ahead of the verdict.

The decision is a direct challenge to current surveillance programs of US security agencies.

The Court upheld the validity of the Standard Contractual Clauses, although the European Commission will need to reform them to incorporate more safeguards. These include:

- The US must adopt a comprehensive privacy and data protection framework that puts users at the centre and provides meaningful avenues for redress and oversight;
- Non-US persons, including Europeans, must be granted rights to redress in case of rights violations due to unlawful data processing in the US or by US authorities; and
- The US must significantly reform its surveillance practices and take actions to protect the human rights of all people, no matter where they are from.

## 10. Big Tech's Plans for New WTO Rules over Data Access and Control Exposed

A [new paper](#) written by Deborah James of the Washington-based Center for Economic and Policy Research and published by the Rosa Luxemburg Foundation argues that [giant tech corporations](#) are trying to use trade rules to collect more data, exercise more control over people's lives and over their workers, and amass ever more profit. It examines the potential impacts of these rules on workers, citizens, communities, developing countries, public services, safety and security, and democracy itself, and considers alternatives.

James analyses the efforts of companies like Amazon, Facebook, Google, Apple, and Microsoft to secure new agreements at the World Trade Organization that would allow them greater access to and ownership of data with minimal restrictions.

"E-commerce" rules being negotiated at the WTO and in bilateral and regional trade include:

- gaining rights to access markets globally;
- extracting and controlling personal, social, and business data around the world;
- locking in deregulation and evading future regulation;
- accessing an unlimited supply of labor that has been stripped of its rights;
- expanding power through monopolies;
- avoiding the payment of taxes.

[Seventy-six countries have launched talks](#) aimed at a binding agreement on digital trade at the next WTO ministerial conference. Currently, it is unclear when that will be. The planned 12th Ministerial Conference, which would have been held in Nur Sultan, Kazakhstan, in June 2020, was postponed because of the COVID-19 pandemic. The WTO is hoping to convene the ministerial next year. Australia is a co-sponsor of the digital trade talks in the WTO.

"Some of the world's biggest tech companies are trying to rig the market, via the WTO, to ensure that they have more 'rights' than developing countries and consumers all over the world," James said. "Policymakers should take a close look at this threat to democracy, economic development, and privacy, and act to put the rights of people before mega-corporations".