



## BULLETIN December 2020

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### 1. Introduction

Dear Members,

The 15-nation Regional Comprehensive Economic Partnership was signed online on November 15, 2020. AFTINET is analysing the text, and hosted a zoom seminar on December 15 to examine its different chapters. Video will be available in January. The seminar will help to inform AFTINET and member organisation submission to the inquiry of the Joint Standing Committee on Treaties (JSCOT) into the RCEP which should be announced in February.

The Trade Minister also opened an inquiry into Australia's interest in new nations joining the CPTPP, most likely associated with stated aims of the UK post-Brexit.

The COVID-19 pandemic continues to spread with second and third waves impacting hard on health and economies in many countries, particularly the USA, Europe, Japan and South Korea. A vigorous struggle has opened up in the World Trade Organisation between rich nations who have signed up with several drug manufacturers for early access to any vaccine for their own populations, and poorer countries led by South Africa, India and China, trying to temporarily waive WTO rules to enable universal, low-cost access to any vaccines. Australia is still on the wrong side of this vital argument.

Parliament's Joint Standing Committee on Foreign Affairs Defence and Trade recently reported on the broad impacts of COVID-19 on Australia, recognised the failure of global supply chains in the pandemic and made positive recommendations on local manufacturing capacity, supported by

government procurement. These run counter to the terms of Australia's free trade and WTO agreements.

The JSCOT majority report on the Singapore Digital Economy Agreement recommended ratifying its extreme deregulatory provisions, and the Greens dissenting report reflected serious problems with this agreement that AFTINET had exposed.

We rely on your support to continue our campaigns. If you have not already done so, you can renew your AFTINET membership [here](#), and you can buy the great AFTINET 20<sup>th</sup> Anniversary cloth banners or T-Towels with Wilcox and Tandberg cartoons [here](#).

Please share items from this Bulletin with your networks and friends.

We wish you all the best in this holiday season after a very challenging year!

Thanks and keep safe.

*The AFTINET Team*

## **2. RCEP fails Labour Rights and Human Rights tests: JSCOT Inquiry to start Feb 2021**

*Australian Outlook*, the journal of the Australian Institute for International Affairs, has published an initial [human rights evaluation](#) of the Regional Comprehensive Economic Partnership ([RCEP trade agreement](#)) by AFTINET Convenor, Dr Patricia Ranald.

Dr Ranald acknowledged that expanded trade can create jobs and improve peoples' lives. All trade deals have both winners and losers because they reduce tariffs and other trade barriers, intensify competition, and result in job losses in some industries, she argued. "Other trade barriers" also include many areas of social regulation. The devil is in the detail, and the costs and benefits of the RCEP and other agreements need to be evaluated based on their impacts on human rights, labour rights, and environmental sustainability.

The article argues that the RCEP fails these tests because it has no commitments to internationally-agreed labour rights and environmental standards. RCEP rules could also limit local industry development needed for the post-pandemic economic recovery. It locks in increased foreign investment in essential services like aged care and freezes regulation of most services at current levels. These rules suit the needs of international investors, but limit the ability of governments to respond to future crises like the pandemic and climate change.

AFTINET and member organisations will make submission to the inquiry of the Joint Standing Committee on Treaties (JSCOT) into the RCEP, which should be announced in February.

## **3. COVID-19 trade report recommends changes to local manufacturing, govt procurement and rights of international shipping crews**

The [Report](#) of the Joint Standing Committee on Foreign Affairs, Trade and Defence on the implications of the COVID-19 pandemic for Australia's foreign affairs, defence and trade policies was tabled in Parliament on December 8, 2020.

AFTINET's submission is [here](#) and several member organisations also made submissions. Despite evidence from many health organisations, there are no specific health recommendations, with health being subsumed under general recommendations about national systems to meet both pandemics and other crises.

The recommendations are heavily weighted towards defence and strategic considerations and the development of defence alliances. The report reiterated Australia's support for current trading arrangements which are highly dependent on imports. However it made a number of recommendations on trade issues which reflected some of the issues raised by AFTINET and member organisations.

The report expressed support for Australia's involvement in multilateral institutions like the United Nations, the World Health Organisation and the World Trade Organisation, and recommended positive engagement in reform processes within these organisations.

The report also acknowledged that the pandemic has exposed overdependence on global supply chains and imports in areas like personal protective equipment and ventilators. It recommended the development of a national resilience framework and a plan to move supply chains for critical national systems to Australian suppliers.

The report recommended targeted support for Australian industry sectors, and the intentional use of government procurement to build local industry capability. It recommended aggregation of government procurement demand across Commonwealth, State and Territory governments, and that Commonwealth departments must give a priority weighting to development of Australian industry capability.

The report also recommended changes to ensure that COVID-19-related measures imposed by States and Territories do not prevent the timely change-over of international maritime crews, a situation which has led to unsafe and unreasonable workplace conditions which breach Australia's ILO obligations.

#### **4. Inquiry into expanding membership of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)**

On 20 October 2020, the Minister for Trade, Tourism and Investment, Senator Birmingham asked the Joint Standing Committee on Foreign Affairs, Defence and Trade -Trade Sub-committee to inquire into expanding membership of the CPTPP.

Submissions on Australia's national interest in any new member of the CPTPP are requested by **Thursday, 18 February 2021**, [The terms of reference include:](#)

- the opportunity for freer trade between Australia and potential new members;
- the merit of the CPTPP as the vehicle to realise freer trade opportunities;
- issues related to expanding and improving market access;
- the impact of other members committing to similar high standards;
- issues relevant to the values, rules and norms of the CPTPP;
- the role of the CPTPP as a vehicle for economic collaboration and cooperation; and
- any other related matters.

#### **Background**

The CPTPP includes Australia, NZ, Japan, Chile, Peru, Mexico, Canada, Malaysia, Singapore, Brunei, Vietnam. It includes rights for foreign companies to sue governments (ISDS), restrictions on government regulation of services and increased numbers of temporary workers See more detail [here](#).

The withdrawal of the US in January 2017 killed the 12-nation TPP. But the remaining 11 rebadged the deal and suspended some of its most controversial clauses, (but not ISDS). The [text](#) was tabled on March 26, 2018, followed by a [JSCOT Inquiry](#), a [Senate Inquiry](#) and a [Senate legislation committee inquiry](#). After fierce debate, the implementing legislation was passed on 18 October 2018. Australia

and six other countries have ratified the deal, which came into force on December 30, 2018. The Malaysian government is still assessing its impact on [industry development](#), and may not ratify. Chile, Peru and Brunei have not ratified.

Both the UK and Taiwan are applying for membership, which will raise geopolitical conflicts.

AFTINET will discuss whether to make a submission at our January 20 Committee meeting. We have limited resources and the agreement is already in force for Australia. Please let us know if you have views about this.

## **5. WTO postpones decision on better access for COVID-19 vaccines – no consensus, no vote**

The World Trade Organization TRIPS Council failed to act on December 10, 2020, on the proposal by [South Africa and India](#) to temporarily waive some intellectual property rights, so that Covid-19 medical products and vaccines could be more easily accessible, especially for low-income countries.

Normally decisions are made by consensus, and this time South Africa had signalled it would request a rarely used provision for a 75 per cent majority vote of member states. But there was no consensus and no vote.

[Civil society](#) strongly supports the waiver. The US and EU opposed the waiver. Australia, Canada, Chile and Mexico called for examples of where IP challenges have impeded or prevented local production or manufacturing and the timely procurement of COVID-19 diagnostics, equipment, therapeutics or vaccines, and any problems in issuing compulsory licences under Article 31 of the TRIPS Agreement in relation to COVID-19.

A [WTO communiqué](#) that summarized the session also indicated that, rather than wait for the next regularly scheduled meeting in March 2021, the issue could be revisited in January or February.

“It appears that rich country opponents have settled on a four-legged tactic of express opposition, protracted delay, backroom pressure, and obfuscation concerning the real world impact of exclusive intellectual property rights,” said Brook Baker, a professor at Northeastern University School of Law and a senior policy analyst for the Health GAP advocacy group.

As at December 4, 2020, high-income countries had reached deals with vaccine makers for 3.9 billion doses, upper middle-income countries had commitments for 1 billion doses, and lower middle-income countries reached agreement for more than 1.7 billion doses, according to data compiled by the [Duke Global Health Innovation Center](#).

Meanwhile, the World Health Organization [COVAX](#) project - with its two partner, the Coalition for Epidemic Preparedness Innovations (CEPI), and Gavi the Vaccine Alliance — aims to purchase 2 billion doses of Covid-19 vaccines for the highest risk populations of the world. But only US\$2.1 billion of the necessary US\$18 billion had been raised by November 17, 2020.

So far, the COVAX program has reserved only about 450 million doses of vaccine for 92 developing countries, enough doses to vaccinate one in 10 people in many of the poorest countries by the end of 2021, while rich countries have enough to vaccinate their entire populations nearly three times over.

An [Open Letter](#) from the World Federation of Public Health Associations to the World Trade Organisation, the World Health Organisation, the World Intellectual Property Organisation and to the UN Secretary-General supported the waiver. This followed a [similar letter](#) to the Australian Trade Minister from the Public Health Association of Australia, and a blog by Australian public health experts in [Croakey](#).

“Large inequities will be created as high vaccine prices will result in significant financial sacrifices for these countries, many which are already heavily in debt,” wrote Professor Walter Ricciardi, WFPHA President.

“We join over [300 non-governmental organizations](#) that have expressed their support for this proposed waiver of temporary suspension of intellectual property rights as have international organizations such as the WHO, UNAIDS, the South Center, UNICEF, UNITAID, and DNDi,” said the letter.

### **WTO TRIPS agreement explainer: why waiver makes the COVID-19 vaccine more accessible**

Any COVID-19 vaccines need to be freely accessible to all countries, but this requires a waiver to some World Trade Organisation rules, argues [Rachel Thrasher](#), a Research Fellow at Boston’s Global Development Policy Center.

Despite emergency approval of two or three COVID-19 vaccines, millions of people around the world will [have to wait years](#) for access. One reason is that WTO intellectual property rules put up barriers to knowledge-sharing which could otherwise produce more [widespread and rapid access](#).

The primary role of the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) is to protect intellectual property rights worldwide with 20-year monopoly patents, [to address a ‘market failure’](#) resulting from the high cost of research and development. This is supposed to encourage innovation.

Thrasher explains that governments around the world have directly funded efforts to find treatments and vaccines, without which much of this research would have been impossible. Moreover, the companies producing these products have a guaranteed global market, which would secure substantial profits even if much of the research and development money had come from their own pockets. The TRIPS Council and the countries rejecting the proposed waiver are fully aware of this fact.

Thrasher argues that even if Pfizer, Moderna and AstraZeneca decided to grant licences to produce their vaccines through manufacturers in other parts of the world, the reach of such licences will be limited. Relying on these licences would demand that many countries negotiate with the pharma company on a drug-by-drug basis, an approach that is both time-consuming and expensive. Given also that [industrialised countries have already secured](#) much of the anticipated vaccine production, countries outside of these licensing agreements may have to wait even longer for access to the vaccine.

Thrasher concludes that a temporary TRIPS agreement waiver will not be a panacea for countries seeking access to life-saving vaccines. But the waiver will allow for meaningful knowledge-sharing and technology transfer as countries work toward building their pharmaceutical capacities – without the threat of having to defend these measures before a WTO tribunal.

## **6. Singapore Digital Economy Agreement implemented without parliamentary debate, but Greens dissent**

The [Report 192 of the Joint Standing Committee on Treaties](#) (JSCOT) Inquiry on the Australia-Singapore Digital Economy Agreement was quietly tabled in Parliament on the night of 8 December 2020. The government has a majority on the Committee.

AFTINET’s submission to the inquiry is [here](#). The agreement is an amendment to the existing Singapore-Australia Free Trade Agreement (SAFTA) and did not require any implementing legislation, so there was no debate in Parliament.

The agreement was negotiated behind closed doors in record time between October 2019 and March 2020. The government claims it “breaks new ground” and goes further than the CPTPP and other agreements on deregulating cross-border data flows, preventing requirements for local storage of data or local presence and preventing access to source code by government regulators.

The agreement will be used as a model for other agreements, and should have the highest level of parliamentary scrutiny. But instead the committee only heard evidence from DFAT and the Agreement came into force when the Committee report was tabled.

AFTINET’s submission noted that that the [ACCC report on digital platforms](#) and a [Human Rights Commission](#) report expressed concern about:

- Facebook and Google’s [data abuse scandals](#);
- [Anti-competitive practices](#) by Facebook, Google and Amazon;
- Apple’s [tax avoidance](#);
- Uber classifying itself as a technological platform [to avoid regulation and enable its exploitation of workers](#);
- Human rights risks of [facial recognition software](#).

The ACCC and Human Rights Commission have recommended more, not less, regulation of big tech companies and the digital domain to address these issues.

The Committee majority report recommends ratification of the agreement. It claims that the exceptions in the agreement for privacy and public interest regulation will enable governments to regulate in the public interest, claiming that Australian privacy law and other public interest regulation will apply to data stored overseas and to companies without a local presence in Australia. The report reflects concerns about the regulation of Artificial Intelligence and facial recognition technology by requesting an update by the end of 2021 on progress towards establishing an ethical governance framework for the use of AI technologies which is foreshadowed in the agreement.

The Greens’ dissenting report questions the adequacy of the exceptions for public interest regulation and points out that the privacy standards in the Agreement differ from EU’s General Data Protection Regulation (GDPR). The agreement commits Australia to a model of lower privacy standards, which could jeopardise Australia’s position in our trading negotiations with the EU. They also criticise the restrictions on regulation of source code and algorithms, particularly in the context of COVID-19 where the [public scrutiny of source code and algorithms](#) used in the COVIDSafe App were crucial to ensuring appropriateness and transparency of a government-issued application of significant public importance.