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1. Introduction

Dear Members,

On December 15, 2020, AFTINET held a webinar to discuss the text of the 15-nation Regional Comprehensive Economic Partnership, which was signed a month earlier. Video is now available. The presentations could help inform AFTINET and member organisation submission to the inquiry of the Joint Standing Committee on Treaties (JSCOT) into the RCEP, which should be announced this month.

The big political stories with an impact on trade policy are the January 1, 2021, Brexit, and the inauguration of President Biden in the USA. President Biden has already cancelled the controversial Keystone XL Pipeline, potentially triggering an ISDS claim for damages from Canadian companies. But in reality, these two events are dwarfed by the continuing impact of the COVID-19 pandemic.

A now intense struggle continues 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 others, trying to temporarily waive WTO 20-year patent rules to enable universal, low-cost access to vaccines. Australia is still on the wrong side of this vital argument.

Vaccination programs have now started in over 60 countries, and it is already clear that the distribution of vaccines will not be on the basis of a global public good, that the pharmaceutical companies have promised far more than they can deliver, and that the UK, USA and Israel appear to have cornered they bulk of the available supply.

Underlying this debacle is the 20-year monopoly on medicines guaranteed by the World Trade Organisation TRIPS Agreement, which is the target of the TRIPS Waiver being pushed by South Africa, India and others.

Focus on the Global South has published a new study on the growth of Big Tech, whose practices have prompted calls and some government action to regulate.

AFTINET relies on your support to continue our campaigns. If you have not already done so, you can renew your AFTINET membership here, donate here or buy the unique AFTINET 20th 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 very challenging new year!

Thanks and keep safe.

The AFTINET Team

2. What's really in the RCEP? - experts discuss

The Regional Comprehensive Economic Partnership text was released on November 15, 2020.

The AFTINET Zoom Seminar on December 15, 2020, was our first look at the devil in the detail.

You can see short 7-9 minute videos of the presentations:

- Dr Patricia Ranald, Australian Fair Trade & Investment Network - investment and e-commerce, manufacturing
- Dr Deborah Gleeson, Public Health Association of Australia - access to medicines
- Damien Kyloh, Australian Council of Trade Unions - workers' rights, movement of people, govt procurement
- Travis Wacey, Construction, Forestry, Mining & Energy Union - trade remedies
- Joseph Bradford, Community & Public Sector Union - trade in services
- Katherine Tu, ActionAid - gender impacts

You can look at the whole 63 minutes here.

3. Google could use ISDS to sue Australia for millions over regulation for payment of news content

An Australian Senate Inquiry has been told that Google's Singapore subsidiary could use a controversial Investor-State Dispute Settlement (ISDS) provision in the Singapore-Australia Free

Trade Agreement to demand millions in compensation over proposed Australian regulation for payment of news content.

ISDS allows foreign investors to bypass national courts and claim compensation for a change in law or policy if they can argue that it harms their investment, even if the change is in the public interest. The disputes are heard by international tribunals made up of practising advocates who are not independent judges and there is no system of precedents or appeals.

All trade agreements have government-to-government dispute processes. ISDS is a separate process giving additional legal rights to international investors that already have huge market power, and it is not included in all the agreements. Community opposition meant that John Howard did not agree to include ISDS in the US-Australia Free Trade Agreement, so the US-based Google cannot sue under that agreement. But Google has substantial investments in Singapore, and ISDS is included in the Singapore-Australia Free Trade Agreement (SAFTA).

The US-based Philip Morris tobacco company used a similar forum-shopping tactic when it shifted some assets to Hong Kong after the plain packaging law was foreshadowed and used a Hong Kong investment agreement to sue the Australian government over our plain packaging law. It took the international tribunal almost five years to decide that Philip Morris was not a Hong Kong company, but Australia still had to pay $12 million in legal costs.

The Australian Financial Review reported that Google had substantial investments in Singapore before the regulation was proposed. This means it may have a stronger case to argue that is a Singapore company and therefore able to use the SAFTA ISDS provisions.

Another possible risk from the SAFTA could arise because its digital trade rules were recently revised to restrict government access to source code and also foreshadowed a restriction on governments requiring access to algorithms. This could impact on access to source code and algorithms which may be required as part of the regulatory framework.

This is another example of how ISDS can give global companies like Google additional legal rights to demand compensation for government regulation in the public interest, and why it should be excluded from all trade agreements. It also highlights the risks of restricting access to source code and algorithms which may be required to regulate giant tech companies.

4. Online Action to support WTO making vaccines more affordable for low-income countries

The latest round of World Trade Organisation TRIPS Council negotiations on improving access to vaccines for low-income countries by waiving certain intellectual property (IP) rules during the COVID-19 pandemic took **place on Thursday, February 4, 2021**.

The proposal initiated by India and South Africa is now being officially co-sponsored by Eswatini, Kenya, Mozambique, Pakistan, Mongolia, Venezuela, Bolivia and Egypt.

However, a small group of WTO members including the EU, UK, US, Japan, Switzerland and Australia continue to withhold their support.

AFTINET took part in a twitter campaign on these governments on February 2-4. Médecins Sans Frontières coordinated this global online action.

The world is now grappling with the failure of the giant pharmaceutical companies to deliver the COVID-19 vaccination programs on time, and the realisation that poorer countries may wait until 2023 or 2024 to undertake vaccination programs, because of the insistence on 20-year patents enshrined in the WTO TRIPS Agreement.

COVID-19 vaccines, treatments, test kits and related medical equipment must be public goods, not for profit.

5. WHO calls for urgent response to production failures for COVID-19 vaccines

World Health Organisation Director-General, Tedros Adhanom Ghebreyesus, told a briefing on January 29, 2021: “If we hoard vaccines and we are not sharing, there will be three major problems. One, I have said it, it will be a catastrophic moral failure and two it keeps the pandemic burning and three very slow global economy recovery”.

A new call for a “People’s Vaccine” has been launched by Oxfam and other organisations to support the WHO effort for a fair, effective global vaccination program. And the South Africa – India call for a waiver of some WTO patent rules during the pandemic continues to be argued against rich country resistance.

Both Pfizer/BioNTech and AstraZeneca have reported delays in production of vaccines, failing to deliver contracted supplies to the European Union. The UK, USA, and Israel appear to have grabbed the bulk of available supplies, mainly by paying top prices to the pharmaceutical companies.

Mike Ryan, WHO’s top emergency expert, decried countries “fighting over the cake” when frontline health workers in poor countries “don’t even have access to the crumbs”.

Younger, healthier adults in rich countries are being vaccinated before healthcare workers and more at-risk people and communities in poorer countries.

The WHO also said the world needed to diversify the supply chain for making COVID-19 vaccines and that it was looking at other suppliers. The WHO promised to begin distribution the Pfizer/BioNTech vaccine to poor and middle-income countries through its COVAX Facility in February 2021.

6. Experts explain why WTO rules need to change to tackle vaccine inequality

At the World Trade Organisation TRIPS Council the proposal by India and South Africa, supported by 100 countries, to waive various intellectual property provisions on COVID technology is opposed by Big Pharma, who defend the 20-year monopoly on new medicines. The MSF medicine access movement has rebutted their claims. South Africa and India began this initiative in October 2020.

Medicines experts Professors Ronald Labonte and Brook Baker explain in The Conversation why 100 developing country members of the World Trade Organisation’s 164 members are demanding a temporary waiver of some intellectual property rights, supported by hundreds of public health and other community organisations. This would enable more equitable access to COVID-19 vaccines and treatments by sharing knowledge and enabling manufacturing in low-income countries.

There are some flexibilities in WTO rules to enable more affordable access, but these are complex and difficult to use. The temporary waiver could address this problem. WTO decisions are usually made by consensus and can be easily blocked, but developing countries are asking for a vote on this issue.

On January 18, the World Health Organisation Director General Dr Tedros Adhanom Ghebreyesus told the WHO Executive Board, “More than 39 million doses of vaccine have now been administered in at least 49 higher-income countries. Just 25 doses have been given in one lowest-income country. Not 25 million; not 25 thousand; just 25.

“I need to be blunt: the world is on the brink of a catastrophic moral failure – and the price of this failure will be paid with lives and livelihoods in the world’s poorest countries”.

He warned that the safety-net for COVID-19 vaccinations in poor countries – the COVAX Facility – was also endangered by pharmaceutical manufacturers prioritising bilateral deals with rich countries.

The Paris-based International Chamber of Commerce has commissioned a team of economists affiliated with Harvard University, the University of Maryland and Istanbul's Koc University, to examine trade data across 35 industries in 65 countries, which explores the economic impacts of unequal COVID-19 vaccine distribution.

In the study's most likely scenario, in which developing countries vaccinate half their populations by the end of 2021, the world economy would still absorb a blow of between $1.8 trillion and $3.8 trillion. More than half of the pain would be concentrated in wealthy countries, like the USA, Europe and Canada. These findings rebut the popular notion that sharing vaccines with poor countries is merely a form of charity.

Many developing countries, from Bangladesh to Tanzania to Peru, will likely have to wait until 2024 before fully vaccinating their populations. This is a humanitarian crisis that will cost thousands of lives and cause economic pain in both poor and rich countries. Multinational companies in rich nations will also struggle to secure required parts, components and commodities.

Most international trade involves parts that are shipped from one country to another. Of the $18 trillion worth of goods that were traded in 2020, so-called intermediate goods represented $11 trillion, according to the Organization for Economic Cooperation and Development. The study finds that the continued pandemic in poor countries is likely to be worst for industries that are especially dependent on suppliers around the world, among them automotive, textiles, construction and retail, where sales could decline more than 5 per cent.

As migrant workers from poor countries have lost jobs during the pandemic, they have not been able to send as much money home, a major blow to countries that have relied on these so-called remittances like the Philippines, Pakistan and Bangladesh.

The global recession has slashed demand for commodities, decimating copper producers like Zambia and the Democratic Republic of Congo, and countries dependent on oil like Angola and Nigeria. As Covid-19 cases have soared, that has depressed tourism, costing jobs and revenue in Thailand, Indonesia and Morocco.

The study reinforces call for rich countries to act to make vaccines available to low-income countries.

7. Biden block of Keystone XL Pipeline exposes ISDS threat to other government actions on global warming

Incoming US President Joe Biden has cancelled a vital permit for the environmentally contentious Keystone XL pipeline, proposed to take Canadian tar sands to refineries in Texas. This decision to protect the environment could trigger a compensation claim under Investor-State Dispute Settlement or ISDS.

Dr Kyla Tienhaara, Canada Research Chair in Economy and Environment, Queen's University, Ontario argues in The Conversation that such a case would be a harbinger of a massive wave of ISDS cases against government climate action in the Global South, but also including Australia.

The former North American Free Trade Agreement investment chapter allowed foreign investors to sue governments in international tribunals if they could claim a government decision harmed their investment. The owner of Keystone XL — TC Energy (previously TransCanada) — used NAFTA to launch a US$15 billion lawsuit in 2016 after President Barack Obama cancelled the project's permit, but it was then restored under Trump.

NAFTA has been replaced by the US-Mexico-Canada Agreement, which does not allow ISDS claims from Canadian or US corporations against the other government. But TC Energy could proceed with a claim, because NAFTA provided for legacy claims for pre-USMCA investments until 2023.

TC Energy's claim may now be weaker because the permit issued by the Trump administration explicitly stated that it could be rescinded, essentially at the president's whim. But many investors have proceeded with ISDS claims on the basis of much weaker cases. Investors bet on positive outcomes in arbitration, as much as they bet on governments not taking action to halt catastrophic climate change. This is because the anticipated rewards, in both instances, are high.

Dr Tienhaara notes that the US government has the resources to fight the case, and has so far not lost an ISDS case brought against it, but argues that poorer and smaller countries will not be as capable of fighting cases over early closure of coal fired power stations and coal mines.

"We need climate action to happen everywhere, not just in the countries where governments can afford to fight legal challenges. This is one of the reasons why many are calling for radical reform or complete abolition of international investment treaties," said Dr Tienhaara.

8. The Biden Presidency trade policy: implications for Australia and the world

Incoming US President Joe Biden immediately issued Executive Orders which reverse major Trump policies from the last four years, beginning with re-joining the World Health Organisation and plans to address the deadly COVID-19 pandemic, reversing his environmental agenda including re-joining the Paris Climate Agreement, cancelling his anti-immigration policies, bolstering the economy and restoring federal efforts to promote diversity.

International trade agreements didn't feature.

President Biden has nominated Katherine Tai to be the US Trade Representative. She is a widely respected, traditional trade lawyer, fluent in Mandarin, who worked on China trade under the Obama Administration. Although committed to a free trade agenda, she has indicated that trade policy should strengthen US manufacturing and increase jobs in that sector, and strengthen the economies of US allies. She liaised with unions on the labour aspects of the new US-Mexico-Canada Agreement.

However, like Biden and the Democrat majority, Katherine Tai supports a "tough" line on China, which could continue to impact on Australia's trade relations with China.

Trump's legacy in trade is the degrading of the World Trade Organisation, the effort to "de-couple" from China, and damage to long-standing allies with unilateral tariffs on steel and aluminium for Canada, Japan and Europe. Trump's term saw three of the biggest trade deficits in US history and two years of overall decline for US trade.

AFTINET advocates fair trade rules as an alternative to both the neoliberal economics which Biden still represents, and Trump-style unilateralism. Such rules should apply to all countries and potentially restrain the market domination of the most powerful players.

Trade agreements should be based on internationally agreed upon and fully enforceable labour rights and environmental standards to counter the global race to the bottom on these standards.

President Biden is likely to repair the damage to trade relations with Japan, Canada and Europe. He may also rebuild US relations at the WTO, possibly by allowing appointments to its Appeals Body.

Biden will still put US interests first, but Australia's officials should now have a more predictable dialogue with their US counterparts than during the Trump years. Biden has also made clear that domestic issues are his first priority, so there will be no moves to new trade agreements anytime soon. Expectations that his administration will move to re-join the 11-member Comprehensive and Progressive Agreement on Trans-Pacific Partnership (CPTPP), of which Australia is a member, would also run into massive political opposition within the Democratic Party as well as among Republicans.

The reality is that the COVID-19 pandemic and its associated economic shock is uncharted territory for all governments, including Australia's. Health, economic and social problems will continue to mount during 2021. The Biden presidency is a chance for the US to use its many strengths as a positive force in the urgently needed international response to the crisis. Biden first has to craft a domestic response, and the Trump movement may well still hobble this urgent effort.

For now the Trump populist authoritarian movement remains mobilised and has been boosted by the violent attack on the Capitol Building on January 6. It is a fusion of white supremacists, conspiracy theorists, armed militias, fundamentalist Christians and big business – notably the gun and other weapons manufacturers, fossil fuel, big pharma and Wall Street. Biden will have to both confront and defuse this movement if his presidency is to have a positive, democratising impact.

9. Study shows how big tech firms are boosted by trade deals and argues for democratic regulation

A new study published by Focus on the Global South maps the rapid global growth of digital technology and trade, and the Big Tech firms that are amongst the world's largest. US firms Microsoft, Amazon, Apple, Google and Facebook dominate global markets but are being challenged by Chinese firms like Alibaba and Tencent, resulting in a technology cold war between the US and China.

The study shows how Facebook and Google's data abuse scandals, anti-competitive practices by Facebook, and Google and Amazon and Apple's tax avoidance are prompting calls and some government action to regulate these and other abuses.

But trade rules like those in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership and the Singapore Digital Economy Agreement are enabling cross-border data flows and other practices which could impede regulation.

The study also documents the digital divide between low- and higher-income countries and argues that national governments must retain the right to regulate in the public interest.

10. EU-UK Brexit deal and its impacts on EU and UK FTA talks with Australia

The European Union and the British government finally came to an agreement about trade in goods on Christmas Eve 2020, which came into effect on January 1, 2021. The United Kingdom has now separated from the European Union, Common Market and Customs Union.

Brexit was largely driven by conservative forces in the UK which wanted to keep zero tariff arrangements (but not free movement of people), and wanted to discard the modest gains in human rights, labour and environmental regulation which EU social movements, including in the UK, had won over many years. There were also progressive critics of the pro-corporate austerity policies adopted by the European Commission, especially during the Global Financial Crisis, but these featured less in the public debate.

The final agreement enables tariff-free and quota-free trade in goods between the two parties, but will still have a significant negative impact on trade in goods because of extra customs processes to implement rules of origin. Since there are no common rules for services, which make up 80 per cent of the UK economic output and 82 per cent of employment, there is also a predicted negative impact on services, especially financial services based in the City of London.

The Brexit deal will have some impacts on Australia's current negotiations for an Australia-UK FTA and the Australia-EU free trade agreement.

The Australia – EU FTA talks are more advanced, and the EU has published its pro-corporate demands for longer medicine monopolies, and further deregulation of essential services, e-commerce, and government procurement. The UK-Australia FTA talks began last year, and the UK shares many of the EU demands, although like the Australian government, it refuses to publish its detailed proposals.

Australia is seeking more market access for its agricultural and services exports into both the EU and the UK, and the danger is that longer medicine monopolies or other negative deregulatory concessions may be traded off to gain these. Both the EU and the UK also want to protect exclusive use of product names like prosecco and stilton cheese, which is a major obstacle to final agreement.

The UK-EU agreement commits the UK to no lesser product regulatory standards than the EU, which could simplify product regulations for Australian exporters. But the lack of common UK-EU services rules could pose problems for Australian services exports like financial services.

Both the UK and the EU want to include in their FTAs commitments on labour and environmental standards, including United Nations environmental agreements on carbon emissions and climate change. But it is possible that the UK Conservative government may want lower commitments on labour rights than the EU, and less protection of consumer privacy rights for e-commerce, where the EU is developing higher standards.

Free movement of people between the UK and EU ended on December 31, 2020. The UK's points-based skilled immigration system aims to treat EU and non-EU citizens equally. There will be no special provision for Australians to be able to migrate to the UK. But the FTA may be accompanied by a separate agreement for an expansion of existing temporary working holiday visas for young people from both countries.

Australia already had low tariffs for specific quantities of some agricultural products into the European market. There has been a negotiated "split" of these quotas between the UK and the EU-27, but this appears to be "in principle" and the Australian government has not yet published the precise "split," or how it will impact on the FTA negotiations with the EU and the UK for expanded market access for agricultural products.