



BULLETIN July 2021

Inside this edition:

1. [Introduction](#)
2. [RCEP fails on aged care, carbon emissions and more](#)
3. [Australian actions urge the government to support WTO rule change for fair vaccine access for low-income countries as poll shows majority support](#)
4. [Global interfaith prayers, protests, twitter storms for COVID-19 vaccine equity](#)
5. [Australian vaccine shortage and the handful of companies controlling both the price and quantity](#)
6. [US protests urge German Chancellor Merkel to support trade rule change for fair access to COVID-19 vaccines](#)
7. [US\\$15 billion ISDS claim against USA over Keystone XL oil pipeline cancellation](#)
8. [European Border Carbon Adjustment Mechanism and the WTO trade rules](#)

1. Introduction

Dear Members,

The Parliamentary Joint Standing Committee on Treaties (JSCOT) hearings on the Regional Comprehensive Economic Partnership (RCEP) began in the last week of July, and AFTINET presented its evidence on July 27. AFTINET argued that the RCEP should not be ratified, but should be renegotiated. The COVID-19 lockdown prevented a planned rally outside the Sydney hearing.

The WTO TRIPS Council - which manages the Trade-Related Intellectual Property Rights Agreement in the World Trade Organisation – failed to agree on the proposal by South Africa, India and others, to temporarily waive WTO 20-year patent rules to ramp up supply and enable universal, low-cost access to vaccines, treatments and equipment. A report that these negotiations will continue went to the WTO General Council on July 27-28. AFTINET is part of a coalition of civil society organisations which have supported the proposed waiver and pressed the Australian government to support the waiver, and the campaign will continue.

As expected, TC Energy of Canada has taken out an Investor-State Dispute claim for US\$15 billion against the Biden-Harris administration for its cancellation of the Keystone XL Pipeline licence.

The European Union has unveiled its proposed Carbon Border Adjustment Mechanism, as part of its vision for zero net carbon emissions by 2025. Australian trade Minister Tehan denounced the move.

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.

Thanks and keep safe.

The AFTINET Team

2. RCEP deal fails on aged care, carbon emissions and more

On July 27, 2021, [The Conversation](#) published a warning about the 15-state Regional Comprehensive Economic Partnership (RCEP) as the Australian parliament's Joint Standing Committee on Treaties began its public hearings on the agreement.

In the oped, AFTINET Convenor Dr Patricia Randal explained that the trade-in-services chapter does not exempt Aged Care from "lock-in" of existing regulation that requires signatories to "not adversely modify existing regulation in particular services sectors".

But the [Royal Commission into Aged Care Quality and Safety](#) exposed multiple scandals caused by a lack of qualified staff and poor quality care, and recommended increases in staffing levels, increases in qualifications of staff and changes to licensing arrangements. RCEP rules could limit the implementation of these recommendations.

Australia did not exempt state-based regulation of carbon emissions by power stations, leaving action on climate change open to dispute by other RCEP nations. AFTINET's full submission to JSCOT is [here](#).

The JSCOT Report is due in the last week of August, after which parliament will vote on the RCEP implementing legislation. The lockdown will still be in place. AFTINET is planning to lobby politicians before the vote.

3. Australian actions urge the government to support WTO rule change for fair vaccine access as poll shows majority support

Under WTO rules small group of pharmaceutical companies have a 20 -year monopoly on COVID-19 vaccines and treatments. Each government must negotiate with companies which have limited manufacturing capacity and control both quantities and price. Rich countries are first in line, but even countries like Australia are experiencing delays in supply. Under these rules most low-income countries will not have widespread access to COVID-19 vaccines [before 2023 or later](#). Meanwhile the pandemic rages and millions die as new and more infectious variants like the Delta strain develop and spread.

South Africa and India have made a proposal to change WTO rules to waive the monopoly patents on COVID-19 vaccines, treatments and equipment for the duration of the pandemic. The waiver would enable increased global production and help ensure equitable access for low-income countries. WTO TRIPS Council negotiations on the waiver took place during July.

Over 100 countries, including the US and New Zealand, are supporting the waiver, but the Australian government has not yet decided to do so. AFTINET has coordinated a broad coalition of community groups to pressure the government to support the waiver.

On July 12, AFTINET and allied civil society groups led by Amnesty Australia called on people to [email their local federal MP](#) to support the waiver. This message went to over 52,000 people who had signed a [petition in June](#) calling on the Morrison government to support the suspension of the COVID-19-related patents during the pandemic.

An [Essential Media](#) poll commissioned by Friends of the Earth, AFTINET, ACTU, Amnesty and APHEDA published on July 16 showed 62 per cent of Australians support the temporary change in WTO rules to waive patent monopolies on vaccines. The support was consistent across the political spectrum, expressed by 66 per cent of Labor voters, 65 per cent of Greens voters and 64 per cent of Coalition voters. See the full poll results [here](#).

On July 19 fifteen national church, aid and development, public health, union and human rights organisations representing millions of Australians [wrote](#) to government ministers asking them to support the waiver. These included AFTINET, the Public Health Association of Australia, the ACTU, the Australian Council for International Development, Oxfam Australia, Amnesty International, the Australian Catholics Bishops Office for Justice, Ecology and Peace, the Uniting Church, and the Salvation Army.

On July 26, AFTINET promoted a global twitter storm directed at the governments which are blocking the suspension of COVID-19-related patents - Australia, Germany, Japan, Switzerland, UK, Norway and Australia. Our tweets were sent to Prime Minister Morrison, Trade Minister Tehan, Foreign Affairs Minister Payne and Health Minister Hunt.

A report on the TRIPS waiver negotiations went to the WTO General Council on July 27-28, but no agreement was reached and negotiations will continue. Thanks to all those who took part in these actions and be prepared for further actions as the campaign continues.

4. Global interfaith prayers, protests, twitter storms to support WTO rule change

World-wide rallies and actions to support the WTO TRIPS waiver peaked in the third week of July, ahead of the WTO General Council meeting on July 27-28.

In the last week of June, the WTO TRIPS Council held the first informal discussion on a European Union (EU) proposal which argued that current TRIPS compulsory licensing rules can be used to enable increased production of COVID-19 vaccines and other medical products. The EU proposal is supported [by pharmaceutical companies](#).

These provisions do allow a government to by-pass a patent in a national emergency such as the current pandemic, but each government has to negotiate separately with each patent holder. There are so many patents involved with COVID-19 vaccines and other products that this would take years.

Medecins sans Frontières strongly criticised the EU move as an effort to distract from the stronger proposal from South Africa, India and 63 other governments to suspend all patents on COVID-19 related products for at least three years.

“While MSF has long been a supporter and advocate of compulsory licenses, [the mechanism is insufficiently adapted to address the IP challenges on medical technologies in a global pandemic](#),” said the [MSF media statement](#).

On July 20, the Interfaith Vigil for Global COVID-19 Vaccine Access rallied at the National Mall in Washington DC called on the WTO to support the waiver. They also [urged President Joe Biden](#) to share COVID-19 vaccine stockpiles and to advocate for equitable global distribution of vaccines.

“Unless the pandemic is over for all of us, it is not over for any one of us,” said Mathews George Chunakara, the General Secretary of the Christian Conference of Asia, addressing the assembly via Zoom.

On the same day, the [Public Services International](#) – a trade union group – focused action on German Chancellor Angela Merkel because of her stand against fair distribution of COVID-19 vaccines.

When Angela Merkel visited Joe Biden in July there were over a dozen [demonstrations](#) outside German Consulates across the country. This marks the biggest wave of protests against a US "ally" nation in years.

The PSI noted that Merkel’s dogged defence of big-pharma monopolies puts her completely out of line with the WHO, whose leader Dr Tedros has called for urgent waivers. It undermines the credibility of the WTO, where Germany (along with a handful of other countries including Australia) is derailing waiver talks. The European Parliament supports the waiver, as does France, Italy and Spain.

Research [shows](#) that 70 per cent of Germans want their country to support making the vaccine a public good.

5 Australian vaccine shortage and the handful of companies controlling both the price and quantity

Pharmaceutical company patent monopolies are the elephant in the room in the debate about COVID-19 vaccine shortages in Australia.

Most of debate locally has been about whether the federal government ordered enough vaccine doses last year from Pfizer and other companies. This misses the broader point that a handful of pharmaceutical companies control both the price and quantity of vaccines.

Even in the context of a global pandemic, they can set the terms in closed-door negotiations with rich countries. These companies have already [made billions](#) from vaccines which were developed at record speeds and supported with [public funds](#).

Dr Patricia Ranauld, AFTINET Convenor, explained the situation in *the Guardian* [online](#) on July 22.

6. US protests urge German Chancellor Merkel to support trade rule change for fair access to COVID-19 vaccines

German Chancellor Angela [Merkel faced US protests](#) on July 15 at her government’s opposition to the suspension of 20-year monopoly patents on COVID-19 vaccines and treatments at the World Trade Organisation. A “die-in” was staged with a giant Merkel puppet lurking over dozens of body bags representing the millions of lives on the line.

On July 12, nine US Democrat lawmakers [urged Germany](#) to drop its "blockade" of the COVID-19-related waiver of intellectual property (IP) rights under global trade rules, and asked Chancellor Angela Merkel to meet with them during her visit to Washington. "Thanks to IP barriers, it is the US and German firms that have the only approved COVID-19 mRNA vaccines that hold the monopoly power to decide if this scale-up will occur," they wrote.

“While Americans and Western Europeans increasingly have widespread access to COVID-19 vaccination, huge numbers of people around the world aren’t expected to have access to a vaccine

for years unless global production is dramatically increased,” said Arthur Stamoulis, Executive Director of Citizens Trade Campaign.

“With thousands of people continuing to die of COVID-19 every day for lack of vaccines and treatments, the idea that Germany would continue to prioritize pharmaceutical profits over saving as many lives as possible and ending this pandemic is an outrage. Now is the time for real leadership.”

Earlier in July over [100 international IP academics](#) signed an open academic statement co-authored by [Dr Hyo Yoon Kang](#) (Kent Law School), [Dr Siva Thambisetty](#) (LSE), [Dr Aisling Macmahon](#) (Maynooth), [Dr Luke McDonagh](#) (LSE) and [Prof Graham Dutfield](#) (Leeds) which provides academic justification and support for the TRIPS Waiver proposal that is currently being negotiated at the WTO.

The [letter](#) calls on the governments of the United Kingdom, Australia, Brazil, Japan, Norway, Switzerland and the European Union to drop their opposition and instead to support the TRIPS waiver proposal.

7. US\$15 billion ISDS claim against USA over Keystone XL oil pipeline cancellation

As expected, TC Energy has lodged an [Investor-State Dispute Settlement claim](#) against the US government, using the [legacy provisions](#) of the former North American Free Trade Agreement (NAFTA), after the Biden-Harris administration [cancelled the permit](#) for the project on their first day, January 20, 2021.

The Keystone XL pipeline was intended to carry 830,000 barrels per day of Alberta oil sands crude oil to Nebraska, but the project has been delayed for the past 12 years by opposition from US landowners, Native American tribes and environmentalists. They argue it would be environmentally destructive, unnecessary and would hamper the US transition to cleaner fuels.

TC Energy (previously TransCanada) had [used NAFTA to launch a US\\$15 billion lawsuit](#) in 2016 after President Barack Obama cancelled the project’s permit, but the permit was then restored under Trump and the ISDS claim withdrawn.

The Calgary, Canada-based company closed down the Keystone XL project and reduced the value of the company by US\$1.81 billion on June 9, 2021. Almost by magic, this has become a US\$15 billion-plus damages claim, on the basis that the US government has breached its trade obligations.

Also on June 9, 2021, the [Alberta provincial government](#) announced it had reached an agreement for an orderly exit from the Keystone XL project and its partnership with TC Energy. The Alberta government had invested US\$1 billion in the project.

This is yet another example of ISDS being used against [environmental regulation](#), including actions to reduce fossil fuel use. Other North American oil pipelines, including Dakota Access and Enbridge Line 3, face continued opposition from environmental groups.

8. European Border Carbon Adjustment Mechanism and the WTO trade rules

The European Council and Parliament adopted a regulation establishing a [Carbon Border Adjustment Mechanism](#) (CBAM) on July 14, 2021, as part of its delivery of a European Green Deal with the ambition of a 55 per cent cut in carbon emissions compared to 1990, by 2030, and zero net emissions by 2050.

The CBAM applies EU rules on carbon emissions to both local and imported goods. It aims to reduce the risk of transfer of carbon-emitting European industries to non-European countries with weaker carbon regulation, by encouraging producers in non-EU countries to green their production processes.

Australia's trade minister, Dan Tehan, [attacked the EU proposal](#) before the details were released and again after they were, arguing it could hit jobs and be "[just a new form of protectionism](#)".

However, the European Union argues that the CBAM is not protectionist and is designed to [comply with World Trade Organization \(WTO\) rules](#). European Union importers will buy carbon certificates corresponding to the carbon price that would have been paid had the goods been produced under the EU's carbon pricing rules. Conversely, once a non-EU producer can show that they have already paid a price for the carbon used in the production of the imported goods in a third country, the corresponding cost can be fully deducted for the EU importer.

The European CBAM will be phased in gradually and will initially apply only to iron and steel, cement, fertiliser, aluminium and electricity generation. From 2023 to 2026 importers are required to only report the carbon content of the specified imported products.

From 2026, importers will have to purchase carbon certificates, but only for the portion of imports not covered by free certificates available under the current European Emissions Trading Scheme. This is meant to ensure that importers are treated equally compared to EU producers. These free certificates will be phased out by 2035.

By the end of the transition period, the Commission will evaluate how the CBAM is working and whether to extend its scope to more products and services - including down the value chain, and whether to cover so-called 'indirect' emissions, such as carbon emissions from the electricity used to produce the good.

On May 18, 2021, US climate envoy [John Kerry](#) said that Washington is looking into the possibility of introducing a fee on imports from countries that don't tax heavy polluters, but he cautioned that such a move could carry risks "downstream." Kerry said President Joe Biden had instructed US officials to examine "what are the consequences, how do you do the pricing, what is the impact".