



BULLETIN August 2021

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1. Introduction

Dear Members,

The Parliamentary Joint Standing Committee on Treaties (JSCOT) is expected to table a report soon on the Regional Comprehensive Economic Partnership (RCEP), which will recommend in favour of the enabling legislation. AFTINET member organisations have written to Labor, Green and cross-bench MPs to demand changes and delay a vote until they are made.

The WTO TRIPS Council - which manages the Trade-Related Intellectual Property Rights Agreement in the World Trade Organisation – is stalemated 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. Further negotiations will take place in September and October, leading to the WTO Ministerial Meeting on November 30-December 3, 2021. AFTINET is part of a coalition of civil society organisations which continues to press the Australian government to support the waiver.

Pakistan is now formally cancelling all Investor-State Dispute Settlement (ISDS) clauses in its Bilateral Investment Treaties, or trying to get relevant states to agree to neutralise their effect. The latest move by a small UK oil exploration company to sue Italy using the ISDS clause in the Energy Charter Treaty continues to fuel broad opposition to ISDS.

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](#).

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Thanks and keep safe.

The AFTINET Team

2. RCEP trade deal: JSCOT Report imminent; Organisations representing millions urge Labor and cross-benchers to demand changes

The Federal Parliament's Joint Standing Committee on Treaties (JSCOT) is expected to table its report on the Regional Comprehensive Economic Partnership in the last week of August. The government's majority on JSCOT will recommend support for the enabling legislation.

The RCEP includes Australia, China, Japan, South Korea, New Zealand and the 10 ASEAN countries including Myanmar and the Philippines.

AFTINET has held virtual collective and individual briefings for parliamentarians to highlight the failure of the RCEP on human rights, labour rights, the environment and responding to the COVID-19 pandemic.

Thirteen national organisations representing millions of Australians have also written letters to [Labor](#) and [cross-bench](#) MPs arguing that the RCEP should be amended before the parliament votes on the implementing legislation. They are the Australian Fair Trade and Investment Network, the Australian Catholic Bishops Office of Justice Ecology and Peace, the Uniting Church Synod of Victoria and Tasmania, the Australian Council of Trade Unions, the Public Health Association of Australia, the Australian Nursing and Midwifery Federation, the Australian Education Union, the Australian Manufacturing Workers Union, the Electrical Trades Union, Union Aid Abroad, St Columbans Missionary Society, Friends of the Earth, and The Grail in Australia women's organisation.

The letters argue that the RCEP would reward the military coup in Myanmar when the US and other nations are implementing trade sanctions. The RCEP also ignores the human rights violations and killings of the brutal Duterte government in the Philippines, the military coup in Thailand and repression of Uighurs in China.

The RCEP contains no text at all on human rights, labour rights or the environment. Its Services Chapter exempts some important services from deregulation, but failed to exempt Aged Care where critical regulation has been recommended by the recent Royal Commission, and failed to exempt state regulation of emissions from power stations, despite the urgent need to cut carbon emissions.

The RCEP restricts the development of local industry policies which both the Morrison government and the Labor Opposition support to address the pandemic and enable post-pandemic recovery.

The letter notes that since Australia already has free trade agreements with all RCEP countries, there are no clear economic benefits, and there has been no independent economic assessment of its economic or social costs and benefits.

The letter to Labor parliamentarians notes that the flaws in the RCEP are contrary to the ALP platform adopted in March 2021.

3. AFTINET welcomes JSCOT recommendations for small changes to trade agreement process, but more needed

AFTINET media release, August 26, 2021

The Joint Standing Committee on Treaties (JSCOT) has finally released its [Report 193](#) on the trade agreement process in Australia, 12 months after public hearings were completed.

“We welcome the Report’s modest recommendations in the direction of more transparency and independent evaluation of trade agreements. This is the first time that a government-dominated committee has recommended changes to the process, and is a small response to our [advocacy](#) over many years, but more is needed,” Dr Patricia Ranald, AFTINET Convenor, said today.

“Trade negotiations are initiated by Cabinet, negotiated in secret with very limited public consultation, and the text is not published until after they are signed. There is no independent evaluation of the economic, social or environmental costs and benefits of agreements before they are signed, and Parliament only votes on the enabling legislation, not on the whole text of the agreement,” explained Dr Ranald.

The government-controlled majority committee report recommends that the Government should publish negotiation aims and objectives for all future trade treaty negotiations and the Government should brief the JSCOT twice a year on the status of upcoming and current free trade agreement negotiations.

The Report also recommends consideration of the use of non-disclosure agreements with key stakeholders to allow for improved consultation in certain areas of trade agreement negotiations, and consideration of a process through which independent modelling and analysis of a trade agreement, is undertaken in the future by an independent expert body, and provided to the Committee alongside the National Interest Analysis.

“We note that the independent evaluation would be undertaken only after the agreement is signed, when the agreement would be difficult to change. This is too late in the process, and lags behind global trends for more open processes like those of the [European Union](#),” said Dr Ranald.

“The Labor and Green minority on the Committee supported further changes, which we welcome, including that the text be published and independently evaluated after trade negotiations are completed, but before agreements are signed,” said Dr Ranald.

“The Committee’s recommendations are not binding on the government, but we hope the government will respond and take action,” said Dr Ranald.

See more detailed analysis of the Committee report [here](#).

4. Deadlock at the WTO over proposal to suspend COVID-19 patents to enable rapid and fair global distribution of vaccines and treatments; Australia stalling progress

The proposal by South Africa and India, supported by over 100 other countries for the temporary suspension of 20-year monopoly patents on COVID-19 vaccines, treatments and equipment continues to be blocked at the WTO by just seven member countries. They are Australia, the United Kingdom, Brazil, Japan, Norway, Switzerland and the European Union. The WTO works by consensus, so even one country can veto a proposal supported by the other 163 Member States.

These 20-year monopoly patent rights are set out in the Trade-Related Intellectual Property Rights Agreement (TRIPS) adopted at the WTO in 1995.

WTO negotiations were suspended for the northern hemisphere summer holidays and will resume in the first week of September, with the Chair of the TRIPS Council at the WTO consulting individual country delegations leading up to a TRIPS Council meeting on September 14. Informal negotiations will continue after that leading up to another TRIPS Council on October 13-14.

AFTINET has helped coordinate a concerted campaign in Australia to shift the Morrison government to support for this patent suspension, and this will continue through these TRIPS Council meetings held in September and October to the November 30 WTO Ministerial Meeting. You can send a letter to your local Federal MP urging support for the patent suspension [here](#).

In July, AFTINET and 14 other national organisations representing millions of Australians sent an [Open Letter](#) to the Morrison government urging it to support the patent suspension at the WTO.

An extensive report in [The Saturday Paper](#) exposes the Morrison government for stalling on the proposal for a temporary suspension of these patents even as it struggles to provide sufficient vaccines to its own citizens.

The suspension would enable expansion of production at affordable prices in countries like India and South Africa which are large producers of generic medicines. Experts interviewed in the report say that the Australian government's blocking is influenced by [Pfizer](#) and other pharmaceutical companies who are reaping [super profits](#) from their monopolies on COVID-19 vaccines.

More than 38,000 people in Southeast Asia died from COVID-19 in the two weeks to August 21, 2021. Indonesia, Vietnam and Thailand are facing their worst outbreaks so far in the pandemic, and have some of the lowest vaccination rates in the world. While the Morrison government has donated AstraZeneca doses in the region, the numbers are tiny compared to the need.

On August 16, 2021, *BMJ* (formerly the *British Medical Journal*) [published a counter-argument](#) to the Pfizer case against the patent suspension, written by Fatima Hassan, director of Global Witness and based in South Africa, and Gavin Yamey, professor of global health and public policy at Duke University, Canada.

The authors document the super profits of Pfizer and other companies and argues that “pandemic profiteering is, in our view, a human rights violation that demands investigation and scrutiny.

“Vaccine preventable deaths and illness are occurring across Africa, Asia, and Latin America at an unprecedented speed and scale.

“Let us be clear what is causing these deaths: a free market, profit driven enterprise based on patent and intellectual property protection, combined with a lack of political will. Contrary to claims, it is possible to make enough vaccines for the world”.

The World Health Organisation (WHO) has supported the COVID-19 patent suspension since it was put forward in October 2020. Its director general, Dr Tedros, called global vaccine inequity “grotesque,” a recipe for seeding viral variants capable of escaping vaccines, and a “moral outrage”.

5. Pfizer, Moderna use patent power to delay local Australian and South Korean COVID-19 vaccine production

The *Sydney Morning Herald* has [reported](#) that the Federal Industry Minister Christian Porter has found that Pfizer / BioNTech and Moderna, who hold the patents for the only two mRNA vaccines against COVID-19, don't want to licence or sub-contract to a local manufacturer.

Minister Porter [stated](#) on August 20 that the plan for local production has been delayed because “this would depend on decisions by Pfizer or Moderna to build new facilities after clear signals they would not share their intellectual property (IP) with others.

“At present only two companies in the world own IP to an approved mRNA product and the likelihood of either of the existing approved IP owners licensing that IP to others to produce product, which is the basis of any shorter timeframes, is remote,” he told the *Sydney Morning Herald*.

Meanwhile, the only alternative is for Australian researchers to independently develop the mRNA technology, with CSL working to develop an influenza vaccine and Monash University with a project at the early trial stage. While this is achievable with government leadership and funding, it will take much time, and in the meantime make Australia rely on global production, distribution, and pricing decisions by Pfizer and Moderna.

Vaccines based on the mRNA technology teach human cells to make a viral protein, giving the immune system instructions on how to produce antibodies to attack a virus. This mRNA technology held by Pfizer / BioNTech and Moderna can also be used to develop treatments for cancer, HIV, influenza, hepatitis and other illnesses. The patent holders have their eye on these profit sources when they deny access to the technology to potential manufacturers today.

A [media report](#) on August 24, 2021, showed that South Korea is having the same problem with Pfizer and Moderna that Australia is experiencing.

South Korea’s failed attempts to gain access to US companies’ mRNA vaccine technology strikes at the heart of the rising divergence between the interests of pharmaceutical companies and the views of some international medical experts over supply shortages.

“We have asked Washington to transfer technology for vaccine production, but US officials said it is something that should be decided by the private sector,” said a senior official in Seoul, who asked not to be named.

The pharmaceutical industry has strongly resisted attempts to waive intellectual property on COVID vaccines, arguing it would not boost production given the restraints on supplies of raw materials and the time it would take to teach other companies how to manufacture the shots.

South Korea’s biotech sector, which enjoys heavy state backing, is poised to invest billions of dollars to expand factories to produce 1 billion vaccines annually.

Korean companies have already signed deals to manufacture vaccines for AstraZeneca, Novavax and Russia’s Sputnik jabs. Samsung BioLogics, one of the world’s biggest pharmaceutical contract manufacturers, will this month start late-stage “fill and finish” vials for Moderna.

But South Korean companies are struggling to secure IP licensing deals with US pharma groups Pfizer and Moderna, despite a broad vaccine partnership agreed in May by President Joe Biden and Moon Jae-in, his South Korean counterpart. Such deals would enable Korean firms to produce jabs under contract for US companies.

6. Chelsea Clinton, US religious and trade union leaders urge global sharing of COVID vaccine technology

The currently stalemated move to change WTO rules to rapidly boost production of COVID-19 vaccines, treatments and equipment has a new champion in Chelsea Clinton, now a professor of health policy at the Columbia Mailman School of Public Health in New York City. And US religious leaders continue to push hard for the patent suspension.

Professor Clinton says that a December deadline for a decision on this, set by WTO Director General Dr Ngozi, displayed a continued lack of urgency.

Clinton is supporting the waiver and advocating for the Biden-Harris administration to push pharmaceutical companies to license their technologies to the many facilities around the world that could begin to make the vaccines. "I hope that the administration will see this not only as the morally right thing for the American government to do, but also as what's in our best interest to ensure that we're protecting American lives and livelihoods.

"We cannot move forward in a durable, sustainable way until we minimize the risk of future variants, which will happen only when we vaccinate the world," Clinton said in a [Nature magazine interview](#) on August 3, 2021.

"We can't continue to dither. Donations are not a scalable strategy. And that is why I and many others are calling for not only broad-based IP and the sharing of technical know-how, but also real investment to help ensure that people everywhere can be vaccinated. I think, at some point, we will wind up there. But it's very painful for me to think about how many lives will be lost between that point and where we are today".

She argues that Germany's Chancellor Angela Merkel could compel BioNTech to share its patents and technology for mRNA vaccines because her government substantially funded the research. The same should apply to Moderna, funded by the US government, where the US National Institutes of Health even owns some of the patents.

On August 4, 2021, leaders of the Catholic, Methodist, Episcopal, Lutheran, Presbyterian and United Church of Christ Churches and the trade union centre the AFL-CIO joined [Jubilee USA](#) for a meeting with US Trade Representative Katherine Tai to support the waiving of COVID-19 [vaccine patents](#) at the WTO.

"Religious institutions and voices are strongly urging that all COVID solutions protect the vulnerable, jobs and our planet," noted Eric LeCompte, the Executive Director of Jubilee USA. "This is the first time a US Trade Representative met with major religious leaders. The meeting was important because all of the faith leaders represent communities in the developing world who are facing devastating third and fourth waves of the pandemic.

"The meeting with Tai was positive and she understands the urgent need to increase vaccine production for developing countries," said LeCompte. "Waiving vaccine COVID patents will help produce more vaccines and save lives in the developing world."

7. COVAX donation model for COVID-19 vaccines is failing

The Biden-Harris administration has promised to donate 500 million COVID-19 vaccine doses as part of a [1 billion dose promise](#) made by the G7 on June 11-13. So far, the US has sent 110 million doses. Professor Chelsea Clinton wants the full donation made now, but says, "We can't donate our way out of this".

[COVAX](#), a COVID-19 vaccine donation and subsidy program driven by the Bill and Melinda Gates Foundation but coordinated by the WHO, was supposed to [ensure through sheer buying power that poor countries received vaccines as quickly as the rich](#). But its goal of vaccinating 20 per cent of populations in poorer countries by the end of 2021 was always too small.

By mid-August 2021, it was well short of even that goal of providing 2 billion doses by the end of 2021. So far [COVAX has delivered](#) 203.1 million doses to 138 countries. The [Sydney Morning Herald reported that poor countries are dangerously unprotected](#) as the Delta variant runs rampant, just the scenario that COVAX was created to prevent.

8. Pakistan terminating 23 bilateral investment treaties because of ISDS, Italy sued by UK oil exploration company

Pakistan has decided to [terminate 23 bilateral investment treaties](#) (BITs) with different countries in order to avoid being sued by foreign investors. Already Pakistan is facing 10 Investor-State Dispute Settlement (ISDS) claims, exposing it to billions of dollars in compensation.

In just one case, the Australian subsidiary of [Tethyan Corporation](#), was awarded US\$5.8 billion in compensation in 2019. Pakistan is [has disputed](#) this award.

Pakistan decided to [review the entire BIT situation](#) in 2013, and to develop a new model BIT.

The problematic clauses in the BITs are indirect expropriation, fair and equitable treatment (FET), national treatment, and most favoured nation (MFN). Corporations can sue governments by claiming that changes in law or policy did not meet their expectations or that they were not sufficiently consulted about them. The effect has been to shrink the policy space for the government to adopt measures in the public interest.

Of the 53 BITs Pakistan signed with 48 countries, Indonesia unilaterally terminated its BIT in 2016; the 16 signed but unratified BITs will not be ratified; the 23 ratified BITs which have completed their initial duration of 10, 15 or 20 years, will be terminated by giving the prescribed notice; and for the remaining nine ratified BITs that cannot be unilaterally terminated at present, the contracting State will be asked to sign a Joint Interpretation Protocol to mitigate the harmful effects, or to amend the provisions for ISDS, FET, and expropriation.

Meanwhile Italy could be forced to pay US\$275 million (A\$371 million) in damages to [UK oil company Rockhopper Exploration](#), after it banned new drilling within 12 nautical miles of its coast in 2016. Rockhopper reports that it has spent just US\$29 million (A\$39 million) on the project.

This is how [Investor-State Dispute Settlement](#) works – a company can claim its *future* earnings have been taken away and demand compensation.

Rockhopper Exploration, which used a specialist ISDS funder to finance its claim on Italy, has a stock market value of just US\$58.3 million (A\$78.7 million), so an ISDS award potentially worth hundreds of millions of dollars would be significant for its finances.

This case is brought against Italy under the [Energy Charter Treaty](#) (ECT), to which the UK is a signatory along with 52 other countries. Italy withdrew from the ECT in 2016, but “[survival clauses](#)” enable companies with investment up to that time to launch cases for another 20 years. These clauses and cases against government measures to reduce carbon emissions have led to a fierce debate in which environmental organisations are seeking [cancellation of the treaty](#).