



BULLETIN September 2021

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1. Introduction

Dear Members,

Our campaign for the waiver of 20-year monopoly patents on COVID-19 vaccines and related products (the TRIPS Waiver) had a major win in September, when Trade Minister Dan Tehan responded to months of campaigning by AFTINET and our allies by stating the Australia now supports the waiver. Thanks to all of you who took action to support this campaign. We will continue to urge that these words are followed up with actions at future WTO meetings in October.

The global campaign for the TRIPS Waiver, which we have been supporting since October 2020, has kept up the pressure on the European Union, Germany, Japan, Norway and Switzerland, who continue to block the Waiver at the World Trade Organisation (WTO). Campaigners have released important studies about the huge public subsidies to the vaccine makers, AstraZeneca, Pfizer, BioNTech and Moderna, their super profits from the vaccines, and their low tax payments.

And Pfizer and Moderna have refused to share their technology with Australian-based drug manufacturers to increase supply of their mRNA vaccines.

The Parliamentary Joint Standing Committee on Treaties (JSCOT) has tabled its reports on the Regional Comprehensive Economic Partnership (RCEP), and on the trade agreement process. The Federal Parliament is expected to vote on the RCEP implementing legislation in the last two weeks of October. AFTINET is urging changes to the agreement before any vote.

Investor-State Dispute Settlement (ISDS) is under review at the United Nations agency, UNCITRAL, but the prospect of meaningful reform is diminishing as the process is dominated by capital-exporting nations and their corporations.

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. Campaign win: government supports temporary waiver for WTO rules on vaccine monopolies and we urge further action

On September 7, Trade Minister Dan Tehan met a delegation in response to a letter from AFTINET and 14 other national civil society organisations, and stated that the Australian government supported the temporary suspension of WTO rules on monopolies for COVID-related vaccines and other products known as the “TRIPS Waiver”. Previously the government had supported negotiation of the waiver, but not publicly supported the waiver itself.

The waiver is needed urgently because the supply and price of vaccines is controlled by a few companies. Rich countries are first in line, with [less than 20 per cent of doses](#) going to low-income countries, [and only 1.9 per cent of people in low-income countries](#) having received one dose. Millions are dying while more dangerous variants like Delta develop.

Vaccine donation programs like [COVAX](#) are also needed, but they alone [cannot address this massive shortfall](#). The waiver is essential to enable increased production in developing countries like South Africa and India which already produce generic medicines.

The meeting followed our campaign in which [50,000 Australians signed petitions supporting the waiver](#), an [Essential Media](#) poll that showed 62% of Australians across the political spectrum support it, and thousands of [messages](#) were sent to local MPs.

Following our [media release](#), urging him to take action to support the waiver, the Minister confirmed his support at a media conference, and at the September 14 WTO TRIPS Council, Australia argued in favour of the waiver. The media coverage by [ABC News](#) and [The Guardian](#) acknowledged the role of our campaign in changing Minister’s position. Australia’s Catholic Church media also [reported the win](#).

Dr Deborah Gleeson explained the significance in [The Conversation](#) on September 14.

AFTINET and others also urged [further action by Australia to support the waiver](#) at President Biden’s vaccines summit on September 22 and the Quad meeting with the US, India and Japan on September 24.

In the run-up to these meetings, activists mobilized across the world were joined by more than 140 former leaders and Nobel Prize winners including François Hollande, Helen Clarke and Gordon Brown who wrote an [open letter](#) to German candidates ahead of the national election on September 26 calling on them to reverse German opposition to the waiving of patents and support immediate transfer of vaccine technology to manufacturers in developing countries. President Biden was also under [significant public pressure](#) in the United States to do more to support the waiver.

At the September 22 vaccine summit, US President Biden urged a far greater effort to vaccinate the entire human population, but mainly focused on rich countries donating more vaccines to low-and middle-income countries, and promises to expand vaccine manufacture in Africa and Asia.

MSF (Doctors without Borders) and others responded by insisting that [increased donations were not enough](#) to address the massive shortfall and urged support for the waiver to vastly increase global production of vaccines.

The next opportunity to advance the TRIPS Waiver is the TRIPS Council meeting on October 13-14, and then the WTO Ministerial on November 30-December 3, 2021.

3. Research shows low taxes paid on immoral profits from COVID-19 vaccines ahead of vaccines summit

The People's Vaccine Alliance* has lashed Moderna, BioNTech and Pfizer for cashing in thanks to taxpayer investments, monopolies, and low taxes, while leaving millions unprotected, on the eve of major global meetings in September on the COVID-19 pandemic.

Their [research](#) reveals that Moderna, BioNTech, and Pfizer are using their monopolies of mRNA COVID vaccines to take super profits of 69 per cent and more - in the case of Moderna and BioNTech — while Moderna and Pfizer are also paying little in taxes. The pre-pandemic profit rate across the entire Fortune 500 list of leading companies was [8 per cent](#).

The Alliance also estimates that the three corporations are over-pricing vaccines by as much as US\$41 billion above the estimated cost of production.

“Instead of partnering with governments and other qualified manufacturers to make sure that we have enough vaccine doses for everyone, these pharmaceutical companies prioritize their own profits by enforcing their monopolies and selling to the highest bidder. Enough is enough - we must start putting people before profits,” said Robbie Silverman, Oxfam America’s private sector engagement manager.

Pfizer/BioNTech and Moderna have sold more than 90 per cent of their vaccines to rich countries, charging up to 24 times the potential cost of production, according to analysis based on work by mRNA scientists at Imperial College. Analysis of production techniques for the leading mRNA type vaccines produced by Pfizer/BioNTech and Moderna, which were only developed thanks to public funding to the tune of \$8.3 billion, suggest these vaccines could be made for as little as US\$1.20 a dose.

In the first half of 2021, Moderna paid a 7 per cent US tax rate and Pfizer paid a 15 per cent tax rate, well below the US statutory rate of 21 per cent. US workers pay a higher tax rate.

*The People's Vaccine Alliance is a coalition of more than 75 organizations united under a common aim of campaigning for a 'people's vaccine' for COVID-19.

4. Pfizer / BioNTech, Moderna refusing to share COVID-19 vaccine technology – MSF study

A [Médecins Sans Frontières](#) (MSF) study reveals that Pfizer and Moderna, manufacturers of the two approved mRNA COVID-19 vaccines, have not made any agreements to transfer their technology and increase supplies of vaccines in low-income countries. They have only signed contracts for the supply of vaccine ingredients with companies in high income countries and China.

Under WTO rules, all pharmaceutical companies have 20-year monopoly control over supply and price of vaccines. Rich countries are first in line, and most people in low-income countries will not have access to vaccines until 2023.

The pharmaceutical industry argues that they can produce enough vaccines under the current voluntary agreement rules and that no one else has the capacity to do it safely, despite the fact that India and South Africa are amongst the largest producers of generic medicines in the world.

MSF is also supporting the World Health Organisation (WHO) voluntary COVID technology sharing initiative ([C-TAP](#)) and its push for [COVID Technology Transfer Hubs](#) on each continent, starting in Africa.

The mRNA vaccines are more easily adapted for changes in the virus, and are faster to produce than older antiviral vaccine technologies. The need to store these mRNA vaccines at super-cold temperatures has been an obstacle, but the manufacturers are overcoming this problem now.

Africa is the continent most severely suffering from COVID-19 vaccine shortage. MSF identified mRNA vaccine-capable manufacturers in South Africa, Egypt, Tunisia and Morocco, but so far Pfizer / BioNTech and Moderna have refused to share the necessary information with any of them.

MSF found that setting up the capacity to produce up to 100 million doses annually is possible for manufacturers based in African countries within a 10-month timeframe, at a cost of as little as US\$127 million – US\$270 million. But the manufacturers would need to have full access to mRNA vaccine materials from Pfizer / BioNTech and Moderna.

MSF recommended that Pfizer / BioNTech and Moderna should urgently share their vaccine technologies via technology transfer to these manufacturers.

MSF also urged the US and German governments and the European Commission to use all legal and political means to ensure that Pfizer, BioNTech and Moderna share their technologies with African companies. Pfizer and Moderna are also refusing to share their technology with [Australian manufacturers](#).

5. JSCOT Report on RCEP acknowledges deep flaws, but supports implementation

The Joint Standing Committee on Treaties (JSCOT) released its [Report 196](#) on the Regional Comprehensive Economic Partnership (RCEP) between Australia, New Zealand, China, Japan, South Korea and the 10 ASEAN countries including Myanmar and the Philippines. The enabling legislation has been tabled and it is expected to be debated at the next parliamentary sitting from October 18.

“The government-dominated majority report acknowledged key issues raised in [our submissions](#), including the brutal military regime in Myanmar, lack of commitments to human rights, labour rights and environmental standards, and the failure to exempt aged care from the deregulatory rules of the agreement, which could restrict improved regulation of aged care as recommended by the Royal Commission,” Dr Patricia Ranald, AFTINET Convenor, said in a [media release](#) on September 1, 2021.

“Despite these deep flaws, the majority report ignored proposals that the government seek changes to the agreement to address these issues and recommended that the enabling legislation proceed,” said Dr Ranald.

The report recommended that the Government continue to pursue the restoration of democratic rule in Myanmar as a priority, and consider making a written declaration to this effect at the time of RCEP ratification, and that the Government pursue the inclusion of labour, human rights and environmental provisions within the RCEP when it is reviewed in two years (p. xv).

“We welcome the report’s acknowledgement that there has been no clear explanation of why health care and childcare are excluded from the rules of the agreement when aged care has not been excluded, and that ‘such inconsistencies give rise to public concern, and it would be better if they were avoided’ (p.27). We will continue to press for aged care to be clearly excluded from the agreement,” said Dr Ranald.

The Labor committee members’ critical remarks supported a declaration on Myanmar, and supported the pursuit of labour, human rights and environmental provisions within the RCEP. They also noted the ambiguity about aged care and went further by asking the government to confirm in writing that the RCEP does not restrict the government’s ability to regulate aged care. Labor also noted the lack of independent evaluation of the costs and benefits of the RCEP. They noted that Investor-State Dispute Settlement (ISDS) was not included in the RCEP, but could be considered in the two-year review, and argued that it should be opposed (pp59-66).

The Green’s critical remarks noted all of the above flaws, expressed deep concern at the lack of transparency and genuine community consultation, and argued that the enabling legislation should not proceed (pp.55-57).

“We welcome the critical remarks from Labor and the Greens, and will continue to seek delay of the enabling legislation pending amendments to the agreement to address these flaws,” said Dr Ranald.

6. JSCOT Report on the trade agreement process recommends small changes, Labor and Greens support more

The Joint Standing Committee on Treaties (JSCOT) on August 26 finally released its [Report 193](#) on the trade agreement process in Australia, 12 months after public hearings were completed. There has been no official explanation of this long delay. It may be that the government, with the controlling majority on the Committee, did not want to release the report, which recommends some changes to the process, while reviews of other trade agreements like the Regional Comprehensive Economic Partnership (RCEP) were underway.

As several previous inquiries have acknowledged, the current trade agreement process lacks transparency and democratic accountability. 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. 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.

The Report makes the following modest recommendations (p. xvii) in the direction of more transparency and independent evaluation of trade agreements:

- the Government should publish negotiation aims and objectives for all future trade treaty negotiations;
- the Government should brief the Joint Standing Committee on Treaties biannually on the status of upcoming and current free trade agreement negotiations;
- Government should consider the use of non-disclosure agreements with key stakeholders to allow for improved consultation in certain areas of trade agreement negotiation, having regard to the approaches and mechanisms used by the United States and by the European Union;
- the Government should consider implementing a process through which independent modelling and analysis of a trade agreement, at both the macro and sectoral levels, is

undertaken in the future by the Productivity Commission, or a similarly independent and expert body, and provided to the Committee alongside the National Interest Analysis.

Note that the independent evaluation would be undertaken only after the agreement is signed, when the agreement would be difficult to change.

The Labor and Green minority on the Committee supported these recommendations but made additional remarks, supporting more changes, including that the evaluation take place after negotiations are completed and the text published, but before trade agreements are signed.

Labor cited its policy which supports further action on transparency and independent evaluation which included:

- briefing the JSCOT at the end of each round of negotiations for trade agreements, not just twice a year;
- legislating to establish a system of 'Accredited Trade Advisors' from industry, unions and civil society groups who would provide real-time feedback on draft trade agreement texts during negotiations;
- providing public updates on each round of negotiations and releasing draft texts during negotiations where this is feasible; and
- legislating to require an Independent National Interest Assessment be conducted on every new trade agreement **before it is signed** to examine the economic, strategic, and social impact (p. p. 39-42).

The Greens criticised the accredited advisor proposal which would maintain secrecy during negotiations, recommended that negotiating texts be released to the public, and that the Government undertake systematic reform to ensure a more transparent, democratic process for negotiating treaties, including releasing final texts of agreements for public and parliamentary discussion and independent evaluation **before they are authorised for signing** by Cabinet (p.45-47).

The Committee's recommendations are not binding on the government, and we must await the government's response before any action might be taken to change the process.

7. UN review of ISDS faces severe problems

In 2016, following mounting criticism of abuse by global corporations of Investor-State Dispute Settlement (ISDS), the United Nations Commission on International Trade Law (UNCITRAL) began a review. But after five years, the UNCITRAL Working Group III (WGIII) appears to be a long way from delivering meaningful reforms to the investment arbitration regime.

WGIII still has a further five years to complete its tasks and a [new report](#) argues that the danger is that it may very well entrench and legitimise the very [problems with ISDS](#) which provoked the review.

Since 2016 ISDS has continued to provide foreign investors with an exclusive mechanism through which they can directly sue host states and challenge government action, including non-discriminatory, public-interest regulation. This is a threat to regulation required for the COVID-19 pandemic, climate change, the digital economy and the [UN Sustainable Development Goals](#).

More than 1,000 known ISDS cases have resulted in serious pressures on many countries' public budgets, nearly all of these since 2000. The billions of dollars that arbitral tribunals have ordered to be paid out to investors in publicly known ISDS cases have diverted taxpayers' money away from funding public health, access to food and employment creation, among other public concerns.

Jane Kelsey and Kinda Mohamadieh argue in their paper, *UNCITRAL fiddles while countries burn*, that the failure to make effective advances towards urgently needed reforms can be traced back to the power of capital-exporting countries and their corporations compared to the power of capital-importing developing countries.

The UNCITRAL Secretariat, and the consulting experts from the Academic Forum and the Practitioners Group, are dominated by the capital-exporting nations and corporations, and have from the start promoted the European Union plan for a [Multilateral Investment Court](#). Substantive concerns of developing countries have been sidelined to the point where they are unlikely to be properly addressed and lead to genuine reform proposals.

The authors argue that the most likely outcome is a lowest-common-denominator multilateral instrument that allows capital-exporting States to adopt minimalist procedural changes to ISDS and not address the power imbalances undermining States' policy and regulatory space. Some States may not even sign or ratify a voluntary final agreement. Despite that, the UNCITRAL Secretariat, as well as capital-exporting States that promised reforms, will seek to proclaim a "successful" outcome.

The authors propose that the mandate given to WGIII be freed from the narrow interpretation adopted to date so that it takes a serious look at alternatives to arbitration as means to settle investment disputes. In particular, they suggest that domestic legal systems become the main location for settling investment disputes.