



BULLETIN September 2023

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1. [Introduction](#)

Dear members,

Please save the date for the upcoming AFTINET Annual General Meeting, it will be online on Wednesday 8 November at 5.30pm.

AFTINET has produced three submissions in the last month. The first was for the inquiry on the government's trade policy approach. This submission outlined the necessity of consistency between the government's trade negotiating framework and whole-of-government policies to ensure equitable and environmentally sustainable economic development and to support human rights and labour rights. It made a number of recommendations to best achieve this. The second submission was on Australia's position on negotiating the WHO Pandemic Agreement. It noted the failures of the COVID pandemic resulting from the intellectual property regime which gave pharmaceutical companies control of distribution and prices of COVID vaccines. This contributed to extreme vaccine

inequity and much higher per capita deaths in low-income countries. The submission gives four priority areas to address these issues in case of a future health emergency. We also did a submission to the DFAT 5-year implementation review of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which recommended changes to its provisions on ISDS, labour, environment, medicine monopolies and regulation of essential services.

Following [Australian](#) and [international](#) civil society calls for more transparency in the Indo-Pacific Economic Forum (IPEF) negotiations, the text of Pillar Two of the agreement was suddenly released this month. Pillar Two deals with the main focus of IPEF, to reduce supply chain dependence on China. AFTINET's [analysis](#) of the text shows the strongest commitments are on technical supply chain issues, with much weaker commitments on labour rights. The text will be tabled in parliament and reviewed by the Joint Standing Committee on Treaties.

Australia's Southeast Asia Strategy has also been released. It promises to review existing trade agreements in the region. This should be an opportunity to implement government policy to review ISDS provisions in agreements such as the Australia-New Zealand-ASEAN agreement, which Clive Palmer is currently using to sue Australia for almost \$341 billion.

Following the EU proposal to withdraw from the Energy Charter Treaty (ECT) because it enables fossil fuel companies to sue governments over climate change regulation, the UK is facing pressure to withdraw from the ECT for the same reasons.

In medicines access news, negotiations resumed on the WHO Pandemic Agreement, which aims to correct the failures of COVID in the case of a future global health emergency, but are reported to be disappointing. NGO Health Justice Initiative has won a landmark transparency case which forced South Africa to release its COVID vaccine contracts revealing hugely unfair deals with pharmaceutical companies.

An inquiry into the government's COVID response has recently been announced. It has already attracted [criticism](#) for its narrow scope. International programs and activities assisting foreign countries have been excluded from consideration. This means AFTINET's main interest area, the impact of WTO intellectual property rules on access to medicines, will likely not be considered.

AFTINET does not receive any corporate or government funding and relies on your support to continue our campaigns. If you have not already done so, you can renew your AFTINET membership [here](#), and/ or donate to AFTINET [here](#).

Thank you,
The AFTINET Team

2. Save the date: AFTINET AGM, 5.30pm November 8

The AFTINET AGM will be on Wednesday 8 November at 5.30pm, online. Event registration and event details, including the announcement of the guest speaker, are to follow.

3. AFTINET submission to the Inquiry on the government's trade policy approach

The [Joint Standing Committee on Trade Investment and Growth](#) is conducting this inquiry at the request of the Trade Minister. AFTINET's [submission](#) argues that the trade negotiating framework should be consistent with the government's whole-of-government policies for equitable and environmentally sustainable economic development. This includes strategic industry development and development of renewable energy industries and other policies to meet carbon emissions reduction targets and other green economy goals.

The framework should also be consistent with government policies to support human rights, women's rights, rights of Indigenous peoples, workers' rights and environmental standards in Australia and in other countries. Trade negotiations should ensure that governments retain the right to regulate to achieve these broader goals.

Trade negotiations are currently conducted behind closed doors with no public access to the detail of texts. As trade agreements have expanded to deal with many regulatory issues including access to medicines, regulation of essential services, and labour and environmental standards, there have been increasing public demands for more transparency and accountability in the trade negotiation process.

AFTINET's submission recommends that Australia follow examples from the EU and the US of broader public consultation, including access to negotiating texts, publication of texts and independent evaluation of the economic, employment, environmental, health and gender impacts of the final text before it is signed. Parliament should vote on the whole agreement, not just the enabling legislation.

Trade agreements should include enforceable commitments to internationally agreed human rights, labour rights and environmental standards. They should exclude special legal rights for international investors to sue governments over public interest policy changes, known as Investor-State Dispute Settlement (ISDS). They should also exclude longer monopolies on medicines and safeguard the rights of First Nations peoples. Trade-in-services rules should not restrict public interest regulation of essential services like aged care and should protect Australian culture through guaranteeing Australian content in audiovisual media.

Digital trade rules should not restrict public interest regulation of concentration of digital media, consumer privacy, cybersecurity, safety, artificial intelligence and the rights of gig economy workers. Trade agreements should not increase numbers of temporary overseas workers vulnerable to exploitation and should not restrict the use of government procurement as part of industry development programs, including renewable energy industries.

4. AFTINET submission on Australia's position on the World Health Organisation Pandemic Agreement

Australia is part of the ongoing World Health Organisation (WHO) negotiations to build the international response for future pandemics, through both improving the existing [International Health Regulations](#) and negotiating a [new Global Pandemic Agreement](#).

The Department of Health has [asked for submissions](#) to inform Australia's engagement in negotiations. AFTINET's [submission](#) outlined structural power asymmetries in the global health system during the COVID pandemic which led to what the WHO has described as "[catastrophic failure of the international community](#)."

In early 2022, for every dose of mRNA vaccine delivered to low-income countries, 56 were delivered to rich countries. Vaccination rates in low-income countries were less than 20% by January 2022, and were still only at [32% in August 2023](#). In early 2022, per capita deaths in low- and low-middle-income countries were [31% higher](#) than in high-income countries.

Intellectual property rules gave a few pharmaceutical companies twenty-year patents on new COVID vaccines, giving them control of both the price and the quantity of COVID vaccines produced. High income countries could pay higher prices to be front of the vaccine queue, [bypassing efforts to coordinate an equitable global vaccine response](#).

The majority of World Trade Organisation (WTO) members proposed a temporary waiver for all pandemic-related medicines on some aspects of the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) agreement in October 2020, but this was blocked by a handful of high-income countries and lobbying by the pharmaceutical industry.

AFTINET has outlined four priority issues to be addressed for future pandemics and international health emergencies:

- Time-bound waivers of intellectual property rights on pandemic response products to enable more equitable global access to such products.
- Public funding for pandemic products should be conditional on sharing of intellectual property and technology.
- Increased transparency requirements, particularly related to publicly funded research and development of pandemic-related products.
- More equitable global development and manufacturing of pandemic-related products.

5. AFTINET submission on the DFAT 5-Year Implementation Review of the CPTPP

AFTINET's [submission](#) to the DFAT 5-year Implementation Review of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), recommended changes to its provisions on ISDS, labour, environment, medicine monopolies and regulation of essential services. Read the full submission [here](#).

6. AFTINET comments on the IPEF Supply Chain text

Negotiations for the IPEF Supply Chain text were completed in May and the [text](#) was released on September 8. The text may be signed in November 2023, after which it will be tabled in Parliament and reviewed by the Joint Standing Committee on Treaties. It could come into force in the first quarter of 2024. AFTINET's full analysis can be found [here](#).

The 14 IPEF members are the US, Australia, Brunei, India, Indonesia, Japan, the Republic of Korea, Malaysia, New Zealand, the Philippines, Singapore, Thailand, Fiji and Vietnam.

Pillar Two deals with the main focus of IPEF, which is to reduce supply chain dependence on China, create alternative networks of supply chains and prevent disruptions. Three other pillars on trade, environment and tax and anti-corruption issues are still being negotiated.

IPEF is not a traditional trade agreement because there is no additional market access provided through reductions in tariffs on goods or increased market access for services. This means that any commitments made by governments cannot be enforced by trade penalties. The agreement sets up committees to share information and act to improve supply chains, and to monitor and report on labour rights.

It is clear that there have been disagreements between the negotiating countries about the strength of the commitments. While it's positive that labour rights, and consultation with a wide range of stakeholders has been included, the commitments on these issues are weaker than on technical supply chain issues.

It remains to be seen whether governments will comply with the setting up of committees and whether these processes will result in actual changes in supply chains or improvements in labour rights without enforcement through trade penalties.

7. Southeast Asia strategy a chance to stop investors like Clive Palmer suing Australia for billions

[Australia's Southeast Asia Economic Strategy to 2040](#), announced on Wednesday 6 September, promises to review existing free trade agreements in the region. This review includes Southeast Asian agreements that contain ISDS, including the regional Australia-New Zealand-ASEAN Free Trade Agreement and some Southeast Asian bilateral agreements.

ISDS rules in some trade agreements enable foreign (but not local) investors to sue governments for billions of dollars if they can claim that a law or policy reduces their future profits. International investors have sued governments over public policies like [phasing out of fossil fuels to reduce climate emissions](#).

Clive Palmer has moved assets to Singapore and is claiming to be a Singaporean investor in order to utilise ISDS in the Australia-New Zealand-ASEAN Free Trade Agreement.

Palmer has two ongoing ISDS claims against the Australian government, totalling nearly \$341 billion. The first of which is a ISDS case for almost [\\$300 billion in compensation](#) which follows the High Court ruling in favour of the Western Australian (WA) government. Palmer appealed WA's decision to indemnify against his multi-million-dollar lawsuit following its refusal of a mine proposal. His [second claim is for \\$41.3 billion](#) in compensation for the refusal of coal exploration permits for the Waratah coal mine in Queensland. The license was [refused for environmental reasons](#), including its contribution to increased carbon emissions. He has also foreshadowed a third case, over Federal and Queensland government [decisions](#) to refuse a license for a second coal mine due to the impacts on the local environment, local waterways and run-off affecting the Great Barrier Reef.

Even if the government were to win these cases, it could still spend millions defending them. The [Philip Morris tobacco company case against Australia's plain packaging law](#) took five years and cost \$24 million in legal costs, of which only half was recovered by the government.

AFTINET is calling on the government to urgently review and remove the ISDS provisions in these agreements to prevent further ISDS cases.

8. Increased calls for UK to exit Energy Charter Treaty following the EU's decision to withdraw

Following failing efforts to 'modernise' the Energy Charter Treaty (ECT) and the EU Commission's [proposal to collectively exit](#) the agreement, the UK is facing increasing pressure to withdraw. The ECT is a controversial [56-member investment agreement](#) for the energy sector. It contains ISDS provisions which have been a significant barrier for governments in addressing climate change. This is due to the risk that the climate policies will lead to lawsuits from fossil fuel companies. [Canada](#) and the [Netherlands](#) have both been sued over their plans to phase out coal-power. This is part of a [growing trend](#) of ISDS cases from fossil fuel companies which has already amounted to billions in costs.

The EU Executive Vice-President for the European Green Deal [described the treaty](#) as "outdated" saying it "is not aligned with our EU Climate Law and our commitments under the Paris Agreement." These comments came after a lengthy debate about "modernisation" of the ECT. Several EU countries elected to withdraw from the ECT in 2022 due to disappointment with how talks were progressing.

In the UK, earlier this month Conservative MP Chris Skidmore [proposed](#) an amendment to the UK Energy Bill for the UK's exit from the ECT. It did not pass, but the UK government announced that it would "[review](#)" its membership of the ECT if modernisation is not agreed by November 2023.

9. Medicines access updates: Pandemic Agreement could be a “missed opportunity” and South African COVID contracts reveal a huge vaccine markup

WHO Pandemic Agreement could be a “missed opportunity”

[Experts are confident](#) that the WHO Pandemic Agreement, the latest draft of which was discussed earlier this month, will be adopted in May 2024 at the World Health Assembly meeting but there are doubts on how meaningful the agreement will be.

The Pandemic Agreement intends to ensure more equitable access to medicines in the case of a future global health emergency. This could be a landmark agreement but there are concerns that key components will be watered down to reach an agreement.

One of the main barriers to meaningful commitments is the disagreement between negotiating countries. Low-income countries have been advocating a health model based on global cooperation through waiving intellectual property rules and greater technology transfer. However, pharmaceutical companies, which have made enormous profits from existing monopoly rules, have lobbied high-income countries to oppose these changes.

Rich countries want a greater level of health data sharing. However, many low-income countries see this data as the only bargaining chip, and do not want to agree without resource sharing promises.

Rather than firm commitments on these contentious issues much of the draft instead re-emphasises the issue of protecting sovereignty. This is in response to a backlash that the agreement, as Elon Musk describes it, risks “[ced\[ing\] authority to WHO](#)”. Tedros Adhanom Ghebreyesus, the Director-General of the WHO, has categorically rejected these claims, saying they are the result of “[vested interests](#)” (read: pharmaceutical companies) seeking to stymie negotiations.

Another reason cited for the piecemeal progress of the negotiations is less civil society input than for previous WHO agreements. [Lawrence O. Gostin](#), a global public health expert, says this has resulted in a less comprehensive perspective, harming the agreement.

Court-ordered release of South African COVID contracts reveal a huge vaccine markup

The South African NGO Health Justice Initiative won a huge victory in August 2023 when the [Pretoria High Court ruled](#) that South Africa had to make its COVID procurement contracts public.

Confidentiality clauses have prevented multiple governments from releasing their COVID contract details. The level of secrecy over medical contracts has been unprecedented, as pharmaceutical companies conditioned the release of vaccines on governments signing non-disclosure agreements.

South Africa’s contracts were described by Health Justice Initiative as “overwhelmingly one-sided” in favour of the pharmaceutical industry. The contracts revealed that South Africa paid a huge premium for COVID vaccines. It agreed to pay and was liable for US\$734 million to four key suppliers for 67 million doses, approximately US\$11 per dose. This was significantly higher than prices paid by the EU. South Africa [paid double](#) the amount per dose for Oxford/AstraZeneca compared to the EU.

The contracts also show that South Africa [assumed all the risks](#) and costs in its COVID deals. The contracts included advance payments of almost US\$95m with no guarantee that the doses would be delivered on time. Pfizer’s contract meant South Africa could only recoup half of its advance payment [if Pfizer failed to deliver](#). The contracts also included confidentiality and indemnification clauses, shielding the pharmaceutical companies from scrutiny and legal liability.

South Africa’s contracts with Johnson & Johnson and Pfizer also required South Africa to waive its right to impose export restrictions. This meant that while many Western countries kept domestically manufactured COVID doses, South Africa’s export ban meant it could not do the same. In early 2021

during the third wave of COVID when there were severe vaccine shortages in Africa, COVID doses were being exported from South Africa to Europe. At that time, the African Union only had enough COVID vaccines for [0.2 doses per person](#) while the EU already had 3.5 doses per person.

A South African Health Ministry Spokesperson said “[the government was not given any choice... Sign the contract or no vaccine.](#)” Health Justice Initiative has said that the actions of pharmaceutical companies in making contracts “[can only be described as a set of ransom negotiations.](#)”

10. Inquiry into the Government’s COVID response

The government has announced an independent [inquiry](#) into Australia’s response to the COVID pandemic to make recommendations to improve response measures in the event of future pandemics.

The inquiry will deliver a final report by the end of September 2024. It will be conducted by an independent panel of three people appointed by the prime minister and supported by a taskforce. The panel includes Robyn Kruk, former Director-General of the NSW Department of Health; Catherine Bennett, Chair in Epidemiology at Deakin University; and Angela Jackson, a health economist with extensive experience in economics and government.

The [terms of reference](#) cover national policy issues and actions in the government’s policy response. It has already attracted [criticism](#) for the narrow scope. International programs and activities assisting foreign countries have been excluded from consideration. This means AFTINET’s main interest area, the impact of WTO intellectual property rules on access to medicines, will likely not be considered.

The panel will invite public consultation and submissions from stakeholders, but it is not yet clear how those invited to contribute to the public consultation will be selected or what the timeframe for consultations will be.