

**Submission to the Department of Foreign Affairs and Trade on the
Australia–United Arab Emirates Free Trade Agreement
from the Australian Fair Trade & Investment Network (AFTINET)**

April 2005

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1. Overview

The Australian Fair Trade and Investment Network (AFTINET) is a national network of 90 organisations and many more individuals supporting fair regulation of trade, consistent with human rights, labour rights and environmental protection. The Public Interest Advocacy Centre is a member organisation of AFTINET and has prepared this submission on AFTINET's behalf. AFTINET welcomes this opportunity to make a submission to the Department of Foreign Affairs and Trade (DFAT) on the Australia – United Arab Emirates Free Trade Agreement ('the UAE FTA').

AFTINET supports the development of trading relationships with all countries and recognises the need for regulation of trade through the negotiation of international rules. AFTINET supports the principle of multilateral trade negotiations, provided these are conducted within a transparent framework that provides protection to weaker countries and is founded upon respect for democracy, human rights, labour standards and environmental protection. In general, AFTINET advocates that non-discriminatory multilateral negotiations are preferable to bilateral negotiations that discriminate against other trading partners. AFTINET is particularly concerned about the recent proliferation of bilateral preferential agreements pursued by the Australian Government.

AFTINET believes that the following principles should guide Australia's approach to a trade agreement with the UAE:

- Trade negotiations should be undertaken through open, democratic and transparent processes that allow effective public consultation to take place about whether negotiations should proceed and the content of negotiations.
- Before an agreement is signed, comprehensive studies of the likely impacts of the agreement should be undertaken and made public for debate and consultation.
- Trade agreements should not undermine human rights, labour rights and environmental protection, based on United Nations and International Labour Organisation instruments.

- Trade agreements should not undermine the ability of governments to regulate in the public interest.

At this stage, AFTINET is concerned that some of these principles may be compromised in negotiations with the UAE.

This submission raises AFTINET's initial concerns regarding these negotiations and alerts DFAT to potential concerns that may arise negotiations proceed. Specifically, this submission raises the need for effective community consultation and transparent negotiations, and the potential for the FTA to undermine the ability of governments to regulate in the public interest.

This submission was prepared in consultation with AFTINET members.

2. Issues of concern

2.1 Trade negotiations should be undertaken through open, democratic and transparent processes that allow effective public consultation

The Australian Government should commit to effective and transparent community consultation about proposed trade agreements, with sufficient time frames to allow informed public debate about the impact of particular agreements.

To facilitate effective community debate, it is important DFAT develop a clear structure and principles for consultation processes that can be applied to all proposed trade agreements. The Senate Foreign Affairs, Defence and Trade Committee made detailed recommendations for legislative change in its November 2003 report, *Voting on Trade*, which, if adopted, would significantly improve the consultation, transparency and review processes of trade negotiations (Senate Foreign Affairs, Defence and Trade Committee, 'Voting on Trade: The General Agreement on Trade in Services and an Australia-US Free Trade Agreement', 26 November 2003 at paragraph 3.91). The key elements of these recommendations are that:

- Parliament will have the responsibility of granting negotiating authority for particular trade treaties, on the basis of agreed objectives;
- Parliament will only decide this question after comprehensive studies are done about the economic, regional, social, cultural, regulatory and environmental impacts that are expected to arise, and after public hearings and examination and reporting by a Parliamentary Committee; and
- Parliament will be able to vote on the whole trade treaty that is negotiated, not only on the implementing legislation.

Processes such as these should be implemented from the outset for negotiations with the UAE.

AFTINET has serious concerns about the community consultation process to date. The commitment to begin negotiations was announced without any community consultation or public debate. The first public announcement regarding the FTA was made by Trade Minister Mark Vaile and reported in the *Australian Financial Review* in February. At this point, there was no indication on the DFAT website that an FTA with the UAE was being considered and there had been no formal community consultation process. It was not until 15 March 2005, that the Trade Minister issued a press release announcing that the formal start to trade negotiations (Vaile, Press release MVT018/2005, 15/03/05).

This lack of consultation and transparency is unacceptable. For this reason, we welcome DFAT's current round of consultation and hope that consultations and public debate will continue throughout the negotiations.

Recommendation: That the Government set out the principles and objectives that will guide Australia's consultation processes for the UAE FTA and that the Government will have regular consultations with unions, community organisations and regional and demographic groups which may be adversely affected by the agreement.

Recommendation: That the Government establish parliamentary review processes, which give parliament the responsibility of granting negotiating authority for the UAE FTA and that Parliament should vote on the agreement as a whole, not only the implementing legislation.

2.2 Trade agreements should not undermine the ability of governments to regulate in the public interest.

It is important that the UAE FTA does not undermine the ability of either the UAE or Australian Governments to regulate in the public interest. AFTINET is concerned that the Government's capacity to regulate may be compromised in two ways. Firstly, by limiting the ability of governments to regulate investment and public services. Secondly, by using an investor-state complaints process.

- **Protecting the ability of governments to regulate investment and public services**

AFTINET understands that trade in services and investment will be a negotiating focus of the UAE FTA. It is important that trade agreements do not undermine a government's capacity to make laws and policies in the public interest, particularly in regard to public services and investment.

Public services should be explicitly exempt from the UAE FTA. To clearly and unambiguously exempt public services, it is important that public services are defined clearly. AFTINET is highly critical of the definition of public services used in the Thai Free Trade Agreement, the US Free Trade Agreement and the WTO's agreement on trade in services (GATS), which defines a public service as "a service supplied in the exercise of governmental authority ... which means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers". This definition results in ambiguity about which services are covered by the exemption. In Australia, as in many other countries, public and private services are provided side by

side. This includes education, health, water, prisons, telecommunications, energy and many more.

To the extent that services and investment are included in any trade agreement, it should be under a positive list rather than a negative list. A positive list allows parties and the community to know clearly what is included in the agreement. It also avoids the problem of inadvertently including in the Agreement future service or investment areas which are yet to be developed. A positive list means that only that which is specifically intended to be included is included.

Recommendation: The UAE FTA should not seek to limit the capacity of either Government to regulate foreign investment to achieve social policy.

Recommendation: Public services should be clearly and unambiguously exempted from the UAE FTA and, if services are included, the UAE FTA should employ a positive list (rather than a negative list) to denote which services will be included in the Agreement.

- **No Investor-State complaints process**

There should be no investor-state complaints process giving corporations the right to complain to a trade tribunal and seek damages if a government law or policy harms their investments. AFTINET has consistently opposed this process, as it gives corporations unreasonable legal powers to challenge the laws and policies of another country. Furthermore, AFTINET opposes a complaints process model that allows disputes to be arbitrated by panels of trade law experts which are not open to the public and which do not reference public policy considerations

Recommendation: The UAE FTA should not contain an investor-state dispute process.