

**Submission to the Department of Foreign Affairs and Trade on the
Feasibility Study into a possible Free Trade Agreement between
Australia and Mexico from the Australian Fair Trade & Investment
Network (AFTINET)**

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Prepared for AFTINET by Jemma Bailey and Dr Patricia Ranald
Public Interest Advocacy Centre

Level 1, 46-48 York Street

Sydney NSW 2000

Phone: (02) 9299 7833

Fax: (02) 9299 7855

jbailey@piac.asn.au

pranald@piac.asn.au

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 the host 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 Feasibility Study into a possible Free Trade Agreement between Australia and Mexico.

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 feasibility study for a possible trade agreement with Mexico:

- 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 economic, social and environmental 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.

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

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 .

Recommendation: That the Government set out the principles and objectives that will guide Australia's consultation processes for the 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 proposed FTA and that Parliament should vote on the agreement as a whole, not only the implementing legislation.

2.2 Australia's negotiating targets, and the he impact of these on development and poverty in Mexico.

2.3

We note that Australia is seeking greater market access to Mexican agricultural markets, presumably with the eventual aim of zero tariffs. We note that several studies have shown that the market access so far granted to the United States under NAFTA since 1994 has caused a crisis in Mexican agriculture. The flood of subsidized imports has caused income falls and widespread unemployment amongst small farmers. Joseph Stiglitz,

former Chief Economist of the World Bank, has concluded

“ While some large Mexican agribusiness sectors have expanded their exports, much of Mexico’s rural sector is in crisis. Local farms are threatened cheap imports from the US, falling commodity prices and reduced government support. Four-fifths of the population of rural Mexico lives in poverty, and more than half are in extreme poverty”. (Stiglitz, J, and Charlton, A, 2005, Fair Trade for All, Oxford University Press, Oxford).

Mexico’s Minister for Agriculture and the National Confederation of Small Farmers called for renegotiation of the NAFTA agreement that has further tariff reductions scheduled for 2008. However, this request was refused by the United States (Bloomberg Media Agency, June 12, 2006). The demand for renegotiation of NAFTA also featured in a very closely –fought Presidential election campaign in July 2006. It seems unlikely that Mexico would grant preferential access for Australian agricultural products in this context.

2.3 The relationship between the agreement and human rights, labour and environmental standards

We note that both the North American Free Trade Agreement, to which Mexico is party, and the Australia-US Free Trade Agreement both contain labour and environmental chapters that refer to ILO and UN standards on labour rights and the environment. It would therefore be consistent with both these agreements for any proposed agreement between Australia and Mexico to thoroughly examine these issues as part of the feasibility study. There is increasing concern in the community about the inconsistency of the policy which allowed these issues to be included in the AUSFTA but not in other bilateral agreements. We note, for example, that the Senate Foreign Affairs and Trade Committee conducted an Inquiry into Australia’s relationship with China in 2005. The Inquiry received many submissions from unions and other community groups about violations of human rights and labour rights in China. The Inquiry Report, supported by both Government and Opposition members of the committee, used these submissions to

document widespread human rights and labour rights abuses in China, and stated that “the Australian government should take every opportunity, including negotiations for a Free Trade Agreement, to raise Australia’s concerns about violations of human rights and labour standards in China” (Senate Committee on Foreign affairs, Defence and Trade, *Opportunities and challenges: Australia's relationship with China*, November 2005: xxx).

The feasibility study should include analysis of the current state of compliance by both Australia and Mexico with human rights, labour and environment standards, including the International Labour Organisation’s Declaration on Fundamental Principles and Rights at Work. These standards include:

- the right of workers and employers to freedom of association and the effective right to collective bargaining (conventions 87 and 98),
- the elimination of all forms of forced or compulsory labour (conventions 29 and 105),
- the effective abolition of child labour (conventions 138 and 182), and
- the elimination of discrimination in respect of employment and occupation (conventions 100 and 111).

This should include an analysis of how the trade agreement would impact on the ability of Australia and Mexico to ensure compliance with human rights, labour and environmental standards by investors, including effective monitoring mechanisms.

We are particularly concerned that one of the possible advantages that the Australian government sees in an FTA with Mexico is that Australian companies could gain preferential access to invest in manufacturing plants in Mexico’s export processing areas and gain duty-free for the products manufactured there to the United States market.

There are a number of problems with this proposition. Firstly, it seems strange that such access to US markets was not obtained in the AUSFTA, but has to be sought through a

separate agreement with Mexico. Secondly, there have been a number of studies that show that the labour and environmental standards in these export processing zones fail to meet basic ILO and UN standards. It seems inconsistent that the government has agreed to respect these standards in the AUSFTA agreement but would now undermine them by not requiring adherence to them in other agreements, or even investigation of these issues in a feasibility study.

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

It is important that the proposed FTA does not undermine the ability of either the Mexican 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 essential 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 Mexican 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 essential services and investment.

Public services should be explicitly exempt from the Mexican 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.

Even when essential services are not publicly provided, governments need to regulate them to ensure equitable access to them, and to meet other social and environmental goals. 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, and therefore subject to the limitations on government regulation under trade law. 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 Mexican 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 Mexican FTA, there should be no restrictions on the right of governments to regulate services in the public interest, and, if services are included, the 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. We note that such a disputes process was not included in the AUSFTA.

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