

**Submission to the Department of Foreign Affairs  
and Trade Review of a Possible Australia/Republic  
of Korea FTA on Behalf of the Australian Fair Trade  
and Investment Network**

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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. AFTINET welcomes this opportunity to make a submission to the Department of Foreign Affairs and Trade (DFAT) on a possible Australia/Republic of Korea Free Trade Agreement (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 for developing 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 previous Australian Government.

AFTINET believes that the following principles should guide Australia's approach to a possible trade agreement with the Republic of Korea:

- 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 negotiations commence, there should be a parliamentary debate and vote about the objectives, based on public consultation and a social, environmental, economic, regional and cultural impact assessment.
- 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.
- The Australian Parliament should vote on the entirety of any negotiated agreement, not only the implementing legislation.

This submission raises AFTINET's initial concerns and alerts DFAT to potential concerns that may arise if negotiations proceed

## **2. Economic Impacts of Trade Agreements**

### **2.1 Impacts of Australia's Existing Agreements**

Australia has long championed "free trade" between nations, signing five such agreements, actively working within the World Trade Organisation, and currently looking to conclude more FTAs. AFTINET questions whether the previous approach Australia has taken to free trade is working.

A recently published Parliamentary Background Note on Australia's FTAs indicates that Australia's trade agreements are failing. The Background Note shows how Australia's agreements with Thailand, Singapore and the United States of America were "followed by higher Australian trade deficits and a much slower rate of reciprocal export growth, as well as trade diversion as products were sourced from countries with which Australia has zero tariffs"<sup>1</sup>. The background note also highlights how the current FTA model adopted risks continuing to lead Australia down a path of greater trade deficits, long phase-in periods, and negative impacts on the economy by trade diversion<sup>2</sup>.

The recently released Mortimer Review into Australia's export policies and programs titled "Winning in World Markets" has found that the benefits from Australia's FTAs are inconclusive. The review found that there has been a worsening of Australia's

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<sup>1</sup> Priestley, M. "Background Note: Australia's Free Trade Agreements", Parliament of Australia Parliamentary Library, December 2 2008

<sup>2</sup> Priestley, M. et al.

terms of trade with all FTA partners, the rates of increased market share are ambiguous, there is limited evidence of new market entrants, and with the exception of some food, manufacturing and service exports, many exporters saw no increase in exports<sup>3</sup>.

The impacts that these trade agreements have had so far aren't just restricted to the macro economic level. It is estimated that under all of Australia's FTAs there have been 26,000 job losses which have been almost all in the manufacturing area, with no significant job creation in the mining or agriculture sectors<sup>4</sup>. The inclusion of the Joint Medicines Working Group under the AUSFTA has resulted in price increases in the Pharmaceutical Benefits Scheme (PBS) through the creation of a medicine category not subject to reference pricing.

Australia's free trade agreements aren't delivering the economic benefits promised and are having wider negative social impacts on the community.

## **2.2 Economic Modeling**

Australia's FTAs have been promoted to the public by the previous government as agreements that would significantly boost our economy. This policy was based solely on the econometric studies undertaken by consultants, studies that were often based on flawed assumptions.

Econometric studies are limited by the assumptions built into the models they use. Most models include the assumption of perfect labour mobility. This assumes that all of those displaced by increased imports will be perfectly mobile and able to be retrained to take advantage of growth elsewhere in the economy, which is not generally the case in practice. The omission of unemployment effects means that such studies generally overstate economic benefits<sup>5</sup>.

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<sup>3</sup> Mortimer, D., (2008) "Winning in World Markets", pg. 96-98. [www.dfat.gov.au/trade/export\\_review](http://www.dfat.gov.au/trade/export_review).

<sup>4</sup> Ibid.

<sup>5</sup> Quiggin, J., 1996, *Great Expectations: Microeconomic Reform and Government in Australia*, Allen and Unwin, Sydney

The feasibility study for a proposed Australia/ROK FTA once again claims large economic benefits for both countries by using similar flawed assumptions. The study, done jointly by ITS Global and the Korean Institute for International Economic Policy predicts that an FTA between the two countries would result in real increases in Australia and the Republic of Korea's GDP by 2020 of US\$22.7 million and US\$29.6 million respectively<sup>6</sup>. These projected gains which were widely quoted by Minister Crean are based on the unrealistic modeling that assumed that all barriers to trade in merchandise goods, investment and services were all reduced to zero in 2007<sup>7</sup>.

In order to make informed decisions about whether or not Australia should enter into a trade agreement with any country we must have a realistic picture of the expected benefits and costs. Inaccurate modeling doesn't support an informed decision making process.

In addition to the problematic econometric aspects of the modelling that is undertaken, such studies also exclude the social and environmental impacts of an FTA. The decisions and implications of FTAs have impacts that extend well beyond the economic sphere. The impacts that changes in economic relations can have on communities can be enormous and disastrous, yet such potential impacts are seldom addressed in the initial scoping for an FTA.

**Recommendation:** Before Australia enters into negotiations for a Free Trade Agreement with any country it must ensure that the social, environmental and economic impacts are incorporated into the assessment of a possible agreement.

**Recommendation:** The adoption of ALP Policy that "prior to commencing negotiations for bilateral or regional free trade agreements, a document will be tabled in both Houses setting out the Government's priorities and objectives, including independent assessments of the costs and benefits of any proposals

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<sup>6</sup> ITS Global and the Korean institute for International Economic Policy, *Australia – Republic of Korea Free Trade Agreement Feasibility Study*, pg 108.

<sup>7</sup> ITS Global and the Korean institute for International Economic Policy, *Australia – Republic of Korea Free Trade Agreement Feasibility Study*, p107

that may be negotiated. This assessment should consider the economic, regional, social, cultural, regulatory and environmental impacts which are expected to arise” (Chapter 3, Section 26).

**Recommendation:** The adoption of ALP Policy that “A Labor Government will also ensure that all major trade agreements into which Australia enters, bilateral and multilateral, are assessed to ensure that they are consistent with the principles of sustainable development and environmental protection for all regions of Australia” (Chapter 3, Section 22).

### **3. Issue of Concern**

#### **3.1 Parliamentary Process**

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 that 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<sup>8</sup>. These recommendations were supported by the ALP member of the Committee. 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

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<sup>8</sup> 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.

- Parliament will be able to vote on the whole trade treaty that is negotiated, not only on the implementing legislation.

We welcome the Australian Labor Party policy platform on increased transparency in the process of undertaking talks regarding a trade agreement. We are encouraged that the platform now states:

“...prior to commencing negotiations for bilateral or regional trade agreements, a document will be tabled in both Houses setting out the Labor Government’s priorities and objectives, including independent assessments of the costs and benefits of any proposals that may be negotiated. This assessment should consider the economic, regional, social, cultural, regulatory and environmental impacts which are expected to arise.”<sup>9</sup>

AFTINET also welcomes the bipartisan recommendation by the Joint Standing Committee on Treaties that, following examination of the Australia/Chile FTA stated:

“The Committee recommends that, prior to commencing negotiations for bilateral or regional trade agreements, the Government table in Parliament a document setting out its priorities and objectives. The document should include independent assessments of the costs and benefits. Such assessments should consider the economic, regional, social, cultural, regulatory, and environmental impacts which are expected to arise.”<sup>10</sup>

AFTINET welcomes the call for submissions on the possible Australia/ROK FTA that addresses concerns around the economic, social, regulatory, and environmental impacts. AFTINET looks forward to the implementation of independent assessments provided by Government to Parliament if such an agreement is to go ahead.

AFTINET still believes that to properly increase transparency and democracy the Parliament should be the body that decides on whether or not to approve a trade agreement, not just its implementing legislation.

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<sup>9</sup> Australian Labor Party National Platform and Constitution 2007, Section 3.26.

<sup>10</sup> Joint Standing Committee on Treaties Report 95, pg 35

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

### **3.2 Trade Agreements Should Support International Standards on Environment Protection and Labour, Human, and Indigenous Rights**

It should be a prerequisite of Australia pursuing trade agreements that parties to the agreement abide by international standards on human, labour, and Indigenous rights and environmental sustainability, as defined by the United Nations (UN) and the International Labour Organisation (ILO). Trade agreements should not undermine these standards.

#### Labour Rights

Australia's recent entering into negotiations with China is a prime example of the need to have trade agreements that do not undermine international standards. AFTINET is concerned about China's compliance with the *ILO Declaration on Fundamental Principles and Rights at Work* and the failure of the Chinese Government to enforce some of its own labour laws. China has ratified only three of the eight ILO Conventions that form the basis of the ILO Declaration and there are numerous reports of labour rights abuses, many of which occur in export processing industries.

Australia must ensure that it does not give preferential access for goods and services from countries where labour rights and human rights are being violated. Australia has a responsibility to not support governments that are violating human rights and this extends to Australia's trade policy.



The recently completed feasibility study on a possible Australia/ROK FTA highlights some of the ROK labour laws as a “general impediment” to Australian investment. The study points out that “labour laws can affect FDI [foreign direct investment], with limitations on a firm’s ability to lay-off workers, and a complex wage structure and retirement system”<sup>11</sup>. AFTINET is concerned at the inclusion of these labour rights under the heading of “general impediments”, AFTINET believes that our trade relations should enhance the protections and labour rights for workers, not identify them as a barrier to trade.

### Environmental Protection

Environmental protection must not be undermined by Australia’s trade policy. Australia’s trading relationships should support and strengthen multilateral environmental agreements as well as actions taken by the United Nations Environment Program. This includes not only environmental protection but also the right to develop in a sustainable way.

Once again the feasibility study highlights environmental laws related to the establishment of factories as a “general impediment” to investment. ROK requirements for environmental evaluations for developments over 150,000 Sqm, and environmental consultations for developments under that size should not be considered a barrier to trade. Australia should not use a potential trade agreement with the ROK to undermine important environmental processes needed to ensure that new developments are in the interest of communities.

On a domestic level, trade policy must not undermine the ability of governments to regulate in the interest of protecting the environment. This includes ensuring that disputes settlement processes at both a multilateral and bilateral level do not erode the space for governments to regulate. As discussed below, Australia should avoid any mechanism such as the Investor-State Disputes Settlement process in its bilateral agreements. Such a mechanism has seen rulings against governments trying to regulate in the interests of environmental protection.

Trade policy must also work cohesively with measures to address climate change. Trade agreements should recognise the primacy of environmental agreements, and trade rules should not restrict governments from regulating to address climate change. WTO rules currently recognise the right of governments to regulate for environmental goals, but there is still debate about the legal meaning of this. If there is a conflict between trade rules and the ability of governments to regulate, we believe trade rules should be clarified or amended to enable such regulation.

### Indigenous Rights

The rights of Indigenous people's must also be respected in Australia's trade policy. This would involve ensuring that any trade agreement does not undermine the goals of the United Nations Declaration on the Rights of Indigenous Peoples. The current Government has stated that it would support Australia becoming a signatory to the agreement. If Australia is supportive of the Declaration then it needs to ensure that this is reflected in trade policy.

***Recommendation:*** Prior to undertaking any trade agreement Australia outline how it will strengthen and support international standards on the environment, labour rights, human rights and the rights of Indigenous Peoples.

***Recommendation:*** Australia becomes a signatory to the United Nations Declaration on the Rights of Indigenous Peoples.

### **3.4 No Investor-State Disputes Settlement Process**

All Trade Agreements contain State-to-State dispute processes to resolve disagreements arising from the agreements. Investor-State disputes processes are additional disputes processes which allow investors to challenge government actions and sue governments for damages if they believe their investments have been harmed. Both the Thailand/Australia FTA and the Singapore/Australia FTA include such a clause. Investor-State dispute processes in other agreements like the North America Free Trade Agreement (NAFTA) have seen a range of government

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<sup>11</sup> ITS Global and the Korean institute for International Economic Policy, *Australia – Republic*

regulation aimed at protecting public health and the environment overturned in the interests of trade<sup>12</sup>. This allows unaccountable investors to challenge the democratic powers of governments to enact legislation that is in the public interest,

Whilst such a mechanism exists in Australia's trade agreements with Singapore and Thailand it was not included in the agreement with the United States, in part because of strong public opposition in both Australia and the United States.

**Recommendation:** Australia should continue with the example set by the AUSFTA and not include investor-state dispute processes in any trade agreements

### 3.5 Positive List for Trade in Services

The AUSFTA and Chile FTAs have a negative list structure for both services and investment. This means that all laws and policies are affected by the agreement unless they are specifically listed as reservations. This differs from WTO multilateral agreements like the General Agreement on Trade in Services (GATS), which is a 'positive list' agreement, meaning that it only applies to those services which each government actually lists in the agreement. The negative list is therefore a significantly greater restriction on the right of governments to regulate services than the WTO GATS agreement.

A 'positive list' approach to Australia's trade negotiations in services and investment allows Australia to determine exactly which sectors are going to be included in any agreement. This provides for future industries and sectors to be excluded from an agreement unless specifically included under government direction. This approach also places Australia's trade strategy more in line with multilateral efforts within the WTO.

**Recommendation:** If Australia is to include services in a trade agreement that it be done only as a "positive list".

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*of Korea Free Trade Agreement Feasibility Study, p90*

### 3.6 Exclusion of Public Services

AFTINET is highly critical of the definition of public services used in Free Trade Agreements and the WTO's General Agreement on Trade in Services, 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, many public and private services are provided side by side. This includes education, health, water, prisons, 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.

***Recommendation:*** Public services should be clearly and unambiguously exempted from trade agreements and there should be no restrictions on the right of governments to regulate services in the public interest

### 3.7 Temporary labour arrangements and trade agreements.

AFTINET raised concerns about the exploitation of temporary workers under the previous government's Visa 457 regulations, especially the lack of protection of their basic rights, low pay and unacceptable working conditions, including poor health and safety conditions leading to injury and death in some cases. The fact that these workers are temporary, and that their visa applies only to employment with a particular employer, means that they are afraid they will be dismissed and deported if they complain, and are more vulnerable to exploitation than other workers.

AFTINET expressed our concerns about Visa 457 to the previous government, and urged that the Visa 457 arrangements not be included in any trade negotiations,

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<sup>12</sup> See Public Citizen's Report on all the cases included under the Investor-State Disputes Process in NAFTA at [http://www.citizen.org/documents/Ch11cases\\_chart.pdf](http://www.citizen.org/documents/Ch11cases_chart.pdf)

specifically, in the GATS negotiations, or in the Australia-China Free Trade Agreement negotiations.

The Visa 457 arrangements differ from the movement of executives and senior management arrangements that have been included in trade agreements, because the labour market position of such workers makes them vulnerable to exploitation, unless their rights are protected through specific arrangements.

Further, we question whether such arrangements should be part of trade agreements which operate under trade law that has no current jurisdiction to ensure that workers rights are protected. Workers are not commodities and the current rules that govern trade in goods and services are not adequate to protect their rights.

The inclusion of such arrangements in trade agreements, which do not include any protections for basic rights, also means they are effectively ‘locked in’, and extremely difficult for future governments to change. If, for example, such arrangements were included in the GATS, and a future government did make changes, Australia might have to compensate other trading partners or could be subject to legal action under the WTO disputes process, resulting in trade sanctions. Similar action could be taken under the disputes provisions of FTAs.

AFTINET advocates that any arrangements about the temporary movement of workers whose labour market position means they are vulnerable to exploitation, should not be part of trade agreements, but should be completely separate arrangements. This would enable such arrangements to include the range of safeguards of labour rights and other rights that the terms of reference of the review indicate are necessary. It would also enable them to be changed as circumstances change.

***Recommendation:*** That no offers be made on Visa 457 arrangements in any trade agreement.