



AFTINET Submission to the JSCOT inquiry on the Australia-UAE Promotion of investments January 2025

Introduction

AFTINET is a national network of 60 community organisations and many more individuals supporting fair regulation of trade and investment consistent with democracy, human rights, labour rights and environmental sustainability.

AFTINET supports the development of fair trading and investment relationships with all countries based on the principles above. We recognise the need to regulate trade through the negotiation of international rules.

AFTINET supports the principle of multilateral trade negotiations, provided these are conducted within a transparent and democratically accountable framework that recognises the special needs of developing countries and is founded upon respect for democracy, human rights, labour rights and environmental sustainability.

AFTINET welcomes the opportunity to make a submission to this inquiry into the Australia-UAE Agreement on Promotion and Protection Investments.

Why we oppose agreements with the UAE

Before discussing the standalone Investment agreement, we need to place it in the context of the broader Australia-UAE Comprehensive Economic Partnership Agreement (CEPA)

Our submission to the JSCOT review of the CEPA explains that, consistent with previous submissions to DFAT, we are opposing ratification of that agreement because of gross violation of human rights and labour rights and poor environmental standards, and provides detailed evidence about them, which is summarised below.

The UAE is an absolute monarchy and is not a signatory to key UN and ILO Conventions protecting civil rights, freedom of association, the right to organise and the right to collective bargaining. Temporary migrant workers form more than 90% of the private sector workforce. Most non-professional migrant workers are employed under the *kafala* system, which ties them to individual employers who act as their visa sponsors, with the penalty of deportation if they leave.

The *kafala* system has been classified as a system of modern slavery.¹ The 2024 US *Trafficking in Persons Report* found that employers exploit some migrant workers through conditions indicative of labour trafficking, such as passport retention, non-payment of wages and unpaid overtime, restrictions on movement, contract switching, fraudulent employment promises, substandard food and housing provisions, debt bondage or a failure to meet other contractual agreements.² The 2023 Global Slavery Index estimates that on any given day in 2021, there were 132,000 individuals living in modern slavery in the UAE. This equates to a prevalence of 13.4 people in modern slavery for every thousand people in the country. The UAE has the second highest prevalence of people in modern slavery of 11 countries in the Arab States region and the seventh highest prevalence out of 160 countries globally.³

¹ International Trade Union Confederation (2021) UAE labour law reforms fail to address abuses of workers' rights, 22 November, <https://www.ituc-csi.org/uae-labour-law-reforms-fail>

² <https://www.state.gov/reports/2024-trafficking-in-persons-report/united-arab-emirates/>

³ <https://www.walkfree.org/global-slavery-index/country-studies/united-arab-emirates/>

There is persistent legal discrimination against women and gay, lesbian and gender-diverse people. The UAE is a major exporter of fossil fuels and has a poor record of implementing its commitments to net zero under UN agreements⁴

The Labor government has a policy of including enforceable labour rights and environmental standards in trade agreements, and of safeguarding the interests of women and First Nations peoples⁵. However, the government has negotiated a preferential trade agreement with the UAE despite gross violations of human rights and labour rights and weak environmental standards. Recent changes, including the 2022 labour law, have failed to address these issues.⁶ Australia should not reward these violations with a preferential trade agreement.

The text⁷ of the agreement does contain short chapters on labour, women, First Nations peoples, and the environment (Chapters 17-20). These chapters refer to those international agreements both governments have ratified, which is welcome. However, these chapters have weak commitments and, unlike other chapters in the agreement, are not enforceable through the state-to-state dispute process, meaning that there is no obligation to implement them.

There are no clear commitments (indicated by using the word “shall”) to implement the international agreements. Instead, the text uses weaker language like ‘recognise’, ‘promote’, ‘encourage’ and ‘endeavour to’, and establishes contact points for future dialogue and cooperation. There is no means of enforcing these intentions, as the state-to-state dispute process, which enforces other chapters of the agreement, does not apply to these chapters.

In short, if the UAE fails to implement its commitments on tariffs, Australia can take action under the state-to-state dispute process. However, the lack of definite commitments and the absence of a dispute mechanism means there is no equivalent enforcement action available for the labour, women’s, First Nations and environment chapters. This contrasts with fully enforceable rights⁸ in these areas still being negotiated in the Australia-EU Free Trade Agreement.

Our submission recommends that the Committee should not support the ratification of the CEPA, because the chapters on labour, environment, women and First Nations People have weak commitments and are not enforceable in the same way as other chapters in the agreement, which is contrary to Labor Government policy.

⁴ Climate Action Tracker (2021) Country summary: UAE, November 9, <https://climateactiontracker.org/countries/uae/>

⁵ Trade Minister Farrell (2022) Trading our way to greater prosperity and security, November 14, <https://www.trademinister.gov.au/minister/don-farrell/speech/trading-our-way-greater-prosperity-and-security>

⁶ US Department of State (2023) 2022 *Country Reports on Human Rights Practices: United Arab Emirates*, Bureau of Democracy, Human Rights and Labour, <https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/united-arab-emirates/#:~:text=Significant%20human%20rights%20issues%20included,in%20another%20country%3B%20unlawful%20government>

⁷ DFAT (2024) Text of the Australia-UAE Comprehensive Economic Partnership Agreement (CEPA) <https://www.dfat.gov.au/trade/agreements/not-yet-in-force/australia-uae-comprehensive-economic-partnership-agreement-cepa/australia-uae-cepa-official-text>

⁸ European Commission (2023) Sustainable development in EU trade agreements, https://policy.trade.ec.europa.eu/development-and-sustainability/sustainable-development/sustainable-development-eu-trade-agreements_en

The Investment Agreement

In the context of negotiations for a broader trade and investment agreement, it is unusual for Australia to negotiate a completely standalone investment agreement. The DFAT National Interest Analysis explains that this was the preferred structure of the UAE⁹.

Investor-State Dispute Settlement (ISDS) excluded

AFTINET has long opposed ISDS because it enables a single international investor to claim billions in compensation from governments if they can argue that a change in law or policy has harmed their investment or will reduce future profits and/or they were not consulted fairly about the change and/or change was not expected at the time of the investment. Australia has experienced ISDS claims for billions of dollars in compensation for health legislation when the Philip Morris tobacco company claimed billions in compensation for Australia's 2012 plain packaging legislation¹⁰. Australian billionaire Clive Palmer has registered his mining company Zeph Investments in Singapore and is currently using ISDS in trade agreements with ASEAN and Singapore to claim \$120 billion in compensation because his coal mining license and a license for a coal-fired power plant in Queensland were refused for environmental reasons, including increased carbon emissions¹¹.

The Labor government has a policy of excluding ISDS in new agreements and reviewing it in existing agreements. AFTINET welcomes the government's implementation of its policy against ISDS in new trade and investment agreements by excluding ISDS from this standalone agreement. Instead, the agreement applies a state-to-state dispute process¹².

We also welcome the exclusion of fossil fuel industries from the definition of investment, which means that states cannot initiate disputes about the regulation of those industries to reduce carbon emissions (Article 1(j) p. 2).

However, in the context of the human rights violations analysed above, we do not recommend ratification of either agreement with the UAE.

⁹ DFAT (2024a) National Interest Analysis, 6 November, https://www.aph.gov.au/-/media/Committees/Joint/Treaties/November_2024/001_Investment_Agreement_NIA.pdf?la=en&hash=3B2640A27D81628B3A546E68483AD194596F0EAF

¹⁰ "When even winning is losing. The surprising cost of defeating Philip Morris over plain packaging, (2019)" *The Conversation*, March 27, 2019 <https://theconversation.com/when-even-winning-is-losing-the-surprising-cost-of-defeating-philip-morris-over-plain-packaging-114279>

¹¹ Attorney Generals Department (2024) Notice of Intention to Commence Arbitration 20 October <https://www.ag.gov.au/sites/default/files/2023-10/notice-of-intention-to-commence-arbitration-zeph-20-october-2023.pdf>
The list of four claims totalling \$120 billion is at [https://www.ag.gov.au/international-relations/international-law/international-trade-and-investment-law#:~:text=The%20Jericho%20Power%20Station%20Claim%20\(PC%20Case%20No%202024%2D48,Waratah%20Coals%20Galilee%20Coal%20Project](https://www.ag.gov.au/international-relations/international-law/international-trade-and-investment-law#:~:text=The%20Jericho%20Power%20Station%20Claim%20(PC%20Case%20No%202024%2D48,Waratah%20Coals%20Galilee%20Coal%20Project).

¹²DFAT (2024b) Text of the Australia-UAE Comprehensive Economic Partnership Agreement, Article 18, pp14-15 https://www.aph.gov.au/-/media/Committees/Joint/Treaties/November_2024/004- Australia-UAE_Investment_Agreement.PDF?la=en&hash=423C14376EEC05C8A115D9C3A767CCC48ACEC681