

**SUBMISSION NO. 9**  
**TT on 14 August 2012**



**AFTINET**  
Australian Fair Trade  
& Investment Network Ltd

128 Chalmers Street  
Surry Hills, NSW, 2010  
Phone: 02 9699 3686  
Fax: 02 9699 3717  
Email: [campaign@aftinet.org.au](mailto:campaign@aftinet.org.au)  
ACN 097 603 131  
ABN 83 659 681 462  
[www.aftinet.org.au](http://www.aftinet.org.au)

The Hon. Kelvin Thomson  
Chairperson  
Joint Standing Committee on Treaties  
Parliament House  
Canberra  
September 21, 2012

Dear Mr Thomson

As you know, the Australian Fair Trade and Investment Network (AFTINET) is a national network of organisations and individuals supporting fair regulation of trade, consistent with human rights, labour rights and environmental protection. AFTINET welcomes this opportunity to make a short submission to the review of the Malaysia-Australia Free Trade Agreement, and apologise for its lateness.

We note that the MAFTA contributes to the “noodle bowl” of confusing overlapping agreements in our region. Australia already has a free trade agreement with New Zealand and the ASEAN countries, including Malaysia. Australia is also currently negotiating the Trans-Pacific Partnership Agreement, (TPPA) which includes Australia, the US, New Zealand, Peru, Chile, Singapore, Malaysia, Brunei, Vietnam, Canada and Mexico. If the TPPA is concluded, the MAFTA will be the third agreement between Australia and Malaysia, and it is unclear what the relationship between the different agreements will be.

The most glaring omission from the MAFTA is the lack of labour and environment chapters, despite the fact that Australian Labor Party Conference policy in December 2011 contained commitments to include enforceable labour rights and environmental standards in trade agreements.

AFTINET’s view is that all trade agreements should contain a labour rights chapter which commits the parties to implement fundamental rights at work as expressed in ILO conventions, includes commitments to improve, not weaken, labour rights, and provides mechanisms for monitoring and enforcement of labour rights, including access to the government-to-government disputes settlement process of the agreement.

Environment chapters should include commitments by the parties to implement relevant United Nations environmental agreements, to improve, not weaken, national environmental protections and include mechanisms for enforcement of environmental protections, including access to government-to-government disputes settlement processes of the agreement.

Side letters to the MAFTA state that the two governments will implement what emerges on labour and environment in the TPPA negotiations. However, the TPPA negotiations have already been proceeding for three years, and Canada and Mexico have only just joined the negotiations, which is likely to mean further delays. Moreover, reports suggest that there are wide differences between the TPPA parties on labour rights issues, and on the environment

chapter. There is no guarantee that agreement will be reached on them, or that the TPPA will be finalised before the suggested review date of two years after MAFTA will come into force.

In the absence of enforceable labour rights and environmental protections, rapid trade liberalisation intensifies competition and can lead to a race to the bottom on labour rights and environmental standards.

However, AFTINET welcomes some more positive aspects of the agreement. Importantly, the Australian government has implemented its policy of not giving international investors the right to sue governments for damages, so there is no investor-state dispute process in the agreement.

The services chapter uses a positive list approach, which means it includes only those services which each government intends to include, rather than a negative list which includes everything unless excluded. This enables governments to retain more policy space to regulate essential services.

Government procurement is also excluded from the agreement, which ensures the policy space to retain local content and other procurement policies.

The intellectual property chapter does not contain TRIPS-plus intellectual property provisions on medicines, which would be detrimental to Malaysia as a developing country, let alone the more extreme measures which the US has proposed in the TPPA. However, the agreement does contain stronger provisions on copyright and stronger measures for enforcement of copyright, including criminal penalties. The committee should examine these carefully in the light of its previous critical recommendations on the Anti-Counterfeiting Trade Agreement (ACTA).

Thank you for the opportunity to make this short submission.

Yours sincerely

Dr Patricia Ranald  
AFTINET Convenor