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**Submission to the Department of Foreign Affairs &
Trade on the Doha Round negotiations from the
Australian Fair Trade & Investment Network
(AFTINET)**

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1. Overview

1.1 The Australian Fair Trade & Investment Network

The Australian Fair Trade and Investment Network (AFTINET) is a national network of 90 organisations and many more individuals supporting the fair regulation of trade, consistent with human rights, labour rights and environmental protections. The Public Interest Advocacy Centre hosts AFTINET and has prepared this submission on AFTINET's behalf.

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 that these negotiations are conducted within a transparent framework that protects 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 believes that the following principles should guide Australia's approach to all aspects of the negotiations in the Doha Round:

- Trade agreements should be formed and negotiated in accordance with human rights, labour rights and environmental protection standards, as defined in UN and International Labour Organisation instruments.
- Trade agreements should not undermine the ability of governments to regulate in the public interest.
- Negotiations should allow developing countries the flexibility to make laws and policies that allow them to direct their own development.
- 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 a decision is made about negotiations, comprehensive studies of the likely social, environmental and regulatory impacts of the trade agreement should be undertaken and made public for debate and consultation.

AFTINET is concerned that the existing World Trade Organisation (**WTO**) agreements do not reflect these principles and that the Australian government has not adequately addressed these principles in the current Doha Round of negotiations.

1.2 Structure of this submission

AFTINET thanks the Department of Foreign Affairs and Trade (DFAT) for the opportunity to make a submission on the developments in the WTO Doha Round. This submission will raise a number of concerns about the human rights, labour rights, environmental and developmental impacts of the Doha Round and about the need for improved transparency and consultation in trade negotiations.

This submission is divided into three parts. This first part provides an overview of AFTINET's principles and the submission. The second part addresses the principles that should underlie Australia's approach to the Doha Round negotiations, specifically the need for transparency and consultation, the need to support the demands of developing country governments and the need for modelling the impact of the Doha Round in particular regions before proceeding with the negotiations. The third part raises concerns about the content of key aspects of the Doha Round negotiations, specifically the negotiations on agriculture, non-agricultural market access (NAMA), trade in services (GATS), intellectual property and WTO rules on regional trade agreements.

This submission was prepared in consultation with AFTINET members. It represents an overview of the main issues in the negotiations and does not represent the detailed policy positions of all AFTINET members. Members of the network will make more detailed submissions in their areas of policy interest.

2. Principles to underlie the Doha Round negotiations

2.1 Democracy undermined: The need for transparency and effective community consultation

Trade negotiations should be transparent and subject to both community and parliamentary debate.

AFTINET is concerned that there is a lack of information in public debate about Australia's position in the Doha Round. DFAT's Public Discussion Paper provides a description of the negotiations, but leaves Australia's position on a number of key issues ambiguous. The capacity for informed public debate depends to a large extent on the willingness of the Government to make key information public in time for it to be understood and considered. Because the information provided is too general and vague, public debate in response is limited.

There has been a concerted community campaign, directed both at the Australian government and at the WTO itself, to improve transparency in the Doha Round. This has resulted in some improvements in community consultations. For example, in the GATS negotiations we welcome the Government's decision in May 2005 to publicly release Australia's revised GATS offer. We note however that this offer was released only after it was finalised and lodged with the WTO, despite requests from AFTINET and AFTINET members to release a draft of the offer for public debate before the offer was finalised. AFTINET also urges the Government to release its GATS requests to other countries. It is not clear, for example, whether Australia has made requests on health, education or water to other countries, including developing country governments.

AFTINET also supports a greater role for parliament in scrutinising, reviewing and voting on trade agreements. At the moment, Cabinet, not Parliament, makes decisions on trade agreements. AFTINET supports the recommendations for legislative change made by the Senate Foreign Affairs, Defence and Trade Committee in its *Voting on Trade* report in November 2003 (Senate Foreign Affairs, Defence and Trade Committee, 2003 at para 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.

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

Recommendations

- That the Government’s policy for negotiations and all relevant documents be made public on the website of DFAT.
- That the Government conduct community consultation sessions on all aspects of Australia’s WTO negotiations *before* the Government forms its negotiating positions. These sessions should be well-publicised, held at convenient times and locations and with sufficient time frames to allow public debate. Consultation should be specifically sought from unions, community organisations and demographic groups which may be adversely affected by the negotiations.
- That the Government establish parliamentary review processes, which give Parliament the responsibility of granting negotiating authority and that this authority is only granted after public hearings and reporting by a Parliamentary Committee.
- That Parliament vote on the negotiated WTO texts, not only on the implementing legislation.

2.2 Who’s Trade Organisation? Outcomes for developing countries

The rhetoric of the Government is that the Doha Round will produce positive outcomes for developing countries. AFTINET is concerned however that the Government’s approach in key areas of the negotiations will in fact undermine development. Rather than supporting the demands of developing country governments, DFAT’s Public Discussion Paper states that “real development dividends ... will not come from special and differential treatment or special provisions for developing countries.”

To the contrary, the Government should support proposals that preserve the policy space for developing country governments to direct their own development. For example, in the agriculture negotiations the Government should support differential treatment of ‘special products’ important to food security in developing countries. In the NAMA negotiations the Government should support proposals that allow developing countries to protect and develop strategic industries. Similarly, in the

GATS negotiations Australia should not push proposals to change the negotiating structure of GATS to a ‘benchmarking’ approach, that would effectively compel all governments to include particular service sectors in the GATS.

AFTINET is concerned that current structure of the WTO will not provide positive outcomes for developing countries as negotiations are directed by powerful industrial countries and the transnational companies that lobby for their own specific economic interests. The WTO supposedly operates on consensus where each country has one vote. However, many of the meetings that set the negotiating agenda are informal meetings or mini-ministerial meetings attended by a handful of powerful countries. Developing countries are either not invited to these meetings or lack the resources to attend and analyse the proposals made by industrialised countries (Jawara & Kwa, 2003 at p13 – 18).

This dynamic was epitomised in the drawing up of the July Framework. The WTO General Council Meeting in 2004 which approved the July Framework has been described as a “non-transparent, non-inclusive process, dominated by big trading powers and characterised by brinkmanship and power play” that marginalised the key concerns of developing country governments. (Oxfam International, 2004 at p1; Focus on the Global South, 2005). Similar criticisms have been made about the frequent meetings and last-minute negotiations in the lead-up to the WTO Ministerial Meeting in December. As the Institute for Agriculture and Trade Policy states;

[WTO members have] broken their promise to fix the negotiating process to ensure the smallest delegations can participate. While bilateral and plurilateral negotiations are inevitable at this stage of the talks, trade negotiators from smaller countries continue to complain that they have no way to follow all the developments. ... African, Caribbean and Pacific countries and least developed countries are glaringly absent from the negotiating groups (Institute for Agriculture and Trade Policy, 2005).

AFTINET supports the consistent calls by developing country governments to change the WTO negotiating process to ensure that it is more democratic and transparent. A

range of suggested democratic reforms were presented to the WTO General Council in April 2002 by a group of developing countries (WTO, 2002). The proposal was rejected by key industrial countries, including Australia. Key suggestions in the proposal include:

- Allowing all members to express a view before the draft agendas of meetings are drawn up.
- Ensuring that draft texts include a range of views.
- Allowing a sufficient time for members to consider texts before decisions are required, and circulating new drafts before they are to be decided upon.
- Chairpersons remaining neutral and being selected from a meeting of all members.
- Ensuring that decision-making meetings are open to all members.
- Holding the majority of meetings in one place to reduce travel expenses for developing countries.

Recommendations

- That the Government support negotiating proposals that allow developing country governments to direct their own development.
- That the Government support proposals raised by developing country governments to make the WTO negotiating process more transparent and democratic, as outlined above.

2.3 Modelling the impact of the Doha Round negotiations

It is vital that Australia's negotiating position at the WTO is informed by comprehensive studies of the impact of the WTO agreements to date and the potential impact of the negotiations in the future.

AFTINET understands that there has been no evaluation of the social and environmental costs and benefits to Australia of the outcomes of the previous WTO negotiations and the impact of previous negotiations on the Government's regulatory capacity. Likewise, there has been little information about the possible impacts of the current negotiations. DFAT's Public Discussion Paper is silent about the potential social, environmental or regulatory impacts of the Doha Round.

It is premature to commit to liberalisation in WTO agreements before independent and comprehensive impact studies are completed on the Doha Round. AFTINET submits that this is a major failure in the Government's Doha Round negotiations.

Recommendations

- That the Government commission multi-disciplinary research to evaluate the socio-economic and environmental impact of trade liberalisation since the Uruguay Round and that this research also assess the likely impacts of the current negotiations. These studies should go beyond economic modelling to track the potential impacts on human rights, labour conditions and the environment, the ability of developing countries to direct their own development and any restrictions on the ability of future governments at all levels to regulate in the public interest. The studies should seek input from regional and demographic groups in Australia and in developing countries.

3. Doha negotiating issues

3.1 Agreement on Agriculture

The Government has consistently called for improvements in market access and reductions in domestic support in the agriculture negotiations and argues that this is aligned to interests of developing country governments. AFTINET is concerned that the Government has falsely linked Australia's agricultural exporting interests with the interests of poor farmers in developing countries. As recognised by the Food and Agriculture Organisation, trade alone cannot solve hunger in poor countries and Australia's approach may in fact damage the livelihoods of poor farmers in developing countries (Anderson, 2003 at p1).

There are many well-documented examples of the damaging effects of trade liberalisation in developing countries under the WTO's Agreement on Agriculture. Generally, developing countries that reduce trade barriers are flooded by cheap subsidised food exports from industrialised countries, such as the US and the EU. Local farmers cannot compete in this situation, which leads to rural unemployment, poverty, urban migration and loss of food security. Devinder Sharma of the Forum for Biotechnology and Food Security explains the impacts of liberalisation in India:

[In India] cheap food imports depress prices for domestic produce, and large scale cash crop cultivation has not only shifted land away from basic food production but has led to concentration of land and resources in the hands of big farmers, landlords and private companies. It also accelerates the depletion of the natural resource base. (Sharma, 2005 at p3)

To avoid these negative impacts on food security and rural livelihood, developing country governments should have the right to create and maintain measures to protect food security and rural livelihoods through retaining protection of Special Products and through Special Safeguard Measures.

AFTINET urges the Government to support proposals to this effect. For example, the G33 (Grouping of 33 developing countries) proposes that developing country governments could list crops that are important to food security as Special Products and exempt these crops from significant tariff reduction, as well as a Special Safeguard Mechanism to allow developing country governments to raise tariffs to protect themselves from dumping (G33, 2005). The Australian Paper on Special Products in June 2003 rejected the concept of Special Products and DFAT's Public Discussion Paper is silent on this issue.

Recommendations

- That the Government supports the right of developing country governments to special and differential treatment in agriculture, to address food security, rural development and livelihood issues. Such measures may include: recognition of food security as an important principle; the designation of Special Products and use of Special Safeguard Mechanisms; and regulations on food aid to ensure this is not used to dump food in developing country markets.

3.2 Non-Agricultural Market Access (NAMA)

DFAT's Public Discussion Paper explains that Australia has already liberalised across most sectors of the economy relevant to NAMA and that the Government is pushing for "an ambitious result" in these negotiations in the Doha Round. An "ambitious

result” may have serious social, environmental and developmental and regulatory impacts.

Tariff reductions: The danger of de-industrialisation

AFTINET is concerned that the NAMA negotiations to reduce tariffs across industrial goods may harm workers rights and undermine development. The current negotiating framework for NAMA, as defined in the July Framework, is based on the ‘Derbez text’ which prioritises developed country interests and was firmly rejected by developing country governments in Cancun (Focus on the Global South, 2005). We are concerned that binding tariffs at a particular level will take away policy space for strategic industrial development and that steep tariff reductions could destroy local industries and result in de-industrialisation. As explained by the Institute for Agriculture and Trade Policy:

If developed countries are successful in getting most of the proposed tariff bindings and reductions ... developing countries will be deprived of an important tool to implement industrial policies and a source of revenue they badly need for public investment. It will be workers in the South and in the North who will be the losers if deep liberalisation of manufacturing goes through: job losses and worsening working conditions are the likely outcomes (Institute for Agriculture and Trade Policy, 2005).

The Government’s negotiating position in the Doha Round should allow developing country governments to choose which tariff lines to bind and which to reduce. Developing country governments must be allowed to exempt key sectors from tariff reductions or even to raise tariffs on the grounds of developmental, social or environmental concerns.

DFAT’s Public Discussion Paper also raises the issue of sectors that have been chosen for fast-tracked liberalisation. We understand that the sectors under negotiation include manufacturing sectors, such as sporting goods and footwear, and natural resource sectors, such as fish, gems and forest products. With regard to manufacturing, AFTINET is concerned about negative impacts on the manufacturing

sector in Australia and potential job losses in regional areas of high unemployment. Similarly, AFTINET is concerned about fast-tracking liberalisation in environmentally sensitive sectors, such as forestry, fishing and other raw materials. Fast-tracked negotiations in these sectors should cease until full social and environmental impact studies are undertaken.

Non-tariff barriers: Also known as public interest regulations

The negotiations on non-tariff barriers in NAMA threaten to take away the ability of governments to regulate in the public interest. In these negotiations, countries can notify the WTO of another country's laws or regulations that are perceived to be a barrier to trade. An examination of the notifications currently on the table include national laws designed to protect the environment and promote social welfare. For example, notifications have been lodged on the eco-certification of wood products, tracing and labelling of fish and fish products, measures for controlling the use of toxic chemicals and some labour laws (Friends of the Earth International, 2005).

We understand that the Government has lodged some notifications and has had some notifications lodged against Australian laws. However, there is no information in DFAT's Public Discussion Paper or on DFAT's website about what notifications have been made against Australia and what notifications the Government has made. AFTINET strongly opposes the labelling of regulations made in the public interest as barriers to trade.

Recommendations

- That the Government support proposals that allow developing country governments to choose which tariff lines to bind and which tariff lines to reduce in the Doha Round negotiations.
- That the Government support proposals that developing country governments may exempt key sectors from tariff reductions or even to raise tariffs on the grounds of developmental, social or environmental concerns.
- That the sectoral fast-tracked negotiations do not proceed until there is a full and independent review of the potential social, developmental and environmental impacts of liberalisation across these sectors.

- That regulations genuinely made in the public interest to pursue social, environmental or developmental goals not be notified as non-tariff barriers.

3.3 Trade in services

The GATS negotiations have serious implications for the ability of governments to regulate and for the provision of essential services. These concerns are outlined briefly below. AFTINET has detailed these concerns at length in previous submissions (available on the AFTINET website: www.aftinet.org.au).

Australia's offer in the GATS negotiations

As explained in DFAT's Public Discussion Paper, the Government tabled its revised offer in the GATS negotiations in May 2005. The Government inserted a sentence into the revised offer that explicitly excludes "water for human use" from Australia's GATS offer (WTO, 2005 at p29). AFTINET welcomes this development, as keeping water services out of the GATS negotiations has been a key focus of community campaigns in Australia.

We recognise however that the Government can change this revised offer at any time, without any public or parliamentary debate. We remain concerned that the Government may offer, or may request that a developing country offer, to include an essential service in the GATS. The Government should commit to informed public debate about any changes to the Australia's GATS offer.

Essential services, regulatory capacity and democracy undermined

AFTINET submits that essential services sectors should not be included in GATS. Including an essential service in the GATS limits the ability of governments to regulate these services by granting full 'market access' and 'national treatment' to transnational service providers of those services. AFTINET submits that governments should maintain the right to regulate to ensure equitable access to essential services and to meet social and environmental goals.

The Government has already included some aspects of the health, education, energy and telecommunications service sectors in Australia's GATS commitments. AFTINET urges the government to make no further offers in these sectors and to

make no offers in other essential service sectors, such as water, postal, public transport and audio-visual sectors.

More specifically, public services should also be exempt from the GATS. AFTINET remains concerned about the ambiguity of the definition of a public service in Article 1.3 of GATS, which defines a public service as one “supplied in the exercise of governmental authority ... neither on a commercial basis, nor in competition with one or more service suppliers”. Many public services in Australia do not comply with this definition due to private sector commercial involvement. Accordingly, there is a clear need for the Government to explicitly exclude public services from the GATS negotiations. An additional risk to public services is a proposal to amend the GATS definition of subsidies to include government funding. As has been argued at length in previous AFTINET submissions, the effect of this would be to privatise public services and the Government should not and the Government should oppose such changes.

Finally, AFTINET is concerned about the proposed changes to GATS rules to institute a ‘least trade restrictive’ test for domestic regulation of licensing requirements, qualifications and technical standards. If adopted, this proposal would mean that a law could be challenged as a barrier to trade if it was deemed to be more regulatory than necessary to achieve its objective. If legislation and policy are required by GATS rules to fit within a framework that prioritises trade interests above all other interests, then governments will be unable to govern in the public interest. The Government should not support an application of the necessity test that would restrict governments’ ability to regulate

We are disappointed to note that these issues of essential services and regulatory capacity were not addressed in DFAT’s Public Discussion Paper.

Increased pressure to commit services through benchmarking

There is a current push to change the negotiating process of GATS. Australia is one of a handful of countries to submit a proposal to change the GATS negotiations to a ‘complementary’ or ‘benchmarking’ approach. AFTINET has serious concerns about Australia’s role in this debate.

The proposed changes to the GATS negotiations will pressure all governments, especially developing country governments, to make more and ‘higher quality’ GATS commitments by requiring that offers reach certain qualitative and quantitative standards across a minimum number of sectors, including essential service sectors. AFTINET is concerned that these proposals will undermine the currently voluntary nature of GATS, which (at least in writing) allows countries to determine whether and in which sectors they will make commitments. We note that the consequences of this approach for developing countries are dire. Local service providers will be unable to compete with large transnational companies, which will in turn threaten affordable access to essential services.

Recommendations

- That the Government make no further offers in essential services, including health, education, energy and telecommunications and that the Government make no offers in water services, public transport, postal services and audio-visual services.
- That the Government oppose any proposals which would further reduce the right of governments to regulate services, including the application of a stricter ‘necessity test’ to regulation.
- That the government rejects a definition of subsidies that includes government funding.
- That the Government withdraw support for the ‘benchmarking’ proposals to change the GATS negotiating process and that the Government not support any other proposed change that undermines the flexible nature of GATS negotiations.

3.4 Trade related intellectual property rights (TRIPS)

The Government’s approach to the TRIPS negotiations should be guided by the principle that the rights of intellectual property (IP) holders should not be prioritised to the detriment of the public interest and public policy. Further, that TRIPS should allow developing countries to formulate suitable policies to attain their development goals.

Access to medicines

As enshrined in the Doha Statement on TRIPS and Public Health, AFTINET supports the right of developing countries to ensure access to pharmaceutical medicines at affordable prices to treat serious health problems. More specifically, AFTINET supports the interim decision adopted on 30 August 2003 by the WTO General Council. This interim decision requires changes to the TRIPS restrictions that permitted developing countries to issue a 'compulsory licence' for the production of generic drugs *only* where those drugs were produced were primarily for the domestic market. The interim decision grants a waiver from TRIPS rules so that poor countries in need can import generic copies of patented drugs that are produced under compulsory licence in another country.

AFTINET welcomes this waiver and supports the call from developing country governments to convert this interim waiver into a permanent amendment to TRIPS. We understand that the content of the permanent waiver currently proposed by the US may impose conditions on developing countries wanting to use the waiver. The Government should support the permanent waiver that is most aligned to the Doha Statement on TRIPS and Public Health.

Biodiversity and biopiracy

As a general principle, AFTINET supports the right of governments to exclude patenting of plants, animals or any other living organisms.

Biopiracy refers to the privatisation and unauthorised use of biological resources by granting a patent to corporations, universities or governments outside of a country which has traditional knowledge. In many such cases, the country that is the source of biological resource does not even know about the granting of the patent and the economic benefits from the patent are not shared with the country of origin. Developing countries are particularly affected by biopiracy and TRIPS should be amended to limit, rather than permit, biopiracy (South Centre, 2005).

Accordingly, AFTINET supports amendments to TRIPS that will place conditions on the granting of patents to ensure consultations and the sharing of benefits. Specifically, patent grants should be made contingent on the disclosure of the source

and country of origin of the biological resource, evidence that the patent has the knowledge and permission of the country of origin of the materials and evidence of fair and equitable sharing of the economic benefits with the country of origin.

Recommendations

- That the Government supports proposals to write the interim waiver on compulsory licensing into a permanent amendment in TRIPS and that the Government support the content of the permanent waiver that is most aligned with the Doha Statement on TRIPS and Public Health.
- That the Government supports an amendment to TRIPS that makes the granting of patents on living organisms contingent on the disclosure of the source and country of origin of the biological resource, evidence that the patent has the knowledge and permission of the country of origin of the materials and evidence of fair and equitable sharing of the economic benefits with the country of origin.

3.5 Regional trade agreements

The Doha Round negotiations are proceeding amidst a flurry of bilateral and regional trade negotiations. In general, AFTINET prefers multilateral negotiations to bilateral or regional trade negotiations. In bilateral negotiations between larger and smaller economies, large economies have more bargaining power. Multilateral negotiations have the potential for some mitigation of these power inequalities.

Australia has significant new obligations under the US Free Trade Agreement, the Singapore Free Trade Agreement and the Thai Free Trade Agreement. In addition, Australia is negotiating agreements with China, Malaysia and the United Arab Emirates. These obligations are relevant to the current round of WTO negotiations as they contain commitments in areas under negotiation in the Doha Round. In particular, AFTINET is concerned that pressure can be brought to bear on Australia to multilateralise the commitments made in bilateral negotiations.

For example, Australia has recently embarked on a number of negotiations for bilateral agreements that contain services commitments going well beyond Australia's commitments in GATS. These include commitments in such areas as water, energy, audio-visual and public transport sectors. Once a sector is committed in a bilateral

agreement, which often contains Most Favoured Nation clauses relating to subsequent bilateral agreements by the parties, there is greater pressure to then multilateralise these commitments. AFTINET submits that such commitments, made in the unequal bargaining context of bilateral agreements, should not be included in the Doha Round negotiations.

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