

**National Interest Analysis [2024] ATNIA 24**

**with attachment on consultation**

*Agreement between the United Arab Emirates and Australia on the Promotion and Protection  
of Investments*

(Canberra, 6 November 2024)

**[2024] ATNIF 42**

Attachments:

**Attachment I – Consultation**

**Attachment II – Impact Analysis**



## NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

### SUMMARY PAGE

#### *Agreement between the United Arab Emirates and Australia on the Promotion and Protection of Investments*

(Canberra, 6 November 2024)

[2024] ATNIA 24

[2024] ATNIF 42

#### **Nature and timing of proposed treaty action**

1. The proposed treaty action is entry into force of the *Agreement between the United Arab Emirates and Australia on the Promotion and Protection of Investments* (“Agreement”) between Australia and the United Arab Emirates (“UAE”), (collectively “the Parties”), signed at Canberra on 6 November 2024.
2. Article 22(1) provides that the Agreement will enter into force 60 days after the date on which the Parties exchange written notifications through diplomatic channels, confirming that they have completed their respective internal procedures necessary for the entry into force of this Agreement, or on such other date as the Parties may agree.
3. We propose that Australia exchange written notification with the UAE as soon as practicable following the completion of Australia’s domestic treaty-making requirements.

#### **Overview and national interest summary**

4. The Agreement was signed together with the *Comprehensive Economic Partnership Agreement between Australia and the United Arab Emirates* (“CEPA”) and its five side letters, and the two agreements, along with the five non-binding memoranda of understanding relating to investment (Investment MOUs) (referred to at paragraph 11), form integral parts of the *Comprehensive Economic Partnership Agreement* package.
5. This National Interest Analysis should be read alongside the CEPA National Interest Analysis (reference number [2024] ATNIF 41).
6. During the CEPA negotiations, the UAE made a request, based on its usual practice, to include investment provisions in a stand-alone treaty, alongside CEPA.
7. While this investment architecture differs from Australia’s recent past practice on investment in free trade agreements, it is an innovative way of delivering the maximum



benefit for Australia's investment objectives across the CEPA package. Australia therefore agreed to the UAE's request.

8. This Agreement includes comprehensive investment protections and non-discrimination provisions which provide certainty to Australian and UAE investors.
9. The Agreement includes reservations for non-conforming measures, preserves sufficient policy space for the Treasurer to administer and develop the Foreign Investment Framework and does not include Investor-State Dispute Settlement (ISDS).
10. The Agreement also establishes a Council on Investment to promote and enhance economic cooperation between the Parties on the investment relationship.
11. Five non-binding Investment MOUs were also agreed as part of the overall CEPA investment package in sectors of national priority including Green and Renewable Energy, Data Centres and Artificial Intelligence Projects, Food and Agriculture, Minerals and Infrastructure Development.

#### **Reasons for Australia to take the proposed treaty action**

12. As noted in the CEPA National Interest Analysis, ratifying CEPA will open valuable opportunities for trade and investment outcomes with a dynamic and growing globally focused strategic partner. The same opportunities will flow from signing this Agreement. Consistent with Australian Government policy, it would diversify trade and investment opportunities and strengthen our strategic engagement with an important partner in the Middle East Region.
13. Two-way investment between Australia and the UAE was worth \$20.6 billion in 2023 with UAE investment in Australia worth \$12.6 billion (2023) and Australian investment in the UAE totaling \$8.02 billion. The UAE was the 30th largest investor in Australia in 2023 with an investment stock including direct, portfolio, financial derivative and other investments, according to Australian Bureau of Statistics data.
14. The UAE's leading Sovereign Wealth Funds (SWFs) contain an aggregate of USD\$1.4 trillion in assets under management, with five funds ranked amongst the top 20 by the Sovereign Wealth Fund Institute. UAE SWF entities hold significant investments in Australia, including in the renewable energy, agribusiness, tourism, health and aged care and resources sectors. There is significant scope to expand two-way investment with the UAE, given the complementarity of the Australian and UAE economies.
15. The Agreement will support this expansion of two-way investment opportunities with the UAE.
16. For example, the Council on Investment set up under the Agreement will facilitate political and technical level exchanges to enable strengthened cultivation of Australia's bilateral investment relationship with the UAE. In turn, this will support investment in priority sectors, including sectors aligned with the Government's Future Made in Australia agenda.



17. The Agreement will support the Government's right to regulate in the public interest, including in relation to the environment. It also includes modern provisions that encourage meaningful engagement and dialogue between investors and First Nations peoples.
18. As the same time, the Agreement preserves significant policy space across multiple sectors of the Australian economy. It:
  - does not include ISDS provisions;
  - ensures Australia may adopt or maintain any measure with respect to the Foreign Investment Framework and that decisions or requirements imposed on investors pursuant to the Foreign Investment Framework will not be subject to dispute resolution between the Parties;
  - ensures that no obligations apply to the pre-establishment phase of investment (i.e. before investments are made);
  - includes reservations for non-conforming measures, to ensure appropriate policy space is reserved; and
  - includes a broad security exception that enables Australia to enact measures it considers necessary for the maintenance or restoration of international peace and security, or the protection of its own essential security interests.
    - this is the same broad security exception Australia has included in a number of its FTAs.

## **Obligations**

19. The Agreement consists of 22 Articles with associated Annexes and Appendices (set out below).
  - Annex I: Expropriation
  - Annex II: Temporary Safeguard Measures
  - Annex III: Foreign Investment Framework of Australia
  - Annex IV: Foreign Investment Framework of UAE
  - Annex V: Investment Related to Digital Trade
  - Annex VI: Code of Conduct for Panellists and Others Engaged in Dispute Settlement Proceedings Under this Agreement.
  - Appendix VI-A: Initial Disclosure Statement
  - Annex VII: Schedule of Australia
20. The Preamble and Articles 1 to 2 of the Agreement contain standard terms and definitions and set out the scope and coverage of the Agreement.



21. Articles 3 to 10 of the Agreement contain investment protections and non-discrimination provisions that apply once an investment is established in Australia or the UAE (i.e. post establishment). These include national treatment and most-favoured nation treatment as well as provisions that provide a minimum standard of treatment and protection from unlawful expropriation (Annex I contains the Parties' shared understanding regarding expropriation).
22. Articles 11 to 13 retain the right for each Party to deny the benefits of the Agreement to certain investors and maintain policy space in areas of domestic sensitivity. They also allow Parties to request information from investors in relation to their investments.
23. Article 14 affirms the importance each Party attaches to encouraging investors to incorporate internationally recognised standards, guidelines, and principles of corporate social responsibility and engage meaningfully with First Nations people.
24. Articles 15 to 17 of the Agreement contain exceptions usually found in Australia's FTAs such as: general exceptions; a broad security exception; and a prudential exception. The Agreement also includes a balance of payments exception at Annex II.
25. Article 18 of the Agreement contains a State-to-State dispute resolution mechanism which is complemented by a Code of Conduct for Panellists at Annex VI.
26. Articles 19 and 20 of the Agreement establish a Council on Investment which is co-Chaired for Australia jointly by the Minister for Trade and Tourism and the Treasurer, and for the UAE by the Finance Minister and the Investment Minister. The Council will further the investment relationship between the two countries and includes an officials-level track to implement any outcomes from the Ministerial level meetings.
27. Articles 21 and 22 of the Agreement include standard provisions relating to amendment, entry into force, duration and termination.
28. Articles 3, 4, 9 and 10 of the Agreement do not apply to existing non-conforming measures and Annex VII includes a schedule of reservations for future non-conforming measures to preserve future policy space in key Australian sectors, broadly in line with the schedules in CEPA that reserve against obligations in the Trade in Services chapter.
29. Annexes III and IV provide policy space for Australia and the UAE respectively to adopt or maintain measures in relation to their foreign investment framework, and provide that certain measures relating to each Parties' foreign investment framework shall not be subject to dispute settlement under Article 18.
30. Annex V provide digital protections to investors so as to ensure that the Agreement and CEPA together provide an equivalent coverage to our recent FTAs of digital trade rules with respect to the cross-border flow of data and in relation to data localisation.

## **Implementation**



31. The Agreement does not alter any settings under the Foreign Investment Framework and preserves the largest amount of policy space for the Framework, as compared to our current FTAs.
32. It will not create any new obligations on States and Territories.
33. Under Article 22, entry into force of the Agreement will occur 60 days after the date on which the Parties exchange written notification through diplomatic channels, confirming that they have completed their respective internal procedures necessary for the entry into force of the Agreement, or on such other date as they agree.

### **Costs**

34. This Agreement will not impose any regulatory burden on businesses, communities or individuals. New funding is not required for its implementation.

### **Impact Analysis**

35. An Impact Analysis covering the CEPA package, including this Agreement, consistent with the Australian Government Guide to Policy Impact Analysis has been certified by the Office of Impact Analysis and is attached.

### **Future treaty action**

36. Article 21 provides that the Agreement may be amended by the written agreement of the Parties. Amendments shall enter into force 60 days after the date on which the Parties exchange written notifications confirming that they have completed their respective domestic requirements necessary for the entry into force of the amendments, or on such other date as the Parties may agree.
37. Any future treaty action, such as an amendment of the Agreement, would be subject to Australia's domestic treaty-making processes.

### **Termination**

38. Article 22 provides that the Agreement shall remain in force for a period of 10 years after its entry into force and shall continue to be in force unless replaced by the mutual consent of the Parties or terminated through a process whereby after a period of 10 years, a Party gives one year's advance written notice of termination to the other Party through diplomatic channels.

### **Contact details**

FTA Coordination Section  
Free Trade Agreements and Stakeholder Division  
Department of Foreign Affairs and Trade



## ATTACHMENT I - CONSULTATION

### *Agreement between the United Arab Emirates and Australia on the Promotion and Protection of Investments*

*(6 November 2024)*

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## CONSULTATION

Consultations on this Agreement were conducted in the context of the Australia-UAE Comprehensive Economic Partnership Agreement [2024] ATNIF 42 (CEPA) which considered the broader CEPA package outcomes, including on investment. In negotiating the CEPA, DFAT has consulted extensively across business, civil society, industry and worker organisations, meeting separately with over 97 public, private and civil society stakeholders (Appendix A).

### *Whole-of-Government Engagement*

Given CEPA's coverage of policy areas across government and noting that policy leads and experts on a range of topics covered in the agreement are situated within different agencies, DFAT consulted across government throughout the negotiations including with Treasury, Department of Agriculture, Forestry and Fisheries, Department of Finance, Attorney General's Department, IP Australia, Department of Health, Department of Industry Science and Resources, Austrade and Department of Home Affairs as well as others.

These consultations ensured policy experts from agencies on the relevant subject matter areas were involved from the beginning as part of the negotiation process.

The Chief Negotiator also gave a series of formal updates after each negotiation round to State and Territory governments, meeting three times in the period January to August 2024. DFAT officials also discussed CEPA separately with different State and Territory officials during ad-hoc engagements over the course of the year.

### *Public Submissions*

Prior to the commencement of CEPA negotiations in December 2023, DFAT started stakeholder consultations in Australia from March 2022 inviting both individuals and groups to consider and comment on the commercial, economic, regional, and other opportunities and impacts that could be expected to arise from a future Australia-UAE CEPA.



This resulted in 45 formal written submissions – 31 of which were public submissions and have been published on the DFAT website<sup>1</sup>. Fourteen submissions were commercial-in-confidence, with only the name of the organisation published.

While details of submissions varied and some requests were commercial-in-confidence, some common themes came through across the submissions. Several stakeholders from the agricultural industry expressed their desire to achieve elimination of UAE tariffs on their exported products through CEPA, while industrial exporters expressed similar views. Several service providers, including in education and financial services, welcomed CEPA outcomes which would enhance recognition of Australian degrees taught in the UAE and support the expansion of current operations in the UAE. Other stakeholders expressed their desire for CEPA to support further investment from the UAE into Australia, including in the field of renewable energy.

Various groups expressed views on the importance of including inclusive trade outcomes in CEPA, such as provisions on animal welfare, environment, labour rights, First Nations trade and gender equality. The ACTU in its submission indicated it did not support moving forward with CEPA unless the UAE demonstrated certain preconditions to safeguard workers' and human rights. AFTINET also had a clear view that CEPA should address human and labour rights, and not include Investor State Dispute Settlement (ISDS).

DFAT continued to provide stakeholders with the opportunity to provide written submissions on the CEPA via the DFAT website throughout the negotiations.

### *Peak Bodies stakeholder engagement*

Throughout the negotiations, DFAT's Chief Negotiator held regular open forums to provide updates for all interested stakeholders on the status of negotiations. These consultations a range of channels including virtual and in-person meetings.

DFAT held virtual consultations with Peak Bodies on CEPA in January 2024 and engaged regularly with Peak Bodies during the negotiations.

Key stakeholders, individuals and organisations, including those who had made submissions and others DFAT had identified as having an interest in CEPA were invited to consultations with DFAT's Chief Negotiator in June and August 2024. Over 100 attendees representing 63 organisations from business civil society, industry and worker organisations, attended these meeting.

Except for some concerns expressed regarding labour and human rights related issues, consistent feedback from most stakeholders during these consultations showed broad support for CEPA. Stakeholders indicated their desire for CEPA to secure outcomes which would enhance market access for exports to the UAE, further UAE investment into Australia and support inclusive trade areas (environment, labour, animal welfare, First Nations and gender equality).

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<sup>1</sup>Link to public submissions [Australia-UAE Comprehensive Economic Partnership Agreement \(CEPA\) | Australian Government Department of Foreign Affairs and Trade \(dfat.gov.au\)](https://dfat.gov.au/australia-uae-cepa-submissions)



There were six consultations with the National Farmers Federation held both virtually and in-person, discussing market access interests, progressive trade issues, and non-tariff barriers. These discussions included agricultural trade with the UAE and the sensitivities around market access for wine and pork.

Peak bodies for wine and spirits were consulted several times to discuss technical barriers to trade for wine, wine tariffs, excise taxes and labelling. The Chief Negotiator also held further in-person meetings in Adelaide (June 2024) with Wine Australia and Australian Grape and Wine.

The consistent feedback from these talks was the importance for Australian farmers and premium food and beverage exporters in receiving enhanced market access to the UAE for their products through CEPA. This would result in substantial commercial opportunities in a growing market.

DFAT met with and briefed trade unions both prior to and immediately after the January 2024 negotiation round. Further consultations and briefings were held with trade unions in May, June and September 2024. The June and August 2024 Chief Negotiator stakeholder meetings were also attended by trade unions. Trade unions continued to oppose CEPA, reiterating the points outlined in the ACTU submission provided to DFAT<sup>2</sup>.

Consultations with trade unions showed strong opposition to CEPA, raising the UAE's issues with human and labour rights and concerns around environment, gender equality and LGBTQI+ rights. Continuing engagement with trade unions has not reduced concerns, though efforts to engage with them have been appreciated. Trade unions have reiterated they would not support a CEPA with the UAE unless some fundamental changes are made to UAE labour rights<sup>3</sup>.

While not all these concerns could be addressed through CEPA, these stakeholder views were taken into account by negotiators in pursuing the best possible outcomes for Australia in this area. As a result, CEPA will have a dedicated chapter covering trade and labour, a first for the UAE. Under this chapter, Australia and the UAE will affirm our obligations as members of the ILO and our commitments under the ILO *Declaration on Fundamental Principles and Rights at Work*. CEPA will also promote compliance with ILO standards and enforcement of labour laws and establish a Dialogue on Labour to advance Labour Rights, including through engaging with stakeholders. In addition, it will promote cooperation on labour matters of mutual interest.

### *First Nations stakeholder engagement*

First Nations stakeholders were primarily engaged via DFAT's First Nations Trade and Investment Reference Group (which comprises 113 members), with representation from First Nations' peak bodies, First Nations chambers of commerce, and First Nations businesses from across States and Territories to discuss trade negotiations. We invited members of the Reference Group to a virtual briefing on 26 June 2024 and held an in-person briefing in Perth on 6 September 2024 to engage with interested First Nations stakeholders.

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<sup>2</sup> [Australian Council of Trade Unions \(ACTU\) submission to Australia-UAE Comprehensive Economic Partnership Agreement \(CEPA\) \(dfat.gov.au\)](https://dfat.gov.au)

<sup>3</sup> [Australian Council of Trade Unions \(ACTU\) submission to Australia-UAE Comprehensive Economic Partnership Agreement \(CEPA\) \(dfat.gov.au\)](https://dfat.gov.au)



We also published updates and calls for submissions in the First Nations Trade and Investment monthly bulletin which is distributed to the First Nations Trade and Investment Reference Group.

First Nations business peak bodies were also invited to the Department's regular Peak Bodies briefings (virtual and annually in-person) on Australia's trade policy and negotiating agenda.

#### *Direct business engagement*

In addition to the above consultations, DFAT (including in consultation with Austrade) regularly engaged interested Australian businesses directly, both through formal and informal interaction in Australia and in the UAE. The businesses covered by these interactions are in Appendix A.

Similar to views expressed by Peak Bodies during the negotiations, businesses highlighted the value for they saw in CEPA achieving enhanced market access to the UAE market for goods and services, as well as the potential for CEPA to promote significant UAE investment that would help them further develop major projects, including in areas relevant to Australia's energy transition.

Likewise, many stakeholders welcomed the progress being made on inclusive trade outcomes in CEPA, especially the first stand-alone chapter in an Australian FTA covering First Nations Trade and Investment.



## Appendix A

### List of stakeholders consulted through CEPA negotiations

Stakeholders	
1	ABAC Australia Secretariat, Australian APEC Study Centre
2	Aboriginal Carbon Foundation
3	Accolade Wines
4	AFTINET
5	AI Group
6	Alliance for Animals
7	AMP Energy
8	Animal Medicines Australia
9	Animals Australia
10	ANZ
11	Aspen Medical
12	Atlas Wealth Management
13	Australia Sugar Milling Council
14	Australia UAE Business Council
15	Australian Aluminium Council
16	Australian Automotive Aftermarket Association
17	Australian Chamber of Commerce and Industry
18	Australian Council of Trade Unions
19	Australian Fair Trade and Investment Network
20	Australian Fresh Produce Alliance
21	Australian Grape & Wine
22	Australian Information Industry Association
23	Australian Manufacturing Workers' Union
24	Australian Marine Export Industry
25	Australian Nut Industry Council
26	Australian Organic Limited
27	Australian Pork Limited
28	Australian Seafood Industry
29	Australian Services Roundtable
30	Australian Space Agency
31	Australian Steel Institute
32	Australian Sugar Milling Council
33	Australian Superyachts
34	Australian Technology Network of Universities
35	Australian Wine Research Institute
36	Australian Wool Innovation
37	Australian Workers Union
38	Australia-UAE Business Council
39	Bank of Sydney
40	BEGA
41	Binah Group



42	BlueScope
43	BSA - The Software Alliance
44	Business Council of Australia
45	Canegrowers Ltd
46	Capral Aluminium
47	Curtin University
48	Dairy Australia
49	Electrical Trade Union
50	Emirates Airline - UAE Embassy Business Roundtable
51	EOS - UAE Embassy Business Roundtable
52	Export Council of Australia
53	Federation Asset Management
54	Fonterra Australia
55	Food and Grocery Council
56	Frosty Boy
57	Go8
58	Grain Trade Australia
59	Gravity iLabs
60	Infant Nutrition Council
61	Infrabuild
62	Jala Jala Treats
63	King & Wood Mallesons
64	Macquarie Group
65	MASDAR Tribe
66	Matific
67	Meat and Livestock Australia
68	Minerals Council of Australia
69	Murdoch University
70	National Association for Sustainable Agriculture Australia
71	National Farmers Federation
72	NSW Government - DPC and Investment NSW
73	NSW Nurses & Midwives Union
74	OBE Organic
75	Office of the Arts, Screen Australia
76	Organic Industries
77	OzDocs Australia
78	Pacific Road
79	Pegasus International Australia (Flying Cars)
80	Pernod Ricard
81	Plenary
82	Rio Tinto
83	RSPCA
84	Santos
85	Seafood Industry Australia
86	Spirits and Cocktails Australia
87	Synapse Medical



88	TAFE NSW (International)
89	Tech Council
90	Telstra
91	Trade Window Origin
92	Universities Australia
93	University of Adelaide
94	Varley Group
95	Wine Australia
96	Woods Bagot
97	Woolworths International