

COMBINED PENSIONERS AND SUPERANNUANTS ASSOCIATION OF NSW

AUSFTA
Submission No:163.....

BATHURST BRANCH
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Bathurst CPSA is a non-sectarian non-party political organisation caring for the welfare of its pensioner and self-funded retiree membership.

CURRENT MEMBERSHIP ALMOST 600

The Secretary
Joint Standing Committee on Treaties
R1-109
Parliament House
CANBERRA ACT 2600

21st April 2004

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BY:

SUBMISSION TO THE JSCOT INQUIRY ON THE USFTA.

Definition of Free Trade "left to its natural course without customs duties" – Oxford Dictionary

Definition of Free "Not in bondage, having personal rights & social & political liberty; (of State, citizens, institutions) subject neither to foreign dominion nor to despotic government; not restricted or impeded or confined, at liberty (of literary style), clear of obstructions; released or exempt, not subject to tax."

Definition of Trade – "dealing in commodities for profit."

A commodity is "any of the kinds of thing that meet needs or are wanted or can be traded in (e.g. butter clothes, land, skill, health).

However, **The Australian Constitution** (Chapter 1 Part V and partly repeated in Chapter 11) requires the Commonwealth Government to make laws "for the peace, order and good government of the Commonwealth with respect to:-"

... the provision of services such as Postal, telegraphic, telephonic and other like services; Quarantine; Fisheries; copyrights, patents of inventions and designs and trade marks; the provision of pharmaceutical, hospital, medical and dental services;..... (see full list attached)

This raises the question of the right of the Commonwealth Government of the time to trade with any foreign country any of the services listed under its jurisdiction in the Australian Constitution. To do so would abrogate the government's responsibility to the people of Australia without complying with the rules for "Alteration of the Constitution."

Under the USFTA, the term FREE does not comply with the definition above, as its US terms give the US distinct dominion over Australian Government laws, personal and social rights and in some instances, political liberty. It is a deliberate step by one country with a larger economy to interfere in the democratic government and economy of a sovereign country.

The people of Australia were given a guarantee by the present government that the Pharmaceutical Benefits Scheme would not be on the negotiating table, but there it is exposed for all to see, written in for the benefit of the rich and powerful drug companies.

The main reason for the AUS/USFTA we were told was to give our farmers larger and wider access to the US market in farm produce. This has not occurred, and an 18-year wait for its implementation is relegated to the "never-never" of promises. Anyone who believes that it will happen is politically naïve. The whole negotiating procedure should be scrapped and no agreement signed at all. Better nothing than a flawed one-sided trade agreement which caves in to big foreign business pressures, robs us of our Australian traditions, culture (music, film and television), intellectual ownership, and over-rides the Australian Constitution and laws as well as government at all levels.

The Australian Constitution (Chapter IV -p 100) "The Commonwealth shall not, by any law or regulation of trade or commerce, abridge the right of a State or of the residents therein to the reasonable use of

the waters of rivers for conservation or irrigation." The privatisation of water is a contravention of the Australian Constitution.

We ask the Joint Standing Committee on Treaties to address the following:-

1. Protect the highly valued aspects of Australian life, such as its society, economy, culture and environment above any supposed gains assumed under the proposed USFTA.
2. All Australian governments should jealously guard and protect our own democratic processes, our right to legislate and regulate in the public interest and not to be compromised in any way.
3. Pharmaceutical Benefits are to remain under our own controls without influence of US drug companies seeking to review PBS decisions. **The JSCOT** should ensure that there is no influence or mechanism that might change our public health goal of affordable access to medicines for all Australians. In particular deny USFTA changes to patent laws that could delay access to cheaper generic medicines.
4. Copyright extensions to 70 years after the death of an author should not be allowed without a public inquiry as recommended by the Australian Property and Competition Review Committee.
5. Australian laws and policies on investment and services at all levels of government should never be allowed to be challenged by the US government or business enterprises on grounds of being restrictive to business.
6. The Foreign Investment Review Board should retain the power to review US investments (and those of other countries) of \$50M or more in every aspect of the Australian economy. A clear statement should be made public about what happens to profits made by investors and their taxation arrangements.
7. Any process which allows US (or other) corporations to challenge laws or sue governments when there is a "change in circumstances" that might affect negatively their investment should be regarded as a negation of our national democratic right.
8. Side letters that allow "escape" mechanisms for US corporations or investors should have no place in the agreement.
9. The US Government should never be allowed to have input into Australian laws and policies on quarantine, or labelling of products, such as genetically modified foods.
10. US government representatives should never have the same rights as Australian citizens to participate in NGO processes for developing standards for Australia.
11. Australian governments must continue to have the right to regulate essential services such as health, dental health, education, water, postal, communications, public broadcasting, energy, environment, quarantine(vide: Aus. Const.) without being challenged on the grounds of commercial competition.
12. There are to be no limits on the ability of the Australian "voice" to be heard through new or existing media. Australian content should never be subject to quotas or capping. Under no circumstances is there to be any limit placed on Australia to continue its public broadcasting through the ABC or SBS or any future initiative in new media.
13. Australian jobs should be protected even if this means retention of tariffs as the US is currently doing, albeit it as an interim phase.
14. Foreign contractors should be required to give preference to local products or enterprises to support local employment.
15. The impact of the USFTA on regional industry and enterprise should take preference over any perceived gains for sectional interests such as agriculture.
16. A comprehensive statement is needed to show how Australia might challenge US laws and regulations if our own are capable of being challenged.

Yours sincerely



Margaret Mauro

Vice President, Bathurst CPSA

Vice President, Central West Area Council of CPSA.

PART V.—POWERS OF THE PARLIAMENT.

Part V.
Powers
of the
Parliament.

Inserted by
No. 81, 1946,
s. 2.

Legislative
powers of
the
Parliament.

51. The Parliament shall, subject to this Constitution, have power¹¹ to make laws for the peace, order, and good government of the Commonwealth with respect to:—

- (i.) Trade and commerce with other countries, and among the States:
- (ii.) Taxation; but so as not to discriminate between States or parts of States:
- (iii.) Bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth:
- (iv.) Borrowing money on the public credit of the Commonwealth:
- (v.) Postal, telegraphic, telephonic, and other like services:
- (vi.) The naval and military defence of the Commonwealth and of the several States, and the control of the forces to execute and maintain the laws of the Commonwealth:
- (vii.) Lighthouses, lightships, beacons and buoys:
- (viii.) Astronomical and meteorological observations:
- (ix.) Quarantine:
- (x.) Fisheries in Australian waters beyond territorial limits:
- (xi.) Census and statistics:
- (xii.) Currency, coinage, and legal tender:
- (xiii.) Banking, other than State banking; also State banking extending beyond the limits of the State concerned, the incorporation of banks, and the issue of paper money:
- (xiv.) Insurance, other than State insurance; also State insurance extending beyond the limits of the State concerned:
- (xv.) Weights and measures:
- (xvi.) Bills of exchange and promissory notes:
- (xvii.) Bankruptcy and insolvency:
- (xviii.) Copyrights, patents of inventions and designs, and trade marks:
- (xix.) Naturalization and aliens:
- (xx.) Foreign corporations, and trading or financial corporations formed within the limits of the Commonwealth:
- (xxi.) Marriage:
- (xxii.) Divorce and matrimonial causes; and in relation thereto, parental rights, and the custody and guardianship of infants:

Altered by
No. 55, 1967,
s. 2.

- (xxiii.) Invalid and old-age pensions:
- (xxiiiA.) The provision of maternity allowances, widows' pensions, child endowment, unemployment, pharmaceutical, sickness and hospital benefits, medical and dental services (but not so as to authorize any form of civil conscription), benefits to students and family allowances:
- (xxiv.) The service and execution throughout the Commonwealth of the civil and criminal process and the judgments of the courts of the States:
- (xxv.) The recognition throughout the Commonwealth of the laws, the public Acts and records, and the judicial proceedings of the States:
- (xxvi.) The people of any race, ~~other than the aboriginal race in any State,~~ for whom it is deemed necessary to make special laws: 1967.
- (xxvii.) Immigration and emigration:
- (xxviii.) The influx of criminals:
- (xxix.) External affairs:
- (xxx.) The relations of the Commonwealth with the islands of the Pacific:
- (xxxi.) The acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws:
- (xxxii.) The control of railways with respect to transport for the naval and military purposes of the Commonwealth:
- (xxxiii.) The acquisition, with the consent of a State, of any railways of the State on terms arranged between the Commonwealth and the State:
- (xxxiv.) Railway construction and extension in any State with the consent of that State:
- (xxxv.) Conciliation and arbitration for the prevention and settlement of industrial disputes extending beyond the limits of any one State:
- (xxxvi.) Matters in respect of which this Constitution makes provision until the Parliament otherwise provides:
- (xxxvii.) Matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States,¹² but so that the law shall extend only to States by whose Parliaments the matter is referred, or which afterwards adopt the law:
- (xxxviii.) The exercise within the Commonwealth, at the request or with the concurrence of the Parliaments of all the States directly concerned, of any power which can at the establishment of this Constitution be exercised only by the Parliament of the United Kingdom or by the Federal Council of Australasia:

They originate there may

(xxxix.) Matters incidental to the execution of any power vested by this Constitution in the Parliament or in either House thereof, or in the Government of the Commonwealth, or in the Federal Judicature, or in any department or officer of the Commonwealth.

52. The Parliament shall, subject to this Constitution, have exclusive power to make laws for the peace, order, and good government of the Commonwealth with respect to—

Exclusive powers of the Parliament.

- (i.) The seat of government of the Commonwealth, and all places acquired by the Commonwealth for public purposes;
- (ii.) Matters relating to any department of the public service the control of which is by this Constitution transferred to the Executive Government of the Commonwealth;
- (iii.) Other matters declared by this Constitution to be within the exclusive power of the Parliament.

53. Proposed laws appropriating revenue or moneys, or imposing taxation, shall not originate in the Senate. But a proposed law shall not be taken to appropriate revenue or moneys, or to impose taxation, by reason only of its containing provisions for the imposition or appropriation of fines or other pecuniary penalties, or for the demand or payment or appropriation of fees for licences, or fees for services under the proposed law.

Powers of the Houses in respect of legislation.

The Senate may not amend proposed laws imposing taxation, or proposed laws appropriating revenue or moneys for the ordinary annual services of the Government.

The Senate may not amend any proposed law so as to increase any proposed charge or burden on the people.

The Senate may at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting, by message, the omission or amendment of any items or provisions therein. And the House of Representatives may, if it thinks fit, make any of such omissions or amendments, with or without modifications.

Except as provided in this section, the Senate shall have equal power with the House of Representatives in respect of all proposed laws.

54. The proposed law which appropriates revenue or moneys for the ordinary annual services of the Government shall deal only with such appropriation.

Appropriation Bills.

55. Laws imposing taxation shall deal only with the imposition of taxation, and any provision therein dealing with any other matter shall be of no effect.

Tax Bill.

Laws imposing taxation, except laws imposing duties of customs or of excise, shall deal with one subject of taxation only; but laws imposing duties of customs shall deal with duties of customs only, and laws imposing duties of excise shall deal with duties of excise only.

Recommendation of money votes.

56. A vote, resolution, or proposed law for the appropriation of revenue or moneys shall not be passed unless the purpose of the appropriation has in the same session been recommended by message of the Governor-General to the House in which the proposal originated.

Disagreement between the Houses.

57. If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, and if after an interval of three months the House of Representatives, in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may dissolve the Senate and the House of Representatives simultaneously. But such dissolution shall not take place within six months before the date of the expiry of the House of Representatives by effluxion of time.

If after such dissolution the House of Representatives again passes the proposed law, with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House of Representatives will not agree, the Governor-General may convene a joint sitting of the members of the Senate and of the House of Representatives.

The members present at the joint sitting may deliberate and shall vote together upon the proposed law as last proposed by the House of Representatives, and upon amendments, if any, which have been made therein by one House and not agreed to by the other, and any such amendments which are affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives shall be taken to have been carried, and if the proposed law, with the amendments, if any, so carried is affirmed by an absolute majority of the total number of the members of the Senate and House of Representatives, it shall be taken to have been duly passed by both Houses of the Parliament, and shall be presented to the Governor-General for the Queen's assent.

Royal assent to Bills.

58. When a proposed law passed by both Houses of the Parliament is presented to the Governor-General for the Queen's assent, he shall declare, according to his discretion, but subject to this Constitution, that he assents in the Queen's name, or that he withholds assent, or that he reserves the law for the Queen's pleasure