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Ms Julia Morris
Inquiry Secretary
Joint Standing Committee on Treaties
Parliament House
CANBERRA ACT 2600

Dear Ms Morris

Re: Proposed Australia – United States Free Trade Agreement

This Association operates Australia's national program for accreditation of the competence of laboratories and inspection bodies, and is recognised for such in a formal Memorandum of Understanding (MOU) between NATA and the Commonwealth.

The demonstrated competence of Australia's testing, measurement and inspection facilities is crucial in underpinning acceptance of many Australian products, commodities and services in foreign markets. This trade support role is one of the national interest functions of NATA detailed in the above MOU. That MOU also encourages NATA to develop mutual recognition agreements with its counterparts in foreign markets to facilitate mutual acceptance of test and related data.

NATA is currently a signatory to multilateral mutual recognition agreements at both the regional level, through the Asia Pacific Laboratory Accreditation Cooperation (APLAC), and at the global level, through the International Laboratory Accreditation Cooperation (ILAC). Three of NATA's US counterparts (NVLAP, A2LA and IAS) are also signatories to both the APLAC and ILAC Mutual Recognition Agreements.

NATA has also been appointed by the Australian Government to be its designating authority for laboratories underpinning government to government mutual recognition agreements for specific products in regulated sectors (with the EU, Singapore and APEC).

NATA therefore welcomes the invitation of your letter of 11 March 2004 to make a submission on the proposed Australia-US Free Trade Agreement.

Our comments and questions relate specifically to Chapter 8 of the Draft Agreement, relevant to technical barriers to trade. In this context NATA undertook a survey in 2003 of its 2,700 accredited laboratories to identify any major areas where non-acceptance of Australia's test data may inhibit trade. The results were conveyed to the Department of Foreign Affairs and Trade through the Department of Industry, Tourism and Resources last year.

Having now had the opportunity to consider the Draft FTA, our comments are as follows:

Clause 8.5
We would prefer to see some specificity on the means for being satisfied that technical regulations adequately "fulfil the objectives of their own regulations". Are there objective criteria to be applied, and is the objective to have equivalent outcomes? Will confidence enhancing practices be involved, such as independent assessment of the technical competence of bodies determining compliance with technical regulations, through processes such as accreditation?

How will disputes or differences be resolved without a settlement process? Could not the ad-hoc group referred to in 8.5.2 be one such mechanism?

Clause 8.6
""Reliance on a suppliers' declaration of conformity…" while listed as one mechanism that exists, does have inherent risks if such declarations are not subjected to market surveillance in the importing country and are not subject to any recourse or sanctions for non-compliance of the products with the importing party's technical regulations. Additionally, the risk of such acceptances are ameliorated if there is independent evaluation (through accreditation etc), of the competence of the supplier's laboratories etc, to meet the technical regulations of the importing party.

NATA assumes that "voluntary arrangements between conformity assessment bodies from each party's territory" includes voluntary sector mutual recognition arrangements such as the APLAC and ILAC MRAs. Is this correct? What, if any, is the distinction between these voluntary arrangements and "accreditation procedures for qualifying conformity assessment bodies", referred to in 8.6.1(d)?

Does the Agreement provide the opportunity to question or contest the competence of any government designated conformity assessment bodies (8.6.1(e)), or to determine the criteria used to make such designations (eg compliance with International Standards, independent accreditation of competence etc)?

What criteria would be used to recognise results under the provisions of 8.6.1(f)?

We are surprised that the provisions of Clause 8.5.2 are not mirrored in Clause 8.6.2. The ad-hoc working group referred to in 8.5.2 could also assist resolution of non-acceptance issues for conformity assessment procedures.

In Clause 8.6.3, reference is made to the "Party" accrediting etc. In Australia's case and some sectors of the US system, accreditation is not performed by the government itself but by bodies such as NATA. Does "Party" refer only to the government involved in the context of this Clause?

Clause 8.8
Our comments regarding risks associated with suppliers' declarations of conformity under Clause 8.6, also apply to Clause 8.8.1.

Clause 8.9
We assume that considerations under the provisions of Clause 8.9.1(f) will include use of existing national systems for accreditation and the role of voluntary sector MRAs between such bodies, particularly where both the US and Australia are parties to such MRAs.

We would be pleased to expand on any of the above questions or comments and are grateful for the opportunity to provide inputs.

Yours sincerely

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Chief Executive

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