

**SUBMISSION TO THE JOINT STANDING COMMITTEE ON TREATIES**

RECEIVED  
14 APR 2004

Due by 13<sup>th</sup> April, 2004

We, the undersigned, believe that the proposed US-Australia Free Trade Agreement (USFTA) should not be supported by legislation as it is against the interests of Australians. We are grateful to the Australian Fair Trade and Investment Network (AFTINET) for its painstaking research into details of the USFTA, published in "Ten Devils in the Detail", which in large part enables us to make the following submission.

**Undermines sovereignty**

The US-Australia Free Trade Agreement (USFTA) as it has been drafted, undermines the democratic sovereignty of Australians to regulate in our own nation. Matters which should be decided by Australian policy-makers, at times in consultation with the Australian public, would be open to input and challenge by US Government representatives and US companies, guided by the objective of "facilitating trade". It is ironic that the Government is prepared to be implicated in its own disempowerment in respect of Australian policy-making.

**Lack of public consultation and transparency**

This proposed undermining of Australian sovereignty has been formulated in secretive negotiations between Australian and US trade negotiators. While the agreement would have far-reaching implications for Australian workers, for Australian businesses and the health and welfare of the public, if it is legislated, details were only made public some weeks after the deal was signed. Even now, after many months of deliberations between the trade representatives of the two countries, we are given a tight deadline within which to make submissions.

It is unjust to Australians that consultations with US trade representatives have been extensive, while consultations with the Australian public have been minimal.

**Misleading public statements**

Furthermore, statements issued by the Government regarding the terms of the agreement are misleading. For example, the National Interest Analysis (NIA) and the Regulatory Impact Statement (RIS) contain numerous half-truths which could lead readers to be complacent about the deal unless they take the time to examine details of the agreement. The following are a few of these half-truths:

- a) The NIA claims that quarantine and food safety regimes have been preserved but fails to mention that the USFTA would establish two new committees intended to scrutinize such regimes with the objective of "facilitating trade".
- b) The NIA summary on investment states that there is no investor-state complaints process, but fails to mention that if circumstances change an investor can request that such a process be established.
- c) The NIA summary states that the agreement does not change the "fundamental architecture" of the Pharmaceutical Benefits Scheme (PBS), but fails to mention the creation of mechanisms which would allow drug companies to promote higher prices for medicines within the PBS.

Democracy is not promoted by lack of public consultation, secrecy, misleading public statements and short time frames in which the public must respond. Our democracy will be weakened if we allow another nation, and a much more powerful nation, to influence important policies which are currently the domain of Australian political processes.

**Dubious economic benefit to Australia**

The original CIE economic consultants study commissioned by the Government assumed free trade in agriculture and still only predicted gains to the Australian economy from a USFTA of US\$2 billion after ten years. The benefits for agriculture will be absolutely minimal from the USFTA as it is formulated at present, which would lead any reasonable person to expect that the gains will be even less than predicted when expectations were more optimistic (Australian APEC Study Centre quoted in "Ten Devils in the Detail" published by AFTINET, April 2004).

Studies separately conducted by the International Monetary Fund (Hilaire, A. and Yang, Y, "The US and the New Regionalism/Bilateralism" IMF Working Paper, 2003, p. 16) and ACIL consultants ("A Bridge too Far?" Canberra

2003) *actually predict losses* to the Australian economy because of trade diversion from other trading partners such as Japan and the European Union. For this reason trade economists will often refer to "Preferential Trade Agreements", rather than "Free Trade Agreements" (Adams, R., Dec, P., Gali, J & McGuire, G., Productivity Commission Staff Working Paper, Canberra, 2003).

#### **Erosion of Pharmaceutical Benefits Scheme**

We understand that the proposed USFTA will mean the Government is less able to regulate in the public interest regarding the Pharmaceutical Benefits Scheme (PBS). It would give pharmaceutical companies more opportunities to influence the Pharmaceutical Benefits Advisory Committee before its decision; it would provide for an independent review of decisions not to list companies' drugs on the PBS; and companies would be able to apply for price adjustments after drugs have been listed. Changes to patent laws would include extensions of patent periods and an increased ability for companies to raise legal objections and so delay the production of generic drugs. Delays in the production of generic drugs would contribute to price rises because the PBS relies on comparisons with these cheaper generic drugs.

No-one would be as naive as to doubt that pharmaceutical companies will actively pursue avenues to influence decisions wherever they are given an opportunity. They are indeed notorious world-wide for their aggressive marketing strategies regardless of the welfare of people (Families USA, "Profiting from Pain: Where prescription drug dollars go", 2002).

In these ways it is proposed Australians should voluntarily relinquish our influence on decisions regarding our much-admired PBS scheme, allowing companies to influence these decisions when their motive is not the common good but maximizing profits. How can this possibly be in the national interest?

#### **Restrictions on rights to regulate services**

It is worrying that this is a "negative list agreement" meaning that, unless goods and services are listed as exempt, they are included in the terms of the agreement. "Negative list agreements" have more far-reaching impacts. Generally the agreement drives for deregulation, US corporations having greater entry into the Australian economy, and US influence in policy decisions.

It is most concerning that under the USFTA, at a Commonwealth level, water, energy and public broadcasting are not included in the lists of reservations, so are therefore included in the agreement. State and local water services regulation must be kept at "standstill", so if they are made more regulatory the US could challenge them. Regulation of public broadcasting would be at risk of challenge by the US, because services are not excluded from the provisions of the USFTA if they are in competition with other service providers.

Health, education and welfare are included in an ambiguous way in the negative list ie, only to the extent that they are "established or maintained for a public purpose" and they are defined as services "not supplied on a commercial basis, nor in competition with one or more service suppliers". Of course, many services in Australia are supplied in some form of competition with other service providers.

It would appear that not-for-profit community-minded organisations would have to compete with profit-seeking businesses and the USFTA would compel all players eg, in aged care, to be treated as equally valid in their appropriateness to provide services to the public. This has already started to happen, but the USFTA would accelerate this process.

Australia is in danger, if this agreement is legislated, of developing a health and welfare system similar to those in the US where many people are excluded from adequate service provision.

#### **Restrictions on Australian content rules**

Under the proposed agreement Australia's existing local content on multi-channelled free-to-air commercial TV would be capped at 55% on no more than two channels, or 20% of the total number of channels made available by a broadcaster. For free-to-air commercial radio, Australian content would be capped at 25%. If this level is reduced at any time, it may not be restored to earlier levels. Furthermore Australian Governments would be restricted in the laws they can introduce for any new media.

It has historically been a struggle to achieve the Australian content as we have it. Now these gains are under threat. What we are referring to here is the capacity of Australia to maintain a cultural identity not swamped by a North American cultural identity.

As Australian actor, Geoff Morrell, poignantly stated at a public meeting in early April, imagine if we were proposing a similar move in sport! How would Australians view a position where we would have to argue why Australians should be given priority over US citizens to represent Australia?

#### **Blood products to be opened up to competition**

If the USFTA is backed up by legislation, by 2009 Australia will be required to conclude the centralized role of Commonwealth Serum Laboratories (CSL) and open up blood fractionation supply services to competitive tendering. This goes against a carefully considered recommendation by a Parliamentary Committee in 2001, chaired by Sir Ninian Stephen, which considered submissions from the public, that the CSL remain the single central authority for blood fractionation services.

#### **US influence on quarantine and food labeling**

Two new committees would be established under a USFTA which would give the US Government direct input into Australian laws on quarantine and technical standards. The objective of these committees is to "facilitate trade". Australia's quarantine regulations should be made on a scientific basis in the interests of Australia, not as part of a trade dialogue with a much more powerful country.

The US does not allow labeling of genetically engineered food, and has already identified Australian labeling laws as a barrier to trade. A USFTA would require Australia to give "positive consideration" to accepting US technical regulations as equivalent to Australia's, and to give reasons if we do not.

#### **Job losses**

It is more than likely that there will be job losses when certain Australian tariffs are cut. Tariffs on motor vehicle parts are expected to be cut from 15% to zero immediately if the USFTA came into force, tariffs on assembled motor vehicles will be phased out by 2010 and on clothing (currently at 15 - 25%) by 2015. Australia's manufacturing sector has been diminishing and is likely to diminish further if the proposed tariff cuts are imposed.

#### **Fewer review powers of Foreign Investment Review Board (FIRB)**

While existing limits on US investment will be retained under the USFTA, for certain areas such as newspapers and broadcasting, urban-leased airports, coastal shipping, military equipment, uranium and nuclear industries, the role of the FIRB in reviewing levels and conditions for US investment in Australia would be greatly restricted. The threshold for most other investment has been lifted from \$50 million to \$800 million. It is expected that US investment in Australia is to be given "national treatment", meaning it must be treated in the same way as local investment. US investors cannot, for example, be required to use local products, transfer technology or contribute to exports.

#### **Proposal guided by commitment to liberalization, not reason**

Given the dubious economic benefits of the proposed USFTA, and the obvious erosion of Australians' democratic rights to formulate regulations for our own country, we can only understand the USFTA as being informed by a fixed commitment to liberalization, regardless of the predictable consequences.

Generally speaking there can be favorable consequences to liberalization, in terms of macro-economic indicators, but it can be predicted that the current agreement will fail to deliver even these. The benefits of a commitment to liberalization are usually measured in terms of growth in GDP per capita, lower national government debt, and increasing productivity growth. The underlying assumption for those promoting liberalization is that these will eventually yield greater economic welfare for people.

Yet here, and internationally, liberalization has not translated into benefits for the majority, and the costs of liberalization have been disproportionately borne by the poor. (Pasha, M., in Vandersluis, S. & Yeros, P., Poverty in World Politics, Millennium, Wiltshire, 2000, pp. 188 - 192). Indeed for the majority of Australians it has meant longer working hours, job insecurity, reduced funding for hospitals, for higher education and transport. It has translated into increasing income disparities between rich and poor. Inequalities have increased in Australia such that the median wealth of the most wealthy 10% of the population is 6.4 times the median wealth of the poorest 10%, compared with the top 10% having 2.5 times the median wealth of the bottom 10% in 1994 (www.anz.com/business).

In the case of the USFTA, benefits will not even be delivered to this country at a macro-economic level. The fixed commitment to liberalization instead threatens to undermine national sovereignty over policy decisions which will affect the health and welfare of Australians, in favor of greater market access by US companies into the Australian market. In effect, it promises to deliver benefits to a powerful trading partner while harming Australians.

We, the undersigned, urge the Australian Government to act according to reason, rather than a fixed commitment to liberalization, and act only in accordance with the national interest.

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