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SUBMISSION TO THE JOINT STANDING COMMITTEE ON TREATIES
INQUIRY INTO THE USFTA

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BY:.....

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While many submissions would be expected on the trade aspects of the USFTA, and its adverse effects on Australian media content, the Pharmaceutical Benefits Scheme and Australian society in general, all of which have been given media attention, the thrust of my submission is that the USFTA is more designed for investment-related matters than it is on trade matters, and that it also entails regulation of the Australian government by US corporate-supported interests.

As such, I may draw the Senate's attention to comparisons between the current draft of the USFTA and the Multilateral Agreement on Investment draft tabled in the Federal Parliament on 31/03/1998. While such a comparison may be odious to all ~ considering that the MAI was the most discredited agreement so far proposed on a worldwide basis and would have amounted to a serious capitulation by national governments to the forces of big capital ~ such comparisons have to be made because elements of the proposed USFTA have been lifted wholesale from the MAI.

It should be noted that the ALP faction was in government when negotiations on the MAI commenced in secret in 1994; that both the ALP and coalition faction supported the MAI in principle; that both had the power to sign the agreement; and that when the shroud of secrecy was finally blown on the MAI both factions declared that they would not sign it if it was shown not to be 'in the national interest'.

The MAI draft stipulated that governments had to grant National Treatment to transnational corporations.

The USFTA draft stipulates that the Australian government has to grant National Treatment to US TNCs.

The MAI stipulated that governments had to combine National Treatment for TNCs with Most-Favoured Nation status.

The USFTA stipulates that the Australian government has to combine National Treatment for US TNCs with Most-Favoured Nation status.

The MAI provided a compulsory dispute resolution process ~ if agreement

could not be reached between a TNC and a national government, the dispute would ultimately be heard by an arbitration panel of three 'trade experts' who would override any national court.

The USFTA provides a compulsory dispute resolution process ~ if agreement cannot be reached between a US TNC and the Australian government, the dispute will ultimately be heard by an arbitration panel of three 'trade experts' who will override any national Australian court.

The MAI would have provided protection for international corporate investors.

The USFTA will provide Australian protection for US corporate investors.

The MAI provided 'expropriation' for 'public interest'.

The USFTA provides 'expropriation' for 'public purpose', though only in a non-discriminatory manner.

The MAI stipulated that an international investor could not be required: #1 to export a fixed amount or percentage of production; #2 to employ a minimum percentage of a country's nationals; #3 to engage in a joint venture; #4 to adhere to any level of domestic content; #5 to transfer technology; #6 to train workers; #7 to carry out R&D on a country's territory.

The USFTA stipulates that Australia cannot require a US corporate investor:

#1 to export a fixed amount or percentage of Australian production; #2 to employ a minimum percentage of Australian nationals; #3 to engage in a joint Australian venture; #4 to adhere to any level of domestic Australian content; #5 to transfer technology to Australian interests; #6 to train Australian workers; #7 to carry out R&D on Australian territory.

Under the MAI, governments shall not create procedural obstacles to international trade.

Under the USFTA, the Australian government shall not create procedural obstacles to international trade.

The MAI would have severely curtailed the ability of governments to impose conditions or limits on foreign investments.

The USFTA will severely curtail the Australian government's ability to impose conditions or limits on foreign investments.

Under the MAI, the Standstill provisions would have meant that a government could not introduce or extend existing conditions against the MAI; under the Rollback provisions, a government would have been required to reduce such existing mechanisms over time.

Under the USFTA, there are areas where laws that do not conform to the USFTA will be allowed to remain, but these laws are bound to current levels and cannot be extended, only reduced.

Under the MAI, governments would have been allowed to pass laws for the protection of the environment, though only in a way that did not discriminate against foreign TNCs.

Under the USFTA, the Australian government would be allowed to pass laws for the protection of the environment, though eventually only in a way that does not discriminate against US TNCs.

Under the MAI, the ability of Australia to lock up much of Antarctica and its waters as a huge wilderness area would have been jeopardized.

Under the USFTA, the ability of Australia to lock up much of Antarctica and its waters as a huge wilderness area, would, in time, be likely to be

jeopardized.

Under the MAI, the areas of Cooper's Creek and Lake Eyre would have been opened up to foreign cotton irrigators eventually.

Under the USFTA, the areas of Cooper's Creek and Lake Eyre will likely be opened up to US cotton irrigators eventually.

MY contention is that, under the MAI, had one wilderness area been opened up for exploitation by a TNC, then a legal precedent would have been established, and further areas would have been opened up.

My contention is that, under the USFTA, if one wilderness area is opened up for exploitation by a US TNC, then a legal precedent will be established, and further areas will be opened up.

The OECD even admitted that there were uncertainties between the MAI and *Multilateral Environmental Agreements*.

There are uncertainties between the USFTA and *Multilateral Environmental Agreements*.

Under the MAI, a TNC that elsewhere had an atrocious record regarding the environment or civil rights abuses could not be excluded.

Under the USFTA, a US TNC that elsewhere has an atrocious record regarding the environment or civil rights abuses cannot be excluded from Australian territory.

Under the MAI, it is likely that the scenario would develop where bans or restrictions on access to natural resources could be interpreted as 'expropriation', and that governments would have to pay TNC to enact environmental protection laws and even social policy.

Under the USFTA, there is the potential that the scenario could develop where bans or restrictions on access to Australian natural resources could be interpreted as 'expropriation', and that the Australian government would have to pay US TNCs to enact environmental protection laws and even social policy.

The MAI would have seen an increased trade in animal fodder and transmission of pests.

The USFTA will likely see an increased trade in animal fodder and transmission of pests.

The MAI would not have assisted the environment, the general public or humanity at large.

The USFTA will not assist the environment, the general public or humanity at large.

The MAI would have sabotaged warnings on genetically modified or irradiated food.

The USFTA will sabotage warnings in Australia on genetically modified or irradiated food.

The MAI did not clearly address public health matters. These include restrictions on tobacco advertising, tobacco health warnings and alcohol awareness campaigns.

The USFTA appears to contain loopholes on public health matters to be eventually exploited by US TNCs in Australia. These include restrictions on tobacco advertising, tobacco health warnings and alcohol awareness

campaigns.

The proponents of the MAI failed to answer their critics' arguments that the MAI meant deregulation of foreign investment, and that unregulated foreign investment is not ultimately advantageous to a country's economy or environment.

The proponents of the USFTA have failed to answer their critics' arguments that the USFTA means deregulation of US TNC investment, and that unregulated foreign investment is not ultimately advantageous to Australia's economy or environment.

Doubts were cast that under the MAI any country could have passed laws regarding truly fair trade.

Doubts have been cast that under the USFTA Australia can pass laws regarding truly fair trade, particularly with US interests.

The beneficiaries of the MAI would have been the owners and controllers of big capital, and to a lesser extent their lackeys.

The beneficiaries of the USFTA will be the owners and controllers of big US capital, and to a lesser extent their lackeys.

Along with rights go responsibilities. The MAI was shaping up as a Magna Carta for TNCs, and that it was an attempt to separate corporate rights from responsibilities, with a diminishment of the latter.

Along with rights go responsibilities. The USFTA is a Magna Carta for US TNCs, and that it helps pave the way for a separation of corporate rights from responsibilities, with a diminishment of the latter.

Had the MAI come into effect, it would have become more powerful, rather than less powerful, over time.

If the USFTA comes into effect, it will become more powerful, rather than less powerful, over time.

Part of the hidden agenda of the MAI was to do away with government grants to education, health and small companies undertaking R&D.

Part of the hidden agenda of the USFTA is eventually to do away with Australian government grants to education, health and small Australian companies undertaking R&D.

In part, the hidden agenda of the MAI was not to regulate TNCs or their investments but to regulate governments.

In part, the hidden agenda of the USFTA is not to regulate US TNCs or their investments, but to regulate the Australian government.

Furthermore, under the USFTA, the Australian government shall facilitate access by US TNCs to Australian markets.

While the USFTA is not as extreme in its implications as the MAI, nonetheless there can be no coincidence that sections of the USFTA have been lifted from the MAI ~ the most discredited agreement the world has so far proposed.

It is ironic that the MAI that would have reduced every government's sovereign rights was being negotiated by those same governments.

It is ironic that the USFTA that will reduce the Australian government's

sovereign rights has been negotiated by the Australian government.

Such a reduction in sovereignty is known in military terms as 'surrender'.

Every politician who votes for this agreement can be expected to be judged by posterity.

It cannot be expected that such a judgement will be favourable to those who capitulate.

signed,

B. Barrett-Lennard

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