AUSFTA
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Submission to the Joint Standing Committee on Treaties
The Australia US Free Trade Agreement (USFTA)
by Betty Murphy

According to various studies, the economic benefits of the USFTA are in doubt because there are now relatively few trade barriers and our trade with the US is significant. Also the exclusion of sugar from the agreement and the fact that proper access to beef and dairy markets is very long term, limits benefits to agriculture. The agreement would be likely to divert trade from other trading partners and possibly damage our relationships with Asia.

The dispute process could be used to challenge social regulation judged to be inconsistent with the agreement eg medicines and essential services and also important regulations concerning investment, the environment, quarantine, food labelling etc.

The USFTA committees would give the US more influence over Australian law and policy making, and put US trade interests above our right to make laws to suit ourselves. Our independent policy making is at stake. In many areas regulations could only be altered to increase trade not to protect Australia's interests regarding quarantine restrictions and other important matters

I have particular worries about the dangers of exposing our health system to US influence. This is bound to restrict our control over it and increase prices of our medicines in the long term. The medicines working group will enable the US to challenge policy on trade grounds. The USFTA will impose a trade test on the safety and quality requirements of blood plasma products etc which is ridiculous. Also patent laws could delay access to cheaper generic medicines which could cause crises like that with South Africa and AIDS drugs.

Australian content in film, television and music is not properly protected. Under Annex 1 our existing local content quotas are 'bound' ,and if they are reduced in future they can't be later restored to existing levels. Under Annex 11 future Australian governments are limited in the laws they can introduce for new media. New developments happen very quickly and can be very important commercially and socially. The various restrictions in place severely limit the capacity of future governments to respond. Public broadcasters like the ABC or SBS who advertise products to go with their programmes could be challenged, which would affect their funding levels.

The Environment

I am particularly worried over Environmental matters.
A general clause states that Australia and the US will be able to make laws necessary to protect human, animal or plant life or health. However these laws must not be a 'disguised restriction on trade in services'. This is vague and leaves our laws potentially open to challenge.

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A key objective of the USFTA is to increase our agricultural production for export. This increase will have many indirect adverse effects on our environment, which has already been damaged by environmental degradation due to farming. Among the problems will be the following:-

Water has not been excluded through any reservations, so any Commonwealth regulation of water services will have to comply with the USFTA. State and local government services are permitted at 'standstill', but could be challenged if changed. In the case of market rights for the Ord River or the Murray Darling Basins the government may want to give preference to local landholders but not be able to, or may have to pay compensation.
According to Foran and Poldy's analysis dairy products use 1,470 litres of water for every dollar of output, so a huge rise in the use of water for dairy production is forecast. Massive water 'export' seems illogical at a time when many Australian cities and towns are suffering severe water restrictions. Water is a scarce and valuable resource for us so this is a worry. Increased agricultural water use, mostly for irrigation, adds to a number of environmental problems, including dryland salinity, water pollution (from pesticide run off), and blue green algae in waterways (from fertiliser run off).

Salinity. High volume agricultural production has led to serious salinity problems. Dryland salinity already affects 2.5 million hectares of what was prime agricultural land. Estimates vary between 10 million and 17 million hectares as to how much will be affected by 2050. Irrigation salinity is also a significant part of the problem. A knock on effect will be produced by making rivers and streams more saline - it may increase the cost of water treatment for urban and industrial use and limit the productive potential of many irrigation areas. Salinity also leads to the loss of Australia's biodiversity, as natural vegetation increasingly becomes threatened by degraded soil conditions.

Chemical Overuse. Growth in export agriculture will lead to exponential growth in agricultural chemical use. The Fertiliser Industry of Australia estimates that 48% of the total value of fertilisers applied in Australia are now applied on dairy farms. Nitrogen fertiliser use is a significant cause of increased soil acidification.
Both fertilisers and pesticides eventually run-off and seriously affect Australian waterways and coastal areas and the flora and fauna which inhabit them. For example increased occurrence of blue green algae and poisonous algae in river systems such as the Swan River causes eutrophication, resulting in death of fish etc and people being deprived of recreational use of the river. The Great Barrier Reef is significantly affected by the pollution which ends up in the ocean and threatens coral reef systems and endangers plants and animals. This also is very bad for the tourism industry.

Land Clearing. Australia has the fourth highest rate of land clearing of any country in the world. Land clearing for agriculture exacerbates the salinity crisis, causing more water to enter the groundwater system thus causing water tables to rise and bringing salt to the surface.

Then as the land becomes saline more land is required and more clearing. Land opened up around the Ord River and the Katherine Basin etc has been irrigated, thus bringing problems of salinity and soil acidification. It is all related. The 1996 State of the Environment Report established the clearance of native vegetation for agriculture as the single most significant threat to biodiversity in Australia.

Increased Greenhouse Gas Emissions and other Pollution. ~~25%~~ of energy related greenhouse gas emissions are generated in the production of goods and services for export. Agriculture is responsible for nearly one fifth of our total greenhouse gas emissions.
Increased trade between Australia and the US would increase domestic transport and also in particular shipping transport. Ships spew out CO2, CH4, N20and SO2 (and other pollutants).Almost 70% of these emissions occur within 400 km of the coast, thus adding significantly to pollution above cities and also to our greenhouse gas emissions.

Genetically Modified Food. In Australia by law all foods containing significant amounts of genetically modified material must be labelled. The US has tagged GM labelling and regulation as a "barrier to trade" and has signalled that it will push for the removal of government rights to regulate GM products. This would include our WA State government's legislation declaring us a GM free zone.
Australia must give US representatives the same rights as Australians to participate in the development of Australia's standards and regulations This is not right. We should be able to "do our own thing". So Monsanto could challenge us on the right to their market access under the agreement, because Australia is regarded as a single market. The US has challenged EU labelling laws through the WTO.
The production of genetically modified crops has serious environmental implications. Once released GM organisms cannot be recalled, so their environmental impacts are irreversible. Various studies have shown their bad effects on flora and fauna populations and diversity eg Brown and Vidal 2003.

National Parks Increased US market access to trade in service providers could pave the way for the privatisation of Australian conservation management, such as National Parks.

Investor State Provisions These would allow US corporations to sue Australian governments for loss of income resulting from environmental, health or labour laws which the governments have made or might make. Environmental laws are often challenged. Under NAFTA there have been successful cases resulting in millions of dollars of payments to firms eg
To Metalclad Corp for being denied permission to operate a hazardous waste disposal plant in a special ecological zone in Mexico.
In cases still pending:- Methanex Corp (Canadian based)is suing the US government over banning a fuel contaminant which is causing ground water contamination.

Sun Belt Water Inc (US based) is suing the Canadian government for expected future losses due to restrictions on the bulk export of Canadian fresh water

If investor state provisions are included in the proposed USFTA, they would be a clear threat to Australia's environmental regulations. For example Pangea may be able to build a Nuclear Power Station against the wishes of State or Commonwealth governments.

Policy recommendations

Preferably the committee should recommend that this agreement not be endorsed by Cabinet and not come into force, as it is contrary to the national interest.

If this does not happen the following modifications should be made:-

Immediately commission a comprehensive review of the environmental impacts of the USFTA

Clearly exclude from the proposed agreement changes to any regulations concerning bio-safety, water services and GMO's and changes to Australia's quarantine and health regulations.

Clearly exclude any form of "investor-state" provisions, or any provisions providing investor rights to challenge domestic regulations or technical standards. Designate Australian and US courts as the sole arbitration bodies for disputes under the agreement.

Go against "ratcheting", that is allowing regulations only to move in favour of more trade.

Social policies should not be included in the USFTA. This would promote narrow commercial issues.

References

Foran and Poldy (2002) Future Dilemmas. CSIRO Sustainable Ecosystems, Canberra, Australia.

Brown and Vidal (2003) "Two GM crops face ban for damaging wildlife" The Guardian , October 17, 2003 London, UK.

Oz Prospect www.ozprospect.org Aftinet www.aftinet.org.au

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