

AUSFTA
Submission No: 95

From: Brian Jenkins [jenks@iinet.net.au]
Sent: Tuesday, 13 April 2004 11:04 PM
To: Committee, Treaties (REPS)
Subject: AUSFTA submission from StopMAI

RECEIVED
15 APR 2004

BY:.....

Dear Secretary

As per my advisory fax earlier today, I attach herewith the full StopMAI Coalition submission in RTF format.

IMPORTANT

Please note that the 3-page Appendix 'A' is here as a separate attachment, since the endnotes protested vigorously about being followed by more pages.

The pages are all numbered to assist checking them if they're converted to the pdf format.

If possible, I would appreciate a one-word reply in reassurance that the transmission worked. My ISP has been having a lot of trouble with connections and emails in the past week.

Kind regards

Brian Jenkins
Hon Secretary
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"They keep telling us how successful their system is. Then they remind us not to stray too far from our hotel at night."
--European G8 conference delegate, Denver 1997.

15/04/2004

STOPMAI (WA) Coalition



W.A. Campaign Coalition against a Multilateral Agreement on Investment and in support of fair and ethical trade practices

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(Affiliated with the Australian Fair Trade and Investment Network (AFTINET) and the International Simultaneous Policy Organisation (ISPO))

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

13 April, 2004

Dear Sir

INQUIRY INTO THE AUSTRALIA-U.S.A. FREE TRADE AGREEMENT (AUSFTA)

Citizens are justifiably concerned that the AUSFTA has not been demonstrated to offer significant benefit to the Australian population, while it has potential to increase costs to consumers (eg, for pharmaceuticals) and to greatly expand foreign ownership of business and property.

The nation's balance of payments and overall trade liabilities have progressed to disastrous negative levels through the years during which economic 'liberalisation' has been fashionable. This has strongly impacted on employment and environmental standards. Unnecessary obeisance to a profit-based 'new world order' is now posing threats to domestic security, eg, as a consequence of collaboration with adventurous trade 'allies', notably the United States of America.

We maintain that it is the Government's prime responsibility to secure the welfare of citizens as against that of the international corporate interests which are the moving force behind (and prime beneficiaries of) the Australia-US Free Trade Agreement (AUSFTA). In that connection, we urge Committee members to read the book *Economia--New economic systems to empower people and support the living world* by ANU scientist Dr Geoff Davies (ABC Books, Feb 2004)

The StopMAI (WA) Coalition was formed in January 1998 to assist in educating citizens about trade and investment treaty negotiations and to present citizens' opinions to relevant fora, including Australian state and federal parliaments. Our submission on the subject treaty is appended. We are prepared to further assist the Committee's inquiries if required.

Yours faithfully

Brian Jenkins
Hon. Secretary



**StopMAI Coalition
of Western Australia ***

A Submission to
the Joint-House Standing Committee on Treaties
on
the proposed Australia-USA Free Trade Agreement (AUSFTA)

**Prepared in April 2004 by Brian J Jenkins for
StopMAI Coalition of Western Australia)**

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The differences in purchasing power which make US goods cheaper or dearer than Australian are partly an artefact of the currencies' exchange rate, which is set by balances in foreign currency transactions. These differences bear little relationship to genuine differences in efficiency but are a complex resultant of geopolitical deal-making, wars, sanctions, corruption, hedging, gambling by futures traders, other forms of financial speculation and market jitters.

-- Dr Geoff Davies, *Economia* (ABC Books, Feb 2004)

* StopMAI's 'shambling bear' logo represents the dismay and subsequent fierce determination of world citizens confronted in 1998 by the rapacious Multilateral Agreement on Investment (MAI)

which had been negotiated in secrecy for several years by governments through the OECD. The negotiations failed following criticism by worldwide civil society alerted by internet revelations.

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Recommendation:

That the Committee view the Australia-US Free Trade Agreement as counterproductive and unacceptable.

1. Trade treaties diminish Australian constitutional sovereignty

Since treaty commitments and dispute settlement outcomes are able to override parliamentary legislation, commitments to the WTO, GATS and AUSFTA are automatically diminishing the sovereignty and democracy of the Australian people. FTA and WTO outcomes are ultimately decided by the interests of profit-seeking corporations and amenable trade bureaucracies.

2. Dilution of Australian culture by US media content

AUSFTA commitments must not jeopardise domestic measures to protect appropriate Australian media content, cultural identity and cultural diversity. Australians do not want to be deluged by TV commercials spoken in American accents. We already have a minimum of TV content reflecting Australian society, and sports coverage is predominant.

Under AUSFTA Annex 1, free-to-air TV will be allowed a majority of Australian content (capped at 55%) on a maximum of three channels. Other channels will be capped and 20% and commercial radio at 25%. One wonders whether the same standards apply to US domestic transmissions.

3. AUSFTA will facilitate business takeovers by US corporations

Investors receive national treatment under Article 11.3 and 'most favoured nation' status in 11.4. In principle, US corporations are being accorded the same privileges as Australian investors with relatively few reservations.

FIRB scrutiny will not affect investments below an \$800 million threshold (formerly \$50 million), which means that 90% of US investments in Australia over the past three years would not have been reviewed under those terms.¹

Federal and subnational government authorities must retain options to regulate in favour of quality retail trade services and other efficient small business operations which may otherwise be lost to local communities or replaced by inferior large-enterprise services as a consequence of the AUSFTA.

The Committee should also consider, for instance, whether it is genuinely productive and beneficial for 80% of the world's agricultural trade to be controlled by just 10 agro-chemical companies, as is presently the case.

4. Environment and Human Rights

Article 22.1 provides what can only be regarded as a token provision for Parties to legislate to 'protect human, animal or plant life or health'. The primacy of trade over life was established at 19.4 with a quaint commitment to '*flexible, voluntary and market-based mechanisms*' of environmental protection.

Similar tokenism can be identified in Article 11.1--Investment and Environment: *Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with this chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.* (Emphasis added.) This language provides no barrier to destructive activities other than the need for 'sensitive' public relations.

We maintain that investors' environmental and social responsibilities must be defined and sanctioned every bit as precisely and enforceably as their ascribed entitlements to extract and export profits and other returns.

StopMAI thus advocates that environmental and social principles should be incorporated fully throughout any AUSFTA as well as GATS and other WTO instruments, and the scope of the Trade Policy Review Mechanism (TPRM) expanded to include relevant environmental, gender and social concerns, including the right of all to fair employment opportunity and food security.

5. Investment rules must include enforceable obligations

StopMAI Coalition is prepared to accept bilateral and/or multilateral investment rules limited to foreign direct investment (FDI), and which include parallel enforceable rules promoting sustainable development and measures (such as Tobin Tax) to control speculative cashflows. No investment rules can be sustainable and acceptable unless they include binding investor obligations on core labour standards, environmental and human-rights protection and an enforceable equivalent of the OECD Guidelines for Multinational Enterprises.

Any investment regime must be compatible with the right of governments to regulate in all areas of public interest including investment, and must respect the value of public services and state ownership. Governments must have the leeway to implement legitimate domestically-based economic development

strategies.

6. Investment rules must lie within law-court jurisdiction

The AUSFTA ostensibly provides a government-to-government dispute resolution procedure. However, Article 11.16 is headed CONSULTATIONS ON INVESTOR-STATE DISPUTE SETTLEMENT and requires consideration of a claim made by an investor. *'Upon such a request, the Parties shall promptly enter into consultations with a view towards allowing such a claim and establishing such procedures.'* (Emphasis added)

If Australia has no intention of agreeing to the notorious NAFTA-style investor-state procedure, the above language has no place in the AUSFTA.

StopMAI is absolutely opposed to the establishment of offshore tribunals for the determination of investor-State dispute actions which potentially affect Australian legislation at federal, state and/or local levels. Such actions must be determinable by domestic courts. **This is fully in accordance with 'national' treatment as enjoyed and accepted by Australian investors.**

7. Relevance of Canada's NAFTA experience

Canada's widely publicised experiences under the tripartite North American Free Trade Agreement (NAFTA) are an ample demonstration of future actions which will reduce the ability of Australian governments at all levels to regulate in the public interest if/when AUSFTA gravitates to the method of investor-State dispute resolution.

A great deal of information about NAFTA's investor-state dispute resolution process is available on the website of the international law firm Appleton and Associates.ⁱⁱ For example, the Canadian government took measures to delay the sale of a terminal at the Toronto Airport to a group including an American company. This delay constituted an expropriation under the NAFTA of the foreign company's interest. There could be a NAFTA claim, if the foreign investor did not receive full compensation from the Canadian government. Government policies that provide a preference to locals violate the NAFTA investment obligations of governments. This includes policies that encourage local hiring or the purchase of local services or goods.ⁱⁱⁱ

8. 'Customary International Law'

Senators and Members should also note the content of Annex 11-A which refers to '*a general and consistent practice of States that they follow from a sense of legal obligation*' and to '*customary international law principles that protect the economic rights and interests of aliens.*'

StopMAI holds the view that neither Australia nor the United States has demonstrated observance of customary international law, eg, in an arguably illegal invasion and occupation of Iraq and their joint endorsement of the captivity of Afghani and other Muslim prisoners of war in harsh surroundings, long after (purported) cessation of relevant hostilities and without due process as prescribed by international conventions. Likewise, the Australian Government has incurred international condemnation for its unnecessarily harsh and unusual treatment of (*inter alii*) legitimate refugees seeking to gain lawful asylum and establish their credentials.

In similar vein, the United States has declined to join Australia in endorsing the establishment of an International Criminal Court by the United Nations. It may also be added that neither the US nor Australia subscribes to the wishes of the international community that they adopt the Kyoto Protocol on climate change.

StopMAI's members see it as ironic that such uncompassionate and pragmatic Partners must seek to convert the worthy ideals of customary international law to the special cause of investors' economic rights.

9. Impact of AUSFTA on provision of public services provided in competition, such as public broadcasting, health, education and water

The treaty will affect services provided by all spheres of government and those provided by non-government agencies under government authority. It uses the controversial GATS definition of public services in making clear that '*A service supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers*' (Article 10.1)

Since Australia's broadcasting, health, education, water and energy services clearly operate in a commercially competitive environment, they

will be subjected to US corporate competition and takeover just as soon as there is sufficient inducement and political will for that to happen.

Yet public services and other services of general interest reflect democratically-determined public policy objectives, and it is essential that these not be undermined by private sector competition under the AUSFTA, the GATS and other WTO disciplines. It behoves governments to preserve full responsibility and accountability in the area of such services.

To protect the ability of governments to enact domestic regulatory measures, a clarifying statement needs to be adopted that social and environmental concerns have primacy over the principle of 'free trade' and that such regulations will not be subject to any 'necessity test' through the AUSFTA dispute settlement process, nor that of the WTO.

10. AUSFTA is one of 142 bilateral FTAs sought by the US

In 2002, the Wall Street Journal reported that the U.S. *'will ask 142 trading partners to open their borders to American services, in a sweeping proposal aimed at liberalizing global trade in an area where the U.S already holds an advantage over other industrialized nations'*.^{iv} The Bush administration believes liberalisation of trade in services will bring \$450 billion annually in new business to US firms.

The US Trade Representative stated on 15th March *'In the past three months, the United States has completed FTAs with Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua (CAFTA), Australia and Morocco.*

'New and pending FTAs constitute America's third largest export market and the sixth largest economy in the world (a group that includes the above countries along with the Jordan, Chile, Singapore FTAs that are in place; and, also the current FTA negotiations with five southern African nations; with Bahrain; and negotiations to begin later this year with Thailand; Panama and four Andean nations)'.^v

11. Two questions raised by delegates at a recent Perth meeting:

1. What is the nature of the 'special relationship' that, we have been told, Australia enjoys with the US? and

2. What is the point of the exercise if the US is going to have FTAs with every country in the world?

Their proffered answers were that--

1. There is none and we are being 'conned'; and
2. There is absolutely no advantage from the Australian perspective.

The exercise was seen as purely commercial/economic imperialism, directed to ensure that the US companies have unlimited access to world resources and its corporations have unlimited access to the markets of every country.

12. Projected loss of more valuable regional trade

The Australian economy is 4% of the size of the US economy. The independent study by ACIL Consultants showed that there would be net losses to Australia from South-east Asian regional trade lost to other countries.^{vi}

Australians would be foolish to 'think that systematic trade discrimination against East Asian economies, leading to reductions in Australian imports from and overall rates of return on investment in these economies, would not lead to reactions which reduced Australian market access', according to Prof. Ross Garnaut's commentary on the subject.^{vii}

The main cost to the nation from AUSFTA would stem from *'Australia's non-discriminatory access to markets in East Asia and the rest of the world through its effects on other countries' policies and the trading system*'. In the worst case scenario, Garnaut said *'the cost to Australia of fracture in the open, multilateral trading system would be very large indeed'*^{viii}.

As Garnaut pointed out elsewhere, 'A 'Free Trade Area' comprises two or more countries which have removed trade barriers between or among themselves, while retaining their own respective barriers against countries that are outside the arrangements. It is therefore **preferential trade** rather than free trade'.^{ix}

There will undoubtedly be negative effects on Australia's relationship with neighbouring trading partners, including China, if the AUSFTA succeeds in being implemented.

13. Unwelcome linkage with military policy

The contiguity of AUSFTA negotiations with the Government's major commitment of military personnel and resources to the US invasion of Iraq suggests that there is an unaccustomed and unwelcome linkage of trade and security policy. This has been confirmed by numerous proclamations by authorities in both Australia and the Bush Administration. For instance, a March Financial Review article by Washington correspondent Peter Hartcher quoted the following comment by senior US trade lawyer Peter Watson (who represented Australia in the WTO lamb dispute appeal against the US):

'You can't divorce trade from politics and security policy, and an agreement would strengthen the relationship between the US and Australia.' ^x

14. Threat to national-interest regulation

The Australian Government favours both a 'necessity test' and 'least trade restrictive' criteria in these negotiations. This has brought our quarantine regulations, licensing, professional qualifications and technical standards under challenge by US competitors.

* * * * *

We need to return to the central idea that people are sovereign over corporations. Incorporation is a privilege granted at the people's pleasure, and it can be withdrawn if, in the judgment of the people, the public interest is not being served. Some due process is appropriate, to provide a reasonable expectation of a stable business environment, but corporations should not have the same rights as people.

-- Dr Geoff Davies, *Economia* p. 178. (ABC Books Feb. 2004)

15. Conclusion

Though this submission has not fully addressed all the issues of concern, StopMAI is strongly opposed to the following measures of the AUSFTA:

- **Removal of controls on Investment below \$800 million**
- **Treating essential services as traded goods and reducing the right of governments to regulate to ensure equitable access to them.**
- **Removal of Australian local content rules for film and television.**
- **US participation in regulation of the Pharmaceutical Benefits Scheme**
- **Abolition of Food Labelling for food containing Genetically Modified Organisms (GMOs)**
- **Pressure to accept GM crops and imported GM food**
- **Reduction in Quarantine Standards**
- **Abolition of local preferences in government purchasing**

The issues have been discussed in public at several forums organised by our group in Western Australia. We have also attended other similar forums organised by State and Federal parliamentarians and by the well represented WA Globalisation Roundtable group. Thus we are confident that our view generally represents that of WA civil society.

Recommendation:

That the Committee view the Australia-US Free Trade Agreement as counterproductive and unacceptable.

* * * * *

References and acknowledgments

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- ⁱ US Trade Representative Summary of the US-Australia Free Trade Agreement, Trade Facts page 1, 8 February, 2004
- ⁱⁱ <http://www.appletonlaw.com/>
- ⁱⁱⁱ *ibid.*
- ^{iv} Wall Street Journal, July 1, 2002, article by Michael M Phillips
(Copy available at <http://www.tradeobservatory.org/news/index.cfm?ID=3613>)
- ^v US Trade Representative press release, 15 March 2004, cited in Manchester Trade Update (See Appendix 'A')
- ^{vi} www.rirdc.gov.au/reports/GLC/ACIL-ABridgeTooFar.pdf
- ^{vii} Garnaut, Ross, 2002. 'An Australia-United States Free Trade Agreement' in Australian Journal of International Affairs, Vol 56, No. 1, pp.123-141
- ^{viii} *ibid.*
- ^{ix} Garnaut, Ross, 'Effects of a Free Trade Agreement with the United States On Australia's Multilateral and Regional Interests'-- Paper presented to Conference on an Australia-United States Free Trade Agreement, Canberra, 30 August, 2002. Available at <http://www.apec.org.au/docs/fta2gar.pdf>
- ^x 'Countdown to a free-trade accord with Uncle Sam' by Peter Hartcher, *Aust Financial Review*, 9 March 2004

Date: 17 Mar 2004 15:21:39 -0000

To: trade-newswire@sidsnet.org

From: DavidLewis@manchestertrade.com

DR-US FTA NEGOTIATIONS COMPLETED

MANCHESTER TRADE UPDATE

MARCH 16, 2004

1. USTR Statements and Media Reviews
2. Statement from US Agriculture Secretary Ann Veneman
3. Statement from Cong. Charles Rangel
4. Various Statements from Private Sector Associations

1. U.S. and Dominican Republic Conclude Trade Agreement: Caribbean nation will be fully integrated into CAFTA

<http://usinfo.state.gov> - March 15, 2004

The United States and the Dominican Republic concluded a free-trade agreement on March 15 that will promote growth and opportunity by integrating the Dominican Republic into the recently concluded U.S.-Central American Free Trade Agreement (CAFTA), according to a press release issued by the Office of the U.S. Trade Representative (USTR).

"This is a proud day for the people of the Dominican Republic and the United States: with close ties and \$9 billion in trade already, this free-trade agreement will help both countries to grow stronger together," said U.S. Trade Representative Robert Zoellick.

With the addition of the Dominican Republic to the "cutting-edge, modern" CAFTA agreement reached between the United States, Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, the combined total goods trade among all seven countries is approximately \$32 billion, Zoellick observed.

The USTR press release explained that the inclusion of the Dominican Republic in CAFTA not only will lower trade barriers, but also will require reforms to foster business development and investment. These reforms include enhancing government transparency, strengthening the rule of law, and improving intellectual property-rights protection and enforcement.

A fact sheet and outline of the U.S.-Dominican Republic free-trade agreement and the overall CAFTA is available at www.ustr.gov, the press release said.

Following is the text of the USTR press release:

OFFICE OF THE U.S. TRADE REPRESENTATIVE

EXECUTIVE OFFICE OF THE PRESIDENT

Washington, D.C.

FOR IMMEDIATE RELEASE - March 15, 2004

U.S. & Dominican Republic Conclude Trade Talks Integrating the Dominican Republic into the Central American Free Trade Agreement*Tariffs & Trade Barriers Phased Out in Cutting Edge Pact Designed to Promote Economic Growth and Expand U.S. Export Opportunities in Important Regional Market*

WASHINGTON -- The United States and the Dominican Republic today concluded an historic and comprehensive free-trade agreement that opens markets, phases out tariffs, strips away trade barriers and promotes economic growth and opportunity by fully integrating the Dominican Republic into the recently concluded Central American Free Trade Agreement (CAFTA). U.S. Trade Representative Robert B. Zoellick and Dominican Secretary for Commerce and Industry Sonia Guzman made the announcement following a week-long round of negotiations that finished over the weekend.

"This is a proud day for the people of the Dominican Republic and the United States: with close ties and \$9 billion in trade already, this free-trade agreement will help both countries to grow stronger together," Zoellick said.

"The Dominican Republic is a large regional market, with strong ties to the U.S., and this agreement opens many opportunities for American exporters, farmers, workers, consumers and businesses, and it will promote economic growth, opportunity and prosperity in the Dominican Republic and the region. With the addition of the Dominican Republic, the CAFTA will further streamline regional trade; promote investment; slash tariffs on goods; remove barriers to trade in services; provide advanced intellectual property protections; promote regulatory transparency; strengthen labor and environmental conditions; and, provide an effective system to settle disputes," Zoellick said.

"Today, we are enhancing a cutting-edge, modern FTA [free-trade agreement] between the United States and Central America by expanding the circle of friends and neighbors who have agreed to tear down the tariff walls that block trade. Market by market, country by country and region by region, the United States is opening markets, and expanding our export opportunities with modern, comprehensive FTAs," added Zoellick.

The agreement expands the benefits of the CAFTA to all seven countries (the United States, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic). Combined total goods trade between the U.S. and the original five Central American CAFTA countries is \$23.2 billion. The addition of the Dominican Republic to the CAFTA represents an additional \$8.7 billion, totaling approximately \$32 billion in goods trade.

"Secretary Guzman is a very effective and dedicated negotiator. I want to thank her, our chief U.S. negotiator Regina Vargo, [the] U.S. agriculture negotiator Ambassador Allen Johnson, and their respective teams for their hard work in crafting a truly excellent agreement," said Zoellick.

In addition to today's announcement, in the past three months, United States has completed FTAs with Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua (CAFTA), Australia and Morocco.

Zoellick thanked two proponents of the FTA, Congressman Charlie Rangel (D-NY), and Congressman Jerry Weller (R-IL) for their leadership, along with House Ways and Means Committee Chairman Bill Thomas (R-CA) and Senate Finance Committee Chairman Charles Grassley (R-IA). Congressman Weller accompanied Zoellick on his visit to the Dominican Republic in January, when the negotiations were launched.

The Dominican Republic is now part of the CAFTA, a state-of-the-art free-trade agreement, which will not only reduce barriers to U.S. trade, but also require important reforms of the domestic legal and business environment that are key to encouraging business development and investment. Such reforms include providing greater transparency for government actions and rule making; strengthening the rule of law; and improving the protection and enforcement of intellectual property rights.

The Dominican Republic is the largest beneficiary of the Caribbean Basin Initiative (CBI), a trade preference program in place since 1984 that provides duty free access to products from qualifying countries in the region. Recognizing the importance of the economic relationship between the Dominican Republic and Haiti, as well as the critical role that CBI has played in both countries' economic development, the Administration will work with the Congress to ensure that this agreement will allow Haiti to continue to receive Caribbean Basin Trade Preference Act (CBTPA) for apparel containing Dominican inputs.

New and pending FTAs constitute America's third largest export market and the sixth largest economy in the world (a group that includes the above countries along with the Jordan, Chile, Singapore FTAs that are in place; and, also the current FTA negotiations with five southern African nations; with Bahrain; and negotiations to begin later this year with Thailand; Panama and four Andean nations).

In August of 2003, President Bush informed the Congress of his intent to integrate the Dominican Republic into the CAFTA.

A fact sheet and outline of the U.S.-Dominican Republic FTA and the overall CAFTA is available at www.ustr.gov

* * * * *

[The original posting was 16 pages long. It has been truncated and bolding added to the paragraphs quoted in StopMAI's submission to JSCOT on the AUSFTA]