

FTA. Submission No: 2

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BY:

Members of the Committee
 My Submission to the Joint Standing Committee on Treaties :

[The Australia/US Free Trade Agreement]

There is extensive public interest in this Agreement and it is important that this should be reflected in the Committee's review process. It is noted that the government's consultation processes have improved significantly during the course of the negotiations involved. However I remain concerned that, given the great impact of the Agreement on regulation in important areas of social policy, the public consultation process has been quite inadequate.

On nearly every point of concern in the text the public was not permitted to know what was proposed, or had been agreed to, until after the full text was published. This showed that the process of public consultation had much less meaning than it should have done.

I must add, also, that although the Government has claimed to have maintained proper democratic process in connection with the lengthy consultation phase in connection with the USFTA, it now transpires that the Prime Minister will visit the US in May 2004 to carry out a formal signing of the Agreement.

But it should be noted that when the full text of the Agreement was released on or about March 6th 2004 it was announced that there would be a three-month period to allow for public consideration before any closure would be decided - presumably after June 6th 2004.

The fact that the Prime Minister intends to apply closure before that time makes a mockery of democratic process.

General Concerns

There is considerable doubt about whether the USFTA will result in any benefits for the Australian economy as a whole - economic studies have predicted very small impacts, some being negative. This is, in part, because the US and Australia have relatively few trade barriers and are already significant trading partners. This poses the question of whether such an Agreement is needed at the economic level.

Economic studies are limited by the assumptions built into the models they employ. Most models include the assumption of perfect labour mobility. This assumes that those displaced by increased imports will be perfectly mobile and able to be retrained to take advantage of growth elsewhere in the economy - which is not generally the case in practice. The omission of unemployment effects means that such studies generally overstate economic benefits.

It is therefore significant that econometric studies on the USFTA have predicted either very small gains or losses to the Australian economy, even without full inclusion of unemployment effects.

The original CIE economic consultants' study commissioned by the Government assumed totally free trade in agriculture - yet predicted gains for the Australian economy of only 0.3% (\$US 2billion) after 10 years. The results of this study were heavily dependent on the assumption that the USFTA would result in the removal of key US barriers to trade in agriculture, especially in the sugar, dairy and beef industries. (Australian APEC Study Centre : An Australia-US Free Trade Agreement - Issues and Implications Canberra 2001.

A study by ACIL consultants predicted slight losses to the Australian economy, partly because of trade lost to other trading partners in the Asia-Pacific area. (ACIL Consultants : A Bridge Too Far? Canberra 2003. www.rirdc.gov.au/reports/GLC/ACIL-ABridgeTooFar.pdf.

Many trade economists argue that bilateral trade agreements tend to increase trade between the bilateral partners, but divert trade from other trading partners, so reducing overall economic gains. For this reason such agreements are often called Preferential Trade Agreements (PTAs) rather than Free Trade Agreements. A working paper prepared by staff at the Productivity Commission examined 18 PTAs and found that 12 had diverted more trade from non-members than they had created amongst members. It also found that 'many of the provisions needed in preferential agreements to under- pin and enforce their preferential nature - such as rules of origin - are, in practice, quite trade-restricting' (Adams, R., Dee, P., Gali, J. and McGuire, G., 2003 : *The Trade & Investment Effects of Preferential Trade Agreements - Old and New Evidence*, (Productivity Commission Staff Working Paper, Canberra, p xii)

Similar points were made by the authors of an International Monetary Fund(IMF) Working Paper. This econometric study found, in relation to the USFTA, that 'slightly negative effects on Australia are related to trade diversion from Japan, Asia and the European Union in machinery and equipment, basic manufactured goods and textiles'. (Hilaire, A. and Yang, Y.) : *The United States and the New Regionalism/Bilateralism*, IMF Working Paper, 2003, p 16.

The Australian Government has admitted that the original CIE study is no longer valid because the access to US agricultural markets is much less than it assumed. Sugar has been excluded totally and access to beef and dairy markets is phased over much longer periods. The government announced that it would conduct a competitive tendering process for another study - then announced a week later that CIE consultants had again been selected.

After noting reports that the Australian negotiators had advised the government to reject the USFTA, Allan Wood wrote in *The Australian* on March 9th 2004,'The modelling work commissioned by the government is not going to convince anyone if it simply confirms Howard's view. It certainly won't dispel the suspicion that the government has something to hide'.

Government to government dispute process limits democracy

The USFTA dispute process enables a government to claim that a law or policy of the other country is in breach of the Agreement, or is preventing it from getting the benefits expected from the Agreement (Article 21.2),

The dispute process requires initial consultations, referral to a Joint Committee of US and Australian government officials, and finally, if not resolved, to a dispute panel of three acknowledged law experts. Hearings may or may not be public, and the panel may or may not invite non-government representatives to make written submissions. The panel's initial decision can be revised after comments from the governments before a final decision is made. **The panel can order that a law be changed or compensation be paid. The decision may or may not be made public and cannot be appealed.** (Articles 21.5 - 21.11)

The process based on trade law can be used to challenge social regulation judged to be inconsistent with the Agreement - like policies on medicines, or the regulation off essential services. It is a clear restriction on the democratic right of governments to regulate in the public interest.

No immediate investor/State complaints process

The Australian Government has claimed that there is no USFTA process which allows corporations to challenge laws or sue government. The US wanted this facility, based on the North American Free Trade Agreement model which has enabled corporations to challenge environmental laws and sue governments for millions of dollars. (*Public Citizen 2001 NAFTA Chapter 11 - Investor-to-State Cases: 'Bankrupting Democracy'* www.citizen.org)

However the USFTA does provide a foot in the door for such a process. If there is 'a change in circumstances' an investor can request consultations with the other government to make a complaint. The other government is then obliged 'to promptly enter consultations with a view towards allowing such a claim and establishing such procedures'.(Article 11.16.1)

Increased US influence in Australian policy and lawmaking

The USFTA establishes a series of committees that give the US increased influence over Australian law and policy making, and prioritise US trade interests over other social policy criteria. The Agreement established committees on medicines and health policy, on quarantine issues and on technical standards like food labelling, including the labelling of genetically modified foods.

These are all areas where the US has identified Australian health and environmental policies as **barriers to trade**. In all cases the terms of reference of the committees give priority to US concerns about trade issues - and not to Australian health or environment policies.

Negative list for services and investment

The USFTA had a negative list structure for both services and investment. This means that all laws and policies are affected by the Agreement unless they are listed specifically as reservations. This differs from WTO multilateral agreements like the General Agreement on Trade in Services(GATS) which is a 'positive list' agreement, meaning that it only applies to those services which each government actually lists in the agreement.

The negative list, therefore, is a significantly greater restriction on the right of governments to regulate services than the WTO GATS agreement.

There are two sets of reservations for 'non-conforming measures' which may not be consistent with full

national treatment and market access for US firms, or which may be considered 'too burdensome' or a 'barrier to trade' by the US government.

Annex A or 'standstill' reservations mean that existing laws and policies can remain - but they are 'bound' at current levels and cannot be made more regulatory without being subject to challenge by the US government under the disputes process. There is a 'ratchet effect' which means that if an existing law or policy is made less regulatory, it must remain at that lower level and cannot be changed back by any future government.

For example, if the current government reduced Australian content rules in film and television before the USFTA came into force, a future government would be unable to restore them to current levels. **This is yet another restriction upon democracy.**

Annex B contains reservations which enable governments to make new laws, but some of these also contain restrictions. For example, the Australian content rules for new media contain strict limits. New services or areas not specifically named in the Agreement are automatically covered by the terms of the Agreement. Again this restricts the right of future governments to respond to new developments.

Conclusion

Many trade economists question whether the USFTA will result in benefits to the Australian economy. In any case, if benefits resulted the price would be too high for Australia.

The USFTA weakens government's right to regulate and locks in trends towards US-style policies without democratic debate or decision.

Despite government assurances it weakens Australian price controls on medicines and limits the regulation of Australian content on new forms of media.

It adopts US copyright laws - which will cost consumers more.

It sets up joint US/Australian committees to review policies on medicines, quarantine regulations and food labelling, and enables many Australian policies open to challenge by the US government.

It treats social regulation of essential services as if they were tariffs - bound or 'frozen' at current levels and subject to challenge if increased.

It restricts government rights to support local development by local purchasing.

RECOMMENDATION

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.

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[I acknowledge the valuable assistance of the Australian Fair Trade & Investment Network(AFTINET) in making this submission available to your Committee]