

Submission No:21.....

QUEENSLAND Nurses' Union

IN ASSOCIATION WITH AUSTRALIAN NURSING FEDERATION QLD. BRANCH

ADDRESS ALL CORRESPONDENCE TO THE SECRETARY, G.P.O. BOX 1289, BRISBANE, Q. 4001.



A.B.N. 84 387 908 052

IN REPLY PLEASE QUOTE:

All enquiries regarding this correspondence should be directed to:

Beth Mohle

8 April 2004

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BY:.....

Committee Secretary
Joint Standing Committee on Treaties
Department of House of Representatives
Parliament House
CANBERRA ACT 2600
AUSTRALIA
Email: jsct@aph.gov.au

Dear Sir/Madam

RE: Free Trade Agreement between Australia and the United States of America

Thank you for the opportunity to provide comments on the Australia-United States Free Trade Agreement (AUSFTA). As there are currently two federal parliamentary committee inquiries into this agreement we have prepared one submission to be submitted to both inquiries.

Given the relatively short time frame for submissions and also because our organisation is not an expert on trade agreements our submission will be relatively brief and will deal largely with matters of broad principle. As we have a particular interest in health related matters we will also deal largely with the potential impacts in this area, especially in relation to the Pharmaceutical Benefits Scheme (PBS). Many of the issues raised will come as no surprise given that we have made numerous submissions to the Department of Foreign Affairs and Trade as well as providing a submission to the Senate inquiry into GATS and the proposed AUSFTA that was held in 2003. Before we outline our concerns we will provide some details on our organisation.

Queensland Nurses' Union of Employees, 2nd Floor QNU Building, 56 Boundary Street, West End, Brisbane, 4101.

Brisbane Office:
G.P.O. Box 1289, BRISBANE 4001
Phone: (07) 3840 1444
Fax: (07) 3844 9387
e-mail: qnu@qnu.org.au Website: www.qnu.org.au

Townsville Office:
P.O. Box 1751, TOWNSVILLE 4810
Phone: (07) 4772 5411
Fax: (07) 4721 1820
e-mail: townsvle@qnu.org.au

Rockhampton Office:
P.O. Box 49, ROCKHAMPTON 4700
Phone: (07) 4922 5390
Fax: (07) 4922 3406
e-mail: qnurocky@qnu.org.au

Cairns Office:
P.O. Box 846N, NORTH CAIRNS 4870
Phone: (07) 4032 4066
Fax: (07) 4032 6094
e-mail: rlanlon@qnu.org.au

Toowoomba Office:
P.O. Box 1464, TOOWOOMBA 4350
Phone: (07) 4659 7200
Fax: (07) 4639 5052
e-mail: gowon@qnu.org.au

The Queensland Nurses' Union

The Queensland Nurses' Union (QNU) is the principal health union operating in Queensland and is registered in that state. In addition the QNU operates as the state branch of the federally registered Australian Nursing Federation (ANF). The QNU represents the largest number of women of any union in Queensland.

The QNU covers all categories of workers that make up the nursing workforce in Queensland, registered nurses, enrolled nurses and assistants in nursing, employed in the public or the private and not-for-profit health sectors. Our members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from entry level trainees to senior management.

Membership of the QNU has grown steadily since its formation in 1982 and as at March 2004 was in excess of 32,500 and still growing. Like the nursing profession as a whole, the overwhelming majority of our members are female (93%). The QNU has a democratic structure based on workplace or geographical branches. Approximately 250 delegates are elected from the branches to attend the annual QNU conference which is the union's principal policy making body. In addition the QNU has an elected council and an elected executive, which in turn have decision-making responsibilities between conferences. Council is the governing body of the union.

The QNU has taken an active interest in the impact of globalization on health and have worked closely with organisations who share our concerns in this area such as the Doctors Reform Society and other Queensland based community based organisations and groups.

Comments on the Free Trade Agreement

The QNU has commented in the past to government and the Senate Inquiry in 2003 that we have a number of key issues of concern relating to trade liberalisation in general. These also apply to the AUSFTA under consideration by your committee. We will briefly summarize these threshold concerns before turning to specific issues of concern with the AUSFTA.

A key concern to the QNU is that the level of understanding about the potential implications of trade liberalisation remains woefully inadequate, not just in the general community, but also amongst our elected representatives (at all levels of government) and most federal, state and local government bureaucrats. It is essential that this knowledge deficit be addressed as a matter of urgency. It is difficult to see how this knowledge deficit will be easily overcome given the length and complexity of the agreement currently under consideration.

Apart from this threshold issue, the QNU's broad areas of concern can be best categorised as falling under the headings of lack of openness and transparency, lack of accountability, the maintenance of standards, distributional issues, the ideology underpinning free-trade and the weakening of the role of government and self-determination. We will make brief comments on a number of these issues in light of our experience in relation to the process surrounding the negotiation of this AUSFTA.

1. The negotiation process

Perhaps the most significant concern that the QNU has about the AUSFTA is in respect to process and the governance and accountability deficiencies inherent in the ratification process. Although the QNU acknowledges that there have been improvements in the transparency of the negotiation process for this agreement as it progressed we still hold concerns about lack of transparency, in particular the genuineness of the community consultation process and lack of appropriate parliamentary and community scrutiny of the agreement. Careful public scrutiny of this agreement is essential and is the hallmark of open, responsive and accountable government.

We welcome the opportunity to provide input into this inquiry process as it provides an opportunity for closer examination of the impact of the agreement and dialogue with the community on areas of concern but are concerned that this is merely a “stop gap” measure – an attempt to make the best of an existing flawed process. Deficiencies in transparency and process were acknowledged in the recent Foreign Affairs, Defence and Trade References Committee report *Voting on Trade*. We strongly submit that these serious deficiencies remain of considerable concern to the QNU and we believe there is a critical need for the implementation of formal processes that enable proper parliamentary and public scrutiny of all trade agreements.

The process recommended in the *Voting on Trade* report (at 3.91, page 40) regarding improving parliamentary scrutiny of trade agreements is supported by the QNU insofar as it represents a significant improvement on the current process. We would however prefer that a separate Joint Standing Committee on Trade Liberalisation be established to oversight trade agreements (as had been recommended in a past JSCOT report) rather than the matters being referred to the Joint Standing Committee on Foreign Affairs, Defence and Trade. Our reason for this is that the sheer complexity of trade agreements and often pressing timeframes associated with their negotiation would warrant a separate committee on workload grounds alone. This committee should of course be required to maintain close links with the Joint Standing Committee on Foreign Affairs, Defence and Trade but we believe that the issues surrounding trade liberalisation are so multifaceted and complex that they require close scrutiny and from a broader perspective.

It is appropriate to give proper consideration to the US process for the negotiation and scrutiny of trade agreements as this involves formalised executive authority for the negotiation of agreements and then scrutiny by congress. We would say that the timeframes are too tight to enable close and proper scrutiny by Congress, however their system is still a vast improvement on the current Australian arrangements.

The hearings on the in the US have also been interesting as they have highlighted significant areas of inconsistency of interpretation of the likely costs and benefits of the agreement to each country. Although some of this can be seen as the US negotiators “playing to their domestic audience”, the disparity between statements made by US and Australian negotiators and politicians on some issues (especially in relation to the PBS) are of considerable concern to the QNU. We believe that Australian negotiators should be closely questioned by your committee on these significant inconsistencies.

The flawed nature of the current negotiation and ratification process for the AUSFTA is a threshold issue for the QNU. Even if we didn't hold serious concerns about aspects of the content of the agreement we would still not be able to support the agreement on the basis of the lack of proper public and parliamentary scrutiny of the agreement prior to signing. Given the binding nature of trade agreements for both present and future governments (as well as the potential and often unforeseen social consequences of entering into such agreements) it is imperative that we establish a process that gives us confidence that there has been proper and thorough public scrutiny of the agreement (including a multi-disciplinary analysis of the socio-economic impact of each agreement) and that parliament is confident that the agreement is in the public interest prior to the signature and ratification process. The "public interest" test must be a broad one, going beyond the narrow trade costs and benefits.

2. Weakening of the role of government

Perhaps the most disturbing aspect of the free trade agenda is the way in which the role and power of democratically elected governments are currently being undermined through trade liberalisation. This is occurring by virtue of the issues outlined above. It is unacceptable to the QNU that a sovereign government's capacity to implement domestic policy that is in the best interests of their citizens can be compromised by the terms of a trade agreement. We are unconvinced that the AUSFTA will not have detrimental impacts with regards to the development of domestic policies and regulatory mechanisms, particularly in relation to matters such as health (especially the PBS), education and other essential services, quarantine, food labeling and new media local content rules.

The QNU has repeatedly sought assurances from the Commonwealth government that trade agreements we have entered into will not have a negative impact on the integrity of our public health services and the right to universal access to health services. We have also sought similar commitments with regard to any other public services provided by government such as education, telecommunications and water services. The QNU remains concerned that this cannot be guaranteed. This is for a number of reasons. There is, as stated above, a fundamental problem in relation to the deficiencies in processes for scrutiny of agreements. There has also been a failure by government to undertake a multi-disciplinary assessment of the impact of our commitments under trade liberalisation to date. This is an essential step that must occur before any further trade agreements are entered into and indeed there is the need for an ongoing multi-disciplinary assessment process to be established if we are to ensure accountability for decisions made by government.

3. The maintenance of standards

It is our view that standards of particular importance to the trade union movement (such as labour standards, regulation of services, protection of human rights and environmental legislation) are not afforded adequate protection in this agreement. It is easy for such standards to be portrayed as "barriers to trade" that need to be removed. This is of extreme concern to the QNU. For example, we fear the potential still exists for regulatory frameworks that govern the practice of health professionals (and are central to the maintenance of appropriate standards of care in the health sector) to be compromised by this agreement. It is essential that Australia retains its unfettered ability to regulate to protect the community – this surely must be a non-negotiable position in any trade agreement.

4. Concerns in relation to the PBS

Another issue of concern to the QNU is the potential negative cost effects on the Pharmaceutical Benefits Scheme (PBS) that may arise from the AUSFTA. Given that growth in pharmaceutical costs has been identified as the most significant driver of health care costs the government needs to be satisfied that the changes proposed in the AUSFTA will not drive drug costs up. The QNU certainly is not convinced that this is the case and a significant number of experts have expressed concern that they believe drug costs will rise as a result of the AUSFTA. The government's assurances that there will be no increase in drug costs to the consumer as a result of the agreement is cold comfort as this is merely semantics. If US pharmaceutical companies have their way the costs of their drugs in Australia will increase. They do not care whether this is paid for by individual consumers or through the collective purse, in this case the PBS. Either way, Australian taxpayers will be footing the bill.

The QNU strongly urges this committee to pay particular attention to the concerns expressed by Australian public health and pharmaceutical experts with regard to the AUSFTA. For example, Dr Ken Harvey, Senior Lecturer, School of Public Health at La Trobe University (an inaugural member of the Commonwealth's Pharmaceutical Health and Rational Use of Medicines (PHARM) Committee) has highlighted some serious concerns.

Dr Harvey's primary concerns about the AUSFTA are:

Major concessions that have been given to the US pharmaceutical industry in the AUSFTA are likely to undermine the Australian PBS and ultimately increase the costs of drugs to Australian consumers.

There is a lack of balance in agreement – the focus is on the rights of drug manufacturers and not the right of consumers to equitable access to affordable drugs.

There is a failure to include a key principle of the Doha Declaration on the TRIPS Agreement and public health (adopted by the WTO Ministerial Conference in November 2001), namely that trade agreements should be interpreted and implemented so as to protect public health and promote access to medicines for all.

The implementation of an appeals process into the Pharmaceutical Benefits Advisory Committee (PBAC) processes is likely to favour transnational drug companies. The introduction of such appeals processes was previously rejected by a PBS review in 2000.

There is a provision that will allow for dissemination of drug information via the internet. This will allow Direct To Consumer Advertising (DTCA) in Australia. Such advertising is legal in the USA but not in Australia and is associated with substantial increase in usage of drugs that is often not associated with best practice.

It also appears that there may be planned extensive changes to patent laws that could delay the introduction of cost effective generic drugs.

The QNU strongly supports the views expressed in the conclusion of Dr Harvey's analysis of the agreement:

In conclusion, it is very sad that at the same time that the Australian Health Insurance Commission is successfully exporting Australian medicinal drug policy to many countries wishing to balance public health policy with industry policy; the current Australian government has totally ignored public health considerations in a one-sided trade agreement with the USA.

The PBS is a world class system that has greatly assisted in containing drug costs and promoting rational and sustainable prescribing. The 2001 Productivity Commission inquiry into international pharmaceutical price differences highlighted that Australia had been very successful in containing drug costs for the majority of drugs prescribed when compared to seven other "like" countries in the study. For the basket of 150 drugs (which accounted for over 80% of expenditure on PBS listed drugs in 2000) compared in the study costs in the USA were 80-160% higher.

It is inconceivable that at a time when the Australian government is highlighting the potential significant health related costs associated with the ageing of our population that they could countenance entering into an agreement that has the potential to significantly drive up health costs. Australia's demographic challenges are perhaps one of the most significant domestic policy challenges facing our country and yet there has not been any real consideration of the imperative to ensure consistency of objectives (i.e. health cost containment measures) in all fields of government activity. Does one hand of government know what the other is doing?

Our government must not enter into any agreement that has the potential to increase drug prices given the significance of this as a driver in increasing health costs.

Other health related concerns

The Doctors Reform Society has also undertaken an analysis of the AUSFTA that goes beyond concerns about the potential negative effects on the PBS. They identified the following parts of the agreement that are relevant to health care:

- Chapter 10 Cross-Border Trade in Services;
- Chapter 13 Financial services (includes health insurance);
- Annex II (includes exclusions for Social services);
- side letter regarding gambling, alcohol, firearms and tobacco;
- Chapter 2: Market Access, Annex 2.C Pharmaceuticals;
- Chapter 17 Intellectual Property Rights;
- side letter on the Pharmaceutical Benefits Scheme (PBS).

Their analysis identifies some areas of particular concern in the agreement, some of which are shared by Dr Harvey. In summary these are that:

- *Public services not protected;*
- *Health care not unambiguously excluded;*
- *Qualifications, standards and licensing requirements need to be 'not more burdensome than necessary to ensure the quality of the service';*
- *Public health measures open to interpretation by trade dispute panels;*

- *Greater influence of pharmaceutical companies into the functioning of the PBS, weakening the price control capacity of Pharmaceutical Benefits Advisory Committee (PBAC);*
- *Creation of a 'Medicines Working Group' (MWG) with the US government whose pharmaceutical policy is one of the most expensive and inequitable;*
- *Increased patent rights for pharmaceutical companies resulting in higher cost for the PBS and ultimately the Australian people;*
- *The beginning of direct-to-consumer advertising (DTCA) of pharmaceutical drugs.*

The QNU shares the DRS's concern in relation to the potential impact of health policy, in particular the potential that exists for our health policy determination to be influenced by the a trade treaty, in this case the AUSFTA. This is of particular concern given that the USA has arguably the most costly, inefficient and inequitable health and pharmaceutical systems in the developed world.

Broader concerns

The QNU has concerns about the AUSFTA beyond the areas of health policy. We share for example the concerns expressed by the Australia Fair Trade and Investment Network (AFTINET) in their analysis of the AUSFTA that highlighted concerns in ten key areas:

1. The economic benefits are unclear
2. The dispute process limits democracy
3. Potential higher costs of medicines
4. Extension of copyright means higher costs for libraries and education bodies
5. Restrictions on the regulation of investments and services
6. Less rights to review foreign investments
7. Less rights to regulate essential services
8. US influence on quarantine and food labelling
9. Restrictions on Australian content rules in new media
10. Job losses for tariff cuts and changes to government purchasing rules

The QNU requests that your inquiry pay particular attention to these ten key areas of concern in your deliberations.

Similarly the QNU supports the concerns expressed by the Australian Council of Trade Unions (ACTU) regarding the AUSFTA. Apart from concerns already expressed in this submission, the ACTU has also highlighted the one sided nature of the benefits flowing from the deal and potential job losses.

The concerns expressed by unions as well as a range of community, consumer and public health groups must be given due consideration by your committee. This agreement is not merely about the long term benefits to some parts of our agricultural producers. The issues that are of most concern to us are difficult to quantify in pure dollar terms. There are issues that we believe will have both negative economic consequences for the Australian community as well as poor public policy outcomes, an issue that is more difficult to quantify in purely economic terms. One such example of this is the potential effects of the AUSFTA on the PBS. We believe this will not only have an effect in terms of increases in drug prices (a consequence/objective acknowledged by US trade negotiators) but also on responsible and sustainable drug use, something that will have negative consequences in health policy terms.

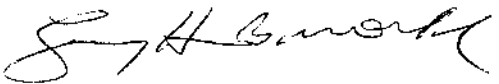
The QNU believes that not only have the negotiation, scrutiny, analysis and endorsement processes for this agreement been unacceptable, we also believe that the AUSFTA is just a poor agreement. There have been public statements to that effect from both opponents and supporters of trade liberalisation, with some supporters of trade liberalisation expressing concern not only about the standard of the agreement ("this is not a free trade agreement") but also about the shift away from multi-lateral agreement processes.

Putting aside all the concerns raised in this submission for one moment, media reports that trade experts within the Department of Foreign Affairs and Trade were not in favour of signing the deal because it was substandard must be of concern to your committee. Have issues such as the status of our foreign policy alliance with the USA and domestic political imperatives resulted in a preparedness to compromise in order to reach a deal at any cost?

We thank you for the opportunity to provide a submission to this important inquiry.

Should you wish to discuss our submission further please do not hesitate to contact me by telephoning 07 3840 1444.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Gay Hawksworth', written in a cursive style.

GAY HAWKSWORTH
Secretary