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AUSFTA

Submission No: 211-2

**Australian Government****Department of Foreign Affairs and Trade**

16 June 2004

Dr Andrew Southcott MP
Chair
Joint Standing Committee on Treaties
Parliament House
Canberra ACT

Dear Dr Southcott

Thank you for your query regarding any changes made to the text of the Australia-United States Free Trade Agreement (AUSFTA) during the legal scrub.

As you are aware, no changes were made to the rights and obligations of the Parties to the Agreement during the legal scrub. The purpose of the legal scrub is to ensure that the legal text of the treaty faithfully reflects the outcome of the negotiations between the Parties. It is also an opportunity to provide increased clarity in the treaty text and consistency in language, style and formatting across the entire treaty text. Given the size and complexity of the AUSFTA text, this was a major undertaking.

If the final text is compared to the draft text released to the public on 4 March, you will notice that:

- . language in the passive tense has been replaced by active tense language;
- . common definitions of frequently-used terms have been agreed and used throughout the agreement;
- . common formatting has been used;
- . where Annex I, II and III reservations refer to Australian legislation, the text has been amended to use terminology consistent with that found in the relevant legislation; and
- . where appropriate, drafting devices used in some chapters have been replicated in others. For example, the Investment Chapter practice of defining and using the term "covered investment" was replicated in the Government Procurement Chapter where "covered procurement" was defined and used. This greatly simplified the language required to express the obligations in this chapter.

You may also note that two more substantive changes were made to the draft text to ensure that it accurately reflected the deal closed in Washington in February. Firstly, the commitment to exempt the other Party from application of WTO Special Safeguards under

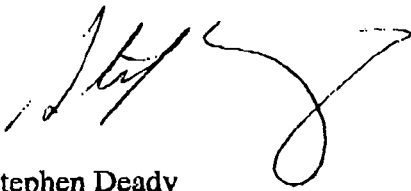
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Article 5 of the Agreement on Agriculture was included in the draft US General Notes to Annex 2-B, but not in the Australian General Notes. It has now been included.

Secondly, in the Annex II Broadcasting and Audiovisual reservation, the draft text referred in paragraph (h) to "taxation concessions". The final text has been corrected to refer, in paragraph (g), to all "subsidies and grants", not just taxation concessions, to ensure appropriate coverage of Australian arrangements. The draft text also reserved Australia's rights in paragraph (g) with respect to spectrum management. This was corrected in the final text in paragraph (f) to reserve Australia's rights with respect to both spectrum management and licensing of broadcasting services.

I hope this explanation is of some assistance and look forward to release of your report.

Yours sincerely



Stephen Deady
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Office of Trade Negotiation