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Y/R: JSCOT Inquiry

TO: Julia Morris
Inquiry Secretary
Joint Standing Committee
On Treaties
AUSTRALIA - UNITED STATES
FREE TRADE AGREEMENT

FROM: Stephen GOULD
Chair Management Committee
XZIG
OIC

Dear Julia

Further to our submission to the Senate Inquiry on Fri 30 Apr 2004, your e-mail Mon 03 May 2004 and my conversation with Trish TYSON JSCT Secretariat at the Public Hearing in the Jubilee Room Parliament House Sydney on Thu 06 May 2004, I understand late submissions will be accepted until 23 May 2004.

This is a Submission from the Management Committee of the XML & E-commerce Special Interest Group [XZIG] of the Open Interchange Consortium [OIC] Electronic Business Association.

This submission comprises a review of the following sections of the draft Free Trade Agreement:

1	c16 - E-commerce	3 pages
2	c17 - Intellectual Property	29 pages
3	c21 - Dispute Settlement	11 pages
	1 Remuneration Panelists	
	2 Alternative Dispute resolution for SME Trading Partners	
	3 Electronic Notary	

To assist the Senate Inquiry the background to the members of the OIC XZIG Management Committee is provided.

The index for the submission is:

A Management Summary
B Background members of the OIC XZIG Management Committee
C Experience with Electronic Commerce Implementations
D Intellectual Property Royalties
E Dispute Settlement
F Submissions Reviewed from JSCT Web-site

A MANAGEMENT SUMMARY

It is interesting to note that in the Free Trade Agreement only 3 pages are dedicated to Electronic Commerce while 29 pages focus on Intellectual Property and 11 pages outline Dispute Resolution issues with clearly defined timetables and panels for Dispute Resolution.

The deadline for the first Public Consultation on the proposed Trade Agreement was 15 Jan 2004. There were 200 Submission comprising 60 from peak industry and business organisations.

When the Trade Agreement was announced on 06 Mar 2004 the Australian Senate Inquiry deadline for Public Submission was 30 April 2004. As at 10 May 2004 there were 190 Submissions on the Joint Steering Committee opn treaties Web site.

Whilst approximately 60% are individual submissions 15 Association and company submissions were reviewed.

A survey was conducted of other submissions to JSCT to see if any other submissions provided a review of Chapter 16 Electronic Commerce of the Free Trade Agreement

20 Submissions were reviewed including those from:

- 1 Australian Fair Trade and Investment Network
- 2 School of Public Health, La Trobe University
- 3 Australian Council of Trade Unions (ACTU)
- 4 Faculty of Law University New South Wales

None of them appear to comment on Chapter 16 Electronic Commerce

This key focus for this review is the Electronic Commerce mechanism under which the Free Trade Agreement would be able to operate particularly to stimulate Small and Medium size Enterprises to export to the US marketplace.

However before reviewing that mechanism perhaps it is an opportune moment to review as a key part of Electronic Commerce the whole Business Process of International Trade.

The key issues for trade are:

- 1 Government policies have always based trade on "The Wealth of Nations" which was written by Adam SMITH in 1776.
- 2 This document became the basis of the paper by Benjamin DISRAELI "The Vindication of the British Constitution" to the Prime Minister Sir Robert Peel in 1835. In 1867 Canada was the 1st Empire Country to accept the Constitution. In 1901 Australia was the 2nd County to leave the Empire and join the Commonwealth.

The Constitution lists 39 Powers of Parlaiment. The first Power is "Trade and Commerce"

- 3 The Wealth of Nations did not consider "Intellectual Property and Participation" as part of the "The annual labour of every nation is the fund which originally supplies it with all the necessaries and conveniences of life which it annually consumes, and which consist always either in the immediate produce of that labour, or in what is purchased with that produce from other nations".
- 4 Governments have used the Wealth of Nations to promote trade as a way of providing work for populations and collecting taxes via income tax or increasing revenue via import taxes and duties
- 5 Electronic Commerce and Electronic Information Interchange [EII] provides a higher level of business rules that cater for Intellectual Property and reduce the need for expensive Dispute resolution processes particularly for Small & Medium size Enterprises [SME].

Key issues for Australian SMEs that become involved with Trade with the USA will include:

- 1 The unlikely opportunity that US Government Business will be available to Australian SMEs. In Australia, doing business with Australian Government Agencies is a tortuous process and significant contracts are rarely won by Australian SMEs. Australian SMEs will have to work with the Australian subsidiaries of US companies to win US Government businesses

- 2 Administration costs for business particularly Small & Medium size Enterprises particularly with international communication costs
- 3 The problems with Time zone differences
- 4 Volatile fluctuating currency rates
- 5 Fast Dispute Resolution processes not Dispute Resolutions Timetables that extend to years with a requirement for financial lodgments

The initial review of this Free Trade Agreement is that it appears to provide few incentives for Australian Small & Medium size Enterprises and is a potential source of great cost and frustration for SMEs.

B MANAGEMENT COMMITTEE OZIG

The OIC XML & E-commerce Special Interest Group [XZIG] was formed in 1999. The formation members included Sun Microsystems, Halisa International Network, Software Engineering Australia and Software AG.

In 2001 the OIC joined ebXML Australia which was established to stimulate XML E-commerce Standards for Australian business

Following discussions with Keith FINKELDE Chair ebXML Australia, Director Superannuation Industry Association and other ebXML members at OIC XZIG seminars during 2002 it was agreed that the UN/EDIFACT Standard did not provide a suitable name and address format for E-commerce

In 2002 the TIMS XML E-commerce structure was submitted to ebXML Australia as an Australian e-Tender Standard

The members of the OIC XZIG Committee who have contributed to that submission include:

Stephen GOULD Chair
Ken BROMFIELD - OIC Website developer
Guy BLOMBERG - OICY2KRAMP Database Consultant
Lars SORHUS - TIMS Developer

C EXPERIENCE WITH E-COMMERCE IMPLEMENTATIONS

The objectives of XZIG included developing a number of applications using XML to demonstrate how XML operated in an E-commerce environment.

OIC Members include Australian Industrial Development Corporation (AIDC), Commonwealth Bank of Australia (CBA) Sun Microsystems Australia, Halisa International Network, CSC Australia and Business Management Trust funded a number of E-commerce project developments

A number of application were developed using the standard XML E-commerce Name and Address template including:

1997

A Electronic Association Information Management [EAIM]

1998

B OIC Y2K Resource Asset Management Program [OICY2KAMP]

2000

C Tender Information Management Service [TIMS]

2001

D Electronic Questionnaire - developed for Federal Department Employment, Workplace Relations Small Business

2002

E Electronic Event Registration with XML interface

2003

F Electronic Membership Application

2003

G Electronic Subscriptions Registrations

D INTELLECTUAL PROPERTY ROYALTIES

One of the problems with Intellectual Property is that to take out a patent requires the person with the IP to detail the Intellectual Property as part of the patent. In addition the IP details often have to be detailed to obtain Government funding or investor funding.

It is not unknown for Australian inventors to discover that US patents have been taken out on their inventions or vested interest to deter the success of certain inventions. An example is the Sarich revolutionary Orbital Engine which was developed in 1972 and 30 years later is still not a commercial 4-stroke motor engine.

Often product developers and software developers have spent considerable time in a particular community developing and refining the IP. That IP has been able to thrive and develop due to the infrastructure of the Local Community that has provided basic resources such as water, power and sanitation.

There is an Argument following Adams premises of the Wealth of Nations that this IP should be considered as an Asset for the individual, the family and for the Local Community in that although it has not been bought or sold work has been carried out to produce that IP.

Indeed the submissions made by the respondents made by the respondents to this FTA Inquiry contributions are the results of research and work carried out by Community minded people hence this again could be considered an Asset.

This may be a role that Local Government can fulfil by providing an IP Trustee service for the local community whereby an encrypted file could be sent as a record to record when an invention was devised.

This encrypted file can only be opened by the sender as and when appropriate if there is a dispute over copyright and IP.

At the OIC AGM 23 Jul 1996 the Members unanimously voted for Intellectual Property Royalties to be awarded to members that contribute to running and attending events.

In 1998 OIC members developed an IP Accreditation system which was implemented for attendees at the XML & E-commerce Seminars.

There are 7 types of Electronic Credits as part of the IP Accreditation:

Type	Credit
A	Accommodation
E	Entertainment
F	Financial
H	Health
L	Learning
N	Nourishment
T	Travel

This type of e-Credits system may be worth considering for school children as a way to encourage them to study

The Credits could be "spent" in travel and staying at places that are prepared to accept e-Credits like .

Local Councils, Masonic lodges or schools could become credit repositories whereby travellers can nominate where a certain number of e-credits are held

E DISPUTE RESOLUTION

The process for Dispute Resolution looks like a legal nightmare for SMEs particularly with sections like

- A Establishment of Panel
- B Rules of Procedure
- C Panel report - within 6 months
- D "Inflation Adjustment Formula for Monetary Assessment"

The Dispute Resolution process is still locked into traditional legal dispute resolution processes

It is hard enough for SMEs to conduct business locally let alone trying to conduct trade with the US where you have 4 different time zones in USA and 3 different time zones in Australia not count daylight saving hours.

It can be done because the telecommunications infrastructure is in place but the operations infrastructure for e-Commerce has not been implemented yet.

In 1989 at the European Union EDI Conference in Brussels the French proposed that an Electronic Notary could provide an independent record of when company A sent a trade document to company B.

Further more it was proposed that various Industry Associations and Peak Bodies could act as Electronic Notaries for their members to either record the time and date when e-documents are sent and with certain key documents retain an encrypted copy of a document to verify the information that has been sent and more important received.

We are agree that it is far better for a Panel to revue the dispute although suggest that the remuneration may by an e-Credits system similar to that developed by OIC members

This type of Credits may be suitable for the panels proposed in the chapter 21 for Dispute Resolution

F SUBMISSIONS REVIEWED

As at 10 May 2004 there were 190 Submissions registered on the Joint Standing Committee of Treaties. A number were selected for review to determine whether Chapter 16 Electronic Commerce had been reviewed. These include:

39	<u>Australian Information Industry Association</u> -	270 Kb - 10 pages
43	<u>Australian Services Union</u>	284 Kb 18 pages
50	<u>Electronic Frontiers Australia</u> -	4.0 Mb - 18 pages
56	<u>Interactive Entertainment Assc Aus (IEAA)</u> -	34 Kb - 4 pages
66	<u>The Cabinet NSW</u> -	1.09Mb - 8 pages
70	<u>The Australian Institute</u> -	88 Kb - 5 pages
85	Cybersource Pty Ltd -	7 Kb - txt file
91	<u>Victorian Government Submission</u> -	1.0 Mb - 18 pages
94	Australian <u>Industry</u> Group -	1.51 Mb - 13 pages
111	<u>Council of Textile and Fashion Ind Aus</u> -	230 Kb - 2 pages
123	Digital Distribution Global Training Services -	72 Kb - 4 pages
126	<u>Business Software Association of Australia</u>	72 KB 6 pages
127	<u>Australian Censervation Foundation</u>	1873 Kb 20 pages
132	<u>Business Council of Australia</u> -	706 Kb - 8 pages
133	<u>Australian Chamber of Commerce & Industry</u> -	608 Kb - 6 pages
142	<u>Australian Library & Information Association</u> -	761 Kb - 10 pages
143	<u>Federal Chamber of Automotive Industries</u> -	720 Kb 12 pages
156	<u>Australiasian Perfoming Rights Association (APRA)</u> -	4 pages
183	<u>Linux Australia</u> -	221 pdf 8 pages
186	<u>Tuna Boat Owners Association of Australia</u> -	423 Kb 3 pages
187	<u>Australian Red Cross Blood Service (ARCBS)</u> -	256 Kb 14 pages
190	<u>Federation of Australian Scientific and Technological Societies (FASTS)</u>	

