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The Secretary
Joint Standing Committee on Treaties,
R1-109, Parliament House,
Canberra ACT 2600

Submission to the Joint Standing Committee on Treaties The Australia US Free Trade Agreement (USFTA)

Thank you for the opportunity to contribute to this inquiry into the US Free Trade Agreement.

During and since my time in the Senate, I have been very worried about the increasing deregulation of local markets and privatization of public utilities at the expense of hard-won labor conditions, the environment and social harmony. My concern about the absence in mainstream national debate on the creation and implementation of economic policies like the National Competition Policy prompted me to undertake in-depth research into the issue, which resulted in a Masters thesis on Competition Policy, State Agreement Acts and the Public Interest.

Whilst I am grateful for the opportunity to contribute to this inquiry, I'm of the belief that despite the wide-ranging ramifications of this bilateral trade agreement, the consultations that both the State and Federal Governments have undertaken with the Australian public have been far from adequate.

As the Member for the Agricultural Region in Western Australia, I am all too aware of the discontent amongst farmers and agricultural communities about the Federal Government's failure to provide them with comprehensive information about the institutions and markets that will be unduly affected under this agreement. Rural communities throughout Western Australia have had very limited opportunity to contribute to what would have to be one of the most important economic and social decisions Australia has ever had to face.

One would like to have thought that the Commonwealth Government would have ensured that every single state government and federal government department was fully briefed on this trade agreement throughout the entire process, not only to inform their own consultation processes but to enable them to conduct thorough environmental, social and economic impact assessments of the agreement.

As has been revealed in media reports and answers to questions I have asked in the Western Australian Parliament however, many state governments and federal government departments have been left completely out of the loop. The Commonwealth Government has allowed this very important trade agreement to be negotiated in the absence of ongoing essential and constructive input from all of the state governments and government agencies. On nearly every point of concern in the text none of the biggest stakeholders (government agencies and state governments) but more importantly, the entire Australian public, were permitted to know what was proposed or had been agreed to until after the text

was published last month.

Consultation aside however, when considering this trade agreement initially, the Commonwealth Government ultimately failed to gauge whether such a proposal actually enjoyed much support in Australia. How many Australians really believe that this trade agreement is in Australia's national and regional interests?

Recommendation:

The Committee should recommend that this agreement not be endorsed by Cabinet and should not come into force, as it is contrary to the national interest.

There are two parts to this submission. Part A of the submission deals with general concerns about the USFTA, including studies of the economic effects of the USFTA and its general impacts on the ability of governments to make law and policy in the public interest. Part B considers impacts on particular areas of policy.

Part A

Unequal bargaining position

The AUSFTA has unquestionably placed Australia in an unequal bargaining position, resulting subsequently in a very lopsided FTA.

With the enormous disparity in the size of the Australian and US economies (Australia's budget is 4% of the size of the US economy), there is no chance that the proposed Australia-United States Free Trade Agreement (AUSFTA) will bring any economic benefits to the majority of Australian citizens.

Peter Hartcher aptly outlined the glaring economic disparity between the two countries when he wrote:

"We are now committed to negotiate a free trade agreement with a country whose defence budget is bigger than the entire Australian economy. The US has a cookie market the size of the Tasmanian economy, a pet care market as big as South Australia's total annual output".¹

Why would the global superpower, with its \$US10 trillion (\$17.75 trillion) economy, be interested in a free trade agreement with a South Pacific middle power with a \$US400 billion economy?² The US obviously has very little to gain from this agreement and is therefore in a position in which it has been able to maximise its demands whilst making very few concessions to Australia.

Lack of clarity in relation to economic benefits

Despite the Government's initial claims that this trade deal is worth around \$4 billion a year to the Australian economy, the Foreign Affairs Department trade specialist Stephen Deady admitted in November 2002, that the \$4 billion estimation "was a rough figure which had come about when the Australian dollar was weaker against the US dollar". When pressed further he admitted that under the current exchange rate, "the trade deal would be worth less than \$4 billion".³

1 Hartcher, Peter. "US trades principles for power". Australian Financial Review. 16 November 2002.

<http://afr.com/perspective/2002/11/16/FFXLVE5YI8D.html>

2 *ibid.*

3 "Doubts about free trade benefits: officials". The Age. 22 November 2002.

The “\$4 billion of benefits”⁴ comes from the Centre for International Economics’ report *Economic Impacts of an Australia-United States Free Trade Area*, commissioned by the Australian Department of Foreign Affairs and Trade. The limiting assumptions specified by DFAT for this paper “excluded some of the most important real-world costs” such as “extra transport and transactions costs from re-arranging established patterns of trade”.⁵

Although this study predicted gains of 0.3% for the Australian economy and subsequently formed the cornerstone of the Federal Government’s justification for negotiating this bilateral trade agreement, it has been rendered redundant as it was based on ‘total’ free trade in agriculture, as opposed to the existing FTA which contains numerous exclusions and incremental tariff reductions in agriculture.

Another study (by the Australian Asia Pacific Economic Cooperation (APEC) Study Centre) forewarned that the USFTA would deliver negligible economic benefits for Australia if the US refused to remove all of its agricultural tariffs, quotas and subsidies:

“It is argued by some that the United States would not be prepared to make concessions on some agricultural products and that the value of an FTA would therefore be substantially, if not wholly, removed”⁶.

Ross Garnaut, Professor of Economics at the Australian National University’s Research School of Pacific and Asian Studies has led the charge of pessimistic Australian economists:

“A realistic assessment suggests that even the modest gains beyond those from Australia’s own liberalisation of imports exaggerate the benefits of a free trade agreement with the United States.”⁷

Ann Capling from the Department of Politics at the University of Melbourne prophetically wrote in 2001 that the Australian Government’s decision to engage in the US’ “aggressive bilateralism”⁸ in pursuit of a deal with Washington was likely to “trigger a powerful domestic backlash and, in the end, is likely to be highly counterproductive”⁹.

The International Monetary Fund also gave the FTA the thumbs down last November when it “concluded that such an agreement would be a negative for the Australian economy. Economic modelling by IMF researchers showed that a free-trade deal with the US would shrink Australia’s gross domestic product marginally because of the loss of trade with Japan, other Asian countries and Europe”¹⁰.

Impact of a FTA with the US on Australia’s Multilateral and Regional Interests

<http://www.theage.com.au/articles/2002/11/22/1037697867738.html>

4 *Economic Impacts of an Australia-United States Free Trade Area*. Centre for International Economics, 2002 (Leon Berkelmans, Lee Davis, Warwick McKibbin and Andrew Stoeckel). Report Commissioned by the Australian Department of Foreign Affairs and Trade, Canberra.

5 “Effects of a Free Trade Agreement with the United States On Australia’s Multilateral and Regional Interests” by Ross Garnaut

6 Australian APEC Study Centre (2001) *An Australia-US Free Trade Agreement: Issues and implications*, Commonwealth of Australia, Canberra.

7 “Effects of a Free Trade Agreement with the United States On Australia’s Multilateral and Regional Interests” by Ross Garnaut, Professor of Economics, Research School of Pacific and Asian Studies, The Australian National University. Paper presented to Conference on an Australia-United States Free Trade Agreement, Canberra, 30 August, 2002.

8 “An Australia-United States Trade Agreement?” Ann Capling, Department of Politics, University of Melbourne (Policy, Organisation and Society Vol, 20 No. 1 2001 – Special Edition – An American-Australian Free Trade Treaty?

9 *ibid*

10 “IMF marks down US free-trade deal” Australian Financial Review, Mark Davis, 17 November 2003

A FTA with the US could have profound ramifications for Australia's multilateral and regional interests.

The main cost Australia would face under a free trade agreement with the US would involve "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"¹¹. In the worse case scenario Garnaut said "the cost to Australia of fracture in the open, multilateral trading system would be very large indeed"¹².

There will undoubtedly be negative effects on Australia's relationship with neighbouring trading partners if a FTA with the US was implemented.

The DFAT commissioned study by the Centre for International Economics found that:

"The effects of an Australia-United States Free Trade Agreement on overall expected return to capital would be negative for Asia as a whole and for all but two Asian economies"¹³.

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".¹⁴

Threat to Australia's political sovereignty

Whilst trade and security issues haven't been officially linked in the past, the US government has undeniably linked the FTA with the US security alliance. The linking of security and trade issues in the context of this agreement is a serious mistake and could be detrimental to Australia's independence in both foreign policy and trade policy.

US trade representative Bob Zoellick outlined in a letter to Congress that a free trade agreement with Australia would "strengthen the foundation of our security alliance".

Ann Capling was reportedly shocked at the link that had been overtly made between trade and security:

*"It's been a cornerstone of both Australian and US foreign policy since World War II that security and trade issues are kept in separate boxes. To see them linked now has major implications for the Australia-US security alliance."*¹⁵

Dr Patricia Ranald, the convenor of the Australian Fair Trade and Investment Network has pointed out that:

" Some commentators have also raised the possibility of trade offs on defence policy, with the US wanting more active support from Australia for its National Missile Defence system, a

11 *Effects of a Free Trade Agreement with the United States On Australia's Multilateral and Regional Interests* by Ross Garnaut, Professor of Economics, Research School of Pacific and Asian Studies, The Australian National University. Paper presented to Conference on an Australia-United States Free Trade Agreement, Canberra, 30 August, 2002.

12 *ibid*

13 *Economic Impacts of an Australia-United States Free Trade Area*. Centre for International Economics, 2002

14 Garnaut, Ross, 2002. *An Australia-United Free Trade Agreement*.

15 Allard, Tom and John Garnaut. " *All the Way with the USA* " . [Sydney Morning Herald](#), 15 November 2002

*system which has been condemned by most countries of the world for undermining historical gains in nuclear disarmament.”*¹⁶

In the article *“Free trade comes with strings attached”*, Hugh Mackay described the Bush Administration’s aspirations for a FTA with Australia to “strengthen the foundation of our security alliance”, as sounding:

*“suspiciously like an offer to reward Australia’s willing embrace of US military strategies by creating more liberal trading opportunities for us”.*¹⁷

What could that potentially mean?

If the Australian government agrees to this dangerous marriage of trade and security in its negotiations, there’s no doubt that:

*“Australia will be drawn into a deal that ... not only puts military conditions on our trading arrangements, but also challenges our right to retain control over our own economic destiny”.*¹⁸

A closer economic relationship with the US should not affect Australia’s relationship with other countries or compromise Australia’s political sovereignty.

Mackay identified the all-important question which must be asked when considering the ambit of this agreement when he wrote:

*“how much control should trading partners exert over each other’s economic and cultural sovereignty?”*¹⁹

He then preceded to say:

*“That’s just a polite way of asking a more sleazy question: how much bribery or blackmail should be built into the price of anything? The tension between economic pressure and moral values is as old as trade itself, and now we are going to see, up close, how a modern democratic government resolves it.”*²⁰

Part B:

The Pharmaceutical Benefits Scheme (PBS)

The US negotiators and pharmaceutical lobby groups clearly identified the price control mechanism of the PBS as a target from the outset of the negotiations and throughout the negotiation process. Pharmaceutical companies have argued consistently that Australia’s price control system through the PBS is an unfair barrier to trade. They have been successful in achieving changes to the PBS process in the USFTA.

16 Ranald, Patricia. “ Government seeks Free Trade Agreement with the USA without community debate” . www.aftinet.org.au

17 Mackay, Hugh. “Free trade comes with strings attached”. Sydney Morning Herald. 23 November 2002.

<http://www.smh.com.au/articles/2002/11/22/1037697878002.html>

18 *ibid*

19 *ibid*

20 *ibid*

Australian economist John Quiggin points out however that:

“The submission of AUSTA, the main business lobby for a US FTA, to the Senate inquiry into the FTA denies any intention to ‘dismantle’ the scheme, but notes, ominously, that ‘there are features of the scheme that discourage investment by drug companies in Australia’ It is safe to conclude that the features seen as discouraging investment and job growth are the same ones that provide Australians with access to affordable drugs”²¹.

The changes set out in the Side Letter on Pharmaceuticals give pharmaceutical companies more opportunities to influence the Pharmaceutical Benefits Advisory Committee before its decisions, and provide for an independent review of decisions not to list certain drugs on the PBS. The decisions of the committee to list new drugs are made on both health and value for money grounds. The value for money decisions are based on comparisons with cheaper generic drugs. Review of decisions could therefore result in more highly priced drugs being listed. Australia is also required to provide companies an opportunity to apply for price adjustments after drugs have been listed.

The procedural changes to the PBS prioritise the commercial interests of US pharmaceutical manufacturers above the social policy objective of providing affordable access to medicines to Australians. Locking these changes into the framework of a trade treaty limits the ability of future governments to regulate the PBS with the public policy objective of providing accessible drugs at the forefront. The operation of the PBS involves balancing a number of important objectives, which include rewarding innovation for new and useful drugs, as well as ensuring that Australians have affordable access to important medicines. The USFTA selects only one of these objectives, to the benefit of pharmaceutical companies, and enshrines it within a trade treaty, without granting the public policy objectives the same status. The objective of maintaining drug affordability is not mentioned within the side letter at all. This is a dangerous direction in which to take Australian social policy and should be rejected.

Investment

US investment in Australia must be given ‘national treatment’, meaning it must be treated in the same way as local investment (Article 11.3). US investors cannot be required to use local products, transfer technology or contribute to exports (Article 11.9).

Existing limits on foreign investment are retained for newspapers and broadcasting, Telstra, Qantas, Commonwealth Serum Laboratories, urban leased airports and coastal shipping. However, these limits are subject to ‘standstill’ and cannot be increased. The Foreign Investment Review Board (FIRB) retains the power to review investments of over \$50 million in these areas, and in military equipment, and security systems, the uranium and nuclear industries (Annex 1).

Regulation of foreign investment can only be increased for urban residential land, maritime transport, airports, media co- production, tobacco, alcohol and firearms (Annex 2).

However the threshold for FIRB review of all other investment in existing businesses has been lifted from \$50 million to \$800 million. US investment in new businesses in areas not listed as reservations will not be reviewed at all. The US government estimates that if these rules had applied over the last three years, nearly 90% of US investment in Australia would not have been reviewed (US Trade Representative, ‘Summary of the US-Australia Free Trade Agreement’, Trade Facts, p 1, 8 February 2004). The

²¹ “Free trade with the US: the downside”, Australian Policy Online, John Quiggin, 5 June 2003

Australian government is also proposing to extend these changes to investors from other countries. This is a massive reduction in review powers.

Services: the USFTA and public services

'Services' is a very broad category and includes such important areas as health, education, water, postal, energy and environmental services. The USFTA applies to all levels of government – federal, state and local.

The text states that the services chapter does not apply to public services (Article 10.1). These are defined as services **not** supplied 'on a commercial basis, nor in competition with one or more service suppliers'. This is the same flawed definition that has been used in other agreements, such as the WTO Services Agreement (GATS). In Australia many public services are supplied on a commercial basis or in competition with other service suppliers, including health, education, water, energy and post. Such services could be covered by the agreement, unless they are listed as reservations.

Any trade agreement should clearly exclude public services, particularly essential services.

Australia must treat US companies as if they were Australian companies (Article 10.2). Australia must also give full 'market access', which means no requirements to have joint ventures with local firms, no limits on the number of service providers, and no requirements on staffing numbers for particular services (Article 10.4).

Australia's qualifications, licensing and technical standards for services cannot be 'more burdensome than necessary to ensure the quality of the service' (Article 10.7). Regulations could be challenged by the US government on these grounds.

Services reservations

Annex I - 'Stand-still': Existing laws and policies of state and local governments are listed as reservations but are 'bound' at current levels, cannot be made more regulatory, and are subject to the 'ratchet' effect if they are reduced, which means they cannot be restored to previous levels.

Annex II – 'Carve-out': Social welfare, public education, public training, health and child care are reserved, but only 'to the extent that they are established or maintained for a public purpose', which is not defined. If the US challenged a childcare regulation, for example, it is unclear what Australia would have to do to prove that the childcare services were 'established or maintained for a public purpose'.

It is important to note that water, energy and public broadcasting services are not listed as reservations, and are therefore fully included in the agreement.

Water services

Water has not been excluded through any reservations, so any Commonwealth regulation of water services will have to comply with the USFTA. State and local government water services regulation are permitted at 'standstill', but if they are changed the US could challenge them. The agreement assumes that public water services will be protected, but many water services are already delivered on a commercial basis, so the protection is highly doubtful.

Telstra Privatisation Side Letter

This letter outlines the government's policy to sell the rest of Telstra. The US insisted on this letter. This issue is still being debated by the Australian parliament as a matter of public policy, and should not be part of a trade agreement

Australian content in film, television and music

The government claims that the USFTA protects Australian content and culture. In reality, there are strict limits on future governments' ability to ensure that Australian voices continue to be heard. Under Annex I, Australia's existing local content quotas are 'bound', and if they are reduced in the future they cannot later be restored to existing levels. Under Annex II, future Australian governments are limited in the laws they can introduce for new media

For multichannelled free-to-air commercial TV Australian content is capped at 55% on no more than 2 channels, or 20% of the total number of channels made available by a broadcaster, up to only three channels. For free-to-air commercial radio broadcasting Australian content is capped at 25%. These restrictions severely limit the capacity of future governments to respond to new circumstances and new forms of media.

Quarantine

Two new committees have been established with representatives from both sides. The first, called the Committee on Sanitary and Phytosanitary Matters, deals with quarantine policy and processes. However, one of its objectives is 'to facilitate trade' between Australia and the US. Its functions include 'resolving through mutual consent' matters that may arise between the Parties (Article 7.4). The second committee is a technical working group, which is also established with the objective of facilitating trade (Annex 7-A, para 1).

Australia's quarantine regulations should be made on a scientific basis in the interests of Australia, not as part of a trade dialogue with a much more powerful country. The promotion of trade and the quarantine protection of Australia's environment, crops and livestock are separate roles which should not be combined.

Genetically Engineered food labelling laws and crop regulation

The US does not have labelling of GE food, has challenged EU labelling laws through the WTO and identified Australian labelling laws as a barrier to trade. The USFTA requires Australia and the US to give 'positive consideration' to accepting the other party's technical regulations as equivalent to their own, and to give reasons if they do not (Article 8.5).

Australia must give US representatives the same rights as Australians to participate in the development of Australia's standards and technical regulations. The USFTA even states that the Australian government will recommend that Australian non-governmental bodies should also let US government representatives have the same rights as Australian citizens to participate in Australian NGO processes for developing standards for Australia (Article 8.7).

These changes to processes and procedures for regulation of quarantine and GE regulation give the US a formal role in Australia's policy. It ensures that trade obligations to the US will be high on the list of priorities when regulations are being made.

Environment

There is a general clause stating that Australia and the US will be able to make laws that are necessary to protect human, animal or plant life or health. However, these laws must not be a 'disguised restriction on trade in services' (Article 22.1 incorporating GATS Article XIV).

Both Australia and the US have committed to encouraging the development of 'flexible, voluntary and market-based mechanisms' for environmental protection (Article 19.4). Since much environmental regulation is not and cannot be voluntary or market based, this is an extraordinary statement to have in a trade agreement. Fortunately the statement cannot be enforced through the disputes process, which only applies to environment laws if a government fails to enforce its own laws (Article 19.7.5).

These mechanisms have the potential to undermine the ability of Australian Governments (Federal, State, Local) to regulate a wide variety of environmental and other services. It is of the utmost importance that that Australia maintains control over the management of its own natural resources and in accordance with an evidence-based regulatory framework, not one based on the fear of potential compensation claims²².

Government Purchasing

There are some government purchasing schemes which give preference to local products or require foreign contractors to form links with local firms to support local employment. These will not be permitted under the USFTA. This is an unreasonable restriction on the right of governments to have local and regional development policies. At the time of writing, state governments were still considering whether to agree to be included in the government procurement chapter of the agreement, and only about half of US state governments had agreed to be included in the agreement.

Conclusion

The USFTA weakens governments' right to regulate and locks in moves towards US-style policies without democratic debate or decision. Despite the democratic ideals both nations share, neither government has taken this issue to the people to determine whether it would be in the interests of the people of both countries. The AUSFTA would set a precedent for Australia's reliance on 'great and powerful' friends "for economic security in the global political economy"²³. What is deeply concerning is the assumption that the "American 'new economy' and the associated economic and social institutions are superior to the 'old economy' and 'old society' of Australia"²⁴. There is overwhelming concern in the communities I represent that the AUSFTA will not bear fruit for farmers or for consumers and that our national interest is ultimately not being advanced in this agreement.

22 Australian Network of Environmental Defender's Offices. Submission on the Australia-US Free Trade Agreement. December 2003

23 "An Australia-United States Trade Agreement?" Ann Capling, Department of Politics, University of Melbourne (Policy, Organisation and Society Vol, 20 No. 1 2001 – Special Edition – An American-Australian Free Trade Treaty?

24 "Free trade with the US: the downside", Australian Policy Online, John Quiggin, 5 June 2003