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AUSFTA
Submission No: 193

Mr Andrew Southcott M.P.
Chair of the Joint Standing Committee on Treaties
C/- the Secretary
Parliament House
CANBERRA ACT 2600

Dear Mr Southcott

On behalf of the South Australian Government I welcome the opportunity to make this submission on the likely impacts of the Australia-US Free Trade Agreement (AUSFTA) on South Australia. From the outset South Australia has been a strong advocate of an AUSFTA that provides substantial trade outcomes to the Australian community.

The South Australian Government recognises the importance of trade to the future prosperity of all Australians, including South Australians. Trade is a key priority for the Government of South Australia. We have identified growth in exports as a significant driver of the State's economic growth and, to that end, have set ourselves the target of trebling the value of the State's exports to \$25 billion by 2013. We are also cooperating with the Commonwealth Government in its aim to double the number of exporters by 2006. We are helped in these aims by the recent formation of an Export Council for South Australia, an industry-led body that will provide advice to the Government on South Australia's export priorities and will help deliver an export strategy for the State.

Negotiation of a free trade agreement with the United States therefore fits well with our strategic approach to expand our export income and profile.

Previous modelling for the South Australian Government shows that the South Australian economy would be \$362 million better off over 10 years from a comprehensive agreement with the United States. The Government believes that this is a conservative estimate due to the limitations of economic modelling. This modelling assumed full agriculture, goods, services and investment liberalisation. The actual agreement, however, delivers lower gains on agriculture. But even with the disappointing outcome in this sector, the South Australian Government considers that the AUSFTA will provide substantial benefits to the South Australian economy and community. South Australia also welcomes gains in the area of government procurement. Previously 'barred' from entry into the lucrative US government market, South Australian companies will now have the opportunity to access federal and some state-level markets in the United States.

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This is not to say that the agreement is without disappointments, such as in agriculture, some areas of government procurement, and business entry into the United States. I detail South Australia's response to these below. However, it is the hope of the Government of South Australia that consultative mechanisms established under the agreement, including at the ministerial level, will result in further trade liberalisation in the future.

On balance, therefore, it is the view of the South Australian Government that the agreement will be to the economic benefit of South Australia.

We therefore support the agreement's signing and ratification and will be putting our resources into helping South Australian businesses to maximise gains from the market access and investment wins within the agreement.

Bilateral vs Multilateral

Before addressing the AUSFTA directly, I would like to take this opportunity to reinforce a point consistently made by the South Australian Government that the World Trade Organisation (WTO), including the current Doha round, offers the best opportunity for substantial market access gains for Australian exporters. The important issue of export subsidies, and the damage they do to Australian exporters, particularly in agriculture, can only be dealt with within the WTO context.

Despite this, the South Australian Government understands how difficult it is to achieve a substantial outcome in an international body consisting of 150 members where decisions are made by consensus. Consequently, the South Australian Government supports trade liberalisation efforts at the regional and bilateral levels if they do not divert resources from the multilateral effort. The South Australian Government believes that bilateral agreements can ultimately lead to better multilateral outcomes by showing the rest of the world the benefits of free trade and by building strategic coalitions of like-minded countries in the WTO.

Consultation

I would like to express my thanks to the Australian negotiators for their consultation with state and territory officials, and members of the Government, through the negotiations. It is critical that in future a high level of consultation is maintained during the negotiation of bilateral, regional or multilateral trade agreements, including as direct negotiations proceed. On this front, South Australia was disappointed that states and territories were not kept abreast of developments in the final weeks of negotiations for the AUSFTA.

Impact on South Australia

Two-way trade between South Australia and the United States is considerable, with total merchandise trade totalling over A\$2.2 billion in 2002/03. The US is South Australia's largest export market (A\$1.4 billion) and second largest source of imports (A\$755 million). Major export items include passenger motor vehicles, parts and accessories and wine, with the bulk of imports made up of components for South Australia's automotive assemblers. The agreement will bolster these figures for South Australia.

Manufacturing

The best outcomes for South Australia are in manufacturing, with over 95 percent of manufactured exports to the United States duty free from day one. The phased reduction in Australian passenger motor vehicle tariffs, albeit quicker than current arrangements, have reduced some of the concerns the South Australian Government had on the likely impact of the AUSFTA on the automotive sector. Given the importance of the automotive sector to South Australia, the Government will be closely monitoring the impact of the AUSFTA to ensure the sustainability of the industry moving forward. It is recommended that the Commonwealth Government do likewise and if, as a result of the AUSFTA, there is a substantial negative impact on the industry, consider the issue of industry adjustment assistance.

Defence

One of the key goals for the South Australian Government from the negotiations was increased access for South Australian defence exports to the US Government. It is with disappointment that the Government notes that existing strategic defence procurement measures and the majority of the so-called 'Jones Act' legislation remains in place. I hope that these issues will be addressed in the formal consultative mechanisms established in the agreement and, as time progresses, that increased access for Australia defence exporters will be achieved through these mechanisms.

Wine

It is also with some disappointment that the South Australian Government notes the 11-year phase-out of US wine tariffs. South Australian producers account for 60 percent of total Australian wine exports, 45 percent of Australian wine exports to the US, and produce some of the best wines in the world.¹ Continued retention of wine tariffs by the US breaches the spirit of free trade that the US espouses and discriminates against Australian producers relative to US producers.

Lack of progress on wine labeling issues is also a disappointment. South Australia encourages the Commonwealth to pursue reform to wine labeling to reduce costs to South Australian producers in the future.

Agriculture

In the area of agriculture, the South Australian Government shares the concern of many commentators that the outcome was not comprehensive. The exclusion of sugar from the AUSFTA will not impact South Australia directly but the lack of free trade in the dairy sector is disappointing.

This said, there are clear wins for South Australia. The removal of tariffs on a range of horticulture, meat and seafood products (including tuna) will clearly benefit South Australian producers. The protection of Australia's single-desk marketing arrangements is also a clear win for the agriculture sector. It was always the view of the South Australian Government that single desk arrangements in Australia were not trade

¹2002/03

distorting and so the Government is gratified that this view has been accepted within the AUSFTA.

Quarantine

The South Australian Government views the outcome on quarantine as positive. The principle of science is maintained as key to Australia's quarantine. The South Australian Government also welcomes the creation of mechanisms for resolving quarantine issues that may arise between the two countries, especially if this ensures that quarantine is not used as a *de facto* barrier to trade in the US.

However, South Australia seeks assurances from the Commonwealth Government that these consultative mechanisms will in no way be used to downgrade Australia's and South Australia's jurisdiction over quarantine matters.

Services and investment

The outcome for services trade and investment will benefit South Australia with increased access for South Australian service exports and more recognition for South Australian educational and professional standards. While it is unlikely that there will be a large surge in US investment in South Australia as a result of the AUSFTA, due to already substantial investment, the agreement does provide a framework for confident investment between the two countries.

The South Australian Government welcomes the inclusion of a state-state dispute mechanism within the investment chapter, rather than an investor-state mechanism. As both parties have well-developed investment protection laws, the need for additional protection for investors is not required.

There are, however, risks associated with the provisions within the investment chapter and associated annexes. The provisions on expropriation and compensation to some extent reflect the existing obligations of both parties under customary international law, though the scope of the obligation to compensate under international law is in some respects uncertain. This could have implications for government action in a number of sensitive areas, such as the environment. In this respect, the provisions on indirect expropriation are the primary cause of uncertainty.

The proposed investment provisions dealing with expropriation appear to give US investors rights that are not available to domestic investors. This difference in treatment is already a feature of Australia's existing obligations under international law. It may in fact be justifiable on the basis that mobile foreign investors will sometimes require assurances that are not extended to local investors, who are naturally more familiar with the regulatory practices of their domestic jurisdiction.

Annex 11-B to the proposed agreement, which deals with the issue of expropriation, states that "except in rare circumstances", non-discriminatory regulatory actions to achieve legitimate public welfare objectives, such as the protection of public health, safety, and the environment, do not constitute indirect expropriations. South Australian Government advice is that the inclusion of the statement "except in rare circumstances" leaves open the possibility that federal or state government action in these areas could be challenged.

Although the investment provisions of the proposed AUSFTA provide a mechanism by which the US could challenge government regulation, the Government of South Australia believes that the risk to legitimate state-based action is minimised by the absence of an investor-state dispute resolution mechanism.

Government procurement

South Australian companies will receive improved access to the \$200 billion US federal procurement market as a result of the AUSFTA. However, the government is extremely disappointed that to date a better outcome has not been achieved at the state level in the US.

While South Australia recognised at the outset of the negotiations that not all 50 US states were likely to participate in the agreement, the current figure of 27 states is inadequate. In contrast, the United States delivered 37 states, including large states such as California, to its agreement with Chile. Australia should expect no less.

As a consequence, the South Australian Government is reserving its right to participate in the government procurement chapter until it is satisfied that the US offer is adequate. It continues to provide support for participation in this chapter in principle only at this stage.

Labour and environment

South Australia recognises the substantial effort by negotiators to ensure that Australia's environment and labour laws were not impacted by the AUSFTA. In saying this, it is the view of the South Australian Government that the agreement should not have included chapters on these issues. As two developed nations with sophisticated environmental and labour laws the inclusion of these two chapters was unnecessary.

The South Australian Government is looking for a clear commitment from the Federal Government that it will not use the AUSFTA as a mechanism to override state and territory labour and environment laws. The South Australian Government reserves its right to introduce legislation and regulations that protect South Australia's environment and workers.

Local content

The South Australian Government notes with interest that a number of peak bodies in the audiovisual area have expressed concern over the lack of clarity in the agreement on just what is and is not covered. There is confusion in the audiovisual sector about how local content requirements on new technologies will be managed in the future. There is also concern that the agreement may lock the Australian Government out of regulating in new media areas.

The South Australian Government considers the maintenance of Australia's cultural identity as crucial. The presence of ambiguities in the audiovisual area, in terms of what types of media are covered by the agreement and how the agreement restricts (or not) local content requirement, is of concern to the Government. These ambiguities could usefully be addressed by JSCOT in its report.

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IP protection

The South Australian Government notes that the outcome on IP will increase the protection for South Australian copyright holders, but on the flip side will see increase in the costs for the community of using copyright material, including schools and libraries, as Australia is a net importer of copyright material.

Moving Forward

Once the AUSFTA is signed it will be crucial for the Federal Government to work with state and territory governments to ensure that business has every opportunity to exploit opportunities that may arise from the agreement.

The South Australian Government believes that this should include organised programs that promote the potential benefits of the AUSFTA in the community, the provision of relevant and timely information about opportunities in the US market, and formal education programs to help Australian businesses learn how to do business in the US. This should be a collaborative process between the Federal Government and states and territories.

In its support for the agreement, the South Australian Government is ready to work with the Commonwealth to ensure that local companies make real inroads into the US market. It also expresses its commitment to collaborate to enhance investment flows into the country.

I would like to take the opportunity again to thank the Joint Standing Committee on Treaties for the opportunity to make this submission and I look forward to reading the Committee's analysis of the AUSFTA in due course.

Yours sincerely



Michael Atkinson

Acting Minister for Industry, Trade and Regional Development
Acting Minister for Mineral Resources Development
Acting Minister for Small Business

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