Australian
Conservation
Foundation

June 2004

Submission to the Joint Standing Committee on Treaties

Inquiry into

The Thailand- Australia Free Trade Agreement (TAFTA)

Prepared by Michael Kerr (legal practitioner) ACF Advisor on Trade

The Australian Conservation Foundation (ACF) is one of Australia's leading non-government environmental organisations. Recently, ACF, along with civil society worldwide, has given increasing attention to the complex relationship between international trade liberalisation on the one hand and ecologically sustainable development on the other. ACF welcomes this opportunity to make a submission to the Joint Standing Committee on Treaties (JSCOT) on the Thailand- Australia Free Trade Agreement (the TAFTA).

This submission concludes that the TAFTA threatens Australia's existing environmental laws and fetters Australian governments seeking to legislate to protect the environment or act on other matters important to Australia's economic and social welfare.

The potential environmental impacts of this agreement on Australia and Thailand have not been formally assessed. Many serious questions about the environmental consequences of the TAFTA therefore remain unanswered. This FTA has also failed to build on the lessons learnt during negotiations for the Australia-U.S FTA (the AUSFTA) and the necessity of incorporating specific provisions within the framework of trade agreements- particularly those with developing nations- that will promote sustainable development.

For these reasons, ACF opposes the TAFTA and urges Parliament to refuse to pass any enabling legislation required to bring these concerning aspects of the TAFTA into effect.

1. Investment - Chapter 9

The TAFTA's investment chapter (chapter 9) defines rules protecting Thai investors investing in Australia and, conversely, rules protecting Australians investing in Thailand.

1.1 Protection Against Expropriation and the Right to Compensation - The Impact on Environmental Laws

This chapter includes special protection for Thai investors against Australian government expropriation of investments. This protection will grant Thai investors greater rights than those currently enjoyed by Australians under Australian law and has the potential to have very significant impacts on Australian environmental laws.

The expropriation clause appears in article 912:

1. Neither Party shall nationalise, expropriate or subject to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as "expropriation") the investments of investors of the other Party unless the following conditions are complied with:
    a. the expropriation is for a public purpose related to the internal needs of that Party and under due process of law;
    b. the expropriation is non-discriminatory; and
    c. the expropriation is accompanied by the payment of prompt, adequate and effective compensation.

This obliges the Australian Government to pay compensation to Thai investors if Australian laws (including environmental, human rights and labour laws) expropriate their investments either directly or indirectly through measures equivalent to expropriation.

A similar article appears in chapter 11 of the NAFTA. In the NAFTA case *Metalclad Corporation v Mexico* (2000), the tribunal provided an extremely broad definition of what constitutes expropriation. In addition to the more conventional notion of expropriation involving the taking of property, the Tribunal held that expropriation under the NAFTA includes covert or incidental interference with the use of property which has the effect of depriving the owner, in whole or in significant part, of the use or reasonably-to-be-expected economic benefit of property. This definition was subsequently upheld on appeal to the Supreme Court of British Columbia.[i]

This definition of expropriation, likely to be applicable to the TAFTA, will grant rights to Thai investors to obtain compensation from the Australian Government, well beyond the compensation rights enjoyed by Australians under Australian law.

Ordinarily, Australian law will only recognise a right to compensation when property has been acquired or "effectively sterilized." [ii] This does not extend to circumstances where regulation significantly interferes with the use or the reasonably-to-be-expected economic benefit of property.

There is a good reason for this. To extend a right to compensation to circumstances where there has been a mere regulatory interference with the use of property would be enormously costly. The prospect of such costs would disable and/or limit the capacity of current and future Australian governments to pass legislation pursuing legitimate public interest objectives, such as environmental protection. Consequently, Article 912 will fetter the capacity of future Australian governments to legislate to protect the environment or act on other matters that become important to Australia's economic and social welfare.

Furthermore, the combined effect of the expropriation clause in this FTA and similar clauses that appear in FTAs Australia recently signed with Singapore and the U.S, may have the unintended consequence of causing what is known as 'regulatory chill.' This occurs when authorities charged with regulatory responsibilities are reluctant to implement new regulatory measures in the fear of contravening trade agreements and provoking a trade dispute. As Australia continues to strengthen its bilateral and regional trade relations with trading partners through FTAs that include expropriation clauses, the cumulative effect of such action might be to 'chill' the introduction of new and much needed regulation within Australian jurisdictions.

ACF in its submission to this committee with respect to the AUSFTA raised a number of concerns (similar to those outlined above) about the effect of the expropriation provisions in that FTA. So too did numerous other submissions including the Victorian, NSW and ACT governments to name but a few. **This level of concern warrants further investigation by JSCOT into the precise meaning and effect of expropriation clauses of this nature. One way forward would be for the committee to seek legal advice on this matter. If the advice should confirm the interpretation that ACF and others share, we would encourage JSCOT to recommend the imposition of a "no greater rights" standard applicable to future Australian trade agreements to ensure that they do not result in greater rights being granted to non-Australians under Australian law than those afforded to Australians.**

1.2 Investor- State Dispute Settlement Mechanism

The TAFTA includes an investor- state dispute settlement mechanism at article 917. This provision will grant Thai investors with standing to challenge laws and regulations of Australian governments which are allegedly in contravention of the obligations (such as those relating to expropriation discussed above) contained in chapter nine. It is disappointing that such a provision has been included in this FTA when Australian negotiators went to great lengths to ensue that an investor state dispute settlement mechanism was excluded from the provisions of the AUSFTA. The implications of this kind of dispute settlement mechanism are well documented; particularly the unforeseen consequences of the investor-state dispute settlement mechanism contained in chapter 11 the North American Free Trade Agreement (the NAFTA). Investors have used the NAFTA's chapter 11 provisions to challenge U.S, Canadian and Mexican environmental laws and social policies, and to claim sums as high as a billion dollars in compensation. Within North America, this has undermined public confidence in the desirability of trade and investment liberalisation.

For a summary list of all NAFTA cases got to
http://www.epa.gov/region5/orc/articles/nafta_cases.pdf

Once a dispute is initiated by an investor under article 917, the investor may choose to have the dispute heard by the domestic courts of the Party or resolved by an international ad hoc arbitral tribunal established under the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

An analysis of investment disputes under NAFTA tells us that the investor initiating a dispute is most likely to choose the UNCITRAL option. This is because the rules of procedure in domestic court systems, such as Australia's, are more stringent than under UNCITRAL. Several problems arise with a dispute mechanism involving this body:

(i) UNCITRAL was established to hear international disputes of a private commercial nature. Disputes under FTAs now being referred to this body go beyond this to include any type of government policy or public welfare measure that might impact on the establishment or operation of a company.

(ii) The rules of procedure of this body allow the parties to the dispute to determine whether proceedings will be confidential or open to the public. Quite often confidentiality is chosen, shutting the door on public access to the pleadings (eg. Statement of claim), the hearing and in some cases even the final ruling.

(iii) The arbitrators hearing the dispute (usually three) are appointed by the parties themselves. This is done through a process in which each party chooses one arbitrator and the third arbitrator is then negotiated or chosen by a neutral person from a standing list of qualified arbitrators. This process enables the investor initiating the dispute to select at least one arbitrator on the basis of known views or orientations that would tend to support its position.

(iv) The decision of the Tribunal is final as there is no right of appeal.

This process is unsatisfactory and contrary to the judicial traditions of Australia. It might be acceptable for international disputes of a private commercial nature. However, it is not appropriate for a body that has the power to require governments to repeal national laws, nor is it appropriate for a body that can require a government to make compensation with tax payer's money to disgruntled foreign investors who are seeking billions of dollars in damages.

1.3 Are environmental measures excluded from the operation of the Investment chapter?

The answer to this question is 'no'. This stands in contrast to the AUSFTA, which through Article 11.11 attempted to at least give some guidance on the relationship between environmental measures and the investment chapter by stating that:

> Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining, or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

Notwithstanding the limited effectiveness of this clause, the TAFTA does not include such guidance within the provisions of chapter nine.

2. Services- chapter 8

Chapter 8 of TAFTA relates to trade in services. This chapter takes a positive list approach similar to the General Agreement on Trade in Service (the GATS) under the WTO. ACF prefers such an approach to the negative list approach adopted under the AUSFTA.

Pursuant to the positive list approach of TAFTA, Australia agrees to subject only those services listed in annex 8 to its commitments to liberalise trade in services. Included on this positive list are, *inter alia:* construction and engineering services, environmental services (such as waste management and biodiversity & landscape), tourism services and transport services (including maritime). Each of these services, depending on how they are conducted, can impact negatively on the environment.

For this reason, commitments to "liberalise" the rules and measures governing such services in Australia, for the benefit of Thai service providers may have unintended impacts on the Australian environment.

The commitments contained in article 807 are particularly troubling. ACF's interpretation of this article is that it formally links the TAFTA services chapter to the commitments both parties have made under the "relevant GATS provisions," which includes Articles VI (1), (2), (3), (5) and (6); VIII (1), (2), (5). In other words, "the relevant GATS provisions" are incorporated into the TAFTA.

Article VI(5) of the GATS is of some concern to ACF. "With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements do not constitute unnecessary barriers to trade in services," it will require Australia to ensure that such requirements, as they are applied to services listed in annex 8 of TAFTA, are, *inter alia*:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service;

(b) not more burdensome than necessary to ensure the quality of the service;

(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

This obligation will potentially open up Australian environmental laws and other measures of public policy to challenge by the Thai Government on behalf of disgruntled Thai service providers who allege that such laws are an unnecessary barrier to trade. In the event of such a challenge, Australia must overcome two hurdles to show that its environmental regulatory measures are acceptable.

First, Australia must prove to a special arbitration panel, convened under chapter 18 of the FTA, that its environmental laws are objective. Under this requirement, the panel might demand proof that an environmental law is based on evidence that the harm that it prevents is scientifically ascertainable. Such a requirement could depart from the

precautionary principle (now part of Australian law), which would allow for regulation even when there is a lack of full scientific certainty of possible harm.

Second, through what is known as a "necessity test", Australia must prove to the panel that its environmental laws are the least burdensome laws available. In other words, Australia cannot simply adopt a reasonable regulatory approach but must instead identify a full range of alternative approaches and adopt the approach that will least affect the economic interests of Thai service providers.

If Australia fails to satisfy the panel with respect to these requirements, the panel will hand down a determination that the domestic law represents a barrier to trade. Australia will then have to choose to either repeal the offending law or pay compensation.[iii]

The prospect of such challenges, and challenges based on the contravention of other commitments and obligations under this chapter, may also contribute to the problem of regulatory chill outlined in the preceding section of this submission. Authorities charged with regulatory responsibilities may become reluctant to implement new regulatory measures in the fear of contravening the services chapter of this and other FTAs.

3. Sustainable Development- No Where To Be Seen.

It is disappointing to observe that the TAFTA does not build on the lessons learnt during negotiations for the AUSFTA with respect to the necessity of incorporating specific provisions within the framework of trade agreements designed to promote sustainable development. The TAFTA, in stark contrast to the AUSFTA, does not include any reference to the concept of sustainable development in the preamble to the agreement and does not include specific chapters relating to environmental and labour issues.

This underscores the federal government's continual failure to acknowledge any link between the pursuit of trade liberalisation, on the one hand, and the many issues surrounding sustainable development on the other. This omission is particularly troubling when one considers that the FTA has been negotiated with Thailand, a developing country with numerous environmental and social problems. Some of the environmental problems include:

- One of Thailand's most significant environmental threats is that of urban air pollution. In 1992, the United Nations Environment Program (UNEP) reported that the Thai capital, Bangkok, was one of the most air-polluted cities in the world. Approximately one million Bangkok residents are thought to suffer from allergies and respiratory problems due to air pollution. In 2001, airborne particulate matter was estimated to have caused 3,300 premature deaths and to have led to almost 17,000 hospital admissions, at a total health care cost of up to $6.3 billion. [iv]
- Marine pollution is also considered a severe threat to the health of Thailand's people as well as its economy. Agricultural run-off, coastal aquaculture, industrial effluents and domestic sewage are responsible for the pollution of coastal, surface and groundwater in Thailand. Water pollution is most severe in Bangkok due to the high concentration of industrial activity; however, areas all over the country have been affected by current water use trends. As a result of rapid coastal development, it has been estimated that more than half of all mangrove forest areas in Thailand have been depleted. Although

agriculture is considered to be the primary factor behind this, expansion of marine-based activities such as offshore oil and gas exploration in the Gulf of Thailand is expected to increase the risk of marine pollution in Thailand. Indeed, a planned 140-mile offshore gas pipeline, designed to carry gas to southern Thailand from the Malaysia-Thailand Joint Development Area along the two countries' maritime border, has been the focus of vehement environmental opposition. Construction of the pipeline, along with a two-unit gas separation plant at a point along the pipeline in the Songkhla province, has been delayed by strong opposition from Thai environmental groups worried about the risks of further marine pollution.[v]

- Thailand's energy consumption has been growing at a phenomenal pace since 1980. In 2001, the country's energy consumption was 2.90 quadrillion Btu (quads), nearly six times higher than just two decades previously, when Thailand consumed just over 0.5 quads. Strong economic growth and the rapid industrialization of the "East Asian tigers" was both the cause and effect of huge increases in energy consumption across the region, as South Korea, Indonesia, and Malaysia all experienced similar increases in their energy consumption levels. In 2001, the country emitted approximately 48 million metric tons of carbon equivalent--more than twice its carbon emission level in 1990.[vi]
- Thailand's energy demands have also resulted in increased pressure for the construction of environmentally harmful hydro electric schemes (particularly within the Mekong river basin) within Thailand and in neighbouring countries.[vii]
- In 1992, Thailand passed the Environmental Protection Act, a law that was heralded as the dawn of environmental awareness in the country. Pursuant to the Environmental Protection Act, Thailand's 1997 constitution requires the government to conduct public hearing and seek the views of local communities before it embarks on development projects that will have an effect on the environment. These environmental impact assessments have made the government accountable for the environmental effects, intended or otherwise, for large infrastructure projects, and public participation is increasingly accepted as a necessary ingredient for sustainable resource management. Still, the December 2002 Environmental Sustainability Index, which was conducted by the World Economic Forum 2000 to show the state of the environment and how it is affected by human activities, ranked Thailand 46th out of 56 countries. Environmentalists cite Thailand's power environmental performance to the government's lack of will in enforcing existing laws and regulation. They claim that the Natural Resources and Environment Ministry does not have any clout and that the government needs to take a tougher stance to regulate and monitor all developments which impact the environment, from new building projects to increasing traffic consumption. Thailand's economic contraction following from the 1997 financial crisis pushed environmental concerns to the backburner as well.[viii]
- Thailand has lost more than half of its forest, mainly to slash and burn agriculture and logging. In 1989, Thailand imposed a ban that made all logging in Thailand illegal. Instead, it now imports timber from surrounding countries, which causes extra pressure on their forests. The United Nations has recognised that wide spread illegal logging remains a problem despite the ban.[ix]

While it must be acknowledged that Thailand has been working hard in recent years to resolve many of the abovementioned problems, pressures on the Thai environment remain. By entering into a free trade agreement with Thailand, the Australian government has a responsibility to ensure that the strengthening of trade relations does not place increased pressure on the Thai environment and that the Thai government is in a better position to achieve the objectives of sustainable development. This responsibility reflects Australia's commitments made at the Johannesburg World Summit on Sustainable Development (WSSD). The WSSD plan of implementation, which was endorsed by Australia, at paragraph 51 commits Australia and other nations to:

> Strengthen regional trade and cooperation agreements consistent with the multilateral trading system, among developed and developing countries and countries with economies in transition, as well as among developing countries, with the support of international financial institutions and regional development banks, as appropriate with a view to achieving the objectives of sustainable development.

Australia's failure to address the issue of sustainable development through the TAFTA is inconsistent with the above commitment. It is also at odds with the efforts of other Australian trading partners, such as the U.S, to incorporate sustainable development objectives within their regional and bilateral trade agreements.

4. Process.

4.1 Environmental Impact Assessment

As was the case with the Singapore and U.S FTAs, the Australian government has failed to undertake an environmental impact assessment of the TAFTA. Without an environmental impact assessment, Australia is unable to fully assess the potential environmental impacts arising from the TAFTA, such as:

- the impact the TAFTA will have on Australia's environmental laws and social policy measures, as outlined in parts 1 an 2 above.
- The potential environmental impacts in both Thailand (as outlined above) and Australia that could arise from the increase in economic growth that the FTA is projected to bring to both countries.[x] In Australia for example, it is estimated that each dollar increase in GDP requires the consumption of 37 litres of water, 3 square meters of land disturbance and 10 megajoules of fossil energy.[xi] If Australian GDP is projected to grow as a consequence of TAFTA what will the impacts be as a consequence of the resulting increase in energy and water consumption and land disturbance?
- The transboundary environmental impacts of "two-way" air and maritime traffic that will increase under the TAFTA, particularly the potential for the exchange of invasive species.

The "National Interest Analysis" of the TAFTA does not include any discussion of the environmental impacts that could potentially flow from the FTA. This is a ridiculous omission which has left JSCOT in a position where it must now rely on other information sources to determine the environmental consequences arising from this international treaty.

4.2 Role of Parliament

Now that the TAFTA has been signed, the role of the Australian Parliament is limited. In Australia, decisions on international trade agreements are made by the Executive and not by the Parliament as a whole. This means that decisions relating to the determination of objectives, negotiating positions, the parameters within which the Australian delegation can operate, and the final decision as to whether or not to sign are taken at Ministerial level or by Cabinet - not the Parliament.

The Commonwealth Government's literature on the treaty process points out that a certain level of scrutiny of international trade treaties is provided when such treaties are tabled in Parliament for debate, ordinarily for a period of 15 sitting days. This debate is informed by a review conducted by JSCOT, which reports to Parliament on whether Australia should take binding treaty action and on other related issues that have emerged during its review. However, Parliament's role is limited to a debate on the issue. No mechanism exists which enables Parliament to vote to accept or reject the TAFTA, even if JSCOT in its final report were to conclude that the trade agreement is not in the national interest. Parliament's sole recourse, if it determines that the trade agreement is not in the national interest, is to refuse to pass any enabling legislation that might be required to implement the TAFTA at the domestic level.

This process stands in stark contrast the process to one of Australia's largest trading partner, the United States. Pursuant to the *Trade Act* 2002 (U.S), the President has authority to negotiate trade agreements on behalf of the U.S. However this authority is not absolute. The *Trade Act* sets out requirements for consultation between the President and Congress including a Congressional Oversight Group to ensure the interests of both the legislative and executive branches of government are respected. The President must inform Congress at least 90 days in advance of his intention to initiate trade negotiations and at least 180 days before signing any trade agreement proposals which could change US anti-dumping and other trade remedy laws. The *Trade Act* also sets out clear negotiating objectives with respect to trade agreements including, amongst other things, matters relating to environmental and social issues. Whilst it does not grant authority to Congress to amend a trade agreement, Congress still has the right to vote to accept or reject the agreement following a 90 day consultation period. Furthermore, the *Trade Act* grants Congress the power to revoke the President's negotiation authority if it is of the view that the President failed to adequately consult Congress during the negotiation process. [xii]

ACF shares the concerns of many U.S NGOs that the *Trade Act* 2002 does not address the serious concerns surrounding investor lawsuit rules like the NAFTA's Chapter 11 and the fact the Act does not provide adequate protection for Multilateral Environmental Agreements that may come in to conflict with trade agreements.[xiii] Notwithstanding the inadequacies inherent in the U.S trade legislation, when compared to the U.S process for entering into international trade agreements, the Australian process is marred by its over-reliance on Executive powers, which thwarts the principles of transparency, public accountability and precautionary review which are part of the process of parliamentary oversight.

5. What Should be Done?

5.1 Refuse to pass legislation giving domestic effect to the most concerning aspects of the TAFTA

As discussed above, the Australian Parliament's sole recourse at this stage, if it determines that the trade agreement is not in the national interest, is to refuse to pass any enabling legislation that might be required to implement the TAFTA at the domestic level.

ACF urges Parliament to seriously consider the negative impacts of the TAFTA highlighted above, and to refuse to pass any enabling legislation required to bring those aspects of the FTA into effect within Australia.

ACF urges this course of action particularly in relation to the aspects of Chapters 8 and 9 of the TAFTA discussed above, which are of great environmental concern.

5.2 Enact new legislation giving Parliament an adequate role in approving proposed international trade agreements

ACF also recommends that the Australian Government legislate to:

1. ensure Parliament has the right to review and, where required, amend or veto proposed trade agreements.[xiv]
2. require a comprehensive assessment to be undertaken of the environmental, social and economic impacts of international trade agreements prior to Australia signing those treaties
3. set out Australia's broad objectives for any trade agreement to which Australia is to be a party - namely to:
   - promote sustainable development, and therefore enhance environmental protection, human rights and labour standards alongside traditional economic measures
   - maintain or strengthen environmental standards and environmental laws
   - maintain or strengthen human rights and labour standards
   - ensure that foreign nationals do not gain greater legal rights than those enjoyed by Australians
   - reserve Australia's right to prohibit trade in products that represent a threat to biosecurity or the environment at large, and to exclude products manufactured according to inadequate environmental standards or processes
   - eliminate government practices and policies that unduly threaten sustainable development, such as environmentally harmful subsidies
   - require that dispute settlement mechanisms accord to the commonly accepted judicial traditions of Australia
   - ensure Australian governments remain unfettered in their capacity to make laws to protect the environment and other matters of public health or social welfare.
   - ensure that where an international trade or investment agreement is in conflict with a pre-existing environmental or human rights treaty, that the latter takes precedence, and
   - reserve the right to use trade bans to enforce environmental and human rights agreements where appropriate.
4. reform the process governing Parliamentary and public scrutiny of international trade agreements by:
   - requiring a full Parliamentary debate and vote before draft international trade agreements are signed
   - requiring JSCOT to report on its review of any international trade agreement prior to the introduction of enabling legislation and in sufficient time to inform any Parliamentary debate and vote regarding the agreement

- ensuring JSCOT has sufficient time and resources to carry out its review function effectively
- establishing a special sub-committee of JSCOT (with appropriate expertise and resources) to review international trade agreements, and
- requiring that the full draft text of a trade agreement be publicly released for comment and scrutiny prior to signing

Conclusion

After careful analysis of the final text of the TAFTA, the Australian Conservation Foundation has formed the view that it is not in the national interest for Australia to implement binding treaty action to bring the agreement into effect.

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[i] *Mexico v Metalclad Corporation* 2001 BCSC 664 at 35

[ii] The High Court has found acquisition in two circumstances. First, where there has been a formal acquisition of a property right that is supported by an antecedent proprietary right recognised by the common law. Second, where there has been an indirect (or de facto) acquisition – that is, where a property right has been "effectively sterilised". See *Newcrest Mining (WA) Ltd v Commonwealth* (1997) 190 CLR 513.

[iii] See article 1810.

[iv] The Energy Information Administration (EIA), *Thailand Environmental Issues*. United States: EIA, October 2003 available at http://www.eia.doe.gov/emeu/cabs/thaienv.html.

[v] See note iv

[vi] See note iv

[vii] See the excerpt of a talk presented at the conference, "Generating Power and Money: Australia's and Thailand's Roles in Hydro Projects in Laos,"" at the Centre for Asia Pacific Studies, Victoria University of Technology, Melbourne, October 28-29, 1996 available at http://www.signposts.uts.edu.au/articles/Thailand/Environment/378.html. See also Australian Mekong Resource Centre, "The Contested Landscapes of the Nam Theun, Lao PDR", available at http://www.mekong.es.usyd.edu.au/case_studies/nam_theun/thailand/thailand.htm

[viii] See note iv.

[ix] For further information on logging issues in Thailand go to the following websites http://www.wwf.org.uk/core/wildlife/fs_0000000038.asp http://www.undp.org.vn/mlist/envirovlc/102001/post35.htm

[x] According to the Centre for International Economics, the projections for economic growth flowing from the TAFTA are: Australia (increase in GDP of .01%) and Thailand (increase in GDP of .16%)

[xi] Foran, B, "Future Dilemmas: A Reply to the Critiques". http://www.actuaries.asn.au/PublicSite/pdf/horizonpaper030827reply.pdf.

[xii] The full text of the *Trade Act* 2002 is available at http://otexa.ita.doc.gov/AGOA-CBTPA/H3009_CR.pdf

[xiii] For a full list of concerns, see letter from U.S NGOs to U.S Congress on 26 July 202 available at http://www.ciel.org/Tae/Fast_Track_29Jul02.html

[xiv] It is clear that the Australian Parliament has the Constitutional power to pass legislation to provide guidance on how those powers are to be exercised and for it to have a right of veto over proposed trade agreements. See the findings of the Senate Legal and Constitutional Committee, Trick or Treaty? *The Commonwealth's Power to Make and Implement Treaties* 1995 at chapter 16. A copy of the report can be viewed at http://www.aph.gov.au/senate/committee/legcon_ctte/treaty/report/index.htm

Cochran, Jenny (REPS)

From: mjkerr71 [mjkerr71@hotmail.com]
Sent: Thursday, 8 July 2004 1:34 PM
To: Committee, Treaties (REPS)
Subject: RE: Submission on the Australia- Thai FTA by the Australian Conservation Foundation

ACF Thailand FTA submission.do...

Dear Jenny,

As discussed, attached is the amended submission from the Australian Conservation Foundation with respect to the Australia-Thailand FTA.

The paragraph that has been removed appeared on page 6 of our original submission. It started with the words "The GATS, by operation of Article XIV, provides...."

While this amended submission awaits authorisation from the Committee, ACF requests that its original submission remain on the JSCOT website to ensure that ACF's other substantive points remain accessible to the public.

Thankyou once again for responding to our request so promptly.

Yours sincerely,

Michael Kerr
ACF advisor on trade

-----Original Message-----
From: Cochran, Jenny (REPS) [mailto:Jenny.Cochran.Reps@aph.gov.au] On Behalf Of Committee, Treaties (REPS)
Sent: Wednesday, 7 July 2004 7:28 PM
To: mjkerr71@hotmail.com
Subject: RE: Submission on the Australia- Thai FTA by the Australian Conservation Foundation

Mr Kerr

Thank you for your email. The Committee is able to accept amended submissions to accommodate such circumstances.

In light of your email, the current authorised submission from the Australian Conservation Foundation has been taken off the JSCOT website. Once the Committee receives and authorises the amended submission it will then be placed on the website.

I hope this is of assistance. If you would like to discuss this further please contact me on the phone number below.

Regards
Jenny Cochran

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-----Original Message-----
From: mjkerr71 [mailto:mjkerr71@hotmail.com]
Sent: Thursday, 8 July 2004 7:07 AM
To: Committee, Treaties (REPS)
Subject: Submission on the Australia- Thai FTA by the Australian Conservation