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BY: .....

5 April 2004

Committee Secretary  
Joint Standing Committee on Treaties  
Department of House of Representatives  
Parliament House  
CANBERRA ACT 2600  
AUSTRALIA

Dear Secretary

Thank you for the opportunity to make a submission to this inquiry.

While there are many issues in the Australia – United States worthy of commenting on, this submission only addresses the recent trend of bilateralism in the world trading system and recommends that it is not only advantageous for Australia to negotiate bilateral agreements but in fact the negotiation of bilateral agreements may be necessary to maintain our standard of living and prosper in the current environment.

### Background

The collapse of the World Trade Organization's Fifth Ministerial Conference in Cancun, Mexico because of irreconcilable differences between the needs and problems of the developed and developing world has caused major shockwaves through the international community. This submission will not discuss the specifics leading to the breakdown, but it is sufficient to say that many in the trading community believe the WTO negotiations have reached a significant impasse. As a result, a large number of countries are now bypassing the multilateral stage and pursuing their own initiatives for bilateral free trade agreements (FTAs) with their trading partners.

This sprint towards bilateralism, while being led by the United States, is not only being promulgated by the developed world. South American, Middle Eastern and African countries, places where democracy is fragile, have joined the chase towards bilateral FTAs and have even become some of the WTO's foremost champions for open markets. Even Asian countries, which have traditionally shied away from bilateral agreements, are racing to sign bilateral trade agreements with each other. This movement is being led by the ten members of the Association of Southeast Asian Nations (ASEAN), who are not only crafting their own regional free trade zone, but individual members are also signing FTAs with countries outside the region. Other Asian nations, including South Korea, Thailand, Singapore and even Japan, have also announced their intentions to pursue a bilateral agenda. And with China looming to be an economic power, the ASEAN nations and others are queuing to negotiate economic ties with the budding giant.

There is little doubt that multilateral agreements negotiated in the World Trade Organization (WTO) should be the preferred instruments for liberalizing international trade. Such agreements ensure a non-discriminatory approach with potential mutual benefits for all parties. They reduce trade distortions and simplify administration. The eight rounds of multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT) since the end of WWII have made major contributions to economic growth and higher living standards around the world. The Uruguay Round built upon the success of the GATT and added substantial improvements, including the establishment of the WTO, inclusion of agriculture and services in the multilateral trade regime, and multilateralization of most of the GATT's plurilateral codes.

But there can also be little doubt that the multilateral agenda is stalled. Countries are therefore advancing the agenda and further liberalising trade through bilateral agreements. In such a climate, not only is the negotiation of more agreements by Australia desirable, but in order to keep up market share for exporters and maintain the standard of living Australians desire, such agreements are necessary.

### **Regional Trade Agreements as Building Blocks**

While multilateral negotiations reducing trade distorting barriers across all member states of the WTO is preferred, it is difficult to get 146 countries to agree on anything, much less the complex issues comprising a WTO negotiating round. The Uruguay Round that created the WTO from the GATT took over eight years to negotiate, and even then it is a miracle that all nations agreed to the text. It is unrealistic to expect multilateral negotiations to be concluded with ease or in a short time period. So what should one do if other nations choose protectionism over free trade? Under the WTO's procedures, one nation can block progress. This means one nation can block opportunity and competition by hiding behind the false security of protectionism.

And even when change does occur in the multilateral setting, the consensus rule employed by the WTO drives the standard down to a lowest common denominator, leaving us with weak standards (see: intellectual property) and sometimes toothless rules (see: agriculture).

In such a scenario, it may be necessary to drive the agenda by negotiating bilateral agreements. Bilateral agreements bring faster results than the multilateral process, may enable parties to conclude levels of liberalization beyond the levels achievable through multilateral consensus, and may be able to address specific issues that do not even register on the multilateral menu. The resulting achievements in trade liberalization can be substantial complements to the WTO system, and they can be important building blocks for future multilateral liberalization.

For instance, if members of the Cairns Agreement were to push its agenda through bilateral deals, the rules created may become so commonplace and eventually accepted as the norm. Likewise, if the United States succeeds in including environmental and labour standards in its FTAs with both developed and developing countries, such provisions may become commonplace and eventually be eased into the multilateral agreements. In a sense, because the multilateral process is stalled, the momentum created by FTAs is now needed to underpin the multilateral environment. This is not radical thinking, but more the backbone of the international legal system. In this regard, bilateral negotiations compliment multilateral trade and go beyond what is achievable in the WTO at this time. Put simply, bilateral agreements have the ability to establish prototypes for liberalization in areas such as services, e-commerce, intellectual property, transparency in government regulation, and better enforcement of labour and environmental protections that are simply not possible on the multilateral stage.

Moreover, free trade negotiations are helping developing countries gain from regional integration and stronger economic ties to developed countries, improving both the trading regimes and rule of law in those countries.

### **Become Advantaged, Not Disadvantaged**

But another, arguably more important, reason for Australia to negotiate bilateral free trade agreements is that so it does not get left behind and become disadvantaged in the world trading system. Australia is and will always be an active participant in multilateral trade, but there are currently over 200 FTA's in effect, with many more proliferating at this moment. Many members belong to several FTAs and only three members of the WTO do not belong to any regional FTA (Macau, Taiwan and Mongolia). Australia is potentially only a member of four agreements (New Zealand, Singapore, United States and Thailand).

As a result of inactivity on the bilateral front, Australia is facing actual discrimination in many key markets right now. This is because the WTO sets minimum standards in some cases and in others, simply requires that all imported "like-goods" be treated equally. FTAs can, however, help countries legally effectuate discriminatory policies as long as two conditions are satisfied: (1) the FTA must substantially reduce or remove barriers to trade and (2) that non-members of the particular FTA do not find trade more restrictive than before the FTA came into force.

The prospect of Australia becoming disadvantaged is not just distant speculation; it is already happening. During the GATT years (1948-1994), 124 bilateral and regional FTAs were negotiated and signed, but since the implementation of the WTO in 1995, over 130 bilateral and regional FTAs negotiated and signed. In addition, every major world trading nation, and certainly every major trading partner of Australia, are negotiating FTAs with multiple countries and more than 100 more FTAs are expected to be concluded by the end of 2005. Just a few examples of current negotiations include:

US: negotiating with the Central and South American nations, several Middle Eastern states, Thailand, Singapore, Chile and South Africa.

India: recently concluded bilateral treaties with Sri Lanka, Bangladesh and Afghanistan and is negotiating with Thailand, Singapore South Africa and Brazil.

Thailand: recently concluded deals with Australia and the US and is negotiating bilateral treaties with China, Bahrain and India.

Korea: recently signed a precursor trade agreement with Chile and is launching formal negotiations for bilateral FTAs with Japan, Singapore, Mexico, the US and China in the coming years.

Singapore: signed agreements with New Zealand, Japan, European Free Trade Association (Iceland, Liechtenstein, Norway and Switzerland), Australia and the US, is part of the ASEAN Free Trade Area and is negotiating with Mexico, Canada and India.

China: signed an agreement with Hong Kong, negotiating with Thailand and may begin negotiations with Australia, New Zealand and Korea in the near future.

Argentina: undertaking a bilateral strategy as part of an export renaissance following its 2002 economic implosion and are negotiating with at least eight nations, including both the United States and the European Union.

It is necessary to add that the EU's absence from the FTA-rush is not due to their commitment to multilateralism, but more with the fact that it negotiated a host of agreements in the 1990s while most other nations focussed solely on multilateralism.

The above information clearly shows that if Australia does not negotiate more bilateral agreements, then it will be left behind and its exports and standard of living will suffer. Fortunately, the government is negotiating bilateral agreements, but this may not be enough to protect Australian interests. The world trading system as a whole is not static. Instead, it moves at a rapid pace and if Australia wants to keep its place in the world and improve the standard of living for its citizens, it must take a more active approach to bilateral trade agreements.

#### **Potential for others (Japan, China, South Korea and others)**

Throughout the negotiations with the US, some critics argued that by negotiating with the US, Australia risked alienating "Asia". This criticism is odd, to say the least, as Australia has agreed to FTAs with Singapore and Thailand. Further disproving this theory is the fact that Australian exports to China are booming, that Australia is the leading source for Chinese direct foreign investment and the fact that China recently approached Australia about the possibilities of a deal during President Hu's recent visit. The fact that these same Asian countries are also negotiating deals with the US and the fact that Asian countries view close economic ties to the US as a strength, not a weakness, also puts paid to that theory. In sum, the FTA with the United States will not threaten our ties with our Asian neighbours.

As noted in the introduction, the Asian countries have recently shed their apprehension and aversion of bilateral FTAs and are now negotiating them at a fast and furious pace. And while a number of the agreements are with other Asian countries, many are also negotiating with the European and South American countries as well as with the United States.

The time is ripe for Australia to begin negotiations with these same countries not only to capture preferential deals for our exports, but also out of necessity. If we do not negotiate the deals ourselves, our access will be cut, prices non-competitive, and our markets effectively reduced.

This is not to say that negotiating an FTA with Japan, South Korea or China (to name but a few) will be easy. Each of these countries are particularly protectionist and both Japan and South Korea have more non-market features than we'd like to see. And make no mistake, for all its reforms and rhetoric, China is a non-market economy. So while negotiating an agreement with the US was hard, at least we knew what the Americans were putting on the table and what they were not. That may not be the case in negotiations with our Asian neighbours.

But the rewards of being one of the first western nations to agree to a bilateral FTA with Asian nations will be great. Japan is already one of our largest trading partners, South Korea is a significant export source and China a growing source of import, exports and investment potential. An FTA with any of those three countries will mean that Australia will get a head start in front of competitors in terms of both goods and services, and that advantage will be hard to take away once it is gained.

Obviously, a deal with China would be the most intriguing, if not also the most difficult to negotiate. But a deal would mean our raw materials and energy exports would boom and the cost of importing manufactured goods would decrease. The financial services sector would also greatly benefit from such a deal. Making matters more complicated, however, is that China has the dubious distinction in leading the world in anti-dumping claims initiated against it. In addition, China is also clearly failing to live up to its WTO commitments.

The US, whose deficit with China is astronomical, claim China has failed to adequately implement structural changes mandated upon entry to the WTO and recently warned that China's unfettered access to the US market will be jeopardized unless it reciprocates by opening its markets and honouring its WTO commitments. The US has recently filed its first dispute against China over the taxing of semi-conductors in the WTO (joined by the EU and Japan) and the EU is considering about filing similar cases. But negotiating a free trade agreement with China offers the perfect to advance economic growth, development and the rule of law in China as well as provide stability to the region. Such an opportunity *might be too good to pass up and should be taken under consideration.*

### **Potential negative effects of regional trade agreements**

The most powerful economic arguments against bilateral trade agreements are that they can cause trade diversion and trade distortions (reward inefficiency) and ultimately undermine the multilateral system because of their discriminatory nature. Moreover, some feel they can create obstacles to trade facilitation by increasing administrative complexity at customs. One specific example is the proliferation of different preferential rules of origin -- a prominent source of trade costs and complexity in today's global marketplace in which companies depend on the rapid delivery of products and components from multiple overseas sources. Such effects are costly to business and detrimental to the regional trading areas. Harmonization and simplification of preferential rules of origin and the cumulation of origin could alleviate some of these obstacles to trade facilitation.

Moreover, while some issues can easily be negotiated bilaterally — industrial tariffs, for example, many problems cannot be solved between two countries, particularly the 'hard core' ones that have survived more than 50 years of multilateral trade negotiations. Some agricultural policies, sanitary and phyto-sanitary measures, technical barriers to trade, and trade remedy rules remain despite pressure from almost all of the trading nations in the previous eight rounds of multilateral trade negotiations. For instance, can Australia alone convince, in a bilateral framework, the United States to change its agricultural subsidies scheme or modify anti-dumping rules? Of course not.

Bilateral deals simply cannot deal with the issue of removing agricultural subsidies. How can production subsidies, which have proliferated in the US and Europe, be cut preferentially? It is impossible. At the same time, cutting export subsidies preferentially for one's free trade association partners, though technically possible, is out of the question politically. Why? Because such a move would turn the political logic of preferential trade deals on its head. Reducing tariffs for members of an FTA lowers the competitiveness of non-members, which continue to face tariffs when they sell into FTA markets. That provides a strong incentive to sign FTAs. But if FTA members cut their export subsidies, the competitiveness of non-members, which maintain their subsidies, increases instead in FTA markets.

Another downfall of bilateral agreements is that they result in a "web" of rules, with differing and sometimes arbitrary definitions of which product comes from where and a multiplicity of tariffs depending on source. The complexity of dealing with multiple bilateral or regional agreements, each with different conditions, is another source of concern. For example, if a country's import regime imposes different tariffs for the same product, depending on its country of origin, it is a nightmare for traders. With the number of bilateral agreements increasing, the already bad situation could worsen dramatically. In addition, "Special and differential treatment" and the protection of infant industries are also more difficult to define in a bilateral context. Moreover, between countries of unequal economic strength, the stability and enforceability of rights, based on a bilateral agreement, are more uncertain.

In short, bilateralism cannot replace the multi-lateral trading system, but in the short term, it appears to be the only current option to open up economies and drive the multilateral agenda.

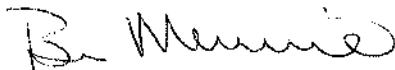
### **Conclusion**

The advantages of bilateral trade agreements to both Australian business and consumers are potentially enormous. The agreements negotiated with Singapore and Thailand signalled an intention of the government to enter the bilateral fray and help Australian enterprises become competitive in the world market again. The agreement with the US *proved the government's commitment and is a major step in reducing the discriminatory effect* Australian exporters currently face in most markets. Successfully negotiating agreements with some of our larger Asian neighbours will, for the first time, give Australia an advantage over other nations. The benefits will be enormous.

Australia should continue stressing the need to move forward through a multilateral agenda, however, in the current climate, Australia faces major disadvantages to both exporters and everyday consumers if it does not negotiate more bilateral agreements in order to keep pace with our trading partners. Not only is the continued growth of the Australian economy at stake, but so to is simply maintaining the present standard of living to which we have grown accustomed.

The recently concluded agreement with the United States is a sound document and in the interests of both Australian business and the Australian consumer.

Yours sincerely



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