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AUSFTA
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14 APR 2004

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BY:

Submission : JSCOT inquiry into the US Free Trade Agreement (USFTA)

I welcome the opportunity to make a submission to the Joint Standing Committee on Treaties on the US Free Trade Agreement (USFTA), and wish to express my concern about the impact the agreement will have on democracy as well as its wider impact. With the democratic process in mind, I would like to stress that given the wide ranging impact the USFTA will have, the public consultation process has been totally inadequate. The public (i.e. citizens) were not allowed to know what was proposed in the agreement or what had been agreed to until after the text was published. This made the whole process of community consultation meaningless. There needs to be more community and parliamentary involvement in order to overcome the democratic deficit in the treaty making process.

Of particular concern is the way the USFTA will limit the right of Australian governments to make public policy while at the same time giving the US government direct input into the Australian policy process. It is undemocratic to sign away the right of future governments (and generations) to regulate in the public interest. It makes a mockery of democracy by undermining the democratic process and our political institutions. Our political institutions become irrelevant. Therefore I ask the Committee to recommend that this agreement should not come into force as it is not in Australia's national interest.

General concerns

The USFTA allows for the establishment of a series of committees that give the US influence over Australian law and policy making and prioritise US trade interests over social policy criteria. The agreement establishes committees on medicines and health policy, on quarantine issues and on GE food labelling. These are all areas where the US has identified Australian health and environmental policies as barriers to trade. In all cases the terms of reference of the committees give priority to US concerns about trade issues and not to Australian social policy concerns. This is unacceptable and should be rejected.

Public services

No trade agreement should include public services, particularly essential services. "Services" in the context of the USFTA includes such important areas as health, education, water, postal, energy and environmental services. Whilst 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 of course ignores the fact that many public services in Australia (including health, education, water, energy and post) are supplied on a commercial basis or in competition with other service suppliers. Such services could be covered by the agreement unless they are listed as reservations. This is unacceptable and needs to be corrected.

The Pharmaceutical Benefits Scheme (PBS)

US negotiators and pharmaceutical lobby groups identified the price control mechanism of the PBS as a target of the negotiations and throughout the negotiation process pharmaceutical companies consistently argued that Australia's price control system through the PBS is an unfair barrier to trade.

The Government's assurance that the USFTA 'does not change the fundamental architecture of the PBS' is unconvincing as the US has been successful in achieving changes to the PBS process in the USFTA. The US Chief Trade Negotiator, Robert Zoellick, has stated that the USFTA changes to the PBS will change the prices of pharmaceuticals in Australia ('Drug costs will rise with deal: US official', *Sydney Morning Herald* 11 March 2004).

There is little doubt that drug companies will argue for higher priced drugs to be listed, and for price rises after drugs are listed, through the new procedures that Australia is being forced to adopt. This brings the risk of a PBS cost blowout which would destroy its capacity to make essential medicines accessible at affordable prices, which is the main purpose of the scheme. This would severely affect marginalised groups in Australia, particularly indigenous people, the unemployed, the disabled, pensioners and poor families with children.

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. 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 affordable access to important medicines. This is unacceptable and should be rejected.

Quarantine and Genetically Engineered (GE) food labelling

The USFTA will give the US government and US companies direct input into Australian laws and policies on quarantine and the labelling of GE food. 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 areas which should not be combined in a trade agreement.

The US does not have GE food labelling and has challenged EU labelling laws through the WTO. It has 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).

These changes to processes and procedures for regulation of quarantine and GE labelling give the US a formal role in Australia's policy process, ensuring that trade obligations to the US will be high on the list of priorities when regulations are being made. This is unacceptable and should be rejected.

Economic impact

The USFTA was supposed to remove barriers to trade between the US and Australia and lead to greater economic growth. However, there is a great deal of doubt about whether the USFTA will result in any real benefits for the Australian economy as a whole given that both Australia and the

US have relatively few trade barriers and are already significant trading partners. Many trade economists argue that bilateral trade agreements are trade diverting rather than trade enhancing. This adds further to the doubts about the overall economic benefits of the USFTA and raises questions about why such an agreement is necessary.

Australia's pursuit of bilateral, rather than multilateral trade liberalisation, runs counter to Australia's national interests. A multilateral rules based trading system is in Australia's best interests. The USFTA will not help Australia in the international trading area where the US is a major competitor. For example, it will have no effect on the US Export Enhancement Program which has increased the US's share of the world wheat trade largely at Australia's expense.

Some trade economists express concern about the potential costs of the USFTA on our trade with East Asia which accounts for the bulk of Australia's trade activity. They argue that by pursuing closer economic relations with the US the Government risks undoing the economic ties Australia has worked hard to develop with East Asia since the early 1980s. There is also concern that Australia risks being excluded from regional trade groupings, such as the potentially important "ASEAN + 3" grouping which brings together all of Australia's major trading partners with the exception of the US.

Of major concern is the dispute process in the USFTA which enables a government to claim that a law or policy of the other country is in breach of the agreement, or is preventing it from getting the benefits expected from the agreement (Article 21.2). The dispute process is based on trade law and can be used to challenge social regulation judged to be inconsistent with the agreement, like policies on medicines or the regulation of essential services. As such, it is a clear restriction on the democratic right of governments to regulate in the public interest. This is unacceptable and should be rejected.

Government Purchasing

Under the USFTA some government purchasing schemes which give preference to local products or require foreign contractors to form links with local firms to support local employment will not be permitted. This restricts the right of governments to have local and regional development policies. This is unacceptable and should be rejected.

Telstra privatisation Side Letter

This letter outlines the government's policy to privatise the rest of Telstra. Given that this issue is still being debated by Parliament it is unacceptable that it should be part of a trade agreement.

Conclusion and recommendation

The evidence suggests that it is doubtful that the USFTA will result in real benefits to the Australian economy. By limiting the right of governments to regulate in the public interest and setting up joint US-Australian committees that enable many policies to be challenged by the US government the USFTA undermines democracy. Therefore I ask the Committee to recommend that this agreement should not come into force as it is not in Australia's national interest.

