

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

AUSFTA Submission No: 36

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7th April, 2004

Dear Sirs

BY:

I want to convey my feelings about the so-called "Free Trade Agreement". I do not want to hear politicians carrying on with all the hype just like they did over the GST and the Iraq war. My initial reaction is that the major thing that all politicians and citizens need to learn is that "**Hype does not equate to reality**".

First, let me begin with a short story. Early in the 20th Century Britain offered a "free trade agreement" to the Solomons. Of course the Solomons were free to visit Britain and trade and likewise Britains to visit and trade with the Solomons. The problem was how were the Solomon people going to visit and take their trade to England ... in their dugout canoes? The agreement was totally lopsided and only benefited the larger more developed British economy. This USFTA is a similar lopsided affair. With a USA economy of approximately \$11,278 billion verses \$526 billion (The Economist, The World in 2004, p100 and p98), Australia will be the "new Solomons" of the Pacific.

I have enclosed three short ABC Radio Perspectives which summarise a number of key points about the agreement. From all my checking to date I am concerned with what appears to me as inconsistencies between the US and Australian Government interpretations of the agreement, see www.dfat.gov.au and www.ustr.gov.

Like other concerned citizens the points that everyone should be aware of in this proposed FTA are as follows:

- it weakens price controls on medicines by allowing drug companies to seek reviews of decisions by the Pharmaceutical Benefits Advisory Committee;
- sets up a new joint policy committee which gives the US government a voice in Australian medicines policy based on US trade policy, not on the Australian policy of access to medicines for all;
- limits Australian content rules for new forms of media, and allows the US government to challenge these rules as a barrier to trade;
- adopts US copyright law, leading to higher costs for libraries, schools and universities;

- "binds" or freezes many areas of state and local government regulation at existing levels and limits the ability of governments to make new laws and policies on essential services like water;
 - limits the powers of the Foreign Investment Review Board to review investment in the national interest, so that 90% of US investment will not be reviewed;
 - sets up joint committees based on US trade policy to give the US government a say in quarantine and regulation of food labelling;
 - outlaws government purchasing policies that give preference to local products or that require US contractors to form links with local firms to support local employment;
 - has a disputes process which enables the US government to challenge many Australian laws and regulations before a trade tribunal on the grounds that they are too burdensome for business or a barrier to trade.
- (Australian Fair Trade and Investment Network, 2004)

I would like to make comment on two particular areas that I know a little in more detail: the future of the Biotechnology Industry in Australia and some aspects of the future PBS scheme in Australia.

Currently there are about 360 small Biotechnology companies functioning in Australia. A lot of the training of possible future staff is coming about through the Government's Backing Australia's Ability I and II. Under the proposed new rules about the takeovers of Australian firms by US companies, there is a change in the threshold at which notification to the Foreign Investment Review Board (FIRB) is to be raised from \$80m to \$800m. These changes would be a real threat to the young Biotechnology Industry. I see cash-rich US Biotechnology and US pharmaceutical companies buying up the best of the Australian small companies and taking the R&D back to be done in the USA, leaving behind an Australian branch plant to maintain just a name. Arnott's is a recent parallel.

This kind of takeover happened in Canada during late 1950s and, by the end of the 1960s, over 80% of the Canadian economy was under USA control. This affected the young Canadian nuclear industry which at the time made better reactors than the USA and was selling on the world market. It also affected the young Canadian aircraft industry which was developing niche market aircraft. Again this industry was competitive with certain large US aircraft companies. Both industries were diminished by the USA takeovers. I believe that over a 10 year period we would see the same results to our growing Biotechnology companies and that much tax payers money that has been used to train young Australians would effectively be "lost". This would not be not competition, it would be takeover!

When I was in the USA this January 2004, it became clear to me that this USFTA agreement does threaten the current Australian PBS system.

Please note:

- The US pharmaceutical companies were the major contributors to the 2000 campaign of G. W. Bush President election;
- the same companies are currently major contributors to his re-election campaign;
- the same companies are benefiting from the Bush push for marked changes to the USA health system;
- that at the October meetings in Washington last year when the government organised a meeting of US academic scientists to consider bio-terrorism, it was the same companies that pushed Bush into providing them with the available billions for the research program and not US university scientists;
- that behind the so-called negotiation over the FTA, the pharmaceutical companies were pushing to get into a position to ultimately control the Australian PBS system of drug selection, with the cost to be paid by Australian tax payers.

Let me use one illustration of how the cost blow out will occur. Right now in the Anglo-Saxon world (USA, Canada, UK, Australia and NZ) there is a major crisis in regard to the obesity problem and the associated type II diabetes and cardio-vascular diseases. Australia's health budget is about \$A 50 billion and the estimate health bill for this obesity/type II problem is about \$A13 billion. Recent studies in the UK (2003) have shown that drugs, known as the Statins, which control cholesterol levels, have such a marked effect on decreasing strokes and cardio-vascular disease that the advice currently being proposed is to have all people over age 50 take them. These compounds are very beneficial, but they are expensive and are supported by the current Australian PBS system. Who controls the production of statins ... the USA pharmaceutical companies! What I am trying to illustrate to you here is just one example of how this FTA will become an expensive disaster for our society.

My last point has to deal with the manner that this so called FTA has been presented to the Australian Parliament and the public at large. As I said, "**Hype does not equate to reality**"

It is hard not to be politically partisan, but consider the following as an illustration:

- Howard and Costello hyped up the GST and so many other features of our Australian society.
- Costello promised that the GST would reduced the black economy ... it has not.

- Howard and Costello promised that the GST would simplify tax ... it has not, ask any tax accountant and small business person how much unpaid compliance cost they go through.

I could go on but "hype" does not make this a **Free** Trade Agreement, it is only a one way trade agreement favouring the largest economy. The Australian public rationally can not fall for this FTA and have it supported in Parliament. A worthy government is meant to protect a nation's health and its new technologies, not squander them by some cheap attempt to get itself re-elected.

Yours sincerely

A handwritten signature in black ink that reads "Barry Rolfe". The signature is written in a cursive style with a long horizontal flourish underneath the name.

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Elizabeth Thurston, written with Linda Weir
 Wednesday 11 February 2004
 Presented by Sandy McCutcheon

Topic: The Government Must Be Crazy

Program Transcript

The proposed Free Trade deal with the US tabled this week is cause for great alarm for many parts of the Australian community.

Keep in mind that despite the government's rhetoric, our current trade relationship with the US is not profitable for this country.

We've long run a massive trade deficit with the US, now standing at around 9 billion dollars. This is the second largest trade deficit with the US in the world.

While some individual Australian exporters certainly profit from their sales to the US, as a country we don't, because we buy so much more than we sell.

To benefit the Australian community then, any trade agreement we sign with the US will have to reduce – not add to – this current burden on our economy.

But sadly the deal on the table has little chance of doing this.

Why?

Because the industries in which Australian producers are most competitive - and thus most likely to survive in the US market - will continue to face significant barriers under the proposed deal.

In beef – one of our most competitive industries - Australian farmers will have to wait 18 years for unfettered market access to the US.

Its worth noting that the 18 years that the US is giving itself to prepare for Australian competition is more time than any of the poorest developing countries have ever been granted by the WTO to effect structural adjustment.

Our Sugar industry will have to wait for even longer for greater US market access.

But while the US has managed to keep its weakest industries effectively shielded from Australian competition, we have agreed to open our weakest industries to an onslaught of highly competitive US imports.

Our IT, financial services, telecommunications, media, and pharmaceutical industries (just to name a few) will face intense competition from their more mature and cashed-up American counterparts.

The most likely outcome of this crazy arrangement is a modest increase in our exports to the US, but a massive increase in US exports to Australia

What this means for our already huge trade deficit with the US is obvious. So much for the National Interest.

Equally concerning is that under the proposed deal, the government will effectively be signing away our sovereignty – our right to make decisions independent of outside influences – in two of the most important areas: quarantine laws and the Pharmaceutical Benefits Scheme.

Under the deal, the US has won the right for American representatives to sit on the Australian bodies that determine our quarantine laws

Similarly, the US has won the right to have American representatives sit on the Australian board that decide which medicines will be subsidized by Australian taxpayers' money.

It takes little to appreciate the army of savvy US legal experts that will be aggressively advocating Australia's subsidization of American pharmaceuticals.

And US Pharmaceutical companies already receive enormous assistance from their own government through a sophisticated range of publicly funded intellectual property supports.

But our national selflessness does not end there.

Under the proposed agreement, we will sign away our right to screen most US investments in Australia. The neutering of our Foreign Investment Review Board will mean open slather for US takeovers of Australian firms and assets.

Ironically, in announcing this bonza deal on their website, the US Trade Representative Office erroneously referred to our Foreign Investment Review Board as our Foreign Investment Promotion Board. This Freudian slip clearly reflects the role that the US expects the Board to play for America in the future.

Of course – the US will retain substantial screening powers over foreign investment under its anti-terrorism laws.

But the list of lopsided deals goes on.

Under the deal, Australia will throw open its government procurement markets to US bidders – a concession we have thus far avoided by steering clear of the WTO's Government Procurement Agreement.

We have stayed out of this agreement because we understand the important role that government procurement has played in industry development in Australia – the government supports fledgling domestic companies by granting them procurement contracts.

Under the proposed agreement however, not only will American firms be able to win these contracts, but Australia will be prohibited from linking any industry development initiatives to procurement at the central level.

For example, we will be unable to require US companies involved in procurement to use Australian suppliers, or to employ a certain number of Australians on their projects.

But this is not to say that Australia should shy away from freer trade in the future.

There is nothing wrong with freer trade – in fact freer trade (implemented mutually and sequenced correctly) can deliver massive opportunities for countries at all levels of development.

But this is not a free trade agreement. This is a lopsided trade and investment deal that will deliver few benefits to Australia and massive benefits to the US.

So the question must be asked – exactly whose national interest is our government advancing?

Guests on this program:

Dr Elizabeth Thurbon
School of Politics and International Relations
University of New South Wales

Professor Linda Weiss
Government and International Relations
University of Sydney



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- about
- past programs
- top sales
- tuning in
- home

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by [John Edwards](#)
Monday 23 February 2004
Presented by Sandy McCutcheon

Topic: Foreign Investment and the FTA

Program Transcript

The free trade agreement between Australia and the US will not have much more than a marginal impact on Australian trade with the US. Australian and US manufacturing tariffs are already very low and US concessions to Australian agriculture are very limited. It is a useful agreement but both its opponents and supporters have wildly exaggerated its significance. It should, over time, be somewhat easier for Australian firms to compete in the US services markets and new access to the US government procurement market will be helpful, but nothing in the agreement on goods and services will validate Prime Minister John Howard's claim that it will set Australia up for the next half century. There is, however, one area where the agreement will make a difference, and that is in the liberalisation of Australia's foreign investment regime.

It is true that Australia has continued to reserve urban land, air transport, telecommunications, defence and media from the new rules, and that it will maintain existing foreign ownership restrictions for Telstra, Qantas, CSL and airports. It is also true that even under the agreement the Australian Treasurer retains the right to reject on national interest grounds proposed takeovers of Australian firms by US firms, although the threshold at which a bid needs to be notified to the Foreign Investment Review Board (FIRB) has been increased from \$50m to \$800m. And finally it is true that of 4747 foreign investment applications made to FIRB last financial year, only 79 or 2 per cent were rejected. All that said, the changes are much more sweeping than has been generally understood.

Once the agreement comes into force, there will be no requirement to notify FIRB of any US investment in Australia which does not involve the takeover of any existing company. Currently any such investment of over \$10 million needs to be notified, which means it is potentially subject to the Treasurer's power to determine if it is in the national interest. It does not mean the usual environmental or other policies would not apply, but it does mean the proposed US investment would be treated exactly like a proposed Australian investment.

While the Treasurer retains the right to reject takeover proposals from US interests for Australian companies, the increase in the notification threshold from \$50 million to \$800 million makes a big difference. Most major Australian companies have a market capitalisation considerably greater than \$800 million. But there are 1400 listed companies on the ASX, and once the top 100 are excluded the average market of the remainder is \$70 million. This is above the existing threshold, but nowhere near the new threshold. US companies will now be able to make offers for the great majority of Australian listed companies without needing to notify the FIRB.

The FIRB does approve nearly every application made to it. But of those approved last year, three-quarters were approved only with conditions. For takeovers of industrial companies these conditions may include requirements for a local board, a local CEO, or for commitments to R&D or manufacturing facilities. Under the new rules there will be no conditions for bids under \$800m, and no notification will be required. And while a takeover above that threshold requires approval, the acquisition of a blocking stake against other predators may not.

When the new rules are operating they will be extremely discriminatory, since they apply only to US firms. When an Australian target is defending against a foreign predator it is quite common to make the case to FIRB that the offer is against the national interest. Under the new rules the US firm will not face this impediment. But if the Australian firm seeks a white knight which happens to be British or New Zealand or German or Japanese, the white knight will be compelled to go through the FIRB processes. It seems to me this is not a sustainable position. It is all the more delicate because Australia already has

understandings with New Zealand and with Japan that those countries will enjoy the most favourable investment rules into Australia which apply to any other country. It is highly likely therefore that within a few years the newly liberal rules will apply to all intending investors, and the role of FIRB will be whittled down to very large transactions, and those sectors which continue to be reserved.

Questions on this program:

John Edwards

Chief economist with HSBC and former economic advisor to the Keating government

Presenter: Sandy McCutcheon

Producer: Keri Phillips

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Lincoln Weiss (written with Elizabeth Thurbon)
Wednesday 10 March 2004
Presented by Sandy McCutcheon

Topic: "The Australian Interest" Challenge to the Australian Government

Program: Transcript

The recent release of the legal text of the Australia-US Free Trade Agreement (FTA) has raised more questions than it has answered about the deal's likely impact on the Australian economy.

Take, for example, the question of market access. Some Australian sectors will certainly enjoy market access gains via reduced tariffs and increased quotas. But the text of the agreement suggests the creation of new obstacles for Australian exporters trying to enter the US market.

Consider the extremely complex Rule of Origin laws. Under the deal, only goods containing a certain amount of Australian produced content will qualify for market access concessions. So what percentage of Australia's manufactured products will actually qualify for increased market access under these rules? We know that our textile manufacturers won't, because they import most of the yarn and fabric that they turn into clothing here at home. As to whether our more substantial industries – autos, for instance – will be able to satisfy the Rule of Origin laws, and thus take advantage of new market access opportunities, the answer is most unclear.

The price safeguards that the US will be allowed to impose on Australia's most competitive exports – such as horticulture – indicate another new hurdle for Australian exporters. Under the FTA, a meagre 10% fall in our product prices in the US market will trigger safeguard tariffs ranging from 30% to 100% on Australian products, including tomatoes, garlic, peaches, pears, and beef. Will such sensitive safeguard triggers negate the FTA's market access gains for Australians?

And the FTA says nothing of America's new bio-security laws – which also place onerous new burdens on Australian exporters. Will the costs of compliance – such as X-raying all foodstuffs and providing lists of every Australian worker who has handled a good destined for the US market – deter Australian companies from exporting to the US in the future? How long before our government has to follow the NZ lead, and contemplate a tax on our exporters to cover the costs of compliance with US bio-security laws?

There are questions too about the Pharmaceutical Benefits Scheme (PBS). Access to affordable medicine is the cornerstone of the PBS. But new reforms detailed in the text of the agreement point away from cheaper medicines in the future. Consider the new review procedures tied to the PBS decisionmaking process. Under the trade deal, American drug companies will now be able to officially question Australian decisions about which US drugs qualify for Australian taxpayer subsidies.

This means that reviews conflicting with the Pharmaceutical Benefits Advisory Committee's (PBAC) recommendations will offer US drug companies – through their formidable PR arsenal - greater scope to attack and unsettle the PBS decision-making process. Bear in mind that US drug companies spend twice as much on marketing as they do on research and development (a key reason for the exorbitant costs of their drugs). Will US companies use their massive PR machine to manipulate the review process – using it to sway Australians' opinions about which 'innovative' new US products 'deserve' to be listed on the PBS?

But the PBS aside, an equally serious concern is that the deal's tougher new Intellectual Property laws extending the life of patent monopolies will reduce Australians' access to cheaper generic drugs. Should this be the case, we would also expect the new Laws to threaten the long-term viability of Australian pharmaceutical producers involved in generic production.

The text of the deal also raises searching questions about government procurement (or public purchasing) that must be addressed before we sign on the dotted line. Under the arrangement, Australia has won the right to bid for American government procurement contracts. But access alone does not guarantee our ability to compete alongside US firms on their home turf. US companies are famously aggressive in bidding for government procurement contracts at home and abroad, often undercutting competitors' prices (with handsome sweeteners from their own government). So market access will not necessarily translate into wins for Australian firms.

In exchange – we've given US firms the right to bid for Australian government contracts – which they are likely to do successfully with assistance from their own government. But, more worryingly, we've agreed to abolish our industry development plans. These would have required American firms winning procurement contracts to employ a certain number of Australians, to transfer technology, and to source a percentage of their inputs locally. What are the likely costs of the compulsory abolition of Industry Development Programs under the FTA?

Clearly, the Australian government has some important questions to answer. If it's proud of this agreement, it has nothing to fear and everything to gain in answering its case, thereby allaying the concerns of many Australians.

This is the Australian Interest Challenge to the Australian Government.

Questions on this program

Professor Linda Weiss

Professor Weiss works in Government and International Relations at the University of Sydney. She is co-founder, with Dr Elizabeth Thurbon, of the Australian Interest Challenge web site.

Further information:

The Australian Interest

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