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**INQUIRY INTO GENERAL AGREEMENT ON TRADE IN  
SERVICES AND AUSTRALIA/US FREE TRADE AGREEMENT**

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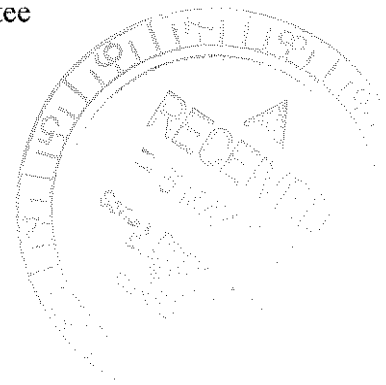
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**Submission to the Senate Foreign Affairs, Defence and Trade Committee on the General Agreement on Trade in Services (GATS) and the Australia/US Free Trade Agreement (AUSFTA)**

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### **Introduction**

Trade Watch is a new Australian group which campaigns for democratic, environmentally sustainable and people-centred trading systems.

Trade Watch supports trading relationships between countries which strengthen the power of citizens to control companies and trade which occurs within their borders. Trade Watch believes that such control is best achieved by a government focus on promoting local production and regional self-sufficiency, rather than abandoning popular sovereignty to international trade agreements.

This submission is made to the Senate Foreign Affairs, Defence and Trade Committee in its inquiry into the GATS and proposed AUSFTA agreements. It aims to:

give voice to some common concerns within the general community about the potential implications of these two agreements;

draw out some of the possible effects of these agreements in areas the government has ignored in its own modelling – specifically environmental and social effects;

make some basic recommendations about how the Australian government might proceed in its future trade policy, to produce socially just and environmentally sustainable outcomes.

### **Summary**

This submission is divided into two parts, dealing first with issues arising from continuing negotiations over the World Trade Organisation's General Agreement on Trade in Services (GATS), and secondly with issues arising from the proposed Free Trade Agreement between Australia and the USA (AUSFTA).

### **Section I – GATS**

The WTO'S General Agreement on Trade in Services aims to liberalise Australia's services sector - that is, to open it up to deregulation and privatisation. Trade Watch has significant concerns about GATS, including:

The basis on which the GATS rests is the neo-liberal belief in the primacy of markets over governments as service providers. Australia's experience of services sector privatisation does not bear out this analysis, and this brings into question the value of continuing participation in the GATS agreement negotiations.

The fact that the GATS calls for "progressive" liberalisation means that it presents an ongoing threat to public services, despite the government's recent claims to the contrary.

The GATS presents a threat to the sovereignty of Australia's elected parliaments and local councils through its "necessity test" provisions contained in Article VI.

The GATS presents a threat to Australia's environment, including through market access and national treatment commitments as well as through the Article VI "necessity" test.

The GATS negotiations have been unduly secretive, and community consultation and concern about the GATS' social and environmental effects have been inadequate.

### **Section II – AUSFTA**

The proposed Free Trade Agreement between Australia and the USA. Trade Watch has serious concerns about the proposed AUSFTA, including:

The Economic benefits of the proposed agreement are highly contentious and will probably not eventuate

The environmental effects of an agreement will be disastrous, in terms of increases to extractive agriculture, land, water and energy use and international transport, rollback of regulations governing genetic modification and rollback of Australia's quarantine standards will take a terrible toll on Australia's natural environment.

The social impacts of the agreement will mean declining rural and urban employment and welfare and increasing privatisation of important public services.

The impact of the agreement on democracy will be to undermine federal, state and local government, if investor-state provisions are included.

## **SECTION I - THE GENERAL AGREEMENT ON TRADE IN SERVICES**

### **Introduction**

Worldwide services trade currently makes up roughly one-fifth of total global trade, and in the past decade, trade in services has grown at an average of 6% per year to a world total of US\$1.35 trillion. Australia's services exports exceeded A\$31 billion in 2001/2.

The WTO'S General Agreement on Trade in Services (GATS) aims chiefly to liberalise the domestic service sectors of WTO member countries – that is, to open them to ownership and management by foreign private corporations.

In essence, the GATS is an agreement by governments to restrict their own powers and the powers of their constituent governments, to facilitate access by private capital to service sectors, many of which are publicly owned and operated. The GATS constraints are legally binding and unlike all other (non-WTO) agreements, they are enforceable by trade sanctions.

### **1) The costs and benefits of services trade liberalisation**

The Australian government is pursuing negotiations on GATS in the belief that liberalisation of Australia's services sector will be of financial, social and economic benefit to Australia and Australians. Yet Trade Watch believes that services trade liberalisation has a long history of adverse economic, social and environmental consequences which are by-and-large ignored by the government in its negotiations.

In example after example, trade liberalisation has not produced the higher productivity, growth or greater quality and range of services of which its proponents boast. There are many examples even from within the Australian services industry where trade liberalisation or deregulation has resulted in more poorly run, more expensive services, and reduced benefits for consumers:

Transport: The 1999 privatisation of Melbourne's public transport system was promoted as a plan to decrease costs, improve services and increase patronage. In fact, it has been unsuccessful in all of these pursuits, with static patronage, ticket price increases, and hundreds of millions in government subsidies used to prop up a failing system (Mees, 2002). The Victorian government has now budgeted up to \$550 million a year in public subsidies just to keep the private operators afloat (Heasley, 2003). In December 2002, one private operator – National Express – withdrew from its contract and handed its section of the system back to the government, citing financial difficulties.

Electricity: The 2001 deregulation of the Victorian and NSW electricity markets was also touted in similar terms to other industrial deregulation projects. But full retail competition for what was once a government service has also been unsuccessful, with only about 3% of consumers switching retailers, and increasing social disparities as larger consumers of power – businesses and high income households – receive discounts while ordinary Australians receive no benefits (Wynn, 2003).

Water: As a result of the 1996 privatisation of Adelaide's water, prices have risen dramatically and thousands of jobs have been lost, while profits for the company have steadily increased. Between 1993 and 2000, prices for the first 136 kilolitres (35,000 gallons) of water, the standard consumption used to set charges, jumped by 59 percent or by \$70.67 a year to \$190.67. Privatisation led to the slashing of jobs at SA Water by 48 percent – from 2,707 to 1,390. In 1997, equipment failures and inadequate monitoring – the result of the new owners' efforts to minimise costs – allowed raw sewage to be flushed directly into the water plant's settling lagoons, causing health and environmental problems across the city (ICIJ, 2003).

Trade Watch is concerned that other services liberalisation and deregulation which result from the GATS will likewise have negative impacts for Australian society and environments. Given the history of negative economic, social and environmental impacts of privatisation of government services in Australia, Trade Watch sees no reason to support the ongoing GATS negotiations.

## **2) The GATS' Threats to Public Services**

The GATS agreement includes a number of services sectors where the majority of services are currently provided by local, state or federal governments, with an aim of producing a more equitable society. Government-run services such as health care, education, water provision,



postal services, and environmental protection are all valued elements of Australian society which will come within the control of GATS. It is of significant concern to Trade Watch that GATS by all appearances will result in a reduction of government services to facilitate an increased presence by multinational corporate providers presents .

These concerns stem most significantly from GATS articles XVI (Market Access) and XVII (National Treatment). National treatment commitments require Australia to provide the same or better regulatory treatment to foreign service operators as that provided to domestic operators. In cases where the domestic operator is a government funded or run body, the result of this provision would be to force the government to provide a foreign private operator with the same level of funding. This would bring an end to public health care, public education, public postal services and even perhaps even public broadcasting. Such a result would mean the death of, for instance, Medicare, public schooling, flat-rate postal services, remote postal services, and the Australian Broadcasting Corporation.

At the same time, market access commitments essentially require Australia to provide unlimited quantitative access to their markets for foreign service operators. Many markets are limited to government suppliers for specific reasons of public good, and the forced provision of access to these markets would have terrible effects. For instance, government provision of national parks is under threat as members have requested liberalisation of "protection of biodiversity and landscape" services. Market Access commitments would mean that governments would have to provide foreign companies access to the "market" for national park management. State water provision will also be in danger with demands that water provisions services be added to environmental services and totally liberalised. Market access commitments would disallow state governments from maintaining their provision of water in the interests of an equitable society.

All services are covered under the GATS except those “supplied in the exercise of governmental authority”. But the GATS text specifies that “a service supplied in the exercise of governmental authority” actually means “any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers” (Article 1.3(c)). Public health care, public education, water services, even national parks and environmental protection services all operate either “on a commercial basis” or “in competition with one or more service suppliers”. This puts these public services well within the boundaries of the GATS agreement.

The Australian Government recently released its offers for services liberalisation under the GATS, together with a statement that “the Government is committed to upholding the right of WTO members to regulate and to fund public services, and will not support any new rules or make any offers which cast doubt on that outcome”. Trade Minister Vaile added that “Australia will not be making any offers in the areas of public health, public education or the ownership of water. The Government will ensure that the outcomes of negotiations will not impair Australia's ability to deliver fundamental policy objectives in relation to social and cultural goals and to allow for screening of foreign investment proposals” (Vaile, 2003).

While the government's statement is encouraging, it is not really true. The reasons for this are partly contained within the minister's own statement when he refers to the fact that “The initial offer is non-binding and can be amended or withdrawn at any time during the negotiations” (Vaile, 2003). This means that there are no guarantees that the government's commitment to public services will remain into the future. Our most important services can still be offered for privatisation at any time, and without the public being aware that it is happening – given the secrecy of the negotiations.

More worryingly, the GATS is a progressive agreement. This means that GATS offers will be renegotiated every five years, with each new round necessitating greater liberalisation than the

last. As a result, it is hard to believe that any services can be permanently excluded from the reaches of the GATS. The Discussion Paper on the General Agreement on Trade in Services produced by the Office of Trade Negotiations in Jan 2003 goes to great pains to point out repeatedly how member states are not "obliged" to liberalise any services sectors, and how commitments are "strictly a matter of choice for member governments" (p. 1). Whereas in fact, the agreement is set up in such a way as to coerce governments to eventually commit all service sectors, regardless of public utility. New negotiating rounds are to occur "periodically", and member countries must progressively include more and more sectors in their commitments to each new round. Some exemptions even have forced expiry dates, as the government document admits when stating that "exemptions from MFN treatment should not, in principle, exceed 10 years" (p. 5).

Trade Watch, like other groups, is concerned that GATS is a way of opening the door to the eventual privatisation or deregulation of many government-funded services, even if this is not the current intention of the government.

### **3) Governmental Sovereignty and the Necessity Test**

The provisions contained in Article VI, often called the "necessity test" are perhaps of greatest concern to Trade Watch of any of the GATS' provisions. Article VI restricts "technical standards," a term which covers many types of government regulation and – particularly concerning – can include almost any type of environmental law. In a recent communication, the WTO Secretariat has affirmed that the domestic regulation criteria in the GATS deal with all measures "intended to serve regulatory or other public policy objectives."<sup>(4)</sup> To be acceptable under Article VI, environmental protection must be "based on objective and transparent criteria" and must "not be more burdensome than necessary to ensure the quality of the service."

In other words, a country cannot simply adopt a reasonable regulatory approach, but must instead identify a full range of alternative approaches and adopt the approach that will affect the economic interests of foreign service operators the least. This imposes a requirement that goes far beyond that in place in the standard regulatory systems of most countries, and it could be an especially difficult standard for cities and other local governments to comply with.

Article VI also calls for member countries to "institute as soon as practicable judicial, arbitral or administrative tribunals or procedures" where investors themselves can challenge government regulations, or in the words of the Article, "for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services." (VI 2 (A))

The overall effect of Article VI is to give foreign investors the right to overturn sovereign governmental laws if they can show that there is a less "burdensome" or "trade restrictive way to regulate. It allows foreign corporations to "second-guess" elected governments as to the best way to govern their citizens. Under this article, corporations can challenge almost any law on the basis that there may be a "less trade-restrictive" way of regulating, even if the cost makes it impossible. There is almost always the possibility of there being a less trade-restrictive alternative to a particular policy choice.

In addition, a country must prove to a trade dispute panel, in the event of a challenge, that its environmental standards are "objective." This turns on its head the "Precautionary Principle" - on which regulations are currently based - which requires scientific proof of environmental safety for a product or service and would allow for regulation even when there is a lack of full scientific certainty of possible harm. Instead, GATS panels might force governments to allow products or services which may be dangerous, but where certainty is not 100%.

The necessity test has already had a trial run in North America via inclusion in the North American Free Trade Agreement (NAFTA). Recently, the state of California banned a gasoline additive MBTE which has contaminated water supplies. A Canadian seller of Methanol in MBTE - Methanex – filed a complaint saying the rule fails the NAFTA necessity test. Methanex asserts that California could simply require all petrol stations to dig up storage tanks, reseal them, and hire inspectors to make sure it's done perfectly. The Canadian proposal might be impossible because of the high costs and be impossible to police, but that may not be reason enough to ban MBTE. If California doesn't drop its ban on MBTE, the US may have to pay Methanex US\$976 million in compensation.

#### **4) The GATS' Threat to the Environment**

Trade Watch is concerned that many aspects of the GATS will be detrimental to Australia's natural environment. These include specific commitments such as market access and national treatment, as well as general obligations such as the necessity test contained in Article VI. These provisions will restrict Australian governments at all levels from pursuing legitimate policy objectives by putting investor rights before those of elected governments.

In any service areas which Australia commits to GATS, its market access commitment will prohibit local, state or federal governments from limiting the number of service suppliers, the value or number of service operations, or the participation of foreign capital. Thus under market access provisions of GATS, the following kinds of legitimate regulations to protect the environment could be found WTO-illegal:

**Energy:** restrictions on the number of oil or gas extractive operations or refineries in an area, possibly including national parks, limitation on the amount of oil extracted, or limitations on the number or length of oil or gas pipelines;

**Water:** limitations on the right of governments to restrict the quantities of water collected from groundwater sources by private service operators; state governments which refuse to privatise their water systems, if other states had already done so;

**Environmental Services:** limitations on the number of hazardous waste sites;

**Protection of biodiversity and landscape:** restrictions on non-government management of National Parks

**Tourism:** limitations to the size or numbers of hotels or other tourism constructions in environmentally sensitive areas, limitations on the number of boats allowed on coral reefs or in sensitive waterways.

With regards national treatment provisions, GATS will restrict the ability of governments and citizens to protect the environment. Since the environmental impact of the way in which a service is provided will most often not change its commercial nature or characteristics, national treatment obligations will limit Australian governments from taking environmental considerations into account when legislating to regulate service providers.

In other words, efforts to protect the environment are only acceptable if they don't disadvantage foreign operators in any way. For example, if a domestic operator uses an environmentally friendly process consistent with a certain regulatory standard and a foreign service operator has not adopted the same process, the foreign operator could claim to be disadvantaged by the requirements imposed by the regulatory action.

Under the GATS, the following types of neutral regulation that affect a foreign corporation's competitive advantage could thus be found WTO-illegal:

regulations for hazardous waste shipment that happen to disadvantage a foreign service operator whose methods differ from those used by most Australian companies;

preferences for granting of resource extraction licenses (such as for fishing) to members of local or indigenous communities;

limitations on the land available to establish hotels in certain areas, thus disadvantaging foreign latecomers to those areas.

Finally the Article VI "necessity test" will allow foreign investors the ability to challenge environmental regulations which they feel are "more burdensome than necessary", and to force governments to disregard the precautionary principle on which current scientific practice rests. These arguments are outlined in the section of this submission dealing with the "necessity test".

\*\*It is thus of great concern that in its recent GATS offers, the Australian government extended its commitments in the area of environmental services to include "protection of biodiversity and landscape" as a service to be liberalised. Should this offer not be withdrawn, Trade Watch believes that it will open the door for Australian biodiversity and landscape management, protection and conservation to be seen as market-oriented services sectors. This would allow private providers of nature conservation services to demand market access to National Park Service contracts in Australian states. It will increasing subject biological resources, including National Parks, state forests and even local nature reserves to market pressures and corporate control, and could lessen the control of local indigenous communities over areas where there is joint management (with government) over biological and natural resources. This is an extremely worrying development.

#### **5) Secrecy of the GATS Negotiations**

It seems a characteristic of trade negotiations the world over that significant secrecy is involved, and neither civil society groups nor national parliaments have either information about these agreements, or power over them. The only exception seems to be the inclusion of business groups at every level of negotiations, from writing the agreements themselves, to acting as

government consultants. The GATS - negotiated in secrecy by unelected government bureaucrats, with little input from the public – is no exception to this trend in negotiating trade agreements.

Although the Australian government claims that this is not the case – the Government's Discussion Paper on the General Agreement on Trade in Services (GATS) claims that "the government will ensure that there will be close and detailed consultation with stakeholders with respect to Australia's approach to the GATS negotiations" – its actions speak louder than words. For instance, WTO member countries lodged their initial requests with the Australian government in June 2002, but it was not until January 2003, more than six months later and after much lobbying, that the government released information about the requests for public comment. Australia's negotiators and the process of negotiations remain secret, and the negotiating process remains opaque to public scrutiny.

Given that the public is the most significant stakeholder in GATS negotiations, Trade Watch does not accept the premise that negotiations must be "commercial in-confidence". Trade Watch can find no reasonable explanation for the general level of secrecy, especially given the significant impact of these agreements on the very fabric of our societies.



## **SECTION II - THE AUSTRALIA-US FREE TRADE AGREEMENT**

### **Introduction**

In November 2002, Prime Minister John Howard told the Australian Parliament that the negotiations towards an Australian-US Free Trade Agreement (AUSFTA) are “by any measure, an historical development in the bilateral relationship; it is unambiguously good news for Australia” (Allard and Garnaut, 2002). But neither the proposed elements of this FTA, nor the effects of the increased trade increased trade which will result from the agreement are “unambiguously good.”

A single-minded approach to its trade policy has made the Australian government blind to the potential negative impacts of trade agreements like the proposed AUSFTA. On an economic level, recent studies have brought into question the governments claims of significant increases in GDP resulting from an agreement, and even foreshadow trade losses in Asia as a result of the agreement.

On an environmental level, the proposed AUSFTA will be severely damaging. Increases to extractive agriculture, land, water and energy use and international transport, rollback of regulations governing genetic modification and rollback of Australia’s quarantine standards will

take a terrible toll on Australia's natural environment. Trade Watch modelling suggests that the agreement would increase Australia's agricultural water use by more than 1.5 trillion litres per year, increasing the entire country's water use by over 8% at a time of significant drought. The same models showed an increase of over 2 million tonnes per year in Australia's greenhouse emissions from increased agriculture, as well as significant increases in emissions due to increased international transportation.

On a social level, national treatment of US corporations could endanger the government provision of many essential services, from post to education and health, and even to water provision. The US demands are likely to be for these sectors to be fully open to investment by US corporations, which means a withdrawal of government-run or "subsidised" services, in favour of private provision. Also at risk are Australia's strong quarantine laws, single desk grain marketing bodies, Pharmaceutical Benefits Scheme, GM Food labelling, local content laws for film and television and government reviews of investment – all important valuable elements of Australian society.

Finally, the government has publicly stated that it will base sections of the proposed US-Australia FTA on the North American Free Trade Agreement (NAFTA). NAFTA has resulted in significant problems in all three signatory countries, particularly as a result of the "investor-state" provisions included in its infamous Chapter 11. These provisions have had the effect of giving corporations the right to take sovereign governments to a tribunal over elements of local, state or federal legislation which reduce or deprive them of profits. The tribunal has the right to order compensation of hundreds of millions of dollars, which can have the effect of forcing governments to repeal laws. These provisions have been overwhelmingly used to challenge environmental legislation in signatory countries. The adoption of investor-state provisions in a proposed Australia-US FTA would be a severely retrograde move which would endanger the basis of Australian democracy, as it has in Canada, Mexico and the USA.

A FTA between Australia and the USA has as its fundamental premise the restriction of the ability of governments at all levels to act in their citizens' interests, and of moving economies away from more self-sufficient and local bases, to more corporate dominated, export oriented and import dependent systems. Such a move is already taking a terrible toll on Australian society and environments – an AUSFTA would exacerbate this toll significantly. Trade Watch believes that there are ultimately no significant advantages to this process for Australians.

### **1) The Direction of Australia's Trade policy.**

Increased trade in and of itself should not be a goal of Australian policy. While trade policy may result in an increase in Australia's GDP level, this does not necessarily, or even often translate to an increase in economic, social or environmental welfare in Australia. Indeed, increases in GDP in many countries are often accompanied by declining employment, declining social equity (through privatisation of government-supplied services) and declining environmental indicators.

Government modelling of the effects of the proposed AUSFTA has focused exclusively on how it will effect Australia's GDP, in ignorance of the other important effects of international trade increases. While there is significant dispute as to the extent the agreement will actually affect Australia's GDP, modelling has ignored the facts that an AUSFTA will also have significant negative effects, including lower employment, lower wages, more expensive and lower quality services - pharmaceuticals, health, education, etc., and a more degraded natural environment.

The government's dogmatic economic rationalist stance is only confirmed through examples which show the extent it will go to prove its own point against all evidence:

The government is basing its arguments in part on a study it commissioned from the APEC Study Centre, entitled "An Australia-USA Free Trade Agreement - Issues and

Implications". The chairman of the APEC Study centre - and the person who would have had most influence on the content of the report - is Mr Alan Oxley. Mr Oxley is also the Director of AUSTA - The Australia United States Free Trade Business Group - which describes itself on its website as a coalition to "promote conclusion of a Free Trade Agreement between Australia and the United States". Trade Watch believes that as a result of this conflict of interest, the study commissioned for the government is heavily biased towards expected benefits which are unlikely to eventuate, and leaves out serious problems associated with the suggested agreement.

Media reports that the Department of Foreign Affairs and Trade attempted to "noble" and then delay the release of a report on the AUSFTA which was critical of the expected benefits of the proposed agreement add to the impression that the government is pursuing this agreement for reasons of economic dogma, or to cement a security relationship - not for the benefit of Australia's national interests (Garnaut, 2003).

Trade Watch believes that the Australian government should pursue trade policies which benefit not only Australia's GDP, but also increase its levels of equity, increase its employment rate, strengthen its democracy and conserve its environment. The proposed agreement will do none of this.

## **2) Economic Costs of an AUSFTA**

*"Free-trade agreements do not ensure free trade. This is because the US uses many other protectionist measures to block foreign goods. After NAFTA was signed, America took actions to restrict tomatoes, avocados, corn brooms, and truck transportation. Chile now faces similar actions, as it has in the past, concerning some important exports, such as wine and salmon. Should Chile find other products that can compete against American producers, these too will likely face restrictions."*

– Joseph Stiglitz, Ex-President of the World Bank, on the recently signed US-Chile FTA (Stiglitz, 2003)

The economic gains which the government says will eventuate from a FTA between Australia and the US have been called into question, not only by the history of free trade agreements around the world – like that between the US Mexico and Canada (NAFTA) – but by the government’s own commissioned reports.

**a) ACIL Consulting Report**

*“ . . . an FTA with the US, even if fully achieved, would cause a loss of welfare for Australia and leave Australians as a whole worse off.”*

– ACIL Report, 2003.

The recent release of the report into the proposed AUSFTA by ACIL Consulting show’s that there is considerable evidence that an AUSFTA would actually damage Australia’s economy, rather than benefit it, as the government has claimed. The ACIL report shows that many of the assumptions on which the governments claims are based are in fact implausible. This includes the assumption that services sector productivity would improve by 0.35% due to greater awareness of US managerial methods. According to ACIL, this single assumption “is large enough by itself to generate more than half of the positive GDP contribution that the CIE found an FTA with the US would make.” (ACIL 2003, p. 41)

The ACIL report found that the government’s claims of a rise of 0.33% in GDP were unfounded, and that a free trade deal would actually reduce GDP by about 0.2 per cent overall, partly because “much of the increased bilateral trade with the US would be trade diverted from Asia.” (ACIL 2003, p. iv)

Finally, The ACIL report also warns that it argues that an AUSFTA might endanger Australia's significant Asian export markets – where 55% of exports are directed, as opposed to 10% to the US. The development of a future Asian FTA might exclude Australia, create a massive negative outcome from current AUSFTA negotiations.

#### **b) Enforcing the provisions of an AUSFTA**

Should Australia actually sign an agreement with the US, the asymmetry in economic power between the US and Australia means that Australia has almost no means to enforce US violations of a FTA. While the imposition of duties on US imports of Australian products would make a profound impact on the Australian economy, similar Australian initiatives would make almost no impact on the massive US economy.

The US's behaviour in international fora gives a strong precedent that it will ignore agreements it has signed if it so decides. Recently, during the negotiations to establish the International Criminal Court (ICC) the USA declared that it was no longer bound by the Vienna Convention on the Law of Treaties, a 1969 pact detailing the obligations of nations to obey other international treaties. For example, in May 2002, the United States decided to renounce formally any involvement in a treaty creating an international criminal court and has officially "unsigned" the document signed by the Clinton administration. As reported in The New York Times on May 5, 2002, "in doing so the US simultaneously "unsigned" the Vienna Convention on the Law of Treaties, a 1969 pact that outlines the obligations of nations to obey other international treaties." (Lewis, 2002)

Trade Watch is concerned that the size differential between Australia and the US means that any AUSFTA will bind Australia to rules which the USA may then be free to ignore at will.

### **3) Environmental Costs of an AUSFTA**

Trade in agricultural products, timber, and minerals are climbing at a phenomenal rate, bringing with them significant environmental costs. Yet these costs are mostly ignored by governments in their trade policies. Australia is no exception. Trade Watch is concerned generally with the environmental and social impacts of Australia's highly export-focused and world-market oriented agricultural policy.

With regards the proposed AUSFTA, Trade Watch is primarily concerned about the effects that the growth in exports – which it is claimed the agreement will produce – will have on the environment. Trade Watch is also concerned at the push to limit regulations on genetically modified (GM) products which pose significant environmental and health concerns to Australians.

In terms of resource use and greenhouse emission creation, an AUSFTA will be an environmental disaster. The proposed AUSFTA aims to increase agricultural production for export, and hence exacerbate already serious environmental problems in Australia's agricultural sector including:

Environmental effects of extractive agricultural land use, especially salinisation due to land clearing and over irrigation, water use, energy use, and flow on effects like biodiversity loss and run-off effects of increased pesticide and fertilisers use.

Environmental effects associated with increased international transport of goods, particularly increased greenhouse gas and other pollution.

#### **a) Extractive Agriculture and the AUSFTA**

Australia's economy has always been reliant on exports of primary products – the majority of all agricultural production and mineral extraction is for export. Unfortunately, these exports have a

devastating impact on Australia's natural environment. Yet rather than pursuing a more environmentally sustainable economic direction, successive Australian state and federal governments have continued to increase Australia's reliance on primary exports, with an accompanying toll on Australia's environment.

The proposed AUSFTA is aimed to increase Australia's exports still further, particularly in agriculture. Government modelling suggests that the overall increase in Australian exports will be up to 0.8% of GDP (CIE, 2001). Substantial increases in production are estimated to occur in the dairy and sugar industries – two of the most environmentally degrading industries in Australian agriculture. For dairy exports the modelling estimates a 354% increase. For sugar exports the estimated increase in exports is 2550%. These figures correspond to an overall increase in total export volumes of 6% and 15% respectively (Ibid., 2001).

Increases of up to 15% of total export volumes represent a massive increase in production, and thus corresponding increases in environmental effects, including water use, soil and water pollution. Yet the government has done no modelling of the effects that these export increases will have on the environment. What follows is a basic analysis of some of the environmental effects of this increased trade.

#### **b) Land Use**

*“Production characteristics of the minerals and agriculture industries, and to a lesser extent forestry and fisheries, are driven not by domestic population levels, but by demand from global export markets. . . . the environmental effects of agricultural production are substantial and may become further evident from 2020 onwards. Modelling indicates that more than 10 million hectares of agricultural land may be lost to dryland salinity, irrigation salinity and soil acidification by 2050. This will produce a knock-on effect in making rivers and streams more saline and more acidic, which in turn may increase the difficulty and cost of water treatment for urban and industrial use and limit the productive potential of many irrigation areas.”*



– CSIRO Future Dilemmas, p. 115.

Of Australian agriculture, the vast majority is for grown for export, including 70-75% of livestock (CSIRO 2002, p. 149), 85% of grains, and 90% of hardwood woodchips (NAFI, 2003). Indeed CSIRO research shows “Domestic population levels have relatively minor primary or direct effects on resource and environmental issues related to mining and agriculture . . . This is because production in the primary commodity sectors is geared to meeting the requirements of global trade” (CSIRO 2002, p. 115)

Increases in agricultural exports under the proposed AUSFTA will exacerbate already serious degradation of much of Australia’s landscape, which is tied to Australia's export dependence, including:

A dryland salinity crisis affecting 2.5 million hectares and potentially more than 12.5 million hectares of prime agricultural land. “Recent estimates from the National Land and Water Audit put the area of possible land affected by dryland salinity in 2050 at 17 million hectares. Monetary assessments value the contemporary damage at \$130 million per year in lost agricultural production, \$100 million per year in damage to infrastructure and \$40 million per year in loss of environmental assets. . . . Losses due to soil acidification are estimated to exceed \$134 million per year.” (Ibid., p. 115) Salinity also adds to the loss of Australia’s biodiversity, as natural vegetation increasingly becomes threatened by degrading soil conditions.

High levels of land-clearing for agriculture. Australia has the fourth highest rate of land clearing of any country in the world. The 2001 Australian State of the Environment Report estimates that during 2000 a staggering 564,800 hectares of native vegetation was cleared, almost all for agricultural purposes. Land clearing exacerbates the salinity crisis, causing more water to enter into the groundwater system, consequently causing water tables to

rise, bringing salt to the surface affecting crop growth. The impacts of high saline watertables for Australia's wheat belt region are decreased crop production, degraded water supplies, damaged infrastructure, and higher production costs. The clearance of native vegetation for agriculture is also the single most significant threat to biodiversity in Australia.

### **c) Water Use**

*"Australia exports an estimated 4,000 gigalitres of embodied water more than it imports. This is about the same amount used each year by urban Australia. If we receive relatively poor trade prices for these products, then the nation accepts a double loss as funds are sought to repair the integrity of its inland river systems."*

– CSIRO Future Dilemmas, p.190.

Services provided by water in Australia are seriously undervalued, despite the fact that water use underlies much of Australia's economic output. Australia's export markets dominate its water usage. Despite the fact that Agriculture makes up only 3% of Australia's GDP (UNDP, 2000), it uses 80% of Australia's total freshwater use. Yet the vast majority of Australia's agricultural produce is for export – for sectors such as grain production, the proportion exported is as much as 85% of all production (ABS, 2002).

From 1985 to 1997, Australia's water usage increased by 7,400 billion litres per year. Almost the entirety of this rise was in agriculture, where usage rose 5,300 billion litres per year in the same period. (CSIRO, 2002, p. 192) It should be noted that increased agricultural water use – apart from using up a scarce commodity in the driest continent on Earth – adds to a number of environmental problems, including dryland salinity, water pollution (from pesticide run off), and blue-green algae in waterways (from fertiliser run off).

Even more worrying is that the CSIRO sees no option to fulfil future agricultural water needs other than opening up more than one million hectares of land in northern Australia for irrigated agriculture. Not only will this irrigated agriculture bring with it problems of dryland salinity and soil acidification, but much of this land is currently almost pristine country, some of which is currently in protected areas. (Ibid., p. 203-4)

#### **d) Energy Use**

According to the Australian Bureau of Statistics, 29% of the total energy consumed in Australia goes into the production of goods and services for export (ABS, 2002). The raw materials to provide this energy are supplied almost totally by the coal mining industry, itself highly extractive and environmentally damaging. But the most significant effect of this energy use is in the production of greenhouse gas emissions, which have been shown to cause global warming. This change in climate presents perhaps the single most significant threat to humanity of any environmental problem, causing rises in sea levels, declines in rainfall in many already dry areas and spreading tropical diseases.

Australia has the highest per-capita greenhouse gas emissions of any country on Earth, and emissions are increasing faster than almost all other OECD countries. Australia's total carbon dioxide equivalent (CO<sub>2</sub>e) emissions have increased by 17.4 percent since 1990 (excluding land clearing). Overall, about 23% of Australia's energy-related greenhouse gas emissions are generated in the production of exports (valued at over \$83 b in 1994-95) (ABS, 2001).

#### **e) Two Environmental Models - Dairy and Sugar**

##### Water

In terms of water use, dairy and sugar are some of the most expensive products Australia can produce. And yet when we export them, this cost is not taken into account at all. According to

the government's modelling, the proposed FTA will significantly increase Australia's exports of these two commodities, and thus increase exports of Australia's precious water resources.

According to the CSIRO, for every dollar of sugar cane we produce and sell, 1,239 litres of water are used. This water only includes managed water resources, and does not include soil water from rainfall. Dairy production needs a massive 1,470 litres of water for every dollar of product sold. (CSIRO, 2002, p. 193)

The Government's modelling estimates that the proposed agreement will increase Australia's sugar exports to the USA by US\$442 million, that is, A\$713 million, per year (CIE, 2001). The same model predicts Australia's dairy exports to the US would rise by US\$263 million, that is, A\$424 million per year (Ibid., 2001).

Thus, based on the government's own models and the CSIRO's statistics, the rises in these two single commodities due to the proposed FTA would increase the amount of water used in Australia by 1.51 TRILLION litres per year. That's 1,507,000,000,000 LITRES more water we would be exporting to the US, every year! This is approximately equal to the volume of 3 Sydney Harbours-ful! This increase – from a rise in exports of only two commodities – represents a increase of 10% on Australia's current total agricultural water use of 15.5 Gigalitres per year, and an increase of 8% on Australia's total water use. (CSIRO, 2002, p. 195)

### Energy

The story in terms of energy use is almost as bad. CSIRO statistics show that per dollar of output, sugar production uses 15.3 million Joules of energy, that is, 4.25 kWh. Dairy production uses 11.6 million Joules of energy, or 3.2 kWh per dollar of output (Ibid. p. 193).

Again, based on the government's own models, the rise in just sugar and dairy production for export due to an Australia-US FTA would amount to an extra 15.8 PJ of energy – 15.8 thousand million million Joules – used in exports to the USA every year, from only two agricultural products.

This is again a massive amount. To put the number in perspective, the entire Australian household consumption of energy per year is just 360 PJ (ABS, 1998). Based on data from the Australian Greenhouse office, (AGO, 1998) this extra consumption of energy would produce 2 million tonnes of Greenhouse gas emissions every year, just from the increases in exports of these two agricultural commodities.

Unfortunately, the total increase in water use, energy use greenhouse emissions – and the resulting increases in environmental effects – from increases in *all* commodity exports due to the proposed FTA is beyond the scope of this submission.

#### **f) International Transport and the AUSFTA**

*“Ship engines are thus among the world's highest-polluting combustion sources per ton of fuel consumed . . . Nitrogen emissions [from global shipping] are 14 percent of all fossil fuel combustion and the sulfur aerosol emissions [from global shipping] are about 16 percent of sulfur emissions from all petroleum use in the world.”*

– Corbett and Fischbeck, Science, 1997.

The proposed AUSFTA aims to increase both Australian and US exports, a scenario which would significantly increase transport between the countries, and significantly increase the environmental problems associated with such transport.

Domestic and international transport is a major contributor to air pollution and thus human health and climate change. About 95% of the world's traded goods are moved by maritime transport, which in turn causes as much as one-sixth of global carbon, nitrogen and sulphur emissions from petroleum sources. (Corbett and Fischbeck, 1997)

In Australia, the transport sector is the second largest producer of greenhouse gas emissions. In 2000 domestic transport produced an estimated 76.3 Mt of CO<sub>2</sub>e emissions, or 14.3% of net national emissions (AGO, 2002). Transport is also the fastest growing polluter of any sector, rising by 20.3 per cent in the decade between 1990 and 2000 (AGO, 2003). Yet these statistics ignore a significant contributor to Australia's greenhouse emissions - the pollution created by transport of goods in international trade.

International shipping causes a wide variety of pollution, including carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) and nitrous oxide (N<sub>2</sub>O), as well as carbon monoxide (CO), nitrogen oxides (NO<sub>x</sub>), non-methane volatile organic compounds (NMVOCs) and sulphur oxides (SO<sub>x</sub>) (UNFCCC, 1999). Ships spew 5 percent of the globe's sulfur oxides and 14 percent of the world's nitrogen oxide emissions – equal to the nitrogen emissions from all the cars, trucks and other vehicles in the United States. Environmental dangers from airborne Sulfur and Nitrogen oxides are serious. Sulfur particles cause acid rain, while nitrogen compounds – as well as being greenhouse gasses – can form ground-level ozone.

Aircraft, while carrying less international trade, cause far more pollution, emitting gases and particles directly into the upper troposphere and lower stratosphere where they have an impact on atmospheric composition. These gases and particles alter the concentration of atmospheric greenhouse gases, including carbon dioxide (CO<sub>2</sub>), ozone (O<sub>3</sub>) and methane (CH<sub>4</sub>); trigger formation of condensation trails (contrails); and may increase cirrus cloudiness - all of which contribute to climate change.

International transport to and from Australia generated a massive 10.2 Mt of CO<sub>2</sub> emissions in 2000 - the most recent statistics available (AGO, 2002). Yet shockingly, these figures are not included in our national inventory by the Australian Greenhouse Office. Were they to be included, they would increase our transport-related emissions by 13.4%, or almost one seventh.

Even more scandalous is the massive and unrestricted growth of emissions from international trade. While Greenhouse gas emissions from the domestic transport sector are the fastest growing emissions of any sector – rising by 20.3 per cent from 1990 levels (AGO, 2003) – they are totally eclipsed – by over three times – by the massive growth in emissions from international transport. Australian Emissions of CO<sub>2</sub> from international transport rose from 6.4 Mt in 1990 (UNFCCC, 1999) to 10.2 Mt in 2000 - a leap of 63%.

Yet far from trying to reduce these emissions, the government has proposed a FTA that will increase them still more. Government modelling predicts the AUSFTA will create significant rises in exports of minerals, manufactured goods and agricultural products - in some cases up to 2550% increases in exports to the USA (sugar) (CIE, 2001). Given that at the Kyoto climate talks, the Federal government proposed that Australia be limited to an 8% rise in greenhouse emissions from 1990 levels, the significant increases in our emissions caused by a USFTA will represent an abrogation of our international responsibilities.

Other environmental effects of the increased international transport created by the proposed include:

Increased air pollution from transport significantly effects air quality and thus human health. Of all ship emissions – which as shown above, account for up to 14% of NO<sub>x</sub> and SO<sub>x</sub> pollution worldwide – nearly 70% occur within 400 km of land regions, adding

significantly to pollution above cities. (Corbett and Fischbeck, 1997) Every year, nearly 3 million people die from air pollution globally.

Increased deepening of harbours. As trade expands, ships get bigger, and this is forcing harbours to be deepened, with significant environmental consequences. Proposals to increase the depth of the entrance of Melbourne's Port Philip Bay to accommodate more international trade have been condemned by environment groups as destroying marine ecosystems and flooding surround areas (Fyfe, 2002).

Increased spread of exotic marine species. The CSIRO estimates that Port Philip Bay in Victoria has some 170 exotic species, most of which arrive through shipping. Some are particularly harmful, like the North Pacific Sea Star (*Asterias amurensis*), which has increased in population from 150 to 12 million in less than two years, crowding out local species and destroying ecosystems. Exotic species are spread in large degree through ship ballast water and increased competitiveness needs has accelerated transfer as the costs of cleaning ballast water make it "inefficient" (Dunkley, 1999, p. 16).

#### **g) Regulation of genetically modified (GM) food**

*"Genetically engineered crops represent a huge and uncontrolled experiment whose outcome is inherently unpredictable."*

– Barry Commoner, biologist, City University of New York, 2002.

Australia currently has laws which require the labelling of all foods containing significant amounts of genetically modified material. The US – as the world's largest producer of GM agriculture – has tagged GM labelling and regulation as a "barrier to trade", and has signalled it will push for the removal of government rights to regulate GM products. In the words of the US trade representative Robert Zoellick, the US will push to "eliminate" any "unjustified" technical barriers to trade, "including those relating to labelling requirements on U.S. food and agricultural products produced through biotechnology" (Zoellick, 2002). The US itself has no labelling laws for GM products, and extremely lax regulation of new GM crops.



Should the US be successful in removing Australia's right to regulate GM products, not only would it undermine Australia's democracy and Australian consumers' rights to know what their foods contain, but it would present significant environmental risks to Australia.

Once released, GM organisms cannot be recalled, so their effects are irreversible. Significant environmental effects include:

The ability of GM plants can pass on to weeds their engineered resistance to herbicides, creating "superweeds".

The endangering of biodiversity – On May 20 1999, Scientists at Cornell University reported in the journal Nature that pollen from genetically engineered corn containing a toxin gene called Bt killed 44 percent of the monarch butterfly caterpillars who fed on milkweed leaves dusted with it.

Unbalancing the biosphere through the by introduction of "alien" species, which can alter the ecological balance of an ecosystem.

The health risks of GM foods are also unknown, given their recent invention and extremely limited testing period. Animal feeding studies are only fourteen or twenty eight days long, and there is no pre-market human testing. Without knowing whether the food people consume has been modified, the health risks of GM will never be understood, and consumers will have no basis on which to make decisions about their health.

#### **h) Proposed Quarantine Provisions**

Australia's quarantine policy plays a vitally important role in ensuring the protection of human, animal and plant health. Australia's current policy is scientifically sound and based on the

"precautionary principle" that currently allows us to act on the side of caution if there is no scientific certainty about potential threats to human health and the environment. Without such restrictive measures, Australia would have no way of safeguarding against exotic pests and disease that may be introduced by agricultural products.

Unfortunately the USA has specifically stated that it considers Australia's stringent quarantine barriers to be a 'technical trade barrier' alongside its wish to "eliminate" any quarantine restrictions it judges "unjustified" (Zoellick, 2002). Any proposed changes to Australian quarantine laws would endanger the Australian environment and farming sector, both worth many billions to the Australian economy through tourism and farm exports.

There is a strong precedent for the undermining of Australia's quarantine laws. In 1999, Canada challenged Australia's quarantine laws on imports of Canadian Salmon as a "barrier to trade" in a case brought under the World Trade Organisation ruled. The WTO upheld Canada's claim, and Australia was forced to allow the import of a product which may endanger our local salmon populations. In the wake of the 1999 WTO ruling against Australia's ban on Canadian salmon, the Senate Rural and Regional Affairs and Transport Legislation Committee Report of June 2000 commented that the decision could "set a precedent which may undermine the [Australian] quarantine requirements in other areas" (p179). Thus there is a real danger that the proposed changes to Australia's quarantine laws will threaten Australian agriculture and wildlife.

#### **4) Social Costs of an AUSFTA**

##### **a) Effects of an AUSFTA on Australian Agriculture**

The deregulation of Australian agriculture has already had a tremendous negative impact on Australian farmers. Deregulation – both in Australia and overseas – has had the primary effect of advantaging large, mostly corporate agri-businesses with their significant economies of scale and highly industrialised production. The losers in this process are the smaller, often more

environmentally sustainable and family-owned farms, which cannot compete against the global corporations who then buy up the land of bankrupt smaller farmers. In 2000, 80% of world agriculture was already controlled by just 10 companies – Syngenta, Novartis, Monsanto, Aventis, Du Pont, Zeneca, Dow Chemical, AgrEvo, Bayer, American Cyanamid, Rhone-Poulenc and BASF (FoEI, 2001, p. 7.).

An AUSFTA will see benefits from agricultural deregulation benefit large agribusiness yet again, and small farmers will again lose out. Trade Watch is concerned that the central focus of the proposed AUSFTA – deregulating the Australian economy and increasing its reliance on export markets – will have significant negative impacts on rural and regional Australia, including:

Declining employment in rural Australia;

Declining income and welfare for farmers.

### **Declining Employment in Rural Australia**

Thirty years ago, workers in the farming and rural sector comprised 11 per cent of the national workforce. Today they make up only 4.5 per cent (ABC, 1998). Trade liberalisation, together with increasing technologisation, has significantly contributed to this declining employment in rural Australia.

Much can be learnt about the proposed AUSFTA from the The North American Free Trade Agreement (NAFTA) – on which the AUSFTA is to be based. NAFTA has had a terrible impact on small farmers in Mexico, where highly subsidised US agriculture has undercut local farmers, destroying farmers livelihoods and creating poverty.

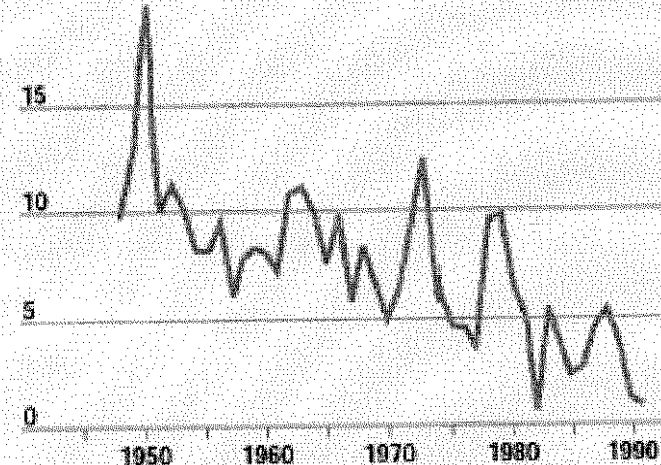
While NAFTA has massively increased Mexico's wealth – nearly tripling its trade volumes since 1994 – this wealth has flowed only to the richest Mexicans, and has destroyed millions of rural jobs in the process. While Mexico's \$600 billion economy is now the world's ninth largest, 19 million more Mexicans are living in poverty than 20 years ago, and one in four Mexicans is now classed as “extremely poor” – that is, unable to afford adequate food (Jordan & Sullivan, 2003). Alejandro Villamar, an Economist from the Commission of Rural Development of Parliament in Mexico cites statistics showing “nearly two million jobs out of 8.5 million have disappeared since 1994, [when NAFTA was signed], and 10 million people have fled to the US in search of work” (WTO, 2003).

In Australia, trade deregulation has also taken a massive toll on small farmers, as becomes obvious from recent cases of industry deregulation. An Australian Bureau of Agricultural and Resource Economics (ABARE) report released on January 30 2001 confirmed that in the six months since the final stage of dairy deregulation was implemented in 2000, 200 dairy farmers in NSW and 110 in Queensland alone had left the industry. The same report quoted a survey of farmer intentions which showed that 30% did not expect to be in the industry in five years time.

### **Declining Income and Welfare for Farmers**

Export-orientation means lower incomes for farmers - Australia's *State of the Environment Report, 1996*, notes that as ‘real’ commodity prices have been falling at a greater rate than ‘real’ per-unit prices of inputs, net farm income in Australia has been falling over the past forty years (see fig):

**Figure 26**  
Real net value (1991-92 \$billion)



Source: Department of the Environment - Australia. *Australia State of the Environment: 1996*. Collingwood: CSIRO Publishing, 1996.

The proposed AUSFTA has also put under threat an important source of income stability for many farmers – single desk marketing boards, like the Australian Wheat Board (AWB). Forty-Five thousand Australian wheat growers export wheat through AWB. The board buys their wheat and pools it over markets and over time, meaning farmers don't have to compete for exports against other growers, and that they can earn a living even when prices are down. The board also markets the wheat internationally, meaning small farmers with limited resources can still find markets for their produce.

But the USA will “seek elimination of Australian government export monopoly arrangements for wheat, barley, sugar and rice” (Zoellick, 2002) – that is, the elimination of single desk marketing systems. If the government were to accede to US demands, small farmers would be those most effected as prices declined further, and market certainties disappeared. Employment would also decline further, as small farmers would no longer be able to compete with international agribusiness, with its large economies of scale and superior ability to market products internationally.

Unfortunately, almost no research is available into the direct impacts of economic liberalisation on other social issues in rural Australia, including education, health or crime levels, or changes in culture. But it is apparent that liberalisation and export orientation – by creating declining employment and commodity prices – must be a major factor in increased depression, suicide and crime rates in rural areas.

#### **b) Effects of an AUSFTA on Australian Services**

Proposed provisions of the agreement covering the services sector will have some of the widest implications for Australian society of any provisions in the proposed agreement. This is because the Australian government plans to grant US corporations “national treatment” for any investments they make in Australia. The government’s report into the AUSFTA stated that it was “likely that the United States and Australia will pursue . . . granting investors from the other country national treatment.” (APEC Study Centre, 2001, p. 36.) The practical outcome of this is that in many sectors where services are provided by government funded organisations, US investors will have “rights” to demand equal funding. This will destroy many important services currently provided by the government on the basis of need and in the interests of citizens – such sectors as postal services, water provision, health, and education – which will not survive if forced to make a profit for corporations. The US Trade Representative has stated that the US will “pursue a *comprehensive* approach to market access [in the services sector], including enhanced access for U.S. services firms to telecommunications and any other appropriate services sectors in Australia’s market” (Zoellick, 2002). This hints at the inclusion of a wide range of services sectors in market access negotiations. There is a significant precedent for the national treatment of foreign corporations, with New Zealand audio-visual products given national treatment under the Closer Economic Relationship Trade Agreement (ANZCERTA).

National treatment may also open the door to the privatisation or deregulation of many of Australia's government-funded service sectors, as government agencies fail to compete against corporations also receiving government funding. A society built on egalitarian ideals should not sacrifice the basic rights of its citizens to government services in the interests of greater profits for large foreign corporations.

### Audiovisual and Cultural Services

The USTR has included Australia's audio-visual laws as a "foreign barrier to trade" in its publications (USTR, 2003). Trade Watch is seriously concerned at the specific inclusion in the US demands for the removal of local content and cross-media ownership laws from Australia's cultural and audiovisual services. Such services are part of the processes which underpin and develop our society's cultural identity, and as such must retain significant local content and local ownership.

In particular, the proposal to lift local content broadcast quotas for television, film and radio would be a blow to Australia's local industry, and thus to its cultural identity. The Australian television industry exists largely because of local content rules which dictate that a proportion of programs must be Australian-made. The effect of a removal of these rules would most likely be an end to a large part of the Australian television industry.

With regards to media ownership laws, limits to cross-media ownership guarantee citizens a diversity of views. The increasing centralisation of media ownership around the world has resulted in fewer and fewer perspectives on which citizens can base their views. Trade Watch sees this as a process which should be curtailed.

### Health Services

Trade Watch is concerned that the USTR has specifically highlighted the Pharmaceutical Benefits Scheme as a "barrier to trade" in its 2003 report (USTR, 2003) and also in comments to

the media (Allard and Garnaut, 2002). The PBS scheme currently allows equitable access to pharmaceutical products to those most in need through the bulk purchase of medicines by a governments – this is a critical part of Australian society. In the USA, prescriptions can cost over A\$60 each, and many people are thus unable to afford basic medications. This has created an "underclass" of more than 50 million people, who, unable to afford private healthcare, are forced to do without as best they can. The creation of a similar underclass in Australia would not be a desirable development.

Unfortunately, the threat to healthcare from a AUSFTA goes further than the PBS. The US Coalition of Service Industries (CSI) has noted that "Historically, health care services in many foreign countries have largely been the responsibility of the public sector. This public ownership of health care has made it difficult for US private-sector health care providers to market in foreign countries" (Kuttner, 1999). National treatment rules would give corporations access to public healthcare funding, and would mean that private companies would be able to challenge government-funded health care providers, and demand equal funding to what public providers receive. A result would be that public hospitals would be forced to compete with private hospitals for government funding, and this would have the effect of substantially dismantling Australia's world class health system.

### Water Services

Trade Watch is concerned that the national treatment provisions of the proposed FTA will include provisions forcing states to open up water provision services to private ownership. Since access to water is essential to survival, Trade Watch believes this would constitute an attack on basic human rights. In example after example around the world, the privatisation of water supplies has resulted in massive price rises and restrictions on the people least able to afford to pay extra for corporate profits. This has already occurred in Adelaide where water services have been privatised and consumer costs have jumped by 59 percent a year while jobs at SA Water



have declined by 48 percent. (ICIJ, 2003). Given increasing water scarcity in many Australian communities, the inclusion of water collection and distribution services in the proposed agreement is of great concern.

### Education Services

The Australian government is already attempting to roll back government funding of education in favour of more private provision of education services, particularly as expressed in the 2002 "Crossroads" report by education minister Brendan Nelson. But national treatment provisions of a proposed AUSFTA could dramatically increase the speed of this rollback without parliamentary approval by:

Making Commonwealth operating grants and subsidies previously confined to domestic public universities to be equally available to US providers operating in Australia.

Removing restrictions on the number of tertiary education institutions operating in Australia.

Removing restrictions on the type of legal entity, e.g., governance structures, for a provider to operate in Australia.

Removing restrictions on the percentage of foreign ownership of educational institutions.

Relaxing qualification requirements and procedures, technical standards and licensing requirements.

Trade Watch is concerned that the proposed agreement will further wind back Commonwealth funding to educational institutions in favour of greater access for US corporations to the potentially lucrative Australian education market. A move to national treatment in education can only have the effect of decreasing both the quality of educational services available to citizens and the affordability and accessibility of education.

### Postal services

Trade Watch is concerned that the proposed national treatment provisions could result in an end to the government subsidised Australia Post system. This concern is based on a case currently before the tribunal which adjudicates the NAFTA agreement, on which parts of the Australia-USA agreement may be based.

Under NAFTA, United Parcel Services (UPS) - an American corporation - is challenging the Canadian government's funding of its public postal service Canada Post. UPS claims that Canada's publicly funded network of mailboxes and post offices gives Canada Post an unfair advantage over private sector courier companies. It claims that Canada Post is unfairly subsidising its competitive courier and express services by using a network that was built to provide its letter service. In fact, the post office is legally mandated to provide a broad range of postal services to everyone in the country, no matter where they live.

If the NAFTA tribunal finds against Canada, it will be liable to pay UPS \$230 million in compensation, and stop its subsidisation of Canada Post. The case could set a dangerous precedent. Most government services are delivered in competition with the private sector. The suit that UPS has launched could just as easily be launched over public education or health care.

Australians have come to take for granted the efficiency, affordability and ease of postal services provided by Australia Post. Dismantling Australia Post would destroy the subsidised stamp system Australia currently uses - a flat rate for post anywhere within the country. Because of the massive distances between population centres unique to Australia, this would end affordable post in country areas, and may even endanger country postal services altogether.

### Government Procurement Services

According to US Trade Representative Robert Zoellick, AUSFTA negotiations will be used by the US to seek to expand access for U.S. goods and services to Australian government procurement markets” (Zoellick, 2002). Under any government procurement provisions in the proposed AUSFTA, national, state and local governments would likely be forced to give national treatment in awarding contracts to US corporations. This could mean the imposition of compulsory competitive tendering for government services in an attempt to “address issues of anticompetitive . . . state enterprises” (Zoellick, 2002). Australian governments would not be allowed to give any preference to local firms to encourage local development or employment. Governments may not even be able to require US firms with government contracts to buy local products or train local people.

#### **c) Effects of an AUSFTA on Australian Democracy**

Australian democracy could be seriously harmed by the inclusion in the proposed AUSFTA of what are known as “investor-state” provisions for investment which would have had the effect of giving corporations the right to take sovereign governments to a tribunal over elements of local, state or federal legislation which reduce or deprive them of profits.

Based on statements made by the US Trade Representative Robert Zoellick (see below) the inclusion of investment provisions in the proposed agreement is likely to follow the path of investment provisions in other agreements, particularly the North American Free Trade Agreement (NAFTA). NAFTA was the first such FTA to include "investor-state" provisions for investors, contained in its infamous Chapter 11.

Investor-state provisions establish a process by which individual investors, rather than the signatory governments, can take governments to a tribunal, and sue for compensation for breaches of the trade agreement. In effect, investor-state provisions give foreign investors rights to challenge domestic legislation enacted by state, local or federal governments. Given that

domestic investors have no such rights, it effectively puts foreign investors on a level above not only local investors, but sovereign governments themselves.

Under Chapter 11 of NAFTA, foreign corporations can sue governments over government measures that allegedly limit the value of their investments. When corporations use investor-state provisions, they by-pass governments altogether by appealing to international tribunals that operate entirely outside of national laws and constitutional guarantees of justice and equality. Almost everything about these tribunals is secret. All meetings are held in secret. Most information is secret. The public and the media are locked out.

Under NAFTA, investor-state provisions have been overwhelmingly used to challenge environmental legislation in signatory countries. Such cases have been based on "national treatment" or "expropriation" rules within NAFTA. The government has already stated that it will pursue similar rules for the US-Australia FTA.

The inclusion of investor-state provisions in the proposed agreement would allow US corporations to sue Australian governments for loss of income which results from environmental, health or labour laws which Australian Governments have made or might make. Under NAFTA, environmental and health regulations have been seen to breach national treatment rules, or been seen as tantamount to expropriation, and governments have had to compensate firms for millions of dollars. For example:

In 1997, Metalclad Corporation, a US-based multinational, sued the Mexican Government for \$90 million dollars, after being denied permission to operate a hazardous waste facility in the municipality of Guadalcazar, on land that had been declared a "special ecological zone." A NAFTA Tribunal awarded Metalclad Corporation, US\$16.7 million in compensation.

In 1999, Methanex Corporation, a Canadian-based multinational, sued the U.S. government for US\$970 million because of a ban by California and other states on a fuel additive (MTBE) containing Methanol, a chemical which the company manufactures. MTBE has become a major groundwater contaminant, but Methanex has argued that since there are less trade-restrictive ways of solving the water contamination problem – whatever their cost – MTBE must be allowed in fuel, or \$970 million must be paid in compensation. The case is still pending.

In 1999, Sun Belt Water Inc., a U.S.-based multinational, sued the Canadian government for US\$10 billion after the government restricted the bulk export of Canadian fresh water. Sun Belt was suing for the company's *expected future losses* which it claimed resulted from the domestic legislation, even though it had never even exported Canadian water. The case is still pending. (Public Citizen, 2001)

Mr Zoellick has stated that the US will seek “to secure for U.S. investors in Australia important rights comparable to those that would be available under U.S. legal principles and practice. . . . [and to] provide procedures to resolve disputes between U.S. and Australian investors that are in keeping with the goals of making such procedures expeditious, fair and transparent” (Zoellick, 2002). This substantially hints that the US will pursue investor-state dispute resolution provisions similar to those in NAFTA Chapter 11.

Trade Watch is extremely concerned at the effects that the inclusion of such investor-state provisions would have for Australian society and the ability of governments and councils at every level to protect citizens' rights and lives.

Finally, the U.S. government has already identified Australia's Foreign Investment Review Board (FIRB) – the body which reviews all foreign investment on national interest grounds – as

a barrier to trade (USTR, 2003). This issue will very likely be included in FTA negotiations. Trade Watch believes that the move to disband the FIRB is a fundamentally undemocratic one, which would remove a fundamental right of Australians to regulate investment in our national interests.

#### **d) Effects of an AUSFTA on Australian Employment**

Trade Watch believes that the proposed reduction of tariffs on American manufacturing products being imported into Australia – particularly in clothing and textiles – would be disastrous for Australian employment levels, and for Australian small manufacturing.

A report by the National Institute of Economic and Industry Research found that by the year 2005, it is likely that the tariff phase-down in Australia's manufacturing sectors that commenced in 1987 will have resulted in the loss of approximately 100,000 manufacturing jobs. In 2005, it is likely that total employment in the Australian economy will be 200,000 less as a result of the tariff phase-down. (NIEIR, 2000)

Tariff reductions also favour large manufacturers with larger economies of scale. Small business is hard hit by being forced to compete against US corporations with revenue larger than the GDP of large countries. Effects of the proposed AUSFTA on rural employment are discussed in the section entitled "Effects on Agriculture".

### **5) Trade Watch Recommendations**

Consequent to the concerns raised in this submission, Trade Watch recommends that the Australian government:

Withdraw its recent GATS offers and take no further part in either GATS or AUSFTA negotiations until such time as close and detailed consultation is undertaken with community and government groups most affected, including but not limited to state government departments, trade unions, student unions, environmental groups, medical groups, local councils and regional and farmers' groups.

Take no further part in GATS or AUSFTA negotiations until such time as extensive research is undertaken into both the actual environmental and social impacts thus far and the potential future impacts of the GATS and the AUSFTA, including impacts on national employment and small business growth, impacts on local communities in urban, regional and rural areas, impacts on agricultural industries – particularly on small farmers – and impacts on regional and rural employment. Gross Domestic Product (GDP) growth should no longer be the exclusive judge of positive or negative impacts of trade agreements.

Clearly exclude from any GATS disciplines and articles of the proposed AUSFTA all publicly provided services, including but not limited to postal services, health services, primary, secondary and tertiary education services, water provision services, cultural/audiovisual services and transport services.

Premise all future negotiations on the renegotiation of the GATS agreement to a) remove Article VI provisions – including any “necessity” provision – that restrict the right of governments to adopt laws and regulations protecting the public interest and the environment, and b) specifically include clear, strong and across-the-board exceptions

ensuring that no reasonable environmental laws and regulations at any level of government will be undermined or challenged by GATS rules.

Clearly exclude from any GATS negotiations any services related to the extraction or collection of energy fuels, minerals and ore, water, timber, and other natural resources; any services related to the provision of water services; any GATS negotiations any services related to "protection of biodiversity and landscape"; and any GATS negotiations any services related to "protection of ambient air and climate".

Clearly exclude from the proposed AUSFTA: investor-state provisions of any shape or form, government procurement provisions and changes to Australia's media ownership rules, local content quotas, Foreign Investment Review Board (FIRB) and quarantine laws.

Undertake all future trade negotiations with complete transparency, including avenues for public scrutiny of the negotiators and the negotiating process.

Legislate to make all trade agreements subject to parliamentary scrutiny and dependent on passage through both houses of Federal parliament before taking effect.



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