



**Queensland  
Government**

Office of the Premier

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**19 JUL 2004**

Mr Brenton Holmes  
Secretary  
Select Committee on the Free Trade Agreement between  
Australia and the United States of America  
Parliament House  
CANBERRA ACT 2600

Dear Mr Holmes

Thank you for your letter of 7 July 2004 seeking additional information on Queensland's views regarding the proposed the Australia-United States Free Trade Agreement (AUSFTA).

I have attached Queensland's response to your request and thank you for the opportunity to provide further information.

Yours sincerely

  
**Rob Whiddon**  
Chief of Staff

Executive Building  
100 George Street Brisbane  
PO Box 185 Brisbane Albert Street  
Queensland 4002 Australia  
Telephone +61 7 3224 4500  
Facsimile +61 7 3221 3631  
Email [ThePremier@premiers.qld.gov.au](mailto:ThePremier@premiers.qld.gov.au)  
Website [www.thepremier.qld.gov.au](http://www.thepremier.qld.gov.au)

**Response to Senate Select Committee's request for additional information on  
Queensland's position on the Australia - United States Free Trade Agreement  
(AUSFTA) 15 July 2004**

**General questions**

While there will not be the creation of a "head of power" as such, s 51(xxix) of the Commonwealth Constitution (the external affairs power) will enable the Commonwealth Parliament to implement, for Australia, any international obligation that the Commonwealth Government assumes under a bona fide international treaty such as the AUSFTA. The Commonwealth's power to legislate in order to discharge an international obligation assumed by Australia under the AUSFTA is not limited to those obligations that relate to matters otherwise within the Commonwealth's legislative competence.

The subject matter of the AUSFTA is, of course, extensive. If the Commonwealth Government proposes to enact legislation to meet an obligation assumed by Australia under a treaty like AUSFTA, the external affairs power will support the Commonwealth legislation. However, it does not necessarily follow that Commonwealth legislation is the only means available to implement AUSFTA obligations.

In practice, the external affairs powers provides the Commonwealth with the opportunity to expand its legislative reach into areas in which it would otherwise lack constitutional power to legislate.

Issues of concern to Queensland in this context are the chapters of the AUSFTA on investment and the environment, in particular the provisions relating to expropriation and government regulatory actions. These issues have been highlighted in the Queensland Government submission to the Joint Standing Committee on Treaties (JSCOT) and the Senate Select Committee.

It is presumed that the reference to the Treaties Committee in the questions is intended to refer to the Treaties Council.

The Treaties Council was established by the Council of Australian Governments (COAG) at its meeting on 14 June 1996. It was among a number of measures designed to improve the provision of advice and consultation undertaken by the Commonwealth Government with State and Territory Governments concerning international treaties. It was intended that the Treaties Council would have an advisory role and would comprise of the Prime Minister and all Premiers and Chief Ministers. The Minister for Foreign Affairs and Trade would attend when appropriate.

In 1996 COAG also endorsed the *Principles and Procedures for Commonwealth-State Consultation on Treaties*. These anticipated that the Treaties Council would meet at least once a year. In reality, the Treaties Council has met only once - in 1997. Premier Beattie wrote to the Prime Minister on 18 July 2000 proposing a meeting of the Treaties Council and drawing his attention to the earlier commitment by COAG. On 13 March 2002, in an address to a Foreign Affairs seminar on *Treaties in a Global Environment*, the Queensland Attorney General, the Honourable Rod Welford MP, reiterated Queensland's concern regarding the apparent reluctance of the Commonwealth to convene a Treaties Council meeting.

The AUSFTA has not been subject to consideration by the Treaties Council and the Queensland Government has not sought this course of action.

As indicated above, the Treaties Council was one among a number of measures approved or noted by COAG in 1996 to improve consultation with States and Territories regarding treaties. The Queensland Government has actively sought to participate in these forums. Among the reforms announced was a federal parliamentary process for the tabling of treaties, the establishment of the Joint Standing Committee on Treaties (JSCOT) and the compilation and provision of National Interest Analyses.

Queensland remains one of only two jurisdictions in which correspondence from JSCOT regarding the proposed treaty actions and related National Interest Analyses is tabled in our Parliament. In addition to tabling this information, the Premier reports annually to Parliament on substantive issues.

COAG also agreed to the establishment of a Standing Committee on Treaties comprised of officials from the Commonwealth and States and Territories which would meet twice per year. The Committee was supposed to identify treaties and other international instruments of sensitivity and importance to the States and Territories and was intended to:

- decide whether there was a need for further consideration by the Treaties Council, a Ministerial Council, a separate intergovernmental body or other consultative arrangements;
- monitor and report on the implementation of particular treaties where the implementation of the treaty has strategic implications, including significant cross-portfolio interests, for States and Territories;
- ensure that appropriate information was provided to the States and Territories; and
- coordinate, as required, the process for nominating State and Territory representation on delegations where such representation is appropriate.

The Committee does meet regularly and while it is a source of information for States and Territories regarding the progress of treaty negotiations, it has not met the original expectations of its role. In addition, States and Territories officials meet prior to Standing Committee meetings, providing a useful opportunity to consult with each other regarding their positions on treaties.

States and Territories have raised concerns regarding the effectiveness of the current measures used by the Commonwealth Government to consult on treaties and at its meeting on 28 May 2004 the COAG Senior Officials Meeting (SOM) established a review of the *Principles and Procedures for Commonwealth – State Consultation on Treaties*. From a Queensland perspective, areas which should be considered in the review include the Treaties Council, timely consultation with States and Territories regarding National Interest Analyses, a more systemic approach to consultation which currently does not follow a standard or reliable path and consideration of when negotiations should be elevated to Ministerial level. In addition, because of the significant increase in negotiation of bilateral agreements, we propose that the review should consider mechanisms to ensure that current legislation/regulation across all jurisdictions, conforms and continues to conform to treaties.

Among the questions posed by the Senate Select Committee, is a query regarding the ideal procedures and machinery for dealing with trade agreements. The COAG SOM Review will provide an appropriate vehicle for thorough consideration of these issues by all States and Territories, in conjunction with the Commonwealth Government.

### Consultation

The format and procedures for consultation between the Commonwealth and the State and Territory Governments in the treaty-making process are found in the *Principles and Procedures for Commonwealth-State Consultation on Treaties*.

One of the *Principles and Procedures for Commonwealth-State Consultation on Treaties* addresses the participation of States and Territories on international delegations negotiating treaties. Principle 6.1 states:

*In appropriate cases, a representative or representatives of the States and Territories may be included in delegations to international conferences which deal with State and Territory subject matters. Subject to any special arrangements, the purpose is not to speak for Australia, but to ensure that the States and Territories are well informed on treaty matters and are always in a position to put a point of view to the Commonwealth. However, State and Territory representatives will be involved as far as possible in the work of the delegation.*

The Queensland Government has always valued Department of Foreign Affairs and Trade (DFAT) consultation and been sceptical about the value of general State and Territory representation on trade treaty negotiations, given that the interests of States and Territories do not necessarily coincide for such treaties. In April 2003, the Honourable Tom Barton MP, who was representing the Premier at the National Trade Consultations Ministerial meeting in Perth made it clear that Queensland's position was that:

- Queensland did not believe it necessary or practical for States and Territories to have a "general" representative at the negotiations;
- Queensland was concerned that such a move could detract from the process of detailed pre/post AUSFTA negotiation briefings of States and Territories by the DFAT;
- Queensland believed it might be more useful to send specialist observers to negotiations on specific issues, particularly government procurement; however
- Queensland would not object to other States and Territories agreeing on and sending a representative.

Subsequently Queensland supported the agreement among States and Territories that resulted in a Victorian official being appointed as a State and Territory representative to observe negotiations. Premier Beattie indicated that this support was provided on the basis that it did not diminish the Commonwealth Government's responsibility and commitment to maintain frequent consultation with the States and Territories. Furthermore he sought a commitment that priority would be given to the state official's attendance at the sessions dealing with agriculture and that Queensland officials would be briefed at the end of each round.

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Following pressure from State and Territory trade officials for an additional representative with a trade and industry interest to be present during negotiations, the DFAT agreed to additional representation. State and Territory officials nominated a Queensland trade official who attended and observed the fifth round of negotiations in Canberra.

Queensland acknowledges the benefit from the presence by a Western Australian government official representing the Australian Procurement and Construction Council (APCC) during the government procurement negotiations. The Queensland Government considers that it was adequately consulted with regard to the government procurement chapter and that this is attributable to topic-specific representation.

Given that the provisions pertaining to the services and investment chapters of trade agreements also carry significant scope to affect the regulatory prerogatives of the States and Territories, it may be appropriate to explore the issue of State and Territory representation for such specific chapters in the COAG SOM Review as an alternative approach for consultation on trade treaties.

In May 2003 and October 2003 Premier Beattie wrote to the Honourable Mark Vaile MP, Federal Minister for Trade, outlining Queensland's interests in the AUSFTA negotiations and highlighted that he would welcome engagement directly on critical issues as they arise.

The Queensland Government is disappointed that, despite assurances made by Minister Vaile in a teleconference just prior to the final round of negotiations, no Ministerial engagement regarding the outcome for agriculture occurred during the crucial final days of negotiations when it was determined that sugar would be excluded from the deal.

Consultations were generally characterised by regular briefings by DFAT on the status of the negotiations; some detail of the Commonwealth's negotiating objectives/position; some detail of the United States' negotiating objectives/position; provision of some of the draft chapters and/or provision of some of the annexes and proposed approach to reservations; with opportunities for questions and comment from the States and Territories.

At the conclusion of the negotiations in February 2004, States and Territories had been provided with drafts of four chapters of the AUSFTA; the chapters on Cross Border Trade in Services, Investment, Government Procurement, and Financial Services. Despite requests to DFAT from State and Territory Government officials for early confidential release of the draft text, particularly to assess the agreement's general exceptions and final provisions, the Queensland Government was not provided with the full draft text until 4 March 2004 when DFAT released it publicly. The *Guide to the Agreement* was distributed some time later and the release of the Centre for International Economics' economic modelling was delayed for some weeks. It was extremely difficult therefore for the Queensland Government to consider the full implications of the treaty and report to the Joint Standing Committee on Treaties (JSCOT) by 13 April 2004. Consequently, the Queensland Government sought an extension from the JSCOT to provide its submission.

The Queensland Government was not invited to contribute to the National Interest Analysis (NIA).

There has been no formal arrangements agreed upon for State and Territory participation in ongoing AUSFTA consultations or negotiations associated with the various working groups

established under the AUSFTA. Queensland Government officials have informed DFAT officials of a desire to participate on or provide input to the working groups. Queensland has a particular interest in those groups focused on professional services, mutual recognition of standards, environment, government procurement, labour, and sanitary and phyto-sanitary aspects. These interests were also noted in the submission to JSCOT and the Senate Select Committee. DFAT officials did advise that a lack of a formal arrangement does not imply that State and Territory input would not be sought.

### **Impact of the AUSFTA on Queensland**

The Queensland Government considered a vast range of available information on the AUSFTA, including independent reports, economic modeling, Commonwealth Government commissioned reports, and Parliamentary reports. The Queensland Government has also consulted with industry.

The Queensland Cabinet has considered the government's position on the AUSFTA and approved the submission which was sent to both JSCOT and the Senate Committee.

The Queensland Government's current assessment of the benefits to the State includes:

- potential for an immediate annual benefit of \$11 million for the Queensland beef industry which will further expand over time as export capacity increases in line with the phasing out of quota restrictions;
- potential for long term market growth for sheep meat and goat meat;
- potential for long term market growth for horticulture products;
- an immediate benefit for increased export of peanuts;
- elimination of tariffs on light metals and minerals;
- new access to the US federal and regional government procurement market;
- increased US investment into commodity sectors and knowledge intensive industries;

The Queensland Government's assessment of the costs for the State includes:

- increased costs to large scale users of copyright material, particularly government, libraries, TAFE's and educational institutions;
- greater competition from US suppliers for Queensland manufacturers of automotive components, textiles, clothing, footwear, furniture and furnishings;
- possible diminished opportunities for the generic pharmaceutical industry due to the potential for expanded legal devices to extend or vary the patent process.

The Queensland Government's assessment of the missed opportunities for the State includes:

- the exclusion of sugar removes what would have been one of the major benefits for Queensland. Queensland commissioned the Centre for International Economics to assess the potential impacts of the AUSFTA on the sugar industry. This study explored a range of scenarios and concluded that the AUSFTA had the potential to deliver benefits to the Australian sugar industry (where Queensland production represents 95%) of over A\$2 billion for the period to 2015;
- the failure to gain better treatment for persons seeking temporary entry visas which has hampered expected benefits for the services sector.

Premier Beattie has publicly called on the Honourable Peter Costello MP, Treasurer, to reinvest the expected national benefits of the AUSFTA into health and education.

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The Queensland Government noted in its submissions that the extension of the duration of copyright protection to 70 years after the death of the producer would result in large scale users of copyright material (government, libraries, universities, TAFEs and other education institutions), paying more in copyright fees. In the financial year 2001-02, the Queensland Government paid approximately \$8 million to various collecting societies. An increase to the term of copyright will increase these payments by up to 40%, representing an increase of approximately \$3 million per annum in expenditure.

### Health aspects

The view that the changes to the Pharmaceutical Benefits Scheme (PBS) may lead to an increase in the prices of drugs is, at this stage, merely a hypothesis. The Queensland Government noted in its submission to the Senate Select Committee that it does hold concerns about the lack of detail of exactly how the independent review panel would operate and who it would comprise. The Queensland Government anticipated that the Senate Select Committee would seek clarification from the Commonwealth Government during its inquiry as to how the Commonwealth Government intends to manage the additional processes, avoid US pressure from large and influential US drug companies, and how it would avoid increases in medicine prices. The Queensland Government would wish to have these details made publicly available prior to the agreement taking effect.

The Queensland Government considers that it would be wasteful should the role of the Pharmaceutical Benefits Advisory Committee (PBAC) be duplicated by a review panel. Queensland believes the most reasonable process would be for the independent review panel to provide feedback to PBAC indicating issues which they believe may not have fully considered, and for PBAC to then determine whether the decision needs reviewing. A process for Ministerial reporting for transparency purposes should also be included.

With regard to the AUSFTA provisions that open up the Australian blood supply sector to competition from United States companies, the Queensland Government was not consulted directly, but is represented on the Jurisdictional Blood Committee which was consulted.

The Queensland Government notes that there have been some suggestions that the size of the Australian market for fractionated plasma products may only support one fractionator and that there are efficiencies to be gained from the arrangements as they currently stand, but this is unsubstantiated.

Queensland considers that it is in the interests of public health that access to generic drugs not be unduly impeded. Generic medicine manufacturers in Queensland remain concerned that the AUSFTA could provide existing US multinational intellectual property holders with scope to either extend their patents or to further protect their patents through legal mechanisms. This could ultimately delay the market entry of equivalent Australian manufactured generic drugs.

## Industry aspects

The Queensland Government's Trade Strategy is designed to increase the number of overseas enterprises that look to Queensland to source products and services, increase the number of Queensland enterprises actively seeking overseas business and maximising the pathways for Queensland enterprises to enter overseas markets. The Trade Strategy encapsulates a range of strategies, programs and initiatives to achieve "more exporters and smarter exports". The Queensland Government is already focused on seizing opportunities for Queensland companies in the North American market, particularly in knowledge intensive industries. If the AUSFTA is implemented, the Queensland Government will initiate programs to facilitate Queensland businesses to seek and achieve trade opportunities with the United States and will work collaboratively with Commonwealth Government agencies, including DFAT and Austrade, to do this.

The Queensland Government's business support framework, including its Manufacturing Strategy, is designed specifically to deliver practical assistance that enables firms to lift their performance and address the challenge of global competition. The Queensland Government is confident this is a robust platform for helping companies to counter any increase in pressure from US imports and will monitor its assistance on an ongoing basis to ensure its ongoing effectiveness.

The Queensland Government has noted reports from the Office of the US Trade Representative (USTR) that US manufacturers are estimating a US\$2 billion increase in manufactured exports to Australia as a result of the AUSFTA. Areas in which increases are anticipated include specific sectors where Queensland firms are also active such as auto parts, chemicals and plastics, electrical equipment and appliances, fabricated metals, non-electrical machinery, medical and scientific equipment, and paper and wood products. If these predicted gains for US exporters are realised, some could be at the expense of other overseas suppliers whose products would still be subject to tariffs. However, the scale of the gains forecast by the US suggests potential for an increase in competition for Queensland companies as well, especially those who currently have some price advantage from tariffs imposed on US imports.

In terms of standards conformance, Queensland small business may find that the changes to their quality systems to conform to a different model would be an impost. Austrade has, in the past, contributed to the cost of achieving US standards by Australian exporters. Similar initiatives should form part of a suite of Commonwealth-funded support initiatives, delivered by Austrade, to ensure Australian exporters achieve the benefits from this agreement.

Government procurement specialists working in conjunction with Austrade have indicated that it will cost approximately \$15,000 for an Australian firm to be listed as a supplier on General Supply Arrangements (GSA) lists in the United States. In addition, it is expected that there would be an additional cost in representatives/agents continuing to keep the Australian products in front of GSA buyers in competition with United States, Canadian, Mexican, and a range of other national suppliers. Clearly this is an export market development issue and measures to assist industry should be facilitated by Austrade with relevant support from the States and Territories where appropriate.

**Legislative/regulatory impacts**

The Queensland Government does not have to amend or enact any legislation prior to the AUSFTA entering into force. Some amendments need to be made to the Queensland State Purchasing Policy and Local Industry Policy to comply with the provisions of the government procurement chapter. The Queensland Government reserved the right in the agreement to take three years to make such changes and would undertake such changes in close collaboration with industry.