



Office of the Premier of Victoria

16 JUL 2004

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

Dear Mr Holmes

REQUEST FOR ADDITIONAL INFORMATION ON STATES' VIEWS OF THE AUSTRALIA-US FREE TRADE AGREEMENT


Thank you for your letter of 7 July seeking further Victorian input to the Senate Select Committee inquiry into the Australia-United States Free Trade Agreement (AUSFTA). I attach some further information, addressing a number of the questions posed by the Committee.

Having reviewed all the evidence available to date, the Victorian Government understands that the net impact of the AUSFTA on Victoria is likely to be positive. The Commonwealth Government has maintained that the US would not agree to re-open the text of the Agreement. If this is correct, we would support ratification of the Agreement as it stands.

However, we also consider that the Commonwealth should implement the Agreement in a manner that will minimise adverse impacts; that the Commonwealth Government should put in place effective arrangements to assist groups that may be disadvantaged by the Agreement (including the film and television and the plastics & chemicals industries); and that the AUSFTA negotiations have demonstrated a need to review existing arrangements for Commonwealth-State consultation on treaties.

We appreciate the Committee's determination to ensure that State and Territory views are reflected in its final report.

Yours sincerely


TIM PALLAS
Chief of Staff

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Impact of the AUSFTA on constitutional responsibilities, legislation and regulation

The Victorian Government does not consider that the AUSFTA would create a head of power for the Commonwealth to legislate on matters of State authority; nor would it extend the authority of the Commonwealth in any other way. The Australian constitution would remain unchanged.

We understand that nothing in the AUSFTA could require us to amend existing Victorian legislation or regulations.

Commonwealth-State consultation

The 1996 COAG *Principles and Procedures for Commonwealth-State Consultation on Treaties ('P&P')*¹ established a Treaties Council (with an advisory function) consisting of the Prime Minister, Premier and Chief Ministers to consider treaties and other international instruments of particular sensitivity and importance to the States and Territories. The *P&P* also established a Standing Committee on Treaties consisting of senior Commonwealth and State and Territory officers to identify such treaties; decide on the need for further consideration by other bodies; monitor and report on Treaty implementation; ensure that appropriate information is provided to the States and Territories; and coordinate the process for nominating State and Territory representation on delegations.

These arrangements were not effective in the context of the AUSFTA negotiations. Although the Treaties Council is supposed to meet on an annual basis, it has met only once – in 1997 – and there was no agreement on a Victorian request (July 2003) for the Treaties Council to consider the AUSFTA. The Standing Committee on Treaties did receive periodic updates on the AUSFTA, but meets too infrequently (twice per year), for it to be an effective forum for consultation on fast-moving negotiations like the AUSFTA.

Against this background, Commonwealth-State consultation included DFAT-coordinated meetings/teleconferences with State and Territory officials. DFAT provided a range of briefing papers as the talks proceeded. The AUSFTA was discussed by Commonwealth, State and Territory Trade Ministers during the formal National Trade Consultations process and further teleconferences. DFAT also involved the Victorian Government in consultations with local industry.

As noted in our original submission to the Committee, we believe that, for the most part, DFAT made conscientious efforts to keep key stakeholders informed of developments in the negotiations. States and Territories were given a general idea of the Commonwealth's objectives and priorities, with State and Territory remarks being noted for consideration.

There should be clear mechanisms for national follow-up to free trade agreements to: ensure a common understanding of Commonwealth/State and Territory responsibilities for implementation; ensure that businesses across Australia can

¹ Available at: http://www.coag.gov.au/meetings/140696/attachment_c.htm

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exploit new opportunities; ensure that disadvantaged industries/regions receive appropriate and timely transitional assistance; and review the working of agreements at set periods after entry into force.

We are pleased that Commonwealth, State and Territory Senior Officials have recently agreed to commission a review of consultation on treaties. Victoria will be pressing for the review to ensure that the impacts of all treaty negotiations on all levels of government in Australia are identified and fully considered, and consider necessary changes to the 1996 *Principles and Procedures*.

Overall impact of the AUSFTA on Victoria

We provided a preliminary assessment of the impact of the AUSFTA in our original submission to the Committee. We noted that the AUSFTA was likely to have a mixed impact on Victoria: some aspects of the Agreement were clearly positive; others were disappointing. We noted that several areas of the proposed Agreement (audiovisual, intellectual property, pharmaceuticals, cross border trade in services, investment, environment, rules of origin, temporary entry of business persons and dispute settlement) merited particularly careful scrutiny.

We note that, since we made our original submission, the Commonwealth and the Committee have released further modelling of the likely impacts of the AUSFTA. We were disappointed that this modelling did not contain a more detailed analysis of the likely impacts of the Agreement on States and Territories. We note that there are significant disparities in the assumptions employed by the modellers and, thus, in the results of the modelling.

Having reviewed all the evidence available to date, the Victorian Government understands that that the net impact of the AUSFTA on Victoria is likely to be positive. The Commonwealth Government has maintained that the US would not agree to re-open the text of the Agreement. If this is correct, we would support ratification of the Agreement as it stands.

However, we also consider that there is a need to review existing arrangements for Commonwealth-State consultation on treaties; that the Commonwealth should implement the Agreement in a manner that will minimise adverse impacts of the AUSFTA; and that the Commonwealth should put in place effective arrangements to assist industries/groups that may be disadvantaged by the Agreement (including the film and television and the plastics & chemicals industries)

Intellectual property

We share the Committee's concern that the AUSFTA's intellectual property provisions may benefit copyright holders at the expense of users, and that the Agreement may have an adverse impact on certain technological and pharmaceutical industries. We urge the Commonwealth Government and Parliament to implement these provisions in a manner that recognises the interests of users and the industries concerned.

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Health

Australia has successfully contained pharmaceutical costs via current PBS arrangements. We are concerned that neither the AUSFTA, nor possible pressure from international drug companies, should be allowed to drive an increase in costs.

It is our view that the Commonwealth Government should clarify how the proposed "independent review" mechanism would function before the AUSFTA enters into force. Such clarification should address the purpose, powers and composition of any review committee.

We note that the PBAC already has all the expertise required (clinical, public health, economic, consumer) to make independent and well-informed decisions on the suitability of drugs for public subsidy. Therefore, an 'independent review committee' would need to have at least the level of expertise of the PBAC to be able to review PBAC decisions. Conversely, it seems unlikely that such a committee could include representation from the pharmaceutical industry without risking conflicts of interest.

Any review mechanism should also apply the same criteria as those already used by the PBAC. Separate issues, such as the importance of pharmaceutical research and development, would best be addressed by other fora.

Victoria does favour making the PBS listing process more publicly transparent. If a review mechanism is implemented, Victoria would favour the review committee being able to refer decisions back to the PBAC for further consideration, but would not favour allowing the committee to overturn PBAC decisions.

The Commonwealth Government should also take steps to ensure that the AUSFTA does not open the door to 'evergreening', nor threaten the continued viability of Australia's generic pharmaceutical industries. Victoria is concerned that any change that impedes the timely availability of generic pharmaceuticals on the Australian market will gradually increase pressure on the PBS and public hospitals.

With respect to blood plasma fractionation, Australian governments have agreed that there should be a review of arrangements by 1 January 2007. It will be important for this review to consider: the need for secure, long-term access to blood plasma products at competitive prices; the need for the highest possible level of assurance against possible infection/contamination of products; the need to maintain confidence in Australia's voluntary blood donor system; and the desirability of maintaining a critical mass of skilled scientific and innovative knowledge.

Industry

It is important that Australian firms be provided with training and expert advice on ways to access US procurement. The Commonwealth Government is already providing support for companies.

Different technical standards and approaches to quality assurance represent a barrier for Australian firms trying to access US markets. The Victorian Government raised this with the Commonwealth during the AUSFTA negotiations. We are pleased that the AUSFTA provides for a committee of senior officials to examine ways to harmonise technical standards and enhance mutual recognition of professional qualifications. We are not aware that Australian exporters to the US will face any extra costs as a result of entry into force of the AUSFTA.

Victoria plans to adjust one aspect of its industry development policy, the Victorian Industry Participation Policy, to ensure consistency with the AUSFTA's Government Procurement Chapter (GPC). Policies to encourage SME participation in Government contracts are exempted under the GPC and will continue.

It is not anticipated that SMEs will be displaced by a sudden surge of US imports. However, it will be important for the Commonwealth Government to monitor the general impact of the FTA. The Victorian Government also provides a number of programs to help SMEs improve their competitiveness in an increasingly global competitive environment.

As noted in our earlier submission, Australian business persons currently face a number of difficulties (particularly lengthy time periods) in obtaining temporary entry to the US. As this issue was not addressed substantively in the AUSFTA negotiations, we believe that there is an urgent need for the Commonwealth Government to press this issue with the relevant US authorities.

Victoria would also like to see enhanced mutual recognition of professional qualifications, which impedes business across various US jurisdictions. We raised this concerns with the Commonwealth during the AUSFTA negotiations, and were disappointed that substantive improvements were not realised in the final text. We would like to see early progress on this issue, whether via consultation arrangements established in the AUSFTA or via other fora.

We understand that industry would generally be prepared to adopt the US approach towards rules of origin (ROO). However, as stated in our earlier submission, we believe it important to ensure that different administrative arrangements (eg under the Australia-Singapore Free Trade Agreement, the proposed AUSFTA and the proposed Australia-Thailand Free Trade Agreement) do not place an unacceptable burden on companies (particularly small businesses).

Other issues

We take this opportunity to remind the Committee of the comments in our original submission on the audiovisual sector, rules of origin in relation to textile products, cross-border trade in services, investment, the environment and dispute settlement.