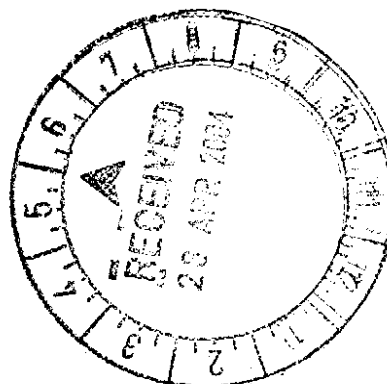


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19 April 2004

Senator Peter Cook
Chairman
Senate Select Committee on the FTA with the US
Parliament House
Canberra ACT 2600



Dear Senator Cook,

We write as two Australians who have had substantial involvement in Australia's trade liberalisation and in international trade policy. An important lesson of our experience is that the domestic processes through which trade liberalisation is discussed and trade policy decisions are taken are critical to progress in liberalising world trade. Disinterested analysis and wide dissemination of information about the costs of protection was a critical element in persuading Australians that reducing our barriers was in our own interest.

We believe that the domestic processes involved in convincing us to reduce our own trade barriers hold the key to mutually beneficial trade negotiations with the US and with our other trading partners. The Prime Minister presently has under consideration a draft proposal, reflecting those processes, for Australia to introduce into WTO discussions when the Doha Round resumes.

That proposal and this submission describe the problems that flawed domestic decision-making has introduced into the international trading system in recent years. These are manifest in the process used so far in negotiating the Australian United States Free Trade Agreement.

The Agreement breaks new ground not only in conventional areas of Australian trade and protection policy, but also in a wide range of sensitive policy areas that have hitherto not been affected by trade policy decisions in Australia. The reach of this FTA extends to health policy (the pharmaceutical scheme); patents and intellectual property; foreign investment review; and broadcasting and media, among many policy areas beyond trade and protection. Some of these new departures in Australian trade agreements are covered by the nine pieces of legislation that we understand must be passed by the Australian Parliament before the AUSFTA as negotiated can come into effect. Others, of great sensitivity and importance, do not require legislation. On broadcasting, for example, although the

execution of the AUSFTA would not require new legislation it would constrain the Parliament's use of its legislative powers.

For these reasons, we believe it is important to establish a proper process for the Parliament's consideration of the AUSFTA.

It has been suggested that the processes through which the FTA can now be considered are constrained by timing imperatives-- that passage of enabling legislation through the Australian Parliament and approval of the Agreement as a whole by the United States Congress must be completed by October 31, to allow the Treaty to come into effect on 1 January 2005. To meet this timetable, the enabling legislation would need to be in place by October-- or much earlier if an election were to be called for August, September or October.

These timing constraints are entirely political and are not embodied in the AUSFTA as negotiated. Chapter 23 provides for the agreement to come into force 60 days after each government has advised the other that legislative approvals have been completed. If for instance an August, September or October election in Australia made it impossible for enabling legislation to be passed by the Australian parliament before 31 October, and if the new Australian Parliament were not to meet until the New Year, the enabling legislation would be passed in 2005. We have been advised by US officials that the Agreement would then come into effect 60 days after the Australian government advised the United States government that Australian legislative approvals had been completed. Similarly, if proper process required delay in consideration of the enabling legislation until late 2004 or into 2005, the Agreement would still come into effect 60 days after completion of legislative processes in the two countries.

We note that, for reasons entirely beyond the control of the Australian government or Parliament, the United States legislative processes may not be completed in time for the Agreement to come into effect on 1 January 2005. We understand that, as at the date of this submission, the United States government has not decided whether it will ask the Congress to take a decision on the AUSFTA in 2004.

There is therefore time for the Parliament to ensure a proper process is in place for it to consider the FTA.

In our view, proper process in this country begins with transparent analysis and public report on the benefits and costs of the FTA by the Productivity Commission. This is the body in Australia that has the human resources, the technical capacity, the experience and the reputation for independence that can give the Australian community and Parliament confidence that there is a sound basis of fact and analysis for rational debate of the wide range of complex issues raised by the FTA.

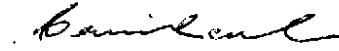
We believe that hasty decisions by the Australian Parliament, based on assessments that are not widely recognised as being independent and authoritative across the wide range of issues that arise in the FTA, would be damaging to public confidence in the Australian policy processes, to public support for changes of policy in areas of high political sensitivity and to Australia-United States relations.

In order to ensure proper process in Australia, and to retain the integrity and credibility of the model our government is urging other countries to adopt, we urge your committee to insist that a public inquiry and report be conducted by the Productivity Commission prior to completion of the Parliament's consideration of enabling legislation for the AUSFTA.

Yours sincerely,



Ross Garnaut
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Bill Carmichael
Former Chairman, Industries
Assistance Commission