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Submission to the enquiry of the Senate Select Committee on the US Free Trade Agreement

The Greek Workers Educational Association of South Australia Inc considers the Australia US Free Trade Agreement (FTA) to be not in the public interest and must be rejected.

We submit ten points to support our case. All these points relate to our fears. On the one hand, we fear the negative effect the FTA will have on our way of life as migrants who came to Australia to build a better future not only for ourselves but for our new homeland and our children. This vision will be further eroded if the FTA becomes operational. We also fear the loss of Australia's sovereignty with all that implies, leading to a loss of pride and a feeling of shame. This is a situation we have already lived through in our old homeland.

Summary:

The economic benefits of the FTA for Australia appear to be negative. The dispute process spelt out in the agreement infringes on the democratic right of governments to regulate in the public interest and excludes the public from having a say. The agreement weakens Australian price controls on medicines and limits the regulation of Australian content in both existing and new forms of media. It adopts US copyright laws, which will cost consumers more. It sets up joint US-Australian committees to review policies on medicines, quarantine and food labelling, and enables many Australian policies to be challenged by the US government. It will result in fewer rights to review foreign investment. It treats social regulation of essential services like tariffs, frozen at current levels and subject to challenge if increased. It allows undue US influence on quarantine, food labelling and the environment. It will result in a massive loss of jobs.

In short, it infringes on the governments' right and weakens its ability to regulate in the public interest and locks in moves towards US-style policies. We would also like to point out that the agreement covers areas, such as foreign investment, competition policy and government procurement, which go far beyond a trade agreement.

1. One study commissioned by the government predicted gains for the Australian economy of only 0.3% after 10 years. Another predicted losses. The FTA was supposed to remove trade barriers between the US and Australia and lead to economic growth. Australian farmers were supposed to gain from removal of US agricultural tariffs and quotas. But the US sugar market is excluded and beef and dairy tariff reductions are phased in over 18 years. This is hardly a mutually beneficial economic alliance between equal partners. Indeed, the New York Times says the deal is "a rare trade victory for the Bush administration".

2. The dispute process limits democracy. It is a clear infringement on the democratic right of governments to regulate in the public interest. The dispute process is based on trade law that can be used to challenge social regulation judged to be inconsistent with the agreement, like the pricing of medicines or the regulation of essential services. Furthermore, the process is limited to government officials and trade law experts and virtually excludes any input from the Australian public. Hearings of any kind need not be public, and the panel may or may not invite non-government representatives to make submissions. Any decision need not be made public and cannot be appealed.

3. The cost of medicines will be higher if the FTA is ratified. The reasons are as follows:

(a) The FTA changes the Pharmaceutical Benefits Scheme (PBS) process to allow drug companies to seek reviews of PBS decisions. At present the price of medicines is low because

(1) the Australian government can buy medicines at low wholesale prices and make them available at subsidised prices to wage earners and pensioners, and

(2) the Pharmaceutical Benefits Advisory Committee only lists new drugs for subsidy if they offer real health benefits, and offer value for money. US drug companies say this is unfair and demand higher wholesale prices.

The FTA

(1) gives drug companies more opportunities to influence the Committee before its decisions are made,

(2) provides for an independent review of decisions not to list their drugs on the PBS, and

(3) gives companies an opportunity to apply for price adjustments after drugs have been listed.

If these higher prices are absorbed, a rise in the cost of the PBS to taxpayers cannot be avoided.

(b) The FTA sets up a joint US-Australia medicines working group based only on commercial principles which include the "need to recognise the value" of "innovative pharmaceutical products". The Australian public health goal of affordable access to medicines for all cannot be taken into consideration. These commercial principles contribute to the high cost of medicines in the US and ensure that the US government can influence future policy in Australia and challenge it on trade grounds.

(c) The FTA contains changes to patent laws which include extensions of patent periods, thus making it easier for drug companies to raise legal objections and delay the production of and access to cheaper generic medicines.

4. The FTA extends the period for which copyright payments must be made from 50 years after the death of the author to 70 years. This extension of copyright will mean higher costs for libraries and education bodies.

5. The agreement places restrictions on the regulation of investment and services. All of Australia's laws and policies on investment and services at all levels of government are affected unless they are listed as reservations. But even in those areas where laws that do not conform to the FTA will be allowed to remain listed, there are riders which amount to a significant restriction on the democratic right of governments to regulate in the public interest. In other reserved areas for which governments can make new laws, for example, health, education and welfare services, there are limitations. They must be "established or maintained for a public purpose".

6. The FTA will result in fewer rights to review foreign investment. The existing limits for newspapers and broadcasting, Telstra, Qantas, Commonwealth Serum Laboratories, urban leased airports and coastal shipping are retained, but cannot be increased. The Foreign Investment Review Board retains the power to review investments of over \$50 million in these areas, and in military equipment and security systems, the uranium and nuclear industries. However, the threshold for review of all other investment in existing businesses has been lifted from \$50 million to \$800 million. US investment in new businesses in areas not listed as reservations will not be reviewed at all. All this means a greater scope for US investment in Australia to be treated in the same way as local investment.

Regulation can only be increased for urban residential land, maritime transport, airports, media co-production, tobacco, alcohol and firearms.

Another negative aspect - US investors cannot be required to use local products, transfer technology or contribute to exports.

The Howard government has claimed that there is no process in the FTA that allows corporations to challenge laws or sue governments. However, it does provide a foot in the door for such a process. If there is a "change in circumstances" an investor can request consultations with the other government to make a complaint. The other government is then obliged to "promptly enter consultations with a view towards allowing such a claim and establishing such procedures". The freedom to take action is mutual, but it is not difficult to see who is at a disadvantage, since this is a trade agreement with a much more powerful country.

7. There will be fewer rights to regulate public (essential) services. The agreement states that the chapter on services does not apply to public services. These include health, education, water, postal, energy and environmental services. However, these are defined as services not supplied "on a commercial basis, or in competition with one or more service suppliers". In Australia many of these, including health, education, water, energy and post, are supplied on a commercial basis or in competition with other service suppliers. Such services could be covered by the agreement, unless they are listed as reservations. It is an added concern that the FTA applies to all levels of government — federal, state and local.

Furthermore, US service companies must be treated in the same way as Australian companies and Australia must give full "market access", which means no requirements to have joint ventures with local firms, no limits on the number of service providers, and no requirements on staffing numbers for particular services.

Even blood services are treated as traded goods. Despite the recommendation of a 2001 review by Sir Ninian Stephen that, for health and national security reasons, blood products should be supplied by Australian company CSL, the Howard government wants to commit future Australian governments to supporting US firms to be allowed to tender to provide this service.

The FTA also requires Australia's qualifications, licensing and technical standards for services not to be "more burdensome than necessary to ensure the quality of the service". Otherwise, regulations could be challenged by the US government on these grounds.

These obligations apply to all services unless they have been specifically reserved. However, although existing laws and policies of state and local governments are listed as reservations, there are riders. They are bound at current levels, and cannot be made more regulatory. In addition, social welfare, public education, public training, health and child care are reserved, but only "to the extent that they are established or maintained for a public purpose", which is not defined. If the US challenged a child care regulation, for example, it is unclear what Australia would have to do to prove that the child care services were "established or maintained for a public purpose".

Water, energy and public broadcasting services are not listed as reservations, and are therefore included in the agreement. Consequently, these are at risk.

Despite the fact that the sale of Telstra is still being debated in the Australian parliament as a matter of public policy, this matter is being considered as part of the trade agreement. It should not be.

8. There will be adverse consequences for Australian film, television and music.

(a) Australian content

There are strict limits on the ability of future governments to ensure that Australian voices continue to be heard. Australia's existing local content quotas are bound, and if they are reduced in the future they cannot later be restored to existing levels. In addition, the Australian government is limited in the laws it can introduce for new media.

In all areas of free-to-air commercial TV and radio broadcasting there are caps on Australian content ranging from 20 to 55%.

The expenditure requirement on Australian content for subscription television is limited to 10% (which can rise to 20% for drama channels, but again, only on conditions which allow the US to challenge).

There are more restrictions on interactive audio and/or video services. Any rules must be no more trade restrictive "than necessary", and can be challenged by the US. These restrictions severely limit the capacity of future governments to respond to new circumstances and new forms of media.

(b) Public broadcasting

Although the funding of public broadcasting is protected by the general exclusion of subsidies and grants, its regulation could be affected because the definition of public services excludes services provided on a commercial basis or in competition with other service providers. By this definition SBS advertising or ABC product marketing may not be excluded. This ambiguity may mean that the US could challenge some regulation of public broadcasting, claiming it is inconsistent with the FTA.

9. There will be undue US influence on policies relating to quarantine, food labelling and the environment. New processes will give the US direct input into Australian laws and policies on quarantine and technical standards, including labelling of genetically engineered (GE) food.

(a) The scientific basis of Australia's quarantine regulations are at risk since the agreement establishes the facilitation of trade as the overriding principle.

(b) The US, which does not have labelling of GE food, has identified Australian labelling laws as a barrier to trade. The agreement requires Australia and the US to give "positive consideration" to accepting the other party's technical regulations as equivalent to their own. It requires changes to procedures for quarantine and GE regulation that give the US a role in formulating Australia's policy. It ensures that trade obligations to the US will be high on the list of priorities when regulations are being made.

(c) In relation to the environment there is a general clause stating that Australia and the US will be able to make laws that are necessary to protect human, animal or plant life or health. However, these laws must not be a "disguised restriction on trade in services". Both Australia and the US have committed to encouraging the development of "flexible, voluntary and market-based mechanisms" for environmental protection. This is an extraordinary demand to have in a trade agreement.

10. The FTA will result in major job losses.

Some will be lost as a result of the inability of state governments to give preference to local products or to require foreign contractors to form links with local firms to support local employment.

More will be lost because US service companies must be given full market access, which means no requirements to have joint ventures with local firms, no limits on the number of service providers, and no requirements on staffing numbers for particular services.

Major job losses will result from tariff cuts and changes to government purchasing rules. Australia's major tariffs are on textiles, clothing and footwear and on motor vehicles and parts. Tariffs on motor vehicle parts will fall from 15% to zero when the FTA comes into force, which will mean immediate job losses. Tariffs on assembled motor vehicles (5-15%) will be phased out by 2010 and on clothing (15-25%) by 2015. Both of these industries employ thousands of workers.

The FTA states, in addition, that US investors cannot be required to use local products, transfer technology or contribute to exports.

According to the Office of the United States Trade Representative: "More than 99 percent of US exports of manufactured goods to Australia will become duty-free". Manufactured goods currently account for 93 percent of total US exports to Australia. It is estimated that this could result in a \$2.6 billion increase in imports of manufactured goods from the US. Obviously many of these will compete with Australian manufactures, thus leading to a further loss of jobs.