

Submission : Senate Select Committee inquiry into the US Free Trade Agreement (USFTA)

I welcome the opportunity to make a submission to the Senate Select Committee on the US Free Trade Agreement (USFTA). I particularly wish to express my concern about the impact the agreement will have on the democratic process in Australia, as well as its wider impact on the community. With the democratic process in mind, I would like to stress that given the wide ranging impact the USFTA will have on the Australian community, the consultation process has been totally inadequate. Neither the people (citizens), nor the people's representatives (Parliamentarians) were allowed to know what was being proposed in the agreement, nor what had been agreed to, until the full text of the agreement was published. This is completely unacceptable and makes a mockery of the democratic process. There needs to be more community and parliamentary involvement in the treaty making process in order to overcome this democratic deficit.

The USFTA undermines democracy

The USFTA allows for the establishment of a series of joint US-Australian committees on medicines and health policy, as well as on quarantine issues and on GE food labelling. These are all areas where the US has identified Australian policies as barriers to trade. In all cases the terms of reference of the committees prioritise US concerns about trade issues over Australian social policy concerns. These committees will give the US government and US corporations influence over Australian law and policy making.

By setting up committees that enable Australian government policies to be challenged by the US government and US corporations, the USFTA undermines the democratic process by limiting the right of governments to regulate in the public interest. The Senate is often presented as unrepresentative, how representative will these committees be? Surely there is a conflict of interest issue here, with, for instance, pharmaceutical companies being able to influence the Pharmaceutical Benefits Advisory Committee before its decisions.

It is undemocratic to sign away the right of future governments (and generations) to regulate in the public interest. It makes a mockery of the democratic process. It will disempower citizens. Our political institutions will become irrelevant. What purpose will elections serve if the government of the day is powerless to enact legislation? I ask the Committee to recommend that this agreement should not come into force as it undermines democracy and is not in Australia's national interest.

Public services

No trade agreement should include public services, particularly essential services. "Services" in the context of the USFTA includes such important areas as health and education. Whilst the text states that the services chapter does not apply to public services these are defined as services not supplied 'on a commercial basis, nor in competition with one or more service suppliers' (Article 10.1). This of course ignores the fact that many public services in Australia (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. This is totally unacceptable and needs to be corrected.

The dispute process in the USFTA is based on trade law and can be used to challenge social regulation judged to be inconsistent with the agreement, like policies on medicines or the regulation

of essential services (Article 21.2). This limits the right of governments to regulate in the public interest and undermines democracy. This is totally unacceptable and should be rejected.

The Pharmaceutical Benefits Scheme (PBS)

The Government's assurance that the USFTA 'does not change the fundamental architecture of the PBS' is unconvincing as the US has been successful in achieving changes to the PBS process in the USFTA. The US Chief Trade Negotiator, Robert Zoellick, has stated that the USFTA changes to the PBS will change the prices of pharmaceuticals in Australia ('Drug costs will rise with deal: US official', *Sydney Morning Herald* 11 March 2004).

There can be no doubt that drug companies will argue for higher priced drugs to be listed, and for price rises after drugs have been listed, through the new procedures that Australia is being asked to adopt. This risks bringing a PBS cost blowout. This would destroy the PBS's capacity to make essential medicines accessible at affordable prices, which is the main purpose of the scheme. This would severely affect marginalised groups in Australia, particularly indigenous people, the unemployed, the disabled, pensioners and poor families with children.

The changes set out in the Side Letter on Pharmaceuticals provides pharmaceutical companies with an opportunity to influence the Pharmaceutical Benefits Advisory Committee before its decisions, and provides for an independent review of decisions not to list certain drugs on the PBS. Enshrining these changes into the framework of a trade treaty limits the ability of future governments to regulate the PBS with the public policy objective of providing affordable access to important medicines. This is totally unacceptable and should be rejected.

Quarantine and Genetically Engineered (GE) food labelling

The USFTA will give the US government as well as US companies direct input into Australian laws and policies on quarantine and the labelling of GE food. Australia's quarantine regulations should be made on a scientific basis in the interests of Australia, not as part of a trade agreement. The promotion of trade and the quarantine protection of Australia's environment should be treated as separate areas and not be combined in a trade agreement.

The US does not have GE food labelling and has identified Australian labelling laws as a barrier to trade. The USFTA requires Australia and the US to give 'positive consideration' to accepting the other party's technical regulations as equivalent to their own, and to give reasons if they do not (Article 8.5).

These changes to the regulation of quarantine and GE labelling give the US a formal role in Australia's policy process, ensuring that trade obligations to the US will be high on the list of priorities when regulations are being made. This is totally unacceptable and should be rejected.

Economic impact

The USFTA was supposed to remove barriers to trade between the US and Australia and lead to greater economic growth. However, there is a great deal of doubt about whether the USFTA will result in any real benefits for the Australian economy as a whole, given that both Australia and the US have relatively few trade barriers and are already significant trading partners. Moreover, critics of the agreement argue that bilateral trade agreements are trade diverting rather than trade enhancing. This adds further to the doubts about the overall economic benefits of the USFTA and raises questions about why such an agreement is necessary.

Australia's pursuit of bilateral, rather than multilateral trade liberalisation, runs counter to Australia's national interests. Bilateral trade agreements undermine the multilateral trading system. A multilateral rules based trading system is in Australia's best long-term interests as the

recommendations of one of the government's own reports states: 'negotiations in the World Trade Organization (WTO) remain Australia's best hope for better access for Australian goods and services to global markets, and for rules that allow Australians to trade on equal terms with others' (Department of Foreign Affairs and Trade. 2003. *Advancing the National Interest*. p xiii).

The bilateral trade agreement with the US will not help Australia in the international trading area where the US is a major Australian competitor. For instance, it will have no effect whatever on the US Export Enhancement Program which has increased the US's share of the world wheat trade largely at the expense of Australian farmers.

Some critics of the agreement express concern about the potential costs of the USFTA on our trade with East Asia, which accounts for the bulk of Australia's trade activity. They argue that by pursuing closer economic relations with the US the Government risks undoing the economic ties Australia has worked hard to develop with East Asia since the early 1980s. There is also concern that Australia risks being excluded from regional trade groupings, such as the potentially important "ASEAN + 3" grouping which brings together all of Australia's major trading partners with the exception of the US.

Government Purchasing

Under the USFTA some government purchasing schemes which give preference to local products or require foreign contractors to form links with local firms to support local employment will not be permitted. This restricts the right of governments to have local and regional development policies. This is totally unacceptable and should be rejected.

Telstra privatisation Side Letter

This letter outlines the government's policy to privatise the rest of Telstra. Given that this issue is still being debated by Parliament it is totally unacceptable that it should be part of a trade agreement.

Conclusion and recommendation

The evidence suggests that it is doubtful that the USFTA will result in real benefits to the Australian economy. By setting up committees that enable Australian government policies to be challenged by the US government and US corporations, the USFTA undermines the democratic process by limiting the right of governments to regulate in the public interest. The Senate is often presented as unrepresentative, how representative will these committees be? Surely there is a conflict of interest issue here, with, for instance, pharmaceutical companies being able to influence the Pharmaceutical Benefits Advisory Committee before its decisions.

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