SUBMISSION TO THE SENATE SELECT COMMITTEE ON THE AUSTRALIA-US FREE TRADE AGREEMENT

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About Friends of the Earth

Friends of the Earth Melbourne (FoE) promotes community action to achieve an ecologically sustainable and socially equitable society. Friends of the Earth is run largely by volunteers and funded through membership fees, donations and a small number of grants from charitable foundations. Friends of the Earth Melbourne receives no corporate or government funding.

Friends of the Earth Melbourne is an integral part of Friends of the Earth Australia, a federation of thirteen environmental groups around Australia. Friends of the Earth, Australia is part of Friends of the Earth International, a network of 66 environmental organisations across the world.

Friends of the Earth Melbourne is the lead group in Friends of the Earth Australia's trade project and an active participant in the Friends of the Earth International Trade, Environment and Sustainability Program (TES). The TES campaign is made of FoEI member groups in 27 countries. The TES campaign is campaigning to replace corporate globalisation with a sustainable framework for trade regulation, based on democracy, equity, reduced consumption, cooperation and caution. The first step is to curb the power and scope of the World Trade Organisation (WTO) and other regional trade agreements. We are working with others to build an international movement opposing the expansion of the WTO, and demanding that food, natural resources and environment and development agreements not be subject to trade rules.

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SUMMARY OF MAIN POINTS

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1.1 **Article 19.4** encourages "flexible, voluntary and market based mechanisms for environmental protection." Where such mechanisms are a replacement for binding environmental protection laws, this leads to lower standards of environmental protection.

1.2 **Quarantine - Article 7.4** – New bodies established with the purpose of 'facilitating trade,' with no reference to upholding environmental protections, will place Australian quarantine laws under threat. There has been a lack of reassurance from the government that the environment and industries such as pork and apples will be protected from contamination.

1.3 **GMO's - Article 8.5 -** Positive considerations should not be given to implementing US regulations relating to Genetically Modified Organisms. Some Australian states have moratoriums that are stalling the dissemination of GMO's, however the US has no such limitations and has fought such laws in Europe.

2 **Future Investor-State mechanism – Chapter 11 –** This chapter provides the potential for processes to be established for investors to sue Australian governments. It is our understanding that this is not an 'investor-state' provision as such, and that the "change of circumstances" required to trigger this dispute settlement mechanism would be as extreme as a break down in the rule of law. It remains a concern that such a clause exists in the first place. There is a concern that if these dispute settlement procedures are created in the future, they could be based on existing procedures, such as that under NAFTA – the North American Free Trade Agreement, that have led to the diminishing of environmental laws, considered 'barriers to trade,' and have left tax payers billions of dollars out of pocket.

3 **Annex I & II, Article 10.1**, FoE is concerned that essential services such as education and health will be in competition with US service providers where they are not established for a 'public purpose.' The term 'public purpose' is not defined. FoE is extremely concerned that the ambiguity of this term will lead to a reading down in the event of a challenge.

4 **Article 21 -** The dispute process outlined in Article 21 allows the government of the US to effectively intervene to strike out Australian laws relating to essential services if they contravene the AUSFTA. This provision raises the concern that representatives of another country, unelected by the Australian people, will be able to change Australian laws.

5 **Annex 2c and Article 17.10 -** FoE is concerned that the establishment of a review committee to review drugs rejected by the Pharmaceutical Benefits Advisory Committee, and the establishment of a joint US/Australian government medicines working group will lead to price increases for pharmaceuticals in Australia. Changes to patent laws will also delay access to cheaper medicines.

6 **Annex I & II -** Local content in free to air TV can only be reduced down. This is bad news for Australian culture. While the agreement purports to limit Australian content in 'new media,' this term is not defined. The government cannot propose a change in the law without explaining the extent of these changes to those affected, being the Australian film and television industry and the viewing public.

7 **Article 17.4 -** FoE is concerned about the clause extending the period of time after which a person's work can be copied, from 50 years after their death to 70 years after their death (in line with US law). This clause limit the amount of material available in the public domain for use by current and future artists. Artists currently using material by artists who have died more than fifty years and less than seventy years ago will not have to pay royalties where this was previously not an issue. This clause also increases the instances in which present and future artists can be sued.

8 The 'take down' provisions in the information technology copyright section will affect open source Internet Service Providers (ISP's) such as Linux and may force such ISP's to automatically remove information hosted on their sites before a breach of copyright is even investigated.

1 INTRODUCTION – The expansion of corporate influence and the lack of accountability in the AUSFTA

FoE's opposition to the Australia-US Free Trade Agreement (AUSFTA) is based on a rejection of the increasingly strong relationship between corporations and policy makers that is unprecedented in Australia. The political context for negotiating the agreement and for debating the related legislation is such that social justice, human rights and environmental protection are off the agenda of the few people making decisions that affect millions. The purpose of the agreement and of the bodies established thereby is to facilitate trade. References to environmental protection encourage a 'voluntary' approach, which in FoE's view, is fundamentally flawed. FoE is angered that the government seeks to legislate this bi-lateral trade agreement, while many multi-lateral human rights and environmental agreements, such as the *Kyoto Protocol* and the *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women* remain unsigned and unratified, let alone implemented in legislation.

In the current climate of corporate-driven globalisation, there is a tendency for public interest and environmental considerations to be removed as they are considered 'non-tariff barriers to trade.' Existing Free Trade Agreements have facilitated legal challenges by corporations that have cost taxpayers billions. The increase in global companies means it has become more difficult for citizens and communities to seek redress where corporations are multinational. Just 20,000 multinational companies now control 70 percent of world trade and 80% of foreign direct investment. (Held, 2000, page 18)

Corporations are increasingly taking control of industries and services previously run by governments, without taking on wider public interest responsibilities. The part-privatisation of Telstra and the obvious lack of adequate telephone services in rural and regional parts of Australia is one example of this. The decrease in medical centres offering bulk-billing, coinciding with the large-scale take over of medical centres by franchise operators is another example. As explained in this submission, the AUSFTA would only facilitate further derogation from the social responsibilities of service providers.

It is alarming that the text of the Free Trade Agreement has only become public very late in the negotiation process. The deliberate minimisation of public debate on an agreement affecting so many people is extraordinarily undemocratic.

We call on the Senate to reject all enacting legislation. We strongly recommend that the ALP reject the AUSFTA. This submission takes the view that the agreement is neither in Australia's interests, nor is it a desirable framework for trade governance.

2 ENVIRONMENTAL EFFECTS OF THE AUSFTA

2.1 THE PROBLEM OF FLEXIBLE, VOLUNTARY AND MARKET BASED MECHANISMS FOR ENVIRONMENTAL PROTECTION

Article 22.1, incorporating GATS article XIV provides that both Australian and US governments can make laws for the protection of human, animal or plant life or health, as long as these laws are not 'disguised barriers to trade'. The concern is raised about the lack of definition of the term 'disguised barrier to trade.' This clause raises the potential for a lack of environmental protection in circumstances of perceived conflict with trade priorities.

Article 19.4 stresses the commitment of governments to provide for 'flexible, voluntary and market based mechanisms' for environmental protection. Voluntary corporate regulation and the concept of corporate social responsibility clearly has not worked to adequately uphold human rights, labour laws and environmental standards. An example of the manifest flaws in the vague concept of voluntary mechanisms for environmental protection can be seen by reference to BHP Billiton's membership of the United Nations Global Compact. The Global Compact requires member companies to uphold a set a voluntary principles for social responsibility, human rights, labour standards and environmental protection. Meanwhile, BHP Billiton has used the offices of the Australian Embassy in Jakarta to lobby the Indonesian government for a relaxation of laws prohibiting mining in protected areas. (Mineral Policy Institute, 2004). The presence of Australian mining companies in the Asia Pacific Oceana region, including BHP Billiton, has lead to controversial social and environmental conflicts. This brings into doubt the adequacy of voluntary mechanisms when companies behave in a way that questions their commitment to social responsibility, human rights, labour standards and environmental protection.

Australia and the US commit that they will draw up a 'Joint Statement on Environmental Cooperation.' This bi-lateral approach to international environmental agreements serves the interests of industry at the expense of the environment. The existing climate change partnership between the US and Australia that sits outside of the *Kyoto Protocol*, therefore justifying a lack of adherence to Kyoto standards, provides a negative precedent for any type of 'Joint Statement on Environmental Cooperation.' (ACF, 2004). The trend towards bi-lateral environmental agreements undermines the hard work that goes into multi-lateral negotiations and risks stripping away environmental protections.

FoE is particularly concerned about the 'expropriation' clause in the investment chapter which means that new Australian environmental laws which threaten the profits of US companies are open to challenge. The concern is that if future Australian governments were to introduce legislation, for example, carbon taxes, banning genetically modified crops, limiting the range or amount of forest products to be exported, or preventing infrastructure development that threatens the environment, the government could be challenged.

2.2 QUARANTINE & GMO's

The provisions for participation of US representatives in the creation of quarantine regulations are likely to place the Australian environment under threat. The two new groups established under the agreement, the Committee on Sanitary and Phytosanitary Matters and the technical working group, are both based on the principle of facilitating trade.

While the text of the provisions creating these two bodies does not refer to environmental laws as constituting 'barriers to trade,' FoE is concerned that the exclusion of environmental considerations as principles to be taken into account by these two groups is merely a more subtle and less confrontational way of ensuring that trade-based outcomes are reached, at the expense of environmental protection. FoE holds the real concern that these committees could agree to water down Australian quarantine laws in the future.

Australian Trade Minister Mark Vaile has denied that the purpose of these bodies was to prevent contamination and disease in industries such as pork and apples. Instead, he stressed that the purpose of these bodies was to solve 'communication barriers' (ABC's AM Program, 23 February 2004).

In light of the current legal status of quarantine standards in multi-lateral trade disputes, FoE is concerned that these bodies will not provide adequate protection for Australian quarantine laws. At the multi-lateral level, there have been three cases in which the WTO Dispute Settlement body has found that national quarantine rules have breached the WTO's *Application of Sanitary and Phytosanitary Measures,* and therefore constituted barriers to trade. The European Union defended its ban on the use of hormonal growth substances by beef producers, Japan defended its requirement for variety-by-variety testing of fruit to establish the efficacy of disinfestation treatments, and Australia defended Canada's challenge to Tasmanian quarantine laws prohibiting the importation of fresh, chilled and frozen salmon. (Gascoine, 2000, page 2). Gascoine states,

> "Australia, like all WTO members who maintain quarantine barriers to trade is vulnerable to being pursued through the WTO's dispute settlement process unless we have done enough sound and defensible import risk analysis and we are prepared to argue in support of it if challenged" (page 5).

In the Tasmanian salmon case, while not all findings were unfavourable towards Australia, the WTO's Dispute Settlement body found that not enough risk analysis had been carried out in order to prove that a risk of contamination and disease existed (ABC's PM, 21 March 2000; Gascoine 2000, page 5).

The process of being challenged is costly for governments, as it requires resource-intensive quarantine risk analysis. Secondly, the current Australian government has shown that it is not willing to put in the resources, time and effort required to prove the significance of environmental risks. Even free trade advocate, Alan

Oxley called Australia's response to Canada's challenge a "shambles", as the government failed to put a good case (ABC's PM Program, 21 March 2000).

Article 8.5 requires both governments to give 'positive consideration' to accepting each others' technical regulations on GMO's. FoE is strongly opposed to the acceptance of US GM regulations, which could over ride moratoriums that are currently in place in Western Australia, Tasmania and Victoria.

Article 8.5 brings into question the relationship between the AUSFTA and international environmental laws such as the *Cartegena Biosafety Protocol 2000* and *Convention on Biological Diversity 1992*. NAFTA - the North American Free Trade Agreement, dealt with this problem by elevating a number of international environmental conventions such as the *Montreal Protocol*, and *CITES – the Convention on the International Trade in Endangered Species*. However, this approach, even if followed in the future in the process of fleshing out the AUSFTA, will not provide any protection against GM contamination, as the US has not even signed the *Convention on Biological Diversity 1992.* The AUSFTA may prevent Australia from complying with the *Cartegena Biosafety Protocol 2000* in the future, as this protocol provides that risks should be assessed in accordance with sound scientific practice (Article 15) and that parties should establish and maintain procedures to minimise risk (Article 16). By accepting US regulations regarding the dissemination of GM agricultural products, Australia may undermine its ability to comply with Articles 15 and 16 of this Protocol. (Environmental Defenders Office, 2003, page 3)

FoE is strongly opposed to these provisions and believes the FTA paves the way for Australian governments to remove GM product disclosure laws in the future. Our fears that disclosure laws could be scrapped are based on the current Federal government's encouragement of State governments to back down on restricting the dissemination of GMO's (Healey, 2003, page 2).

The agreement also provides for US representatives to have the same input as Australians in the development of Australian regulations and standards. Article 8.7 states that the Australian government will recommend the involvement of US representatives in Australian non-government consultation processes for regulations and standards. This has the potential to undermine the advice of Australian environmental non-government organisations, the interests of whom are more closely focused on protecting Australia's environment.

3 FUTURE INVESTOR-STATE DISPUTE SETTLEMENT MECHANISM

This chapter provides the potential for processes to be established for investors to sue Australian governments. It is our understanding that this is not an 'investor-state' provision as such, and that the "change of circumstances" required to trigger this dispute settlement mechanism would be as extreme as a break down in the rule of law. It remains a concern that such a clause exists in the first place and the

possibilities of how this clause can be interpreted are not clear. There is a concern that if these dispute settlement procedures are created in the future, they could be based on existing procedures, such as that under NAFTA – the North American Free Trade Agreement, that have led to the diminishing of environmental laws, considered 'barriers to trade,' and have left tax payers billions of dollars out of pocket. The triggering of such a mechanism requires a "change in circumstances affecting the settlement of disputes on matters within the scope of this chapter." It is our understanding that the Australian Department of Foreign Affairs and Trade believe a "change in circumstances" refers to a break down in the rule of law or to major changes to the judicial system, such as courts continuously making rulings to the disadvantage of American investors. If this were to occur, the Australian government would be encouraged to submit to arbitration with the investor, with a view to creating a dispute-settlement mechanism

An important clause is 11.7(1)(c). While there are differences of opinion regarding the interpretation of this clause, it appears that this obliges the Australian Government to pay compensation to U.S investors if Australian laws (including environmental, human rights and labour laws) expropriate their investments either directly or indirectly through measures equivalent to expropriation. It appears that where this obligation is breached, the U.S Government will have the right to bring the matter before a special dispute settlement panel convened under the provisions of Chapter 21. If the panel finds a breach to have occurred, Australia must either repeal the offending law or pay compensation (chapter 21, article 21.7 and 21.11).

A similar article appears in chapter 11 of the NAFTA. In the NAFTA case *Metalclad Corporation v Mexico* (2000), the tribunal provided a broad definition of what constitutes expropriation. In addition to the more conventional definition of expropriation involving the taking of property, the Tribunal held that expropriation under the NAFTA includes covert or incidental interference with the use of property which has the effect of depriving the owner, in whole or in significant part, of the use or reasonably-to-be-expected economic benefit of property. This definition was subsequently upheld on appeal to the Supreme Court of British Columbia (*Mexico V Metalclad Corporation* 2001 BCSC 664 at 35). (ACF, 2004, page 4)

This definition of expropriation is likely to be applicable to the AUSFTA, as Chapter 11, Annex 11B states that Article 11.7.1 is intended to reflect customary international law concerning the obligations of States with respect to expropriation. This will grant rights to U.S investors to obtain compensation from the Australian Government, well beyond the compensation rights enjoyed by Australians under Australian law. (ACF, 2004, page 4)

FoE is concerned at the broad-sweeping language of the investment and services provisions. All of Australia's laws and services at all levels of government would be affected by Chapter 11, unless they come under Annex I or II.

Annex I laws are 'bound' at current levels and cannot be changed except to create less regulation. New regulation can be challenged by the US on the grounds of being trade restrictive or too burdensome for business.

Annex II provides 'carved out' areas for which the government can make new laws, however, the extent to which new laws can be made for health, education and welfare services is limited to the extent that they are 'established or maintained for a public purpose,' a clause which, like many clauses in the AUSFTA, remains undefined.

4 LIMITED REVIEW FOR FOREIGN INVESTMENT

FoE is concerned at the reduced restrictions on US investors in Australia. Except for Telstra, Qantas, Commonwealth Serum Laboratories, newspapers and broadcasting, urban leased airports, and coastal shipping, the threshold for foreign investment to be reviewed by the Foreign Investment Review Board (FIRB) has been lifted from $50 million to $800 million. Regulation of foreign investment can only be increased for urban residential land, maritime transport, airports, media co-production, tobacco, alcohol and firearms.

This will mean that the government will not apply a screening test for new corporations investing less than $800 million. It will mean fewer bureaucratic hurdles, saving time and money for American companies wanting to invest here, particularly for mergers and acquisitions. While it is not predicted that US investors will instantly flock to Australia (Johnson, 10 February 2004), the long-term implications of reducing foreign investment review will be that Australians will increasingly work to create profits for corporate America.

Based on recent trends, these changes will affect approximately 90% of American foreign direct investment in Australia. (AFTINET, 2004, page 2). The Foreign Investment Review Board (FIRB) scrutinised more than 4,500 foreign investment proposals in the last financial year, about a third of them from US investors. According to Michael Gallager, Managing Director of Ausbusy, a not-for-profit organisation promoting Australian-owned entities, this would mean the end of the FIRB, as the scope of the Board's work would be slashed (ABC's PM Program, 10 February 2004).

5 LACK OF REGULATION FOR ESSENTIAL SERVICES

Australia must treat US companies as if they were Australian companies in the provision of health, education, energy, environmental and water services. Exceptions to this under Article 10.1 include services not supplied 'on a commercial basis nor in competition with one or more service suppliers.' Many suppliers of the above services such as public transport, private schools, private hospitals, private energy and water companies, and privately operated parks are in competition with other suppliers. The agreement requires that

"national treatment" be given to service providers of both states. In Australia, this will pave the way for American service provision in these sectors. The problem this presents is the increasing trend in corporatisation of services that have previously been publicly operated with a view to making a profit out of service provision, without service providers taking on public responsibilities.

FoE is concerned that the Annex II, 'carve-out' provision, identifying social welfare, public education, public training, health and childcare as reservations, fails to clearly stipulate how service delivery in these areas will operate. Annex II states that these areas are exceptions 'to the extent that they are established or maintained for a public purpose.' However, the term 'public purpose' is not identified and therefore risks being read down in the event of a challenge.

6 AUSFTA'S INFRINGEMENET ON DEMOCRATIC PROCESS

The dispute process outlined in Article 21 enables the government to claim that a law or policy of the other country is in breach of the AUSFTA. The dispute panel may or may not be public and the government may or may not invite non-government representatives. The dispute process allows initial consultations with a Joint Committee of US and Australian government officials, after which time, the dispute goes to a panel of trade law experts. The decision may or may not be made public and the process may or may not allow for appeal.

The following is an example of how Article 21 might operate. The US government may challenge future legislation enacting a privative clause to prevent American pharmaceutical companies from mounting challenges against decisions of the Pharmaceutical Benefits Advisory Committee (PBAC) to not list expensive products. This clause gives the US government an immense amount of power over Australian law, and the scope and operation of this power has not even been determined.

The Committee should not accept an agreement purporting to empower the government of another country to over-ride Australian service provision laws.

7 PHARMACEUTICAL BENEFITS SCHEME

Australian consumers pay up to 75 per cent less for prescription medicines compared to Americans. (ABC World Today, 10 February 2004). Under the current system, the Australian government uses the PBS to buy medicines at low wholesale prices, by comparing the prices and effectiveness of generic medicines with medicines that have expired patents. The Pharmaceutical Benefits Advisory Committee (PBAC)

recommends drugs only if they have real health benefits and offer value for money. US pharmaceutical companies claim that this is unfair (AFTINET, 2004, page 1).

The changes to the PBS under the AUSFTA, including the establishment of a review committee to review drugs rejected by the PBAC, and the establishment of a joint US/Australian government medicines working group to make further changes to the PBS, will lead to price increases for pharmaceuticals in Australia. The principles of the joint US-Australia medicines groups requires that the group 'recognise the value' of 'innovative pharmaceutical products.' FoE is extremely concerned that these principles do not recognise the necessity of affordable health products for all. (AFTINET, 2004, page 1)

The FTA's side letter on pharmaceuticals also allows for price adjustments after drugs have been listed.

The Prime Minister claims that the AUSFTA could lead to greater availability of drugs. The chief executive of industry body Medicines Australia, Kieran Schneemann, says that an appeal system for pharmaceutical companies is important to ensure that Australians have access to new-generation medicines (*Sydney Morning Herald*, 10 February 2004). However, Martyn Goddard, Health Policy Officer with the Australian Consumers Association rebuts these broad-sweeping generalisations, stating that these changes will lead to considerable delays in getting new, timely and important medicines. Goddard warns of a health system in which we could see huge legal battles, the only beneficiaries of which will be American pharmaceutical companies.

> "Now what's happening in the United States is that the major companies, as soon as they find out who's doing this work, what patents they're looking at and so on, immediately go to court, and they stop the whole process, and they fight every one of their 50 or 100 patents through the court and that, in itself, may well be enough to drive some of the remaining genuinely independent generic drug makers in this country out of business." (ABC's World Today Program, 10 February 2004).

8 LOCAL CONTENT LIMITED

Under the agreement, multi-channel, free to air commercial TV caps Australian content at 55% on no more than two channels, or 20% of the total number of channels made available by a broadcaster (up to only three channels). For free to air commercial radio broadcasting, Australian content is capped at 25%. Subscription television has an expenditure requirement of 10% on Australian content. These maximum levels of Australian content do not prima facie appear to introduce major changes from the status quo. However, under Annex I, Australian local content rules are bound and if they are reduced in the future, they can not be raised again. Under this provision, local content in Australian media can only go in one direction - down. This is bad news for Australian culture.

Under Annex II, the government is restricted in the laws it can introduce to protect local content in new media. A further problem of these provisions, identified by the Screen Directors Association is that 'new media' is not defined (ABC's AM Program, 4 March 2004). The government is hereby seeking to make major changes to an industry without even defining these changes to the industry. The AUSFTA gives the American government unprecedented provisions to increase market access for American cinema, television and Internet into Australia.

9 COPYRIGHT

The copyright provisions in Article 17.4 extend the period of time after which a person can use another person's work from 50 years after someone's death to 70 years. FoE supports recommendations by the Australian Intellectual Property and Competition Review Committee that a public inquiry take place before copyright periods are extended. (AFTINET, 2004, page 2). FoE is concerned that this clause limits the amount of material available in the public domain for use by artists. Artists who previously had not paid royalties for material written prior to 70 years but after 50 years of the death of the original artist will now face copyright fees. This is a disincentive for artists and will lead to increased instances of copyright litigation against Australian artists, musicians and film-makers.

9.1 INFORMATION TECHNOLOGY COPYRIGHT PROVISIONS AFFECT OPEN-SOURCE INTERNET SERVICE PROVIDERS

FoE shares the concerns of the users of Linux and open source internet service providers (ISP's) who are worried about the effects of the AUSFTA's information technology copyright and patent provisions. In side letters to the agreement, Australia agreed to the US 'takedown notice' regime, whereby copyright owners can force an ISP to remove material such as music, video or text files by serving written notice. In the US, copyright owners give notice of a suspected breach and if ISP's take down the content immediately they limit or even eliminate their liability. Because the ISP's are keen to avoid litigation, they often take down the material without investigation.

The government has confirmed that the FTA did not contain detail on how ISP liability provisions were to be applied. This is another example of the government purporting to change laws affecting a huge industry, without defining these changes.

10 CONCLUSION

The AUSFTA carries with it the potential for detrimental impacts on the environment and the provision of public services, in a way that is unprecedented in Australia.

FoE believes that the AUSFTA is unworkable and should be abandoned. The highly publicised, active pursuit of bi-lateral trade agreements by current Australian and US governments, and the disregard shown for consensus-based, multi-lateral instruments has already led the world further down the path of rejecting consensus-based environmental and human rights agreements as a means of deciding the best way forward for nation-state relations.

The Free Trade Agreement is contrary to the multilateral trade priorities of Friends of the Earth International, which call for a new treaty that operates as a binding Corporate Code of Conduct. This Code of Conduct is currently being drafted in the committees of the UN's Economic and Social Council (ECOSOC).

This Code of Conduct would:

- Extend legal liability to directors for corporate breaches of national environmental and social laws and to directors and corporations for breaches of international laws or agreements;
- Guarantee legal rights of redress for citizens and communities adversely affected by corporate activities;
- Establish human and community rights of access to and control over the resources needed to enjoy a healthy and sustainable life;
- Establish (and enforce) high minimum environmental, social, labour and human rights standards for corporate activities - based for example on existing international agreements and reflecting the desirability of special and differential treatment for developing countries.
- Establish national legal provision for suitable sanctions for companies in breach of these new duties, rights and liabilities (wherever the breaches occur);
- Extend the jurisdiction of the International Criminal Court to try directors and corporations for environmental, social and human rights crimes;
- Establish international controls over mergers and monopolistic behaviour by corporations; and
- Establish a continuing structure and process to monitor and review the implementation and effectiveness of the code of conduct.

Without measures such as this Code of Conduct, trade priorities will continue to set the agenda for global international relations. Globalisation based on the principles of environmental justice and the preservation of the diversity of cultures must take precedence over globalisation that is corporate-driven.

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