

Submission to the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America (AUSFTA).

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1. Summary.

- 1.1 I support the submissions from AFTINET, The Australian Greens(Victoria), the ACTU, and Liberty Victoria.

These submissions focus on different aspects of the proposed AUSFTA, but all come to a common conclusion that this FTA is not in Australia's interests, either economically, environmentally, socially, or in the maintenance of sovereignty of our nation.

- 1.2 As indicated in the submission of the Victorian Greens, comments on AUSFTA are firstly guided by the view that international trade and investment should support the following objectives:

- 1.2.1 protecting local employment and labour conditions;
- 1.2.2 reducing economic and political vulnerability through economic self-reliance;
- 1.2.3 encouraging diversification of industry;
- 1.2.4 permitting and encouraging the development of local technologies and investment in cleaner technologies;
- 1.2.5 encouraging investment for sustainable development prioritising areas in need of revitalisation;
- 1.2.6 reducing the amount of energy and pollution required to power the global economy; and
- 1.2.7 protection of the environment.

- 1.3 My concerns over the AUSFTA are:

- 1.3.1 the abrogation of sovereignty over our land and laws that is implicitly entailed within the Expropriation rules, and the permanent, and essentially irrefutable, loss of capacity of our Australian Government to regulate in the public interest,
- 1.3.2 The lack of discernable economic benefits, through limited tariff reductions on primary produce, with a bias against Australia,
- 1.3.3 the inclusion of most services within the FTA including what should be regarded as public services, including provision of essential services such as power and power and gas distribution, water services, and land management services.
- 1.3.4 The inclusion of taxation in measures that warrant expropriation or compensation, which will effectively prohibit corporate taxation rate rises, and environmental levies such as a carbon tax,
- 1.3.5 Compromising the PBS by the provision of an industry-based review process, and other measures that will lead to increased PBS prices.
- 1.3.6 The removal or reduction in quarantine laws for Australia, which have long protected both our unique environment and our agriculture from exotic pests.
- 1.3.7 The provision for possible future investor-state provisions,
- 1.3.8 The watering down of our Australian media-content laws,

- 1.3.9 The extension of the copyright period,
- 1.3.10 The possibility that the free trade agreement will override current moratoriums on GMO's and that these will be forced upon us.
- 1.3.11 The increased threshold for investments warranting FRIB review.
- 1.3.12 That the tariff reductions on manufactured goods will further exacerbate the decline of our manufacturing, with little chance of recovery in the current neo-liberal climate – and that we will be further dependent on commodity exports to the long-term detriment of Australian jobs, prosperity and the environment.

2. Conclusion.

While I have included some recommendations on individual areas below, these are only tinkering at the edges for the AUSFTA agreement that is before us, as the agreement as a whole is fundamentally flawed.

Given the lack of any substantial economic benefit, and the threat to Australian government capacity to regulate in the public interest in future, I believe that this agreement should be rejected in its entirety.

3. Comments.

- 3.1 **Economic Benefits.** From the time that the Australian-United States free trade agreement was first raised by the Government, the Victorian Greens have not seen any economic studies that have positively endorsed this agreement. The initial study undertaken by the Centre for International Economics (CIE) – on behalf of the Government – predicted a small gain of 0.03% over a period of 10 years, however, this study was based on the assumption that all barriers would be removed particularly in agricultural markets. Other economic studies such as the report by ACIL Consultants and the Productivity Commission predicted losses through trade diversion. The agreement has been criticised by James Wolfenson, President of the World Bank, the IMF, economist Ross Garnaut, Professor Jagdish Bhagwati, strong free trade economist from Columbia University and the National Farmers Federation.
- 3.2 **Services.** The same flaws that occur in the GATS agreement on exemptions to services (article 1.3(c)) are repeated in the services section of the AUSFTA, which will have a very narrow application and will not protect public services. This is despite the Recommendations of the Foreign Affairs, Defence and Trade References Committee in its Report, *Voting on Trade*. Recommendation 4, recommended that the “government clearly define and make public its broad interpretation of Article 1.3 of the GATS so that the public is aware of the basis on which future negotiations are undertaken”. The Government has not only failed to do so but has replicated the same mistake in the AUSFTA agreement.

Recommendations:

That any future trade agreement define services properly, that they dispense with the current definitional terms neither supplied on a commercial basis nor in competition with other service providers.

That the Australian Government exempt all public services such as health, education, and water from coverage in the agreement.

That the Australian Government drop the negative-listing approach from the agreement.

- 3.3 **Parliamentary Oversight of the Treaty-Making Process.** In Australia, Free Trade Agreements may be approved by the Prime Minister and Cabinet, apart from enabling legislation should this be required. This is entirely unsatisfactory and undemocratic in any case, and highlighted by the unsatisfactory nature of this AUSFTA. FTA's and WOT/ GATS arrangements should be considered by both houses of parliament, both in overall terms, and in the detail of the actual agreements, as recommended by the JSCOT senate committee report.

Recommendations:

That a more accountable process for parliamentary scrutiny of treaties as suggested by the Senate Committee be implemented.

That the agreement not be ratified until a proper House and Senate debate has been undertaken.

- 3.4 **Investor-State provisions.** Article 11.6 provides that ‘Parties may consider establishing such a procedure to hear a claim by an investor, if there is a change in these circumstances regarding the Parties’ economic and legal environments’. These claims have been highly controversial in the NAFTA agreement, on which this is based. I consider that any Australian government that would open Australia up to these types of challenges as being irresponsible and negligent.

Recommendation: That no investor-state provisions be included in the agreement at anytime whether now or it the future.

3.5 **Expropriation and Compensation provisions.**

3.5.1 The expropriation provisions within the AUSFTA (chapter 11, and section 22.3) compromise our sovereignty in the application of taxation, environmental levies, or new laws for environmental, safety or other reasons, which change business conditions within the country. This is entirely unacceptable, and incomprehensible for a federal government of any persuasion to be negotiating away our national sovereignty.

3.5.2 **Expropriation and the Right to Strike.** In reviewing *Article 11.6: Treatment in Case of Strife*, there is concern that this would compromise workers’ right to strike. If “*civil strife*” encompasses strikes, which seems probable given the liberal interpretation of terminology within GATS and FTA’s that has been shown by courts and tribunals, then our government would be liable for the adverse economic impacts of a strike in regard to US-owned or invested companies. This further highlights the role of the AUSFTA in establishing our government as the watchdog for the interests of foreign capital, rather than the rights and conditions of workers, and the welfare of the people of Australia.

3.5.3 **Expropriation and new environmental Initiatives.** Article 22.3, para. 6 indicates that *Article 11.7 (Expropriation and Compensation) shall apply to taxation measures*. This indicates that US companies would be entitled to compensation for any increases in corporate tax rates, and that new environmental taxes or levies would bring compensation to companies effected. Thus, if and when a carbon levy is introduced in Australia, US-owned power companies operating in Australia would be able to claim compensation for such a levy. This would effectively prohibit the introduction of new taxes and levies introduced to encourage environmental sustainability, and reduce Global Warming impacts, etc.

Recommendation: That Expropriation be excluded from all Trade Agreements.

Failing full removal of expropriation provisions, Article 22.3 be rewritten to *exclude taxation measures from any compensation claims, and Article 11.6 specifically exclude all issues relating to workers right to strike, and citizen’s right to protest.*

- 3.6 **FRIB.** With rapid changes in the provision of services, increasingly under private provision, and changes to industry, mining and primary industry, the increase to \$800M as the threshold for FRIB consideration will allow undisclosed and unchecked investment in and acquisition of Australian companies and resources, to the detriment of local enterprise. This includes the acquisition of essential services such as power stations, power and gas distribution, and water supply.

- 3.7 **Manufacturing Industry.** While improved access to American markets for both primary industry and manufactured goods has been touted as a big win for Australia under the AUSFTA, there is little evidence to support this.

Studies have shown that where trade liberalisation has preceded a well-developed manufacturing sector, an upturn in the local manufacturing industry has failed to materialise. In fact, in an open market economy, strong governmental support in both industry and research, is required to allow the manufacturing sector to flourish. This is against the neo-liberal

philosophies of contemporary Australian governments, and as such, a further collapse of our manufacturing base can be expected as a direct consequence of the AUSFTA.

3.8 **Media Content.** As indicated in the AFTINET submission on film, broadcasting and culture, in part:

- 3.8.1 The government claims that the USFTA protects Australian content and culture. In reality, there are strict limits on future governments' ability to ensure that Australian voices continue to be heard.
- 3.8.2 Under Annex I, Australia's existing local content quotas are 'bound', and if they are reduced in the future they cannot later be restored to existing levels. Under Annex II, future Australian governments are limited in the laws they can introduce for new media
- 3.8.3 **Public broadcasting** - Because public broadcasting is not listed in either of the Annexes, it is not excluded from the agreement. The funding of public broadcasting is protected by the general exclusion of subsidies and grants (Article 10.1). However the regulation of public broadcasting could be affected by the agreement because the definition of public services excludes services provided on a commercial basis or in competition with other service providers. SBS advertising or ABC product marketing may not be excluded by this definition. This ambiguity may mean that the US could challenge some regulation of public broadcasting, claiming it is inconsistent with the USFTA.

Recommendation: That Australia's cultural objectives, ability to regulate Australian content in film, television and music in Australia's interest be maintained, the US should not be able to determine Australian cultural content.

3.9 **Environmental Protection.**

- 3.9.1 As the enforcement mechanisms in the Environment Chapter are not binding, like the Labour chapter before it, this leaves the impression that these chapters are more symbolic inclusion to satisfy, or appease, the congressional stipulation that Trade Agreements must contain regulations in these areas.
- 3.9.2 I note the inclusion of such phrases as "*strive to ensure..*" in article 19.2., which renders these clauses toothless and a distraction.

Recommendation: That the labour and environmental chapters have enforceability on a par with the rights of capital and investors.

3.10 **Quarantine.** Australia's stringent quarantine regulations are science-based and designed to protect Australia's agricultural exports, domestic production and the natural environment. The proposed US Free Trade Agreement has the potential to undermine the protection given by our present quarantine regulations. There are many pathogens identified by the Australian Commonwealth Department of Agriculture, Fisheries and Forestry that may enter and become established in Australia with the importation of:

- a) Florida citrus
- b) Californian and Northwest stone fruit
- c) Feed corn (bulk maize)

if Australian quarantine regulations are weakened as a result of the proposed Free Trade Agreement.

History has shown that once pathogens are introduced into our country, they are very difficult if not impossible to eradicate. Many of the pathogens have dormant phases in which they are very difficult to detect, and this indicates that even stringent control measures will not guarantee that diseases and pests aren't introduced with these importations, which are entirely unnecessary for Australia, given that we produce all these products economically and in abundance.

It is beyond me to comprehend the negligence that is entailed in reducing our quarantine laws and restrictions. Perhaps our government has more faith in the herbicidal etc. products of agri-

giants and GMO solutions than in the irrefutable damage that introduced pests and diseases have caused, and continue to cause, into Australia.

- 3.11 **PBS.** The Australia-US Free Trade Agreement (FTA) has the potential to significantly reduce the affordability of medicines in Australia. "Research shows that affordable medicine saves lives and contains healthcare costs. It keeps people out of hospital and frees up resources in other areas of the health system (Dr Bill Glasson President of AMA). The success of the PBS has been recognised internationally and is highlighted in the Productivity Commission's 2001 research report International Pharmaceutical Price Differences Productivity Commission research in 2001 found that the price of medicines in the US is 80-160 per cent higher than in Australia. "Changes to Australia's patent protection regulations could severely limit competition from cheaper generic drug producers against the expensive products of American drug companies."

Drugs on the Australian PBS are cheaper than drugs in the US because of the reference pricing system. Studies estimate that PBS pricing controls, particularly reference pricing, save Australia between \$1 and 2.4 billion annually. These savings will be diminished under the FTA, with patent changes, appeals processes, and background bullying by Pharmaceutical companies that is behind the changes.

Concerns regarding the FTA and the PBS are the possible inclusion of investor state complaints provisions similar to those included in Chapter 11 of the North American Free Trade Agreement (NAFTA) (CCJDP 2003). These permit corporations and private investors to litigate against future government legislation, regulations or administrative decisions that are claimed to have adversely affected the value of investor assets.

3.12 **Environmental Services, Water and Environmental Initiatives.**

Concerns here include:

- Limitations on our ability to provide new policy provisions and changes designed to address environmental controls, and broad issues such as global warming.
- Changes in the FRIB scope that will allow almost unrestricted access of US corporations to environmental services, water supply, and agri-businesses.
- Expropriation measures that include taxation, compromising if not prohibiting the application of new taxes and levies to direct corporations, both industry and agriculture, toward more sustainable practices.
- In forestry, in Victoria, a large tract of state land has effectively been privatised, in a long-term lease agreement with Hancock Corp of America, or a subsidiary of that company – much of the forested area of the Strezleckis. This indicates that this industry – the service of providing timber, and associated land management practices of silviculture– is no longer a "government service", even if it were before this.
- Tighter controls are required for these forestry practices – an example of land management practices, and these changes may be constrained by the AUSFTA.
- Logging, and management of State Forests, the native forest asset, is unsustainable – necessarily so as clear-fell logging of old-growth forests destroys complex and natural bio-diversity, and is clearly unsustainable. If Land Management services are included in AUSFTA, we would no longer have effective control, as a sovereign government, over changes to our current practices, without massive penalties. This is to be avoided.

The concern central to GATS and Free Trade Agreements in the mould of the NAFTA is loss of control by Government, at all levels, in influencing policy outcomes, in this case outcomes relating to Environmental Issues.

Though water itself may not be a service per se, its consumption requires collection, treatment, distribution, and disposal, all of which are services. The logical progression here is that the provision (of water) is a service, for which actual and potential expropriation measures lead to the subsequent inability of the public realm to control water provision outcomes. Consequently, environmental – and social/equity - considerations will be excluded from water management,

with the resulting environmental impacts, loss of water quality, or liabilities for withdrawal of supply, as environmental and quality issues are no legal reason to withhold supply.

Recommendation: That the Australian Government exempt all public services, including water, land management, and other environmental services, from coverage in the agreement.

- 3.13 **Genetically Modified Organisms (GMO's).** It is essential that no GM food or agricultural organisms from the USA be allowed to enter Australia under the aegis of the Australian-U.S. Free Trade Agreement.

References.

AFITNET Submission to Senate Select Committee on AUSFTA.

The Australian Greens (Victoria) Submission to Senate Select Committee on AUSFTA.