Victorian Greens[1]

Submission to the Senate Select Committee On the Free Trade Agreement between Australia and the United States Of America

Greens Trade Sub-Committee Working Group
Global Issues Group – Victorian Greens

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1. Introduction

1.1 The Victorian Greens welcome this opportunity to comment on the text of the Australia-United States Free Trade Agreement (AUSFTA). We recognise that foreign trade and investment can be beneficial in terms of:

1.1.1 the transferring of skills and technology not available in the domestic economy;

1.1.2 allowing the importing and exporting of goods and services necessary for the economic well-being of the Australian community;

1.1.3 encouraging innovation and the adoption of new practices and higher standards;

1.1.4 encouraging efficiency through the adoption of 'international best practice' and the importation of technology which makes the local production of goods and services possible; and

1.1.5 giving developing countries, in particular, fair opportunity to trade with developed countries.

1.2 However, the Victorian Greens are also mindful of the negative influences of poorly regulated foreign trade and investment and support a policy of a rules-based managed international trade and investment. The Victorian Greens believe that nation-states have a right and a duty to ensure that their consumption and production, including both imports and exports, are sustainable.

In addition, we believe that international trade and investment should not undermine Australia's obligations under international human rights instruments, in particular, our obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR), Multilateral Environmental Agreements and International Labour Conventions.

1.3 Our comments on AUSFTA are firstly guided by our views that international trade and investment should support the following objectives:

1.3.1 protecting local employment and labour conditions;

1.3.2 reducing economic and political vulnerability through economic self-reliance;

1.3.3 encouraging diversification of industry;

1.3.4 permitting and encouraging the development of local technologies and investment in cleaner technologies;

1.3.5 encouraging investment for sustainable development prioritising areas in need of revitalisation;

1.3.6 reducing the amount of energy and pollution required to power the global economy; and

1.3.7 protection of the environment.

1.4 Secondly, the Victorian Greens believe that all trade agreements should be concluded within the framework established by the United Nations High Commissioner for Human Rights. This framework states that trade negotiations should:

(a) set the promotion and protection of human rights among the objectives of trade liberalization;

(b) examine the effects of trade liberalization on individuals and seeks trade law and policy that take into account the rights of all individuals, in particular vulnerable individuals and groups;

(c) emphasize the role of the State in the process of liberalization – not only as negotiators of trade law and setters of trade policy, but also as primary duty bearer for the implementation of human rights;

(d) seek consistency between the progressive liberalization of trade and the progressive realization of human rights;

(e) require a constant examination of the impact of trade liberalization on the enjoyment of human rights; and

(f) promotes international cooperation for the realization of human rights and freedoms in the context of trade liberalization.[2]

2. Greens Overview Comment

2.1 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.

2.2 On 27 March 2004, Colin Teese, former Deputy Secretary of the Department of Trade and GATT negotiator for Australia, roundly criticised this agreement making reference to Barbara Tuchman's book *The March of Folly*. As Teese points out, Tuchman's work was devoted to "the proposition that governments routinely commit themselves to policies which are against the public interest – out of sheer folly", "misgovernment based on folly" - in short "the implementation of policies counter productive to the interests of the state".[3] After reading the text and side letters we cannot help but conclude that Tesse' judgement is right.

2.3 The irony of the economic assessments, is that the think-tanks, organisations and individuals named above, are all conservative and deeply committed to free trade as defined by the current orthodoxy, as well as more in line with the Government's economic and political viewpoint than that of the Greens, yet not one of them has enthusiastically endorsed this agreement. It is not often that the Greens and conservative economists share the same view, the fact that there is agreement on the questionable economic benefits is an indication as to how dreadful this agreement really is, on all counts it clearly has no economic, social or environmental benefits for Australia.

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[2]United Nations – Economic and Social Council, 'Economic, Social and Cultural Rights: Liberalisation of Trade in Services and Human Rights', Report of the High Commissioner, Commission on Human Rights, Sub-Commission on the Promotion and Protection of Human Rights, Fifty-fourth Session, E/CN.4/Sub.2/2002/9 25 June 2002

[3] Colin Teese (2004) 'Australia-US trade deal a monumental folly', *News Weekly,* 27 March

2.4 In addition, to the lack of economic benefits, there are many other excellent reasons to reject this agreement, these concerns are addressed below.

2.5 The Victorian Greens note that the Australian Government released a new economic report by CIE on 30th April, this one concluding that there are positive gains for Australia in the agreement. We are not inclined to pay too much attention to this second report as the current government has a history of subtle 'interference' in matters if it does not like the results of reports or studies undertaken by various groups or individuals, this is becoming apparent across a range of policy areas, defence, intelligence, trade, and now in broadcasting.

2.6 We would also like to draw to the Senate Committees attention that in the first round of submissions on AUSFTA, there were 166 submissions, 139 against the agreement, 8 supporting with specific conditions, and 11 totally supporting, the remainder were not available. The major concern (51%) was about the impact and/or privatisation of public services, second was media content/intellectual property rights (29%), PBS (25%), and water, environmental, education and health services were covered in 20% of the 139 submissions. Part 1 of the submission covers a range of areas of concern, while Part 11 specifically relates to genetically modified foods.

PART I

3. Services

3.1 The Australian (Liberal) Government has now held a number of senate or JSCOT inquiries into international trade and bilateral agreements. It's becoming clear that the government does not treat these committees or their recommendations with the degree of serious that a democratic government should as the same flaws that occur in the GATS agreement are repeated in the services section of the AUSFTA, despite the Recommendations in the Report of the Foreign Affairs, Defence and Trade References Committee (see below).

3.2 The Victorian Greens have already put their concerns about services, particularly with reference to public services, in an earlier submission to the Foreign Affairs, Defence and Trade References Committee on the GATS agreement, as the Government failed to take ours and many others concerns into account in negotiating the AUSFTA, we repeat them here.

3.3 The definition regarding public services is the same as the flawed GATS one namely that a public service is a service supplied in the exercise of governmental authority which is supplied neither on a "commercial basis", nor "in competition with one or more service suppliers". From a legal perspective, the critical terms are "commercial" and "competition". Neither is defined in the agreement and will be largely determined by the interpretation given by a WTO dispute settlement panel. '*Commercial'* generally means 'engaged in commerce', 'pertaining to commerce and trade', 'the buying and selling of goods for money or its equivalent' and 'trading or exchange of merchandise'. Almost all public services in Australia are supplied through an admixture of public and private suppliers, which often, particularly since the ongoing economic restructuring of the 1980s, include commercial aspects. Tertiary education and many health services, though nominally public, are supplied on a fee-for-service basis whether via a prolonged HECS system or through a publicly funded medicare system, - one could easily argue that they are essentially commercial transactions or contain commercial aspects. Thus they would fall outside the exclusion in Article 1.3(b).

3.4 *'Competition'* means 'rivalry in the market', 'striving for custom between those who have the same commodities' and the 'act of competing or contending with others'. Universities, whether public or private, compete for students as do medical services for patients. Thus they would not necessarily be excluded under Article 1.3(b). Further, the use of the word "nor" suggests that in

order to exclude or protect public services one has to demonstrate that *neither* 'commercial' *nor* 'competition' applies to any given service.

The EC Treaty has a similar exclusion provision, Article 55 of the Treaty states that:

> *The provisions shall not apply, so far as any given Member State is concerned, to activities which in that State are connected, even occasionally, with the exercise of official authority.*

3.5 It has been noted by a number of commentators that the European Court of Justice has taken a restrictive interpretation of the scope of the Article. In fact there have been no decisions in which the Court found that an activity was excluded under Article 55[4]. This indicates that the interpretation taken by courts and tribunals/panels is likely to be unduly narrow. Further indication that this flawed definition will be narrowly construed is supplied by the *obiter* in the Bananas Case (Regime for the Importation, Sale and Distribution pf Bananas, Apellate Body Report, WT/DS27/AB/R, 9 September 1997), which stated in paragraph 220:

> *We also note that Article 1.3(b) of the GATS provides that " includes* any service *in* any sector *except services supplied in the exercise of governmental authority", and that Article XXVIII(b) of the GATS provides that the "supply of a service includes the production, distribution, marketing, sale and delivery of a service".* ***There is nothing at all in these provisions to suggest a limited scope of application for the GATS…"*** *[emphasis added].*

3.6 In addition, on the coexistence of government owned and private hospitals, a Background Note by the Secretariat states that:5

> *…concerning their competitive relationship and the applicability of the GATS: in particular, can public hospitals nevertheless be deemed to fall under Article 1.3? - that the hospital sector in many countries, however, is made up of government and privately-owned entities which both operate on a commercial basis, charging the patient, or his insurance for the treatment provided. Supplementary subsidies may be granted for social, regional and similar policy purposes. It seems unrealistic in such cases to argue for continued application of Article 1.3 and/or maintain that no competitive relationship exists between the two groups of suppliers or services.*

Another Secretariat Note, in this instance referring to Environmental Services states:

> *… if services were deemed to be supplied on a commercial basis, then regardless of whether ownership was in public or private hands, the sector would be subject to the main GATS disciplines and to the negotiation of commitments under Articles XVI and XVII. A different issue arises in situations in which the government has privatized certain services as local monopolies and the private firms receive payment from the government rather than individual users. One view could be that these are still services supplied in the exercise of government authority, as defined by GATS Article 1.3 - since they are not supplied on a commercial basis to individual users and they continue to be (local) monopolies - and, therefore, do not fall within the scope of GATS disciplines. Another view could be that these services are being procured by the government and, therefore, the manner of purchase* per se *would fall within the scope of GATS Article XIII and any future disciplines on procurement.*[6]

3.7 The conclusion to be drawn from these examples is that the flawed definition used in the GATS agreement and repeated in the AUSFTA will have a very narrow application and will not protect

[4] Education International (2001) *GATS and Public Service Systems: the GATS 'governmental authority' exclusion',* http://members.iinet.net.au/~jenks/GATS_BC2001.html p7
[5] Health and Social Services, Background Note by the Secretariat, 18/9/98, S/C/W/50
[6] Environmental Services, Background Note by the Secretariat, 6 July 1998, S/C/W/46

public services. The Victorian Greens note that the Senate 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. In addition, we note that the Senate Committee's Recommendation 12 in relation to the AUSFTA, said "The Committee recommends that future bilateral trade agreements be pursued without recourse to a negative list approach". Yet the AUSFTA contains a negative list approach, this hampers the ability for future governments to regulate services in the interest of the Australian public, the Victorian Greens oppose the inclusion of negative listing in trade agreements.

3.8 **Recommendation 1: 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.**

Recommendation 2: That the Australian Government exempt all public services such as health, education, and water from coverage in the agreement.

Recommendation 3: That the Australian Government drop the negative-listing approach from the agreement.

4. Telecommunications

4.1 The Victorian Greens note that in the Side Letter from the Australian Government to Robert Zoellick the Government states:

> The current Australian Government has a long-standing public commitment to the full privatisation of Telstra by the Prime Minister on 15 March 1998 as part of the Government's policy platform prior to the 1998 elections.
>
> ……
>
> Any further sale of the Australian Government's shareholding in Telstra would require the passage of legislation through the Australian Parliament. The Government introduced new legislation to allow the sale of the Government's remaining shareholding in Telstra on 26 June 2003. The relevant Bill was passed by the House of Representatives on 21 August 2003, but defeated in the Senate on 30 October 2003. The Government has stated publicly that it will reintroduce the legislation in early 2004.

4.2 The Victorian Greens oppose the further privatisation of Telstra. The Australian people – upon whose behalf the Government is supposed to govern – have indicated repeatedly that they oppose the further privatisation of Telstra. In addition, privatising Telstra for the benefit of American Telco companies is not a good enough reason to do so. Telstra is supposed to serve the interests of the Australian people not the interests of the US government or US corporations.

4.3 **Recommendation 1: That the Government withdraw the Side Letter on Telecommunications from the Agreement, this is an issue for the Australian people and should not be part of a trade agreement.**

5. Parliamentary Oversight of the Treaty-Making Process

5.1 The Victorian Greens are concerned about the Treaty-making process and the fact that there is not enough parliamentary scrutiny of trade agreements prior to there ratification. The fact that the agreement can be approved by Cabinet or indeed, the Prime Minister alone – with the

exception of the implementing legislation – is a deeply flawed and undemocratic process. The Senate Committee in Recommendation 2 of its Report, made the following recommendations:

a) Prior to making offers for further market liberalisation under any WTO agreements, or commencing negotiations for bilateral or regional free trade agreements, the government shall table in both Houses of Parliament a document setting out its objectives, including comprehensive information about the economic, regional, social, cultural, regulatory and environmental impacts which are expected to arise.

b) These documents shall be referred to the Joint Standing Committee on Foreign Affairs, Defence and Trade for examination by public hearing and report to the Parliament within 90 days.

c) Both Houses of Parliament will then consider the report of the Joint Standing Committee on Foreign Affairs, Defence and Trade, and then vote on whether to endorse the government's proposal or not.

d) Once parliament has endorsed the proposal, negotiations may begin.

e) Once the negotiation process is complete, the government shall then table in parliament a package including the proposed treaty together with any legislation required to implement the treaty domestically.

f) The treaty and the implementing legislation are then voted on as a package, in an 'up or down' vote, ie, on the basis that the package is either accepted or rejected in its entirety.

We would add to f) that this be dependent upon the type of process instituted in the US. That is that an 'up or down' fast-track system be premised upon the ability of other parties, (currently the ALP, Democrats and Greens), having a role in determining what the overall negotiating objectives of the agreement should be. The Victorian Greens agree with the treaty-process recommended by the Senate Committee with the amendment suggested by us as a rider to f).

5.2 **Recommendation 1: That a more accountable process for parliamentary scrutiny of treaties as suggested by the Senate Committee be implemented.**

Recommendation 2: That the agreement not be ratified until a proper House and Senate debate has been undertaken.

6. Investor-State Provisions, Investment, and Industry.

6.1 The Australian Government states that there are no investor-state provisions in the agreement, however, 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". The Victorian Greens opposed the inclusion of investor-state provisions now or at any future date. These provisions have been highly controversial and have resulted in excessive damages claims in all three NAFTA countries. We consider any Australian government that would open Australia up to these types of challenges as being irresponsible and negligent.

6.2 Of the submissions in the first Senate Inquiry 24 submissions (14%) raised concerns about the investor-state provisions, with particular emphasis on the cases under NAFTA. The Senate Committee Report in Recommendation 17(b), recommended that "no investor-state provisions be included in the Australia-US free trade agreement".

6.3 We wish to draw the Committee's attention to an article in the New York Times on April 18, 2004 titled *NAFTA Tribunal's Stir US Worries.* The author of the article interviewed a number of US law professors and justices on the investor-state provisions of NAFTA, their responses issue a timely warning to Australia to exclude such provisions. John D Echeverria, Professor of Law at Georgetown University, referred to Chapter 11 of NAFTA as "the biggest threat to United States judicial independence that no one has heard of and even fewer people understand"; Peter Spiro, Professor of Law at Hofstra University, stated that "it points to a fundamental reorientation of our constitutional system. You have an international tribunal essentially reviewing American court judgements", and Chief Justice Ronald M George arguing that "there were grave implications here", .. "its rather shocking that the highest courts of the state and federal governments could have there judgements circumvented by these tribunals". All expressions of concern raised by experts in the area.

6.4 **Recommendation 1: That no investor-state provisions be included in the agreement at anytime whether now or it the future.**

Expropriation and Compensation provisions.

6.5 As indicated elsewhere, 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.

Recommendation 2: That Expropriation be excluded from all Trade Agreements.

Investment and Foreign Review Investment Board (FRIB).

6.6 The Victorian Greens believe the changes to the FRIB, including increasing the threshold for activity to come under the aegis of the FRIB, are not in the best interests of the country. 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.

Manufacturing Industry.

6.7 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.

6.8 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.

7. Culture and Media Regulation

7.1 The Victorian Greens have had the benefit of reading the Australia Fair Trade and Investment Network's (AFTINET) submission to the JSCOT Inquiry which was posted on the JSCOT homepage. We agree with AFTINET'S comments on film, broadcasting and culture and reproduce them for this Committee's benefit.

7.1.1 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.

7.1.2 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

7.1.3 **For multichannelled free-to-air commercial TV** Australian content is capped at 55% on no more than 2 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%. 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).

7.1.4 There are more restrictions on **interactive audio and/or video services,** since the Australian government must first prove that Australian content is not readily available. Any rules must be applied transparently and 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.

7.1.5 **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.

7.1.6 **Recommendation 1: 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.**

8. Labour Rights and Environmental Protection Laws.

8.1 **Labour Rights**.

The Victorian Greens have had the benefit of reading the ACTU's submission to the JSCOT Committee Inquiry on AUSFTA and we agree with the ACTU's submission on labour rights, we reproduce the section for the benefit of the Senate Select Committee.

8.1.1 The ACTU acknowledges that AUSFTA breaks with Australian tradition in respect of trade agreements by containing Chapters on Labour and the Environment. It is to be hoped that this approach will apply to other bilateral agreements and that the Commonwealth will support the proposals in these areas of the International Confederation of Free Trade Unions and international environment organisations in the WTO negotiations. However, the detail of Chapters 18 and 19 of AUSFTA indicates that the parties are not serious about regulating this aspect of their trade relationship. Moreover, as has been pointed out by the Labor Advisory Committee for Trade Negotiations and Trade Policy in the US, the standard of the labour provisions in AUSFTA is below that of other bilateral agreements that the US is party to, such as the agreement with Jordan.

8.1.2 AUSFTA does not bind the parties to uphold the core labour standards set by the International Labor Organization. Article 18.1 of AUSFTA records the parties

'reaffirmation of their obligations as ILO members and proclaims that each party shall "strive to ensure" that its laws provide for labour standards that are consistent with internationally recognised labour principles and rights. These principles and rights are set out in Article 18.7 in manner that appears to give force to the core ILO standards. However, non-compliance by a party with the stated objective, principles and rights is outside the scope of the dispute settlement proceedings of the agreement.

8.1.3 AUSFTA also states in Article 18.2.2 that it is inappropriate to encourage trade or investment by a party weakening or reducing the protections afforded in its labour laws. The parties commit that they shall strive to ensure that they shall not, in order to encourage trade or investment, waive or otherwise derogate from their respective labour laws, or offer to do so, in a manner that weakens or reduces their adherence to the internationally recognised labour principles. But like 18.1, this is not enforceable under the dispute settlement proceedings.

8.1.4 The only provision in this area that is actionable under the dispute settlement proceedings is the failure of a party to effectively enforce its domestic labour standards, through sustained or recurring course of action or inaction, in a manner that affects trade between the parties (see18.2.1.(a), 18.6.5 and 21.2) This begs the question as to why an agreement would prohibit a failure to enforce, but not a decision to weaken or reduce, domestic labour standards.

8.1.5 The answer to this question does not lie in the alleged difficulty of enforcing the aspirational language used in 18.1 and 18.2.2. Apart from the obvious point that commitments to uphold core ILO standards and domestic labour standards could have been specified without recourse to words such as "strive to", other AUSFTA provisions that set an objective (such as the obligation in Article 10.7.2 to "endeavour to ensure" that domestic regulation requirements meet certain tests) are not excluded from the scope of application of dispute settlement proceedings.

8.1.6 The ACTU notes that even claimed breaches of 18.2.1.(a), while falling within the scope of application of the dispute settlement proceedings, are treated differently than claimed breaches of other AUSFTA obligations. A dispute settlement panel dealing with a failure by the party in breach of 18.2.1.(a) to agree on a resolution or to observe the terms of an agreed resolution must, in awarding compensation, take into account factors such as the pervasiveness and duration of the breaching party's failure to enforce the labour law, its reasons for non-enforcement of that law, its resource constraints, and its efforts to begin remedying the non-enforcement since the panels report. No list of mitigating factors can be found in connection with assessing compensation for other types of cases.

8.1.7 In addition, in contrast with compensation for other breaches of other AUSFTA obligations, there is a dollar cap on the amount of compensation, and the amount is not payable to the complaining party. The compensation is allocated to a fund jointly administered by the two governments for appropriate labour and environmental initiatives. The overall effect is to make the penalty for breaches of labour obligations less onerous than for other breaches of AUSFTA

8.1.8 While there may be a case for spending the compensation amount on such initiatives within the territory of the offending party, joint administration of the fund confers an effective veto role on how that money is spent by the party that failed to either resolve its breach of the labour obligation or to implement an agreed resolution of the breach. A better alternative would be for the fund to be administered by the ILO.

8.2 **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.

8.3 **Environmental Protection**.

The same problems occur with the environmental chapter.

8.3.1 The Victorian Greens welcome the inclusion of a labour and environment chapter in the AUSFTA and recognise the precedent established with these chapters. However, they need to have the same protections and enforceability as investors have, labour rights and environmental standards can no longer be ignored in trade negotiations.

8.3.2 As the enforcement mechanisms in the Environment Chapter are, like the Labour chapter before it, not binding, 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. The fact that considerable sections of the chapters are repeated verbatim or near-verbatim adds to this impression.

8.3.3 While article 19.1 asserts the right of each party to make laws in relation to the Environment, there is no reference to International Environmental Standards. In this way, there is no aspiration within the FTA to bring the two countries in line with International standards and practices, eg. Kyoto Protocol. This allows each party to "dumb down" their environmental protections without reference to international standards.

8.3.4 Again, we note the inclusion of such phrases as "*strive to ensure*.." in article 19.2. That's "very nice" but has no place in a trade agreement purporting to protect and enhance environmental safeguards.

8.3.5 We dispute the basis of Article 19.4 that "*flexible, voluntary and market-based mechanisms can contribute to the achievement and maintenance of high levels of environmental protection."* They can, but they do not enshrine in law a level playing field in terms of environmental protection, thus penalising the ethical companies against companies that flout or circumvent voluntary measures.

8.3.6 Institutional matter (article 19.5 & 19.6) relate to discussions, while avoiding breaches of laws. Actions are optional, with no teeth in the articles. Disclosure of information, taking account of public concerns are all discretionary.

8.4 **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.

8.5 **Recommendation 1: That the labour and environmental chapters be ratcheted-up and have enforceability parity with the rights of capital and investors.**

8.6 **Recommendation 2: 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.**

9. Quarantine[7]

9.1 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.

9.2 **Risks associated with Citrus importation**

Biosecurity. Australia has identified 28 pests that are likely to be associated with fresh citrus fruit imported into Australia from Florida.

9.2.1 **Mites**. Mites are found on citrus throughout Florida and have been intercepted on citrus fruit from California. Infested fruit may show symptoms and be detected during commercial pre-export inspections but these pests may occur in the calyx and not be detected during such inspections.

Species involved are: *Aculops pelekassi* (Keifer) [Arachnida: Eriophyidae]-Pink citrus rust mite; *Eutetranychus banksi* McGregor [Arachnida: Tetranychidae]-Texas citrus mite; *Panonychus citri* McGregor [Arachnida: Tenuipalpidae]-Citrus red mite. The likelihood that these will arrive in Australia with the importation of fresh citrus fuit from Florida has been assessed as high. The likelihood that mites will be distributed as a result of the processing, sale or disposal of citrus fruit from Florida, to the endangered area has also been assessed as high.

The probability of establishment of these has been estimated as high because a range of plants commonly found in Australia can act as hosts for these pests e.g. *Citrus* spp.; *Prunus* spp. and *Vitis* spp.. Species are widespread in Florida and similar environments are available in Australia In addition, *Aculops pelekassi* has a relatively short generation time and a high reproductive rate. The life cycle is completed within 5–7 days during summer and has four developmental stages. *Eutetranychus banksi* females lay 8–37 eggs on upper leaf surfaces along the mid-rib. Existing control programs may be effective for some hosts (e.g. broad spectrum pesticide applications) but not all hosts. The probability of spread has been estimated as high because adults and immature forms may spread undetected via the movement of fruit or infested vegetative host materials Similar environmental conditions are available in Florida and Australia.

9.2.2 **Fruitfly** Anastrepha suspensa (Loew) (Caribbean fruitfly - Caribfly) is a pest of citrus within Florida (Norrbom et al., 2000). There is a possibilty that Caribfly will arrive in Australia with the importation of fresh citrus fruit from Florida. Given that fresh fruit destined for export markets is picked early, most fruit infested with fruit flies at the time of packing would most likely have been infested only recently. Most of the fruitflies would be in either the egg or early instar stage, both of which are difficult to detect, even when fruit flies are targeted during inspection.

The likelihood that **Caribfly** will be distributed as a result of the processing, sale or disposal of citrus fruit from Florida, to the endangered area: is considered to be high

[7] All reference material on quarantine are at the end of the submission.

because caribfly larvae could survive shipment because they can tolerate cold temperatures and because of the availability of ample food. Eggs may produce larvae within stored fruit, fruit at the point of sale, or fruit that has been purchased. Larvae may then develop into adult flies, which move from fruit into the environment. Wholesales, retailers or consumers discard fruit with spoiled flesh or visible larvae. Larvae would then complete their development within the discarded fruit, and move into the environment. Caribfly is highly likely to become established in Australia because it is has many hosts and the preferred hosts are Myrtaceae, especially *Eugenia* spp., guava and *Syzygium* spp. and some of these hosts are wide spread in Australia. The species is also a pest of *Annona* spp. and *Terminalia catappa*. Caribfly has a wide host range and environmental tolerances and may spread readily within Australia. Caribfly is a strong flier and adults have been reported to fly up to 135 km. .Eggs, larvae and pupae are spread within infested fruit. In international trade, the major means of dispersal to un-infested areas is the transport of fruit containing live larvae. For most regions, the most important fruits liable to carry this pest are *Annona* spp., *Psidium guajava*, and possibly overripe citrus.

9.2.3 **Mealybugs**. The likelihood that mealybugs (*Pseudococcus comstocki* (Kuwana) [Hemiptera: Pseudococcidae]-Comstock's mealybug; *Pseudococcus maritimus* Ehrhorn [Hemiptera: Pseudococcidae]-grape mealybug.) will arrive in Australia with the importation of fresh citrus fruit from Florida is high. Mealybugs have been intercepted on citrus exported from California into Australia. A range of plants commonly found in Australia can act as hosts for these pests e.g. *Citrus*, *Malus*, *Prunus,* and *Vitis*. Species are widespread in Florida and similar environments are available in Australia Existing control programs may be effective for some hosts (e.g. broad spectrum pesticide applications) but not hosts where specific integrated pest management programs are used. Eight species of *Pseudococcus* are reported in Australia, demonstrating the suitability of the climatic conditions for their survival.

Adults and nymphs may be moved within and between orchards (or other commercial production sites) with the movement of equipment, personnel and infested plant material, and juveniles may be dispersed by wind. The probability of spread is high.

9.2.4 **Scales** *Parlatoria ziziphi* (Lucas) [Hemiptera: Diaspididae]-black parlatoria scale is a known pest of citrus in Florida, and have been intercepted on imported citrus produce. Adults or immature forms may remain on the surface of the fruit during distribution via wholesale or retail trade. A range of plants commonly found in Australia can act host for this species e.g. several species of citrus and other Rutaceae (*Severinia buxifolia* and *Murraya paniculata*) *Cocos nucifera*; *Mangifera indica;* and *Nipa* spp. *Parlatoria ziziphi* is reported to have 2-4 generations per year with females producing approximately 30 eggs. Suitable environments for its establishment are available in Australia. The probability of spread is high, As adults and nymphs may be moved within and between orchards (or other commercial production sites) with the movement of equipment, personnel and infested plant material, and juveniles may be dispersed by wind. Similar environmental conditions (e.g. temperature, rainfall) are available in Florida and Australia.

9.2.5 **Leafrollers** *Amyelois transitella* (Walker) [Lepidoptera: Pyralidae]-navel orangeworm; *Argyrotaenia amatana* (Dyar) [Lepidoptera: Tortricidae]-pond apple leafroller; *Argyrotaenia ivana* (Fernald) [Lepidoptera: Tortricidae]-ivana leafroller, *Argyrotaenia kimballi* Obraztsov [Lepidoptera: Tortricidae]-Kimball's leafroller have been reported from citrus in Florida. *Amyelois transitella* has been intercepted on citrus imports from California. The likelihood that leafrollers will be distributed as a result of the processing, sale or disposal of citrus fruit from Florida, to the endangered area is high as adults and immature forms may be present in the calyx and remain with the commodity during distribution via wholesale or retail trade. A range of plants commonly found in Australia can act host for this species e.g. *Acer rubrum*; *Citrus*

spp.; *Eugenia* spp.; *Persea* spp.; *Salix* spp.; and T*axodium* spp. The lifecycle of *Amyelois transitella* can be completed in approximately 30 days during summer in California. Females can live for up to 12 days and are capable of laying up to 245 eggs. The probability of spread is high because adults are capable of flight and larvae may be spread in infested host material. Similar environmental conditions are available in Florida and Australia.

9.2.6 **Thrips** Danothrips trifasciatus Sakimura) [Thysanoptera: Thripidae]-orchard thrips; Scirtothrips citri Moulton [Thysanoptera: Thripidae]-citrus thrips are recorded on citrus in Florida.

Thrips are known to be associated with the citrus fruit and have been intercepted on imported citrus from California. Infested fruit may show symptoms and be detected during commercial pre-export inspections but these pests may occur in the calyx and not be detected during such inspections.

The likelihood that thrips will be distributed as a result of the processing, sale or disposal of citrus fruit from Florida, to the endangered area is high as Thrips hidden in the calyx may remain with the commodity during distribution via wholesale or retail trade. The Probability of establishment and spread is high, as a range of plants commonly found in Australia can act host for this species e.g. *Bougainvillea* spp.; *Citrus* spp.; *Ipomoea alba*; *Musa* spp. and *Vitis* spp. Adults are capable of flight and larvae may be spread in infested host material. Similar environmental conditions (e.g. temperature, rainfall) are available in Florida and Australia.

9.2.7 **Citrus Canker** *Xanthomonas axonopodis* pv. *citri* (Hasse) Vauterin *et al*. The likelihood that *Xanthomonas axonopodis* pv. *citri* will arrive in Australia with the importation of fresh citrus fruit from Florida is high. *Xanthomonas axonopodis* pv. *citri* is known to be associated with the citrus fruit and causes raised lesions on fruit, foliage and young stems. *Xanthomonas axonopodis* pv. *citri* can survive for years in plant residues that have been kept dry. Infected fruit may show symptoms and be detected during commercial pre-export inspections but may also be symptomless.

The likelihood that *Xanthomonas axonopodis* pv. *citri* will enter Australia and be distributed as a result of the processing, sale or disposal of citrus fruit from Florida, is high. Infected fruit that is symptomless could be distributed via wholesale and retail trade. The probability of establishment is high, as *Xanthomonas axonopodis* pv. *citri* infects a wide range of *Citrus* species and their relatives and these plants are commonly found in Australia. *Xanthomonas axonopodis* pv. *citri* could enter the environment via bacterial ooze from moistened lesions on fruit that has been discarded as waste.

Xanthomonas axonopodis pv. *citri* can survive in diseased plant tissues, as an epiphyte on host and non-host plants and as a saprophyte on straw mulch or in soil. Over-wintering lesions are the most important source of inoculum for the following season. Suitable environments for citrus canker occur in Australia. The probability of spread is high. As *Xanthomonas axonopodis* pv. *citri* can spread over short distances by rain, irrigation, wind, insects, birds and human movement e.g. contaminated clothing, tools, packing boxes and other equipment used for harvesting and post-harvest handling. Wind blown inoculum has been detected up to 32 meters from infected trees in Argentina and in Florida there is evidence for much longer dispersals (up to 11 km) via severe rainstorms and tropical storms. The tropical and subtropical environments in Australian citrus production zones would favour the spread of citrus canker.

9.2.8 **Post bloom fruit drop.** The likelihood that Colletotrichum acutatum will arrive in Australia with the importation of fresh citrus fruit from Florida is high. The strain of Colletotrichum acutatum that causes post bloom fruit drop is known to occur in Florida and this disease has been observed on sweet orange and other citrus throughout Florida. Colletotrichum acutatum infects citrus flowers causing necrotic spots or affecting the entire petal. Fruitlets on affected inflorescences do not develop or they abscise leaving

the calyx and floral discs attached to the peduncle. Colletotrichum acutatum has been isolated from the surface of fruit harvested during outbreaks of post bloom fruit drop. It has also been isolated from rind plugs from harvested fruit that had been washed with a solution containing sodium o-phenyl phenate (SOPP), a treatment for citrus canker, and treated with fungicide. The likelihood that Colletotrichum acutatum will be distributed as a result of the processing, sale or disposal of citrus fruit from Florida, to the endangered area is high. Colletotrichum acutatum may remain present as latent infections in the rind of fruit and be distributed via wholesale or retail trade. Spores can be wind dispersed from infected fruit. The likelihood that Colletotrichum acutatum will enter Australia as a result of trade in fresh citrus fruit Florida and be distributed in a viable state to the endangered area is high. Hosts of Colletotrichum acutatum include Citrus aurantiifolia and Citrus sinensis, peaches, pecans, strawberries, almonds and lupins. Most of its hosts are widely distributed in Australia. Humid tropical and subtropical environments are suitable for Colletotrichum acutatum. Colletotrichum spp. are already established in Australia, indicating the suitability of the environment for any new strain of this pathogen. Similar environmental conditions (e.g. temperature, rainfall) are available in Florida and Australia.

9.2.9 **Citrus scab Sphaceloma fawcettii** Jenkins The likelihood that scab will arrive in Australia with the importation of fresh citrus fruit from Florida is high. Sphaceloma fawcettii is known to infect the fruit of susceptible varieties of Citrus as well as leaves, twigs and blossom pedicels. Infected fruit may show symptoms and be detected during commercial pre-export inspections but they may also be symptomless. The pathotype of Sphaceloma fawcettii present in Florida affects a wide range of Citrus and their relatives and these plants are commonly found in Australia. The pathotype of Sphaceloma fawcettii affecting lemon and rough lemon is established in Australia, indicating that the pathotype present in Florida could also establish here.

9.3 Risks associated with stone fruit importation from the USA

Australia produces more than 72, 000 tonnes of fresh stone fruit each year, with an estimated farm gate value of $174 million. Plum pox virus (PPV) (Sharka) is recognised as the most serious disease threat to the stone fruit industry in Australia. This has limited distribution in USA, Canada and South America and is considered the most devastating viral disease affecting stone fruit: The main hosts include Prunus species including apricot, peach, plum, nectarine, almond and cherry trees. Sharka disease is the single greatest threat to Australia's stone fruit industry, which produces more than 70,000 tonnes of fresh fruit a year and supports thousands of families growing fruit for domestic and export markets.

9.4 Risks associated with apple importation from the USA

Fireblight (*Erwinia amylovora*) is an extremely infectious and destructive bacterial disease of apple and pear trees (Burrill) Winslow *et al*. Fireblight is endemic on native rosaceous species in North America, particularly in the eastern parts of the United States. The apple industry in southern Queensland and the pear industry of the Goulburn Valley in Victoria are considered most vulnerable, but apples and pears growing anywhere in Australia could be attacked by fireblight, should this organism enter the country.

9.5 Risks associated with bulk maize importation from the USA

Seventeen pathogens have been identified that are present in the USA, that are not present in Australia. Many quarantine pathogens of other crops are potentially present in admixtures likely to be in bulk maize. There would be significant risk that these other pathogens could be introduced if untreated bulk maize of USA origin, containing significant admixture of other crops, were moved into agricultural areas of Australia. For example, *Peronosclerospora sorghi* can attack sorghum while High Plains *tenuivirus* and wheat streak mosaic *rymovirus* can damage wheat. Some of these high-risk pathogens have relatively wide host ranges, extending

to sorghum, wheat and naturalised grasses such as Johnson grass. In Australia there are many situations where feedlots and crops of maize, sorghum and wheat are in close proximity to each other. Nematodes can be present in soil and trash associated with bulk maize

9.5.1 ***Phymatotrichopsis omnivora*****,** a minor pathogen of maize but serious on cotton and many other dicotyledons, was regarded as having a lower potential for establishment because it would be soil or trash-borne only. If an incursion did occur, however, and it became established, this pathogen would be extremely difficult to manage. Contamination is a problem because of difficulties with identity preservation through the grain transport and consolidation systems in the USA. Feedlots in Australia are present in cotton growing areas so there is the potential for the disease to establish on cotton if it were to be introduced in imports of bulk maize.

9.5.2 ***Cercospora zeae-maydis*** is a serious disease on maize in humid areas. However, it is regarded as less of an overall risk than some other fungal, bacterial and viral pathogens because it is likely to be only trash-borne and to be pathogenic only on maize. Professor McGee confirmed that this is a serious problem in the USA and is getting worse with the increasing adoption of stubble retention systems.

9.5.3 ***Peronosclerospora sorghi*****,** the cause of sorghum downy mildew, presents one of the greatest quarantine risks to the Australian grains industry from the importation of bulk maize from the USA. The disease was first reported in the USA in Texas in 1961 (Keyes *et al*., 1964). By the early 1970s it had reached the corn-belt in the Ohio River Valley in Indiana and Illinois (Frederiksen, 1980).

There is recent evidence that *P. sorghi* consists of more than one species with some strains that occur on maize now recognised as a separate species, *P. zeae*. Further work is needed to determine the distribution of this species (Jeger *et al*., 1998). Until the situation in the USA is better defined, the strains have been considered as one species.

The risks of introducing *Peronosclerospora sorghi* into Australia through bulk maize grain imports are summarised as follows:

- *P. sorghi* is likely to cause serious economic losses if introduced into Australia, particularly in grain sorghum, other Sorghum spp., sweet corn, maize, Panicum spp. and Pennisetum spp. The gross value of sorghum and maize produced in Australia in 1996/97 was $225 million and $75 million, respectively. Information from a USA expert supported the view that the disease was a serious problem in sorghum.
- *P. sorghi* is seed-borne (maize and sorghum admixture) and can also be carried in trash and soil. It is therefore in the pathway.
- *P. sorghi* is widely distributed in the USA from southern Texas to central Illinois, where it was reported on sweet corn in 1990 (Pataky & Pataky, 1990). It can infect wild sorghums and it would be expected to produce oospores in systemically infected maize (Bigeriwa *et al*., 1998) that could form a pathway for seed transmission. Thus it would be difficult to source from maize-producing areas in the USA that are free of *P. sorghi*. Information from the USA indicated that the prevalence of *P. sorghi* in USA maize was low but the pathogen is prevalent on other grasses that can be amongst the trash in bulk maize.

The systemic nature of P. sorghi could mean that it would remain undetected for a considerable period of time, particularly in an uneconomic and widespread host such as Johnson grass. Thus the pathogen could spread widely before being detected, reducing the likelihood of successful eradication.

9.5.4 **High Plains *tenuivirus* (HPV)**

HPV was first recognised in 1993 in the western plains of the USA in maize. The virus is transmitted between plants by the eriophyid mite *Aceria tosichella*, and can be lethal to maize, wheat, barley and other grasses.

The disease is known to be seed-transmitted, and can be recognised by the presence of a protein that is specific to HPV infection. A USA expert pointed out that the experimental evidence for seed transmission does not clearly demonstrate that seed transmission can occur under field conditions. He did accept that infected volunteer plants arising from spilt grain would present a risk if seed transmission does occur.

HPV has been positively identified in 10 States of the USA, from eastern Nebraska to western Idaho, and from Montana and South Dakota to the Texas panhandle. It has also been identified from sweet corn samples from Florida. Genetic variability exists in maize reactions to HPV but this variability has not yet been characterised (Marcon *et al*. 1997). The USA expert indicated that the disease, while widespread, had little economic consequence in the USA although it was a more serious problem in other countries.

Because HPV is only a relatively recently discovered virus (1993), there is still much to learn about its aetiology, distribution and management. Importantly, diagnostic tools have now been developed which will allow determination of its distribution and further clarification of its economic significance. This pathogen is regarded as a high risk to the Australian grains industry because:

a) HPV could be seed-borne and seed-transmitted in maize. Yield losses of up to 75% have been reported in some parts of the USA in some seasons.
b)The disease also significantly affects wheat and barley and thus must be regarded as a major threat to the $5 billion Australian wheat industry.

9.5.5 **Wheat streak mosaic *rymovirus* (WSMV)**

WSMV causes a serious disease of wheat, particularly in the Great Plains region of the USA, where overall losses of up to 2% occur (Christian, 1993) and local losses can be 100% (McNeil *et al.*, 1996). WSMV is both seed-borne and seed-transmitted, and is transmitted by the wheat curl mite *Aceria tosichella*. High Plains virus is often found in association with WSMV, not surprisingly since they share a common vector. WSMV has also been found along with maize dwarf mosaic virus in the same maize plant (Hill *et al*., 1974), and is seed-transmitted in maize. WSMV has a relatively broad host range, encompassing many plants in the grass family. It infects wheat, barley, oats, maize and millets (*Panicum*, *Setaria* and *Echinochloa* spp.). It is the type member of the rymovirus group, whose members are all mite-transmitted. Its entry and establishment in Australia would pose a greater national economic risk to the $5 billion wheat industry than to maize. In maize, it could also be expected to cause substantial losses but with a less significant national impact. Devitalisation of all seed should be an effective management strategy for this virus.

9.6 **Quarantine pests for Australia with a significant risk of being associated with bulk maize grain from the USA**

Scientific name	Common name
a: Pests that are capable of breeding in stored grain	
Cathartus quadricollis (Guérin-Méneville, 1829) [Coleoptera: Silvanidae]	Tropical warehouse moth
Caulophilus oryzae (Gyllenhal, 1838) [Coleoptera: Curculionidae]	Broad nosed grain weevil
Cryptolestes turcicus (Grouvelle, 1876) [Coleoptera: Laemophloeidae]	Flat grain beetle

Cynaeus angustus (Le Conte, 1852) [Coleoptera: Tenebrionidae]	Large black flour beetle
Pharaxanotha kirschi Reitter, 1875 [Coleoptera: Languriidae]	Mexican grain weevil
Prostephanus truncatus (Horn, 1878) [Coleoptera: Bostrichidae]	Larger grain borer
Tribolium audax Halstead, 1969 [Coleoptera: Tenebrionidae]	American black flour beetle
Tribolium brevicornis (LeConte, 1859) [Coleoptera: Tenebrionidae]	Flour beetle
Tribolium destructor Uyttenboogaart, 1933 [Coleoptera: Tenebrionidae]	Large flour beetle
Tribolium madens (Charpentier, 1825) [Coleoptera: Tenebrionidae]	Black flour beetle
Trogoderma glabrum (Herbst, 1783) [Coleoptera: Dermestidae]	Glabrous cabinet beetle
Trogoderma inclusum LeConte, 1854 [Coleoptera: Dermestidae]	Large cabinet beetle
Trogoderma ornatum (Say, 1825) [Coleoptera: Dermestidae]	Ornate cabinet beetle
Trogoderma variabile Ballion 1878 [Coleoptera: Dermestidae]	Warehouse beetle
b. Pests associated with damp maize grain	
Glischrochilus fasciatus (Olivier, 1790) [Coleoptera: Nitidulidae]	Picnic beetle
Glischrochilus quadrisignatus (Say, 1835) [Coleoptera: Nitidulidae]	Four-spotted sap beetle
c. Pests associated with infestable pulses	
Callosobruchus chinensis (Linnaeus 1758) [Coleoptera: Bruchidae]	Cowpea weevil
Zabrotes subfasciatus (Boheman 1833) [Coleoptera: Bruchidae]	Mexican bean beetle
d. Additional pests of quarantine concern to Australia	
Trogoderma granarium Everts, 1898 [Coleoptera: Dermestidae]	Khapra beetle

9.6.1 **Insects**: Pest species identified ranged from little known pests of limited worldwide distribution, through to well-known and widespread pests such as Prostephanus truncatus and some Trogoderma species. As well as being pests associated with grain, all have the potential of establishing in natural habitats. These pests may have adverse consequences on the natural environment if introduced. Once established in natural habitats, official control and eradication is likely to be difficult or impossible to accomplish.

9.6.2 **Weeds:** 80 weeds of quarantine concern to Australia that have a significant risk of being associated with bulk maize grain from the USA A number of these are herbicide resistant variants of species present in Australia.

9.7 **Risk assessment of herbicide resistant maize in bulk maize imported from the USA**

A number of maize hybrids with resistance to herbicides such as imidazolinone, sethoxydim and glufosinate ammonium, produced by Pioneer, ICI, and Cargill have been widely commercialised in the USA (Table 5). There is a significant risk that maize grain imports from the USA will contain a component of herbicide resistant varieties. Various activities during loading, transportation and processing of imported maize have the potential to unintentionally release genetically modified maize into the environment.

9.8 **Quarantine implications of *Striga asiatica* in the USA**

Striga asiatica is the most serious root parasite of maize and other grass crops (including sorghum and sugarcane) in the world. Once established in an area it is extremely difficult (and expensive) to eradicate. Its seed size is very small (0.5x0.2 mm) and would be difficult to detect by normal sampling and analytical methods.

10. PBS[8]

10.1 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 operation of the PBS, like Medicare, is popular among the Australian people and its function in ensuring equity has been endorsed by the UN's World Health Organisation.

10.2 The success of the PBS has been recognised internationally and is highlighted in the Productivity Commission[1]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." These changes could lead to a $1 billion rise in the overall cost of medicines to Australian consumers.

10.3 A recent Australia Institute report concluded that if the American multinationals succeed in changing Australian patent laws then Australians can expect to pay $1 billion more a year for medicines. American pharmaceutical companies are among the biggest donors to politicians' campaign funds. They actively helped shape the US FTA negotiating agenda. The price-suppressant effect of the PBS leads to savings of about $2 billion a year to Australians taking prescription medicines, and to taxpayers. It is money that would otherwise go to the big pharmaceutical firms' bottom lines.

10.4 In the USA, intellectual property regulations such as those being discussed in the FTA, have led to the effective extension of pharmaceutical monopolies by delaying and preventing the entry of low cost generics (FUSA 2002 p.1).to the market. According to FUSA these delays have cost consumers and other health care payers millions of dollars in America. Analysis of PBS data indicates that the prices of brand name (patented) drugs fall by an average of more than 30 per cent after patent expiration and the entry of generic medicines. Delays to the arrival of generic pharmaceuticals will therefore significantly increase pharmaceutical expenditures in Australia over time. Additionally, these delays will weaken the PBS reference pricing system. Reference pricing depends on the availability of low cost.

10.5 Drugs on the Australian PBS are cheaper than drugs in the US because of the reference pricing system under which the Australian PBS negotiates lower than US market prices for pharmaceuticals. "If this protection disappears, rich US drug companies stand to benefit at Australian taxpayers[1] expense by forcing Australians to pay unregulated, highly inflated,

[8] References to this section are at the end of the submission.

American prices for their medications. Studies estimate that PBS pricing controls, particularly reference pricing, save Australia between $1 and 2.4 billion annually. IP reforms in the FTA will have an impact on the price of over-the-counter (OTC) medicines in contrast to direct changes to the PBS which would only affect Government subsidised medicines.

10.6 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. As of March 2003, $11.5 billion in such claims had been made against Canada, $16 billion against the US and $500 million against Mexico (CCJDP 2003). The inclusion of such a chapter in the US Australia FTA would mean that subsequent Governments could be blocked or sued by US corporations if they attempt to pass legislation to improve the PBS, or regulate the supply of medicines in Australia.

10.7 The proposed change to the appeals mechanism will allow pharmaceutical companies to appeal against the prices that are set for their pharmaceuticals. They are unlikely to appeal against prices being too low - obviously they will be attempting to ensure that prices will rise. Whenever a drug company does not approve of a decision of the PABC, it can appeal, which means that the whole process is undermined, the PBAC loses its negotiating power, the process is lengthened and the likelihood that consumers will be paying more for their medication increases.

10.8 Without the PBS, Australians would be in a similar situation to US residents. The average patient suffering from heart disease and diabetes in that country now pays around $1000 per month for their medication. "Soon all prescriptions will show the "real" cost of prescription drugs alongside the amount we pay through the PBS. In this case, "real" cost means the price that drug-manufacturing monopolies succeed in squeezing out of markets like Australia. Drug companies would prefer we believe that this price reflects the cost of research and development for new generations of wonder drugs. An indication of the real situation was supplied with a 1987 survey of the industry by the Australian Pharmaceutical Manufacturers Association that found that 2.2 percent of employees work in the medical department, 2.2 per cent in research and development, 4.9 per cent in quality assurance and a huge 25.5 per cent in marketing. In 1990, a repeat of the survey saw the number in marketing rise to almost 30 per cent."

11. Environmental Services and Water.

11.1 As indicated earlier, concerns expressed in our earlier submissions on GATS, the Singapore Free Trade Agreement, and the AUSFTA, have been substantiated in the detail of the AUSFTA. This includes:

- Limitations on 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 even 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.

11.2 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 and Water Issues.

At a time of profound change in Water strategies, such as in the provision of policy solutions for salinity and environmental flows for rivers, there is a concern that if water and water services are not specifically exempted from the AUSFTA, our ability to affect change in areas such as

water quality will be severely impacted, with considerable environmental, social, and economic consequences for Australia.

11.3 As indicated in sec. 3.6 above, similar provisions apply within the AUSFTA for the exemption of services as indicated in GATS article 1.3(c). Following the implementation of neo-liberal reforms to water provision and supply over the last decade or so, such as the privatisation of town water supplies, and the introduction of ownership of irrigation rights by farmers and agri-business corporations, this exemption would not apply to water services. The latter move is completely against the trend in society to recognise water as part of the global common. Such ill-conceived moves in the present would be extremely difficult to reverse in the future under the AUSFTA, and further indicate the need to specifically exclude water and water services from the terms of AUSFTA, and the concern over negative listing that may allow new environmental services to be included automatically.

US corporations want to invest in these services, ignoring the fact that Australian people and their governments have made the democratic decision that public regulation and often public provision of these services is required to ensure that there is equitable access to high quality essential services. Decisions about these issues are a matter of social policy and should not be signed away in a trade agreement.

11.4 Article 1.2 of the GATS defines "trade in services" so expansively that even the most local transactions may qualify when the interests of foreign corporations are involved, as they are with town water supplies, agri-business, and water rights for mineral sands extractions. By doing so, the GATS constrains sovereign authority, even in local and domestic matters.

11.5 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.

11.6 While GATS does allow government measures to protect human, animal or plant life, if these can pass the "necessity" test, it does not allow the other critical WTO environmental exception for measures relating to the "conservation of exhaustible resources". Thus, no government can use conservation to justify interfering with the rights of foreign service providers. We concerned that the AUSFTA applies similar intents and constraints, given that wording and principles have been based on GATS and NAFTA agreements. Without appropriate exemptions from the GATS, we will loose our ability to address the land and environmental issues, especially salination, at the very time when the nation and its governments are recognising the urgent need to take on these issues.

At present, states are not required by law to compensate for the loss of water supply, or cancellation of water licences. Democracy and fair processes decrees that some compensation is due for revoked licences, or licences bought back by the state. However, under the AUSFTA, environmental concerns are subordinate to expropriation clauses for changes in service delivery. Thus, full compensation would be required for both removal of licences and under-delivery of water in low-rainfall years, or for any other reason. This compensation would potentially entail remuneration on an annual basis, in perpetuity, for potential loss of earnings. Current cases under litigation indicate that this change in power balance would cause massive payouts to, at least, foreign licence holders.

11.7 This reality, on environmental measures, is illustrated in current disputes under WTO and Free Trade agreements such as NAFTA, on which the AUSFTA provisions are modelled:

11.7.1 Canadian-based Methanex Corp against USA for US$970million in damages for a ban by California, and other states, on the fuel additive the company manufactures, because it has become a groundwater contaminant, as "less trade-restrictive measures" were available.

11.7.2 US-based Sun Belt Water Inc. against Canada, for US$10billion, because a Canadian province interfered with its plans to export water to California.

11.7.3 Compania de Aqua as del Aconquija(CAA), an affiliate of a subsidiary of Vivendi, for US$300million, arising out of water wand waste-water privatisation gone sour, with the claim alleging public-health orders, mandatory service obligations, and rate regulations all offended its investor rights.

11.7.4 Threats by Aguas del Tuari, an affiliate of US-based Bechtel, against Bolivia for more than US$25million, for breaches of its contract to provide water services to City of Cochabamba, after Bolivia cancelled its privatisation deal in the face of massive protests from residents following steep rate increases.

11.7.5 US-based Metalclad Corporation, against Mexico, for more than US$15million, because an impoverished rural municipality refused to grant it a permit for a 650,000 ton/annum hazadous waste facility on land already so contanimated by toxic wastes that local groundwater was compromised, as a restriction to trade…

11.8 **Land Management.** While Land Management is such a broad "service", we express concern that with the negative listing employed in AUSFTA, that this would adversely effect our ability to control land management outcomes of an environmental nature.

11.8.1 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 Strzleckis. 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.

11.8.2 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.

11.9 **Recommendation 2: That the Australian Government exempt all public services, including water, land management,and other environmental services, from coverage in the agreement.**

Recommendation 3: That the Australian Government drop the negative-listing approach from the agreement.

PART II

12. Genetically Modified Organisms(GMOs).

12.1 The Victorian Greens believe that the Australia-United States free trade agreement will adversely affect Australian agriculture, and horticulture, if the importation of genetically modified organisms or products produced by using genetic modification (GM) technology is allowed; and that some GM products and GM organisms will be a threat to Australia's trading status and income, and also to people's health, and the environment

The Australian Greens Victoria Working Group on Genetically Modified Organisms, has studied the issues connected with Genetically Modified Organisms (GMOs) and products produced in the U.S.A. using GM Technology.

We have many strong concerns about U.S. corporations being able to import unlabelled and inadequately tested GM products and organisms into Australia, as will happen if there are no restrictions to prevent this from happening.

It is important to note that there are concerns regarding U.S. dairy products contaminated with Monsanto's recombinent growth hormone, which has been implicated in causing breast cancer in women, and cancer in children.

(See Summary and Recommendations, pages 6 and 7)

12.2 Regarding some of the major corporations which produce agricultural chemicals and Genetically Modified Organisms, there have been cases of:

- Manipulation of results of epidemiological and scientific studies. (1) (2)(3)
- damage to people's health (with some deaths), (4) (5)
- resultant court cases involving GM companies, (6) (7)
- a history of deception and law-breaking (Appendix I)
- evidence of both a lack of scientific rigour and lack of peer reviewed studies, in assessing the safety of GM organisms. (8)
- The safety assessment process of GM organisms is also highly questionable and scientifically flawed (see next paragraph).

12.3 **Assessment of the safety of GM products by the U.S. Food and Drug Administration:**

The U.S. FDA has employed executives from the GM industry, who have then approved GM products.

It has been revealed that scientists in the US Food and Drug Administration sent memos to their superiors, warning of toxins, allergies, and new diseases which could eventuate with the release of GM organisms. These warnings were *ignored* by their superiors, who included a former attorney for Monsanto *(9)*. In fact, to fast-track Monsanto's GM foods to the market, the White House instigated a process of the GM industry "self policing". (10)

12.4 **Assessment of the safety and release of GM products by Health Canada:**

In Canada, the standard for assessing the safety of GM crops has also been lacking in scientific rigour and reliability. The paper: "Food Safety of GM Crops in Canada: toxicity and allergenicity," by E. Ann Clark, on behalf of GE Alert, written in 2000, details a lack of rigorous scientific standards in testing of GM foods, and states that assumptions of safety have been made, which are not backed up by evidence.(11) However, evidence for harm from growing GM crops, and negative health effects in animals which consume these crops is gradually being revealed in the few countries which have grown the crops.

12.5 **Situation in Australia:**

A similar situation exists in Australia regarding safety and testing issues. Decisions on release of GM organisms are the responsibility of the GM Regulator, who formerly worked in the GM Industry. The safety of GM foods has never been the major question in the mind of the Federal

government: No special studies on the safety or genetic stability of GM organisms, with independent peer-reviewed studies, have been set up by the Federal or State Governments.

However, most of the States in Australia have declared a Moratorium on GM crops, due to the concerns of independent scientists, parts of the farming sector, and the general public. As more negative information becomes available to the general public, and the government and health authorities, about GM organisms, Australia may decide to ban many GM organisms. This would put the country at odds with the American government, which is currently strongly promoting GM crops to Australia; the USA and Canada have had economic losses due to the introduction of GM crops.

12.6 **Australian Farmers and Sectors of the Farming Industry have expressed opposition to the Release of GMOs:**

The new strategic plan for the Grains Industry excludes GM crops. It states:

> *Grains industry leaders recognise the need for wider consultation on the potential of biotechnology and GM developments to expand demand for Australian grain as benefits become available to both growers and consumers.*
>
> *It was interesting to note the number of long (10-15 year) contracts being negotiated by the multinational food, beverage and pharmaceuticals manufacturers in Australia for 2005 onward.* ***These can require the absence of GM as well as insisting on the presence of traceability and segregation as a contract condition.***

12.7 Although the Victorian Farmers Federation (VFF) and the United Dairy Farmers Victoria (UDV) have expressed support for GMOs, many farmers across Australia have opposed the introduction of GMOs. Apart from a handful of farmers who supported a very small protest in support of GM crops, no farmers have called for the introduction of GMOs. In fact, there is active opposition to GMOs amongst some conventional farmers, and also in the growing organic farming sector. In the 21 April, 2004 edition of the Weekly Times, Tatura Milk Industries stated that it does not support the use of GM technology in the supply feed chain for the production of milk and dairy products. They also stressed that the Japanese market is against buying dairy products from cows fed GM feed.

The Murray Goulburn Dairy company also expressed their concerns, and said that their customers are not comfortable with the prospect of GM entering their food chain. Australian Pork Limited (APL) expressed the need for further and more extensive research, to determine if there is a net benefit to Australia from GM crops, and so that the full implications of GM technology can be further assessed to all involved in the grain industry. APL said that Australia should be cautious and withhold support of the endorsement of GM crops as animal feeds, until the issues of market concerns, segregation costs, farmers' rights, and coexistence have been addressed.

12.8 **Disturbing Evidence of Harm to Overseas Farming Communities from the Introduction of GMOs:**

Evidence from Canada, America, Mexico, India and Argentina about the damaging economic and ecological effects of commercial GM crops, and their effects on overseas trade and on family farms has been completely ignored by the Australian Federal Government. In the handful of countries growing GM crops, the issue of keeping GM and non-GM food stocks separate in storage and processing facilities has proved expensive and impractical.

Loss of trade, loss of internal and external markets, and higher farm expenses incurred by higher (GM) seed costs and the increased amount of chemical sprays associated with GM crops, have contributed to overseas farmers being forced to discontinue running family farms. The GM industry is contributing to the take-over of small farms by big agri-businesses. For more details see the quote from the Soil Association book "Seeds of Doubt", which details North American farmers' experiences of GM crops, and is included in this submission.

This leads the Australian Greens (Victoria) to stress that 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.

12.9 **Concerns of Scientists:**

It should be borne in mind that ALL GMOs are genetically unstable, and that the principle of one inserted gene resulting in only the desired characteristic in the genetically modified organism is mistaken and untrue (See: "Unravelling the DNA Myth, The spurious foundation of genetic engineering", by Barry Commoner in the Australian Financial Review, March 1, 2002.)

12.9.1 The Royal Society of Canada (The Canadian Academy of the Sciences and Humanities) has raised serious questions about the regulation of GM food. According to their press release, and their full report on the RSC website (www.rsc.ca), GM crops and foods should be more rigorously tested. The testing should be independently reviewed, and there should be a moratorium on GM fish grown in farms on Canada's coasts.

There were fifty-three recommendations put forward by the Expert Panel on the Future of Food Biotechnology, whose report was released in Ottawa. The precautionary principle was urged as a framework for assessing new technologies, including GM foods. Conrad Brunk of the University of Waterloo stated: "When it comes to human and environmental safety, there should be clear evidence of the absence of risks; the mere absence of evidence is not enough. The onus is clearly on the government to establish testing and approval mechanisms that meet the highest scientific standards". The Panel was also critical of the secrecy surrounding testing of GM products, and recommended that an external review of GM product approvals be introduced, as well as increased public access to the results of the tests.

These recommendations should apply in Australia, and are a good reason for writing out the possibility of any inadequately tested GMOs entering Australia from the US under the AUSFTA.

12.9.2 There is no evidence to prove that GM organisms are safe for human beings to consume, as there have been hardly any tests at all on human beings. The first test on human beings (one meal of GM food), took place last year. Although the test was skewed to prevent evidence of contamination of human gut bacteria, the evidence for this contamination was actually found.

There is a risk that the consumption of GM foods may cause not only antibiotic resistance in human beings, but also food allergies. The incidence of food allergies in the U.K. went up after the introduction of GM soy from the US.

12.9.3 The accidental release of Starlink corn and the subsequent contamination of food stocks, indicates that whilst potentially harmful foods can be released accidentally, it is not possible to trace and completely remove them from the food supply chain. The US Environmental Protection Agency was told by a panel of scientific advisers that the scientists could not set a safe level of genetically engineered StarLink corn in human food.

12.10 **Other evidence from overseas:**

There is evidence from the US and other countries about the effects of GM products on:

1. damage to the health of animals;
2. damage to human health;
3. rises in food allergies after the release of GM maize and soy products;
4. toxins from GM plants' roots, and also the chemical glyphosate used with GM crops, have been reported as having killed essential beneficial soil bacteria which break down plant waste and make it available as nutrients for successive crops.

5. loss of trade and trading profits;
6. negative monetary effects on the farming and horticultural communities;
7. damaging effects of GM crops on the genetic diversity and biodiversity of non-GM crops;
8. negative impacts on the sustainability of small farms in developed countries
9. disastrous economic impacts on small-acre farmers in poor countries;
10. farmers being taken to court by GM corporations for growing seeds saved from the previous year, which were contaminated by the pollen from neighbouring farms growing GM crops.

12.11 **The negative effects of GM crops on farmers in the USA and Canada, taken from the book "Seeds of Doubt", by the Soil Association**, **are summarised below**:

12.11.1 **Economic Effects:**

GM crops are less profitable, due to:

- Higher cost of GM seed
- Lower market prices paid for GM crops
- 10% or more reduction in yields of GM crops (except for a small increase in Bt maize yields)
- GM herbicide tolerant crops have resulted in more herbicide use
- GM oilseed rape plants have become a widespread weed problem in Canada
- Farmers have suffered a severe reduction in choice about how they farm, as a result of the introduction of GM crops.
- Contamination has caused the loss of nearly the whole organic oilseed rape sector in Saskatchewan at a potential cost of millions of dollars.
- Many organic farmers are unable to sell their crops as organic, because of contamination with GM pollen.
- Seed stocks have been almost completely contaminated with GMOs.
- Good non-GM varieties have become hard to buy.
- Because of segregation problems, the food processing and distribution system has become vulnerable to costly and disruptive contamination incidents.
- Within a few years of the introduction of GM crops, almost the entire $300 million annual US maize exports to the EU and the $300 million annual Canadian rape exports to the EU were lost, and the US share of the world soy market had decreased.
- The lost export trade as a result of GM crops is thought to have caused a fall in farm prices and a need for increased government subsidies, estimated at an extra $3-$5 billion annually.
- GM crops may have cost the US economy at least $12 billion net from 1999 to 2001.

12.11.2 **Legal Issues:**

- GM contamination has led to a proliferation of lawsuits. Farmers have been accused of infringing company patent rights. A non-GM farmer whose crop was contaminated by GMOs was sued by Monsanto for $400,000.
- Farmers are now suing the biotechnology companies for lost income and markets as a result of contamination. In Canada a class action has been launched on behalf of the whole organic sector in Saskatchewan for the loss of the organic rape market.

12.11.3 **Farmers' Response:**

Many farmers and farming organisations are worried about the adverse effects of GM crops and GM organisms, if they are released. They are also concerned that the Federal

Government and the Victorian Farmers Federation are not listening to the evidence against the release of GMOs in Australia.

The severe market problems have led many North American farmers to seriously question the further development of GM crops.

- Many US farm organisations have been urging farmers to plant non-GM crops.
- The US and Canadian National Farmers Unions, American Corn Growers Association, Canadian Wheat Board, organic farming groups, and more than 200 other groups are lobbying for a ban or moratorium on the introduction of the next major proposed GM food crop, GM wheat.

12.12 SUMMARY AND RECOMMENDATIONS:

Australia should write into the Australia-United States Free Trade Agreement the specific statements:

12.12.1 **Recommendation 1: "Australia must not accept under the AUSFTA the importation of GM organisms including: GM "phytoceutical organisms, (crops which produce antibiotics and medicinal products); US dairy food products containing GM (rBGH) growth hormone; and also the GM growth hormone itself; GM microbes; GM seeds; GM crops, and GM pharmaceutical products, <u>which have not been tested for safety by Australian scientists. All tests for safety in Australia should be independently peer-reviewed and published.</u>"**

12.12.2 **Recommendation 2: <u>"NO GMOs from the USA should be allowed whilst the four-year moratorium on GMOs is still in force in most of the States of Australia";</u>**

12.12.3 **Recommendation 3: A further proviso should be written into the Agreement that: If, at the end of the moratorium period, the evidence against the safety and viability of GMOs is judged too risky for:**

- **people's health,**
- **agricultural sustainability,**
- **continued genetic diversity,**
- **biological diversity,**
- **environmental safety,**
- **adverse effects on trade, loss of markets and economic losses,**
- **threats to farm viability because of effects on soils and the environment,**
- **possibility of hardship to farmers, as has happened in Canada, the USA, and other countries, then:**

Australia should be free to maintain and extend the moratorium on GMOs indefinitely, if Australian scientists, farmers and the general public feel this is warranted.

12.12.4 **Recommendation 4: Approval of any GMOs for release in Australia should be dependent upon independent peer-reviewed and published tests and studies, conducted by Australian scientists, <u>over a many generations of each GMO</u>; this stipulation is in order to eliminate the possibility of dangerous or negative effects in GMOs developing over time.**

12.12.5 **Recommendation 5: The banning of GMOs not yet tested for safety in published and peer-reviewed studies in Australia, will not be possible without severe monetary or trade <u>penalties if a particular provision is not removed from the AUSFTA:</u>**

12.12.6 **Recommendation 6: The provision in the AUSFTA which needs to be removed is a method of fast-tracking GMOs and other novel items into Australia and overcoming scientific objections and differences of opinion. This provision currently in the AUSFTA states that any "differences of opinion" on "scientific matters" (which could include the issue of the safety of GM organisms) will be settled by discussion between American and Australian representatives, who would be appointed to a special committee for this purpose.**

The above-mentioned provision is not good science, and will inevitably result in pressure from the stronger trading party (America) influencing decisions in the USA's favour, rather than decisions being allowed to be made by Australia to ensure that there are no risks to health, agricultural sustainability, and environmental integrity. The provision also goes against the general motherhood statements in the AUSFTA, which assert that each country will be able to protect its own environment.

12.12.7 **Recommendation 7: Any provisions which seek to overcome "scientific differences" and impose the importation of unwanted new organisms or potentially dangerous products into Australia should be deleted from the Agreement.**

One particular point of scientific difference is the issue of so-called "equivalence". The American biotechnology corporations have insisted in disputes with the Europeans that genetically modified plants and other organisms are "equivalent to" non-GM plants and organisms. This is not the case, as GM organisms are genetically unstable, and therefore pose risks which may only become evident after their release into the environment.

12.12.8 It is fast becoming clear that the existence of human or animal allergies to GMO toxins, the non-specific expression of inserted genes in plants, the spread of antibiotic resistance in humans, the spread of herbicide resistance to weed species or insecticide resistance to insect species are all real problems that the industry and regulators must face. Simplistic fundamentalist assertions that genetic engineering is based on 'sound science', or that there is 'no difference' between GMOs and normal plants, are just nonsense.

It is precisely because of the 'unanticipated consequences' of GMOs that the Precautionary Principle should be applied, and public release or importation of GMOs from the USA withheld. Under the FTA, the principle of 'equivalence', or equal treatment of GMOs and non-GM-crops, will be insisted on by the USA. The Europeans have refused to accept the equivalence argument, as the risks are too high.

The AUSFTA should therefore also include the statement:

12.12.9 **Recommendation 8: There is NOT an equivalence between genetically modified organisms and non-GM organisms, and GMOs will not be accepted by Australia under the AUSFTA.**

(Note: See Appendix attached)

13. Victorian Greens Final Recommendation.

That given the concerns raised in our submission, the lack of any substantial economic benefit, the threat to Australian government capacity to regulate in the public interest in future, we recommend that this agreement be rejected in its entirety.

14. Appendix I: GMOs

This Appendix is attached in order to reveal the fact that persistent incidences of law-breaking, lack of care for people's health, and long-term pollution of the environment by Bayer and Monsanto are good reasons for not accepting assurances of safety from the biotechnology industry for any GMOs.

Regarding the lack of good faith of corporations with vested interests, it has been proven that Monsanto deliberately misrepresented the rise in cancers in workers exposed to dioxin. (2) Study figures were altered to make it appear that there was no increase in cancer in these workers, but discrepencies and alterations were picked up during examination of the data by lawyers.

The document below is part of a submission sent to the Office of the Gene Technology Regulator, by the Gene Ethics Network.

CASES SHOW BAYER CROPSCIENCE IS UNSUITABLE TO BE LICENCED

1.0 Australian Breaches

Aventis's Australian operations were acquired by Bayer and incorporated into Bayer CropSciences last year. However, many local personnel responsible for GE operations remain in their previous positions. Section 58 requires an assessment of the compliance history of the individuals in charge of operations, as well as the corporation.

During the transition from advisory to lawful regulation of GE in Australia, the IOGTR found that 18 of 49 Aventis canola trial sites did not comply with GMAC advice. Destruction of all volunteer plants from previous trials was required, before flowering.

Mismanagement at Aventis's Mount Gambier sites was also found proven by the IOGTR, with GE canola dumped in roadside bins and on the local tip. Aventis did not fully inform its subcontractors of the nature and import of the trials conducted, nor of the scope of their responsibilities to comply.
An Aventis spokesperson reportedly said the company did not use the term 'genetically engineered' but called its GE crops 'hybrids'.

Then Commonwealth Health Minister Dr Michael Wooldridge summed up with, "Our tough new gene technology laws ensure that Australia can legally ensure no-one can treat our home with disrespect like this again."

We hope that the present Minister and the OGTR share this sentiment and take all necessary action to implement it. Late in 2002 the OGTR ordered the destruction of 40 hectares of a crop in Tasmania where canola volunteers from plants trialed 5 years before had germinated.

2.0 Bayer's relevant convictions

The following convictions are relevant to Bayer's suitability to receive and administer licences for Dealings Involving Release, specifically the unrestricted commercial release of canola genetically engineered to tolerate glufosinate ammonium herbicide (Liberty/Basta) DIR 021.

This is not an exhaustive list of Bayer's failure to comply with the law.

The OGTR should undertake a complete survey of relevant cases world-wide to fully establish the scale and scope of cases relevant to its assessment of Bayer's suitability to hold a licence, as required by Sections 57 (2) and 58 of the Gene technology Act 2000.

The assessment should be integral to the OGTR's RARMP as Bayer appears to suffer from a persistent systemic failure to comply and its willingness to meet its legal obligations also needs review.

USA: 2003

In a fraud settlement, Bayer agreed to pay US state and federal governments $257 million and plead guilty to a criminal charge of fraud after engaging in a scheme to overcharge for the antibiotic Cipro. The fraud involved secretly selling Cipro to Kaiser Permanente, one of the nation's largest health care organisations, at prices lower than the company was charging
Medicaid. This violated a federal law that requires drug makers to sell drugs to Medicaid at the lowest price charged to any customer. The health of people unable to benefit from Cipro because of its cost is relevant.

Norway: 2002-3

In September 2002, three companies including Bayer AG were ordered by the Environment Department of Oslo, Norway's capital, to pay total fines of E7 million. The agency told the three companies they were responsible for contaminating the Oslo fjord with polychlorinated biphenyls (PCBs), chemicals which impact the environment and public health.

3.0 Breach of regulations

USA: 1996

Bayer was fined $500,000 and ordered by the US EPA to do $2.5m worth of remediation works for breaches of regulations relating to hazard reduction in the use toxic plastic chemicals.

4.0 Other relevant misbehaviour

Peru: 2002

After a nine-month investigation, a Peruvian Congressional Subcommittee found significant evidence of criminal responsibility by both the agrochemical company Bayer and the Peruvian Ministry of Agriculture in the poisoning of forty-two children in the remote Andean village of Tauccamarca in October 1999. The children were stricken after eating a school breakfast contaminated with the organophosphate pesticide methyl parathion. Bayer had continued to sell its most toxic pesticides (classified by the WHO as extremely or highly hazardous) despite publicly promising to withdraw them in 1995.

Twenty-four children died and eighteen others survived, with long-term health and developmental problems. The pesticide was promoted under the name Folidol to small farmers throughout Peru, the great majority of whom speak Quechua only and are illiterate. Bayer packaged the pesticide in small plastic bags, labelled in Spanish, displaying a picture of
vegetables. The poison is a white powder that resembles powdered milk and has no strong chemical odour. The labels provided little indication of the danger of the product, and no usable safety information such as pictograms accessible to the majority of users in remote villages. The Report found that Bayer should compensate the families and surviving children who are still waiting for a hearing date to be set.

Sources: Peruvian Congressional Investigative Committee; Letter to UN
Secretary General Kofi Annan http://65.214.34.30/un/gc/unweb.nsf/

Germany and USA: 2001-3

In August 2001, Bayer was forced to withdraw from the market an anti-cholesterol drug, Lipobay (known as Baycol in the US). 50 people had died and this total is now about 100. Bayer faces 7,800 lawsuits over Lipobay and has settled 450 out of court. A decision in the first Lipobay-related court

case, in Corpus Christi Texas, is expected soon. A US pensioner is seeking $100m in damages in the case and the outcome is considered a yardstick of Bayer's liability.

Another suit filed by US shareholders alleges that Bayer violated the Securities and Exchange Act by misrepresenting and omitting information on Lipobay. Manfred Schneider and Werner Wenning, past and present chief executive officers respectively, are also charged. The plaintiffs claim the misinformation hurt shareholders who purchased Bayer American depositary shares, by artificially inflating Bayer's share price.

Germany-USA-UK: 1998-2000

The US EPA is seeking an inquiry by the National Academy of Sciences into Bayer CropScience's use of students to test an organophosphate classified as highly hazardous by the World Health Organisation. Students of Heriott-Watt University in Edinburgh were paid $1,100 to consume fruit juice laced with organophosphate. The research had no medical benefit and its potential hazards were not disclosed. The survey was to gather data to argue that restrictions on the pesticide's use ought to be eased. Bayer has not subsequently checked on the students' health. The Nuremberg Code, formulated after the Nazi's wartime experiments bans the use of humans for testing poisonous substances without a medical purpose.

USA: 1997

In an out of court settlement, Bayer was expecting to pay $267.4m to 6,200 haemophiliacs infected by AIDS-tainted blood products between 1978 and 1985.

USA: 1998

Bayer faced a $54,000 penalty from the EPA for clean air violations after they exceeded sulfur dioxide limits by burning high sulphur coal at their polymers manufacturing plant in Anniston Ohio. Exposure to sulfur dioxide is linked to impaired breathing and other respiratory diseases.

USA: 2000

Bayer undertook a $1m consumer education campaign to redress findings by the Federal Trade Commission that the company made unsubstantiated claims in marketing its aspirin. Bayer had claimed through its advertising that regular use of its product is appropriate therapy for the prevention of heart attacks and strokes. The FTC said no conclusive or reliable scientific evidence supported this claim and added that regular aspirin use may be associated with important adverse health affects. The Bayer advertising also failed to advise users to consult a medical practitioner prior to beginning aspirin therapy. See United States v Bayer Corp., No. 00-132.

USA: 2002

Bayer was successfully sued by two x-ray technicians who suffered illness because Bayer employees had incorrectly installed a Bayer manufactured x-ray machine: Alder v Bayer Corp No. 20000937 (Utah Nov. 26, 2002).

Argentina: 1996

Bayer is cleaning up 10-12 tonnes of pesticides it buried in 1970 after the government began preliminary legal proceedings against it. Bayer says it has no record of the dumping and is unaware of any other such sites.

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(2) Dying from Dioxin, Lois Marie Gibbs, pages 2-5
(3) Seeds of Deception, page 147 and 148
(4) ibid, pages 107-125, re genetically modified Tryptophan
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(6) Ibid.
(7) The Kemner Lawsuit against Monsanto, Dying from Dioxin, Lois Marie Gibbs, page 4.
(8) Physicians and Scientists for Responsible Application of Science and Technology, (www.psrast.org)
(9) Seeds of Deception, by Jeffrey M. Smith, page 130-131
(10) ibid, Chapter 5, page 129
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