

# STOPMAI (WA) Coalition



*W.A. Campaign Coalition against a Multilateral Agreement on Investment and in support of fair and ethical trade practices*

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*(Affiliated with the Australian Fair Trade and Investment Network (AFTINET) and the International Simultaneous Policy Organisation (ISPO))*

The Secretary  
Senate Select Committee on the Free Trade Agreement  
between Australia and the United States of America  
Suite S1.30.1  
The Senate  
Parliament House  
CANBERRA ACT 2600

**30 April, 2004**

Dear Secretary

## **THE AUSTRALIA-U.S.A. FREE TRADE AGREEMENT (AUSFTA)**

Citizens have justified concerns that the AUSFTA has not been demonstrated to offer significant benefit to the Australian population, while it has potential to increase costs to consumers (e.g., for pharmaceuticals) and to greatly expand unwelcome foreign ownership of business and property.

**We maintain that it is the Government's prime responsibility to secure the welfare of citizens as against that of the international corporate interests which are the moving force behind (and prime beneficiaries of) the Australia-US Free Trade Agreement (AUSFTA).** We strongly urge all senators to read the book *Economia--New economic systems to empower people and support the living world* by ANU scientist Dr Geoff Davies (ABC Books, Feb 2004).

The StopMAI (WA) Coalition was formed in January 1998 to assist in educating citizens about trade and investment treaty negotiations and to present citizens' opinions to relevant fora, including Australian State and federal parliaments. Our submission on the subject treaty is appended. We are prepared to further assist the Committee's inquiries if required.

Yours faithfully



Brian Jenkins  
Hon. Secretary

**StopMAI Coalition**



**of Western Australia \***

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

**Prepared in April 2004 by Brian J Jenkins for**  
**the StopMAI Coalition of Western Australia)**

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*The differences in purchasing power which make US goods cheaper or dearer than Australian are partly an artefact of the currencies' exchange rate, which is set by balances in foreign currency transactions. These differences bear little relationship to genuine differences in efficiency but are a complex resultant of geopolitical deal-making, wars, sanctions, corruption, hedging, gambling by futures traders, other forms of financial speculation and market jitters.*

-- Dr Geoff Davies, *Economia* (ABC Books, Feb 2004)

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\* StopMAI's 'shambling bear' logo represents the dismay and subsequent fierce determination of world citizens confronted in 1998 by the rapacious Multilateral Agreement on Investment (MAI) which had been negotiated in secrecy for several years by governments through the OECD. The negotiations failed following concerted criticism by worldwide civil society alerted by internet revelations.



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### **Recommendation:**

**That the Select Committee view the Australia-US Free Trade Agreement as counterproductive and unacceptable.**

## 1. Trade treaties diminish Australian constitutional sovereignty

Since treaty commitments and dispute settlement outcomes are able to override parliamentary legislation, **incautious commitment to multilateral and bilateral trade treaties are diminishing the sovereignty and democracy of the Australian people.** Outcomes are invariably decided in the interests of profit-seeking corporations and amenable trade bureaucracies.

## 2. AUSFTA will facilitate business takeovers by US corporations

Investors receive national treatment under Article 11.3 and 'most favoured nation' status in 11.4. In principle, US corporations are being accorded the same privileges as Australian investors with relatively few reservations.

FIRB scrutiny will not affect investments below an \$800 million threshold (formerly \$50 million), which means that 90% of US investments in Australia over the past three years would not have been reviewed under those terms<sup>1</sup>

Federal and subnational government authorities must retain options to regulate in favour of quality retail trade services and other efficient small business operations which may otherwise be lost to local communities or replaced by inferior large-enterprise services as a consequence of the AUSFTA.

The Committee should also consider, for instance, whether it is genuinely productive and beneficial for 80% of the world's agricultural trade to be controlled by just 10 agro-chemical companies, as is presently the case.

## 3. Environment and Human Rights

Article 22.1 provides what can only be regarded as a token provision for Parties to legislate to 'protect human, animal or plant life or health'. The primacy of trade over life was established at 19.4 with a quaint commitment to '*flexible, voluntary and market-based mechanisms*' of environmental protection.

Similar tokenism can be identified in Article 11.1--Investment and Environment: *Nothing in this Chapter shall be construed to prevent a Party from adopting,*

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<sup>1</sup> US Trade Representative Summary of the US-Australia Free Trade Agreement, Trade Facts p. 1, 8 Feb, 2004

*maintaining or enforcing any measure **otherwise consistent with this chapter** that it considers appropriate to ensure that investment activity in its territory is **undertaken in a manner sensitive to environmental concerns**.* (Emphasis added.) This language provides no barrier to destructive activities other than the need for 'sensitive' public relations.

**We maintain that investors' environmental and social responsibilities must be defined and sanctioned every bit as precisely and enforceably as their ascribed entitlements to extract and export profits and other returns.**

StopMAI thus advocates that environmental and social principles should be incorporated fully throughout any AUSFTA as well as GATS and other WTO instruments, and the scope of the Trade Policy Review Mechanism (TPRM) expanded to include relevant environmental, gender and social concerns, including the right of all to fair employment opportunity and food security.

#### **4. Investment rules must include enforceable obligations**

StopMAI Coalition is prepared to accept bilateral and/or multilateral investment rules limited to foreign direct investment (FDI), and which include parallel enforceable rules promoting sustainable development and measures (such as Tobin Tax) to control speculative cashflows. No investment rules can be sustainable and acceptable unless they include binding investor obligations on core labour standards, environmental and human-rights protection and an enforceable equivalent of the OECD Guidelines for Multinational Enterprises.

Any investment regime must be compatible with the right of governments to regulate in all areas of public interest including investment, and must respect the value of public services and state ownership. Governments must have the leeway to implement legitimate domestically-based economic development strategies.

## 5. Investment rules must lie within law-court jurisdiction

The AUSFTA ostensibly provides a government-to-government dispute resolution procedure. However, Article 11.16 is headed CONSULTATIONS ON INVESTOR-STATE DISPUTE SETTLEMENT and requires consideration of a claim made by an investor.

*'Upon such a request, the Parties shall promptly enter into consultations with a view towards allowing such a claim and establishing such procedures.'*

(Emphasis added)

**If Australia has no intention of agreeing to the notorious NAFTA-style investor-state procedure, the above language has no place in the AUSFTA.**

StopMAI is absolutely opposed to the establishment of offshore tribunals for the determination of investor-State dispute actions which potentially affect Australian legislation at federal, state and/or local levels. Such actions must be determinable by domestic courts. **This is fully in accordance with 'national' treatment as enjoyed and accepted by Australian investors.**

## 6. Relevance of Canada's NAFTA experience

Canada's widely publicised experiences under the tripartite North American Free Trade Agreement (NAFTA) are an ample demonstration of future actions which will reduce the ability of Australian governments at all levels to regulate in the public interest if/when AUSFTA gravitates to the method of investor-State dispute resolution.

A great deal of information about NAFTA's investor-state dispute resolution process is available on the websites of the international law firm Appleton and Associates<sup>2</sup> and expert counsel Todd Weiler<sup>3</sup>. For example, the Canadian government took measures to delay the sale of a terminal at the Toronto Airport to a group including an American company. This delay constituted an expropriation under the NAFTA of the foreign company's interest. There could be a NAFTA claim, if the foreign investor did not receive full compensation from the Canadian government. Government policies that provide a preference to locals violate the NAFTA investment obligations of governments. This includes policies that encourage local hiring or the purchase of local services or goods.<sup>4</sup>

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<sup>2</sup> <http://www.appletonlaw.com/>

<sup>3</sup> <http://www.naftaclaims.com/>

<sup>4</sup> *ibid.*

## **7. Specious adoption of 'Customary International Law'**

Senators should also note the content of Annex 11-A which refers to '*a general and consistent practice of States that they follow from a sense of legal obligation*' and to '*customary international law principles that protect the economic rights and interests of aliens.*'

StopMAI holds the view that neither Australia nor the United States has demonstrated observance of customary international law, e.g., in an arguably illegal invasion and occupation of Iraq and their joint endorsement of the captivity of Afghani and other Muslim prisoners of war in harsh surroundings, long after (purported) cessation of relevant hostilities and without due process as prescribed by international conventions. Likewise, the Australian Government has incurred international condemnation for unnecessarily harsh and unusual treatment of (*inter alios*) legitimate refugees seeking to gain lawful asylum and establish their credentials.

In similar vein, the United States has declined to endorse the establishment of the International Criminal Court by the United Nations. It may also be added that neither the US nor Australia subscribes to the wishes of the international community that they adopt the Kyoto Protocol on climate change.

*StopMAI's members see it as ironic that such uncompassionate and pragmatic Partners must seek to convert the worthy ideals of customary international law to the special cause of investors' economic rights.*

## **8. Impact of AUSFTA on provision of public services provided in competition, such as public broadcasting, health, education and water**

The treaty will affect services provided by all spheres of government and those provided by non-government agencies under government authority. It uses the controversial GATS definition of public services in making clear that '*A service supplied in the exercise of governmental authority means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers*' (Article 10.1)

**Since Australia's broadcasting, health, education, water and energy services clearly operate in a commercially competitive environment, they will be**



**subjected to US corporate competition and takeover just as soon as there is sufficient inducement and political will for that to happen.**

Yet public services and other services of general interest reflect democratically-determined public policy objectives, and it is essential that these not be undermined by private sector competition under the AUSFTA, the GATS and other WTO disciplines. It behoves governments to preserve full responsibility and accountability in the area of such services.

To protect the ability of governments to enact domestic regulatory measures, a clarifying statement needs to be adopted that social and environmental concerns have primacy over the principle of 'free trade' and that such regulations will not be subject to any 'necessity test' through the AUSFTA dispute settlement process, nor that of the WTO.

## **9. AUSFTA is one of 142 bilateral FTAs sought by the US**

In 2002, the Wall Street Journal reported that the U.S. *'will ask 142 trading partners to open their borders to American services, in a sweeping proposal aimed at liberalizing global trade in an area where the U.S already holds an advantage over other industrialized nations'*.<sup>5</sup> The Bush administration believes liberalisation of trade in services will bring \$450 billion annually in new business to US firms.

The US Trade Representative stated on 15<sup>th</sup> March *'In the past three months, the United States has completed FTAs with Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua (CAFTA), Australia and Morocco.*

*'New and pending FTAs constitute America's third largest export market and the sixth largest economy in the world (a group that includes the above countries along with the Jordan, Chile, Singapore FTAs that are in place; and, also the current FTA negotiations with five southern African nations; with Bahrain; and negotiations to begin later this year with Thailand; Panama and four Andean nations)'*.<sup>6</sup>

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<sup>5</sup> Wall Street Journal, July 1, 2002, article by Michael M Phillips  
(Copy available at <http://www.tradeobservatory.org/news/index.cfm?ID=3613> )

<sup>6</sup> US Trade Representative press release, 15 March 2004, cited in Manchester Trade Update (See Appendix 'A')

## 10. Threats to health care services and pharmaceuticals

The StopMAI Coalition believes the market emphasis of the AUSFTA (and any other trade treaty) is inappropriate for the satisfactory operation of programmes like Medicare and the Pharmaceutical Benefits Scheme. The AUSFTA poses a distinct threat to Australia's established public health principles in terms of future service delivery and cost to consumers.

We note that the pharmaceutical industry association (now known as 'Medicines Australia') has strongly supported the AUSFTA on the ground, *inter alia*, of access for exports to the US market<sup>7</sup>. However, we believe examination will show the membership of that organisation to comprise a large majority of US and other foreign-owned multinational corporations. Senators are urged to refer to the different views of Australian-owned enterprises.

## 11. Projected loss of more valuable regional trade

The Australian economy is 4% of the size of the US economy. The independent study by ACIL Consultants showed that there would be net losses to Australia from South-east Asian regional trade lost to other countries.<sup>8</sup>

Australians would be foolish to 'think that systematic trade discrimination against East Asian economies, leading to reductions in Australian imports from and overall rates of return on investment in these economies, would not lead to reactions which reduced Australian market access', according to Prof. Ross Garnaut's commentary on the subject.<sup>9</sup>

The main cost to the nation from AUSFTA would stem from '*Australia's non-discriminatory access to markets in East Asia and the rest of the world through its effects on other countries' policies and the trading system*'. In the worst case scenario, Garnaut said '*the cost to Australia of fracture in the open, multilateral trading system would be very large indeed*'<sup>10</sup>.

As Garnaut pointed out elsewhere, 'A 'Free Trade Area' comprises two or more countries which have removed trade barriers between or among themselves, while

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<sup>7</sup> In Medicines Australia submission (No 28) to the Joint Standing Committee on Treaties (JSCOT). April 2004

<sup>8</sup> [www.rirdc.gov.au/reports/GLC/ACIL-ABridgeTooFar.pdf](http://www.rirdc.gov.au/reports/GLC/ACIL-ABridgeTooFar.pdf)

<sup>9</sup> Garnaut, Ross, 2002. 'An Australia-United States Free Trade Agreement' in Australian Journal of International Affairs, Vol 56, No. 1, pp.123-141

<sup>10</sup> *ibid.*

retaining their own respective barriers against countries that are outside the arrangements. It is therefore **preferential trade** rather than free trade'.<sup>11</sup>

There will undoubtedly be negative effects on Australia's relationship with neighbouring trading partners, including China, if the AUSFTA succeeds in being implemented.

## 12. Unwelcome linkage with military policy and arms purchases

The contiguity of AUSFTA negotiations with the Government's major commitment of military personnel and resources to the US invasion of Iraq and with commitment to enormous US arms purchase contracts suggests that there is an unaccustomed and unwelcome linkage of trade and military policy. This has been confirmed by numerous proclamations of authorities in both Australia and the Bush Administration. For instance, an *Australian Financial Review* article by Washington correspondent Peter Hartcher quoted the following comment by senior US trade lawyer Peter Watson (who represented Australia in the WTO lamb dispute appeal against the US):

*'You can't divorce trade from politics and security policy, and an agreement would strengthen the relationship between the US and Australia.'*<sup>12</sup>

## 13. Threat to national-interest regulation

The Australian Government favours both a 'necessity test' and 'least trade restrictive' criteria in these negotiations. This has brought our quarantine regulations, licensing, professional qualifications and technical standards under challenge by US competitors.

The potential consequences have already been demonstrated by a disastrous introduction of exotic pilchard disease into Australian fisheries (1995-99)<sup>13</sup>.

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<sup>11</sup> Garnaut, Ross, 'Effects of a Free Trade Agreement with the United States On Australia's Multilateral and Regional Interests'-- Paper presented to Conference on an Australia-United States Free Trade Agreement, Canberra, 30 August, 2002. Available at <http://www.apec.org.au/docs/fta2gar.pdf>

<sup>12</sup> 'Countdown to a free-trade accord with Uncle Sam' by Peter Hartcher, *Aust Financial Review*, 9 March 2004

<sup>13</sup> DEH State of the Environment Report 2001, at <http://www.deh.gov.au/soe/2001/coasts/coasts04-1.html>

## 14. Conclusion

**Though this submission has not fully addressed all the issues of concern, StopMAI is strongly opposed to the following measures of the AUSFTA:**

- **Removal of controls on Investment below \$800 million**
- **Treating essential services as traded goods and reducing the right of our governments to regulate to ensure equitable access to them.**
- **Dilution of Australian local content rules for film and television.**
- **US participation in review of the Pharmaceutical Benefits Scheme**
- **Undemocratic pressure to abolish transparent labelling for foods containing genetically modified organisms (GMOs)**
- **Pressure to accept GM crops and imported GM foods**
- **Potential reduction in Australian quarantine standards**
- **Abolition of local preferences in government purchasing**

The issues have been discussed in public at several forums organised by our group in Western Australia. We have also attended other similar forums organised by State and Federal parliamentarians and by the well represented WA Globalisation Roundtable group. Thus we are confident that our view generally represents that of WA civil society.

## **Recommendation:**

**That the Select Committee view the Australia-US Free Trade Agreement as counterproductive and unacceptable.**

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*"We need to return to the central idea that people are sovereign over corporations. Incorporation is a privilege granted at the people's pleasure, and it can be withdrawn if, in the judgment of the people, the public interest is not being served. Some due process is appropriate, to provide a reasonable expectation of a stable business environment, but corporations should not have the same rights as people". -- Dr Geoff Davies, *Economia* p. 178.*

Date: 17 Mar 2004 15:21:39 -0000  
To: trade-newswire@sidsnet.org  
From: DavidLewis@manchestertrade.com

## **DR-US FTA NEGOTIATIONS COMPLETED**

MANCHESTER TRADE UPDATE

MARCH 16, 2004

1. USTR Statements and Media Reviews
2. Statement from US Agriculture Secretary Ann Veneman
3. Statement from Cong. Charles Rangel
4. Various Statements from Private Sector Associations

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### **1. U.S. and Dominican Republic Conclude Trade Agreement: Caribbean nation will be fully integrated into CAFTA**

<http://usinfo.state.gov> - March 15, 2004

The United States and the Dominican Republic concluded a free-trade agreement on March 15 that will promote growth and opportunity by integrating the Dominican Republic into the recently concluded U.S.-Central American Free Trade Agreement (CAFTA), according to a press release issued by the Office of the U.S. Trade Representative (USTR).

"This is a proud day for the people of the Dominican Republic and the United States: with close ties and \$9 billion in trade already, this free-trade agreement will help both countries to grow stronger together," said U.S. Trade Representative Robert Zoellick.

With the addition of the Dominican Republic to the "cutting-edge, modern" CAFTA agreement reached between the United States, Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, the combined total goods trade among all seven countries is approximately \$32 billion, Zoellick observed.

The USTR press release explained that the inclusion of the Dominican Republic in CAFTA not only will lower trade barriers, but also will require reforms to foster business development and investment. These reforms include enhancing government transparency, strengthening the rule of law, and improving intellectual property-rights protection and enforcement.

A fact sheet and outline of the U.S.-Dominican Republic free-trade agreement and the overall CAFTA is available at [www.ustr.gov](http://www.ustr.gov), the press release said.

[Following is the text of the USTR press release:]

**OFFICE OF THE U.S. TRADE REPRESENTATIVE**  
EXECUTIVE OFFICE OF THE PRESIDENT  
Washington, D.C.

FOR IMMEDIATE RELEASE - March 15, 2004

**U.S. & Dominican Republic Conclude Trade Talks Integrating the  
Dominican Republic into the Central American Free Trade Agreement**  
*Tariffs & Trade Barriers Phased Out in Cutting Edge Pact Designed to Promote Economic  
Growth and Expand U.S. Export Opportunities in Important Regional Market*

WASHINGTON -- The United States and the Dominican Republic today concluded an historic and comprehensive free-trade agreement that opens markets, phases out tariffs, strips away trade barriers and promotes economic growth and opportunity by fully integrating the Dominican Republic into the recently concluded Central American Free Trade Agreement (CAFTA). U.S. Trade Representative Robert B. Zoellick and Dominican Secretary for Commerce and Industry Sonia Guzman made the announcement following a week-long round of negotiations that finished over the weekend.

"This is a proud day for the people of the Dominican Republic and the United States: with close ties and \$9 billion in trade already, this free-trade agreement will help both countries to grow stronger together," Zoellick said.

"The Dominican Republic is a large regional market, with strong ties to the U.S., and this agreement opens many opportunities for American exporters, farmers, workers, consumers and businesses, and it will promote economic growth, opportunity and prosperity in the Dominican Republic and the region. With the addition of the Dominican Republic, the **CAFTA will further streamline regional trade; promote investment; slash tariffs on goods; remove barriers to trade in services; provide advanced intellectual property protections; promote regulatory transparency; strengthen labor and environmental conditions; and, provide an effective system to settle disputes,**" Zoellick said.

"Today, we are enhancing a cutting-edge, modern FTA [free-trade agreement] between the United States and Central America by expanding the circle of friends and neighbors who have agreed to tear down the tariff walls that block trade. Market by market, country by country and region by region, **the United States is opening markets, and expanding our export opportunities with modern, comprehensive FTAs,**" added Zoellick.

The agreement expands the benefits of the CAFTA to all seven countries (the **United States, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and the Dominican Republic**). Combined total goods trade between the U.S. and the original five Central American CAFTA countries is \$23.2 billion. The addition of the Dominican Republic to the CAFTA represents an additional \$8.7 billion, totaling approximately \$32 billion in goods trade.

"Secretary Guzman is a very effective and dedicated negotiator. I want to thank her, our chief U.S. negotiator Regina Vargo, [the] U.S. agriculture negotiator Ambassador Allen Johnson, and their respective teams for their hard work in crafting a truly excellent agreement," said Zoellick.

**In addition to today's announcement, in the past three months, United States has completed FTAs with Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua (CAFTA), Australia and Morocco.**

Zoellick thanked two proponents of the FTA, Congressman Charlie Rangel (D-NY), and Congressman Jerry Weller (R-IL) for their leadership, along with House Ways and Means Committee Chairman Bill Thomas (R-CA) and Senate Finance Committee Chairman Charles Grassley (R-IA). Congressman Weller accompanied Zoellick on his visit to the Dominican Republic in January, when the negotiations were launched.

The Dominican Republic is now part of the CAFTA, a state-of-the-art free-trade agreement, which will **not only reduce barriers to U.S. trade, but also require important reforms of the domestic legal and business environment that are key to encouraging business development and investment.** Such reforms include providing greater transparency for government actions and rule making; strengthening the rule of law; and improving the protection and enforcement of intellectual property rights.

The Dominican Republic is the largest beneficiary of the Caribbean Basin Initiative (CBI), a trade preference program in place since 1984 that provides duty free access to products from qualifying countries in the region. Recognizing the importance of the economic relationship between the Dominican Republic and Haiti, as well as the critical role that CBI has played in both countries' economic development, the Administration will work with the Congress to ensure that this agreement will allow Haiti to continue to receive Caribbean Basin Trade Preference Act (CBTPA) for apparel containing Dominican inputs.

**New and pending FTAs constitute America's third largest export market and the sixth largest economy in the world (a group that includes the above countries along with the Jordan, Chile, Singapore FTAs that are in place; and, also the current FTA negotiations with five southern African nations; with Bahrain; and negotiations to begin later this year with Thailand; Panama and four Andean nations).**

In August of 2003, President Bush informed the Congress of his intent to integrate the Dominican Republic into the CAFTA.

A fact sheet and outline of the U.S.-Dominican Republic FTA and the overall CAFTA is available at [www.ustr.gov](http://www.ustr.gov)

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*[The original posting was 16 pages long. It has been truncated and **bolding added** to the paragraphs quoted in StopMAI's submissions to parliamentary inquiries on the AUSFTA]*