

10 June 2004

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
AUSTRALIA
Email: FTA@aph.gov.au

Dear Secretary

**Submission to Senate Select Committee on the Free Trade Agreement between
Australia and the United States of America**

Committee's Terms of Reference

The committee shall:

- (a) examine the agreement;
- (b) provide a democratic and transparent process to review the agreement in its totality to ensure it is in Australia's national interest; and
- (c) examine impacts of the agreement on Australia's economic, trade, investment and social and environment policies, including, but not limited to, agriculture, health, education and the media.

Introduction

The Australian Council of Social Service (ACOSS) is the national peak body of the community welfare sector in Australia and the principal voice for low income and disadvantaged people in public policy matters.

ACOSS is concerned that the Australian Government is pursuing a preferential bilateral trade agreement with the United States (the Australian United States Free Trade Agreement or AUSFTA) without adequate and sufficiently independent information being provided to the community about its potential effects or a proper process for consulting the community.

The potential implications of the Agreement appear to be poorly understood, even by the Government. The Government's assertions that the Agreement will be unambiguously positive for Australia does not sit easily against the concerns expressed across many fields, nor with the Productivity Commission's reservations about preferential trade agreements in general.¹

¹ Adams, R., Dee, P., Gali, J. and McGuire, G. 2003, *The Trade and Investment Effects of Preferential Trading Arrangements — Old and New Evidence*, Productivity Commission Staff Working Paper, Canberra, May.

ACOSS has three principal concerns about the AUSFTA:

- the implication that Australia is departing from a policy of encouraging trade liberalisation as a means of tackling poverty in developing countries;
- the potential negative impact on the Pharmaceutical Benefits Scheme and its users;
- the impact on the capacity of the non-government community services sector in Australia and the potential reduction in Australia's capacity to make domestic policies which benefit all Australians, particularly for people who are living on low incomes or who are otherwise disadvantaged.

Trade liberalisation and poverty in developing countries

ACOSS is concerned that Australia's preparedness to make a trade agreement with the US which wins few concessions on reducing US agricultural subsidies and protections, signals a weakening of Australia's resolve to support trade liberalisation as a means of tackling poverty in developing countries.

In light of the AUSFTA, it is difficult for the Australian Government to continue to argue that it supports the liberalisation of agricultural trade as its principal approach to reducing poverty in developing countries, as the Trade Minister did recently in Bangladesh:

"There is no question that trade liberalisation, particularly in agriculture, has the potential to lift millions out of poverty world-wide. The World Bank estimates developing countries would gain about US\$100 billion a year if developed and developing countries removed all their trade barriers against developing country exports. This would far exceed the US\$57 billion developing countries receive each year in aid. With our partners in the Cairns Group, we are keeping pressure on the major agricultural subsidisers - EU, US, Japan - to live up to the Doha mandate."²

The Pharmaceutical Benefits Scheme (PBS)

The Pharmaceutical Benefits Scheme is a central part of Australia's public health system. It is commonly regarded as one of the best systems for the purchasing and subsidising of pharmaceuticals in the world.

The Scheme is of particular importance to people living on low incomes who could not otherwise afford pharmaceuticals and to older people and people with chronic illnesses who are the heaviest users of medicines.

ACOSS is aware that the Committee has received numerous and detailed submissions on the implications of the AUSFTA for the Pharmaceutical Benefits Scheme and that the submissions of respected independent experts, with no vested commercial interest in the outcomes of the AUSFTA process, are united in their opposition to the AUSFTA provisions relating to pharmaceuticals.

ACOSS agrees with the arguments in many of these submissions about the damage to the PBS and potential cost increases which would result from:

- the AUSFTA review process of PBAC decisions;
- relaxation of direct to consumer advertising regulation; and

² Mark Vaile, Speech at Bangladesh Festival, 6 April 2004,
http://www.trademinister.gov.au/speeches/2004/040406_bangladesh_festival.html

- changes to patent laws which could limit competition from generic pharmaceutical manufacturers.³

ACOSS wishes to stress the particular negative impacts for people living on low incomes of higher drug prices. As the Government's 2002-03 Budget demonstrated, the Australian Government is already concerned about the current and future cost of the PBS to the Commonwealth Budget and used the Intergenerational Report which accompanied that Budget to justify an increase in consumer co-payments for medicines.

Any substantial increase in the cost of the PBS is likely to attract political attention and whenever it does, the Commonwealth may attempt to contain budget costs by shifting costs to consumers. This almost always affects vulnerable consumers more severely.

Even if a Commonwealth Government decides to meet increased costs through public funding, this inevitably means cutting other areas of expenditure or increasing taxation. Both approaches are justified and possible when it can be shown that expenditure on the PBS is cost effective, but much harder to justify when the increasing cost of the PBS cannot be linked to improvements in health and well being (as is the likely outcome from this Agreement).

In terms of funding increased PBS costs through cuts to other areas of budget spending, there is a real risk that this too will impact disproportionately on low income groups. Over 60% of the Commonwealth budget (health, housing and social security and welfare programs) is devoted to social spending which particularly benefit low income groups and cuts to this expenditure has a heavy impact on these groups.

Regulation and funding of public, social and essential services

ACOSS is concerned that the AUSFTA leaves a significant degree of uncertainty about the freedom of Commonwealth and State Governments to 'adopt or retain' any measure relating to public, social and essential services.

While there appear to be general protections for domestic 'public services' and 'grants' to non government organisations, it remains unclear whether community services delivered by non-government organisations in Australia via contracts on behalf of government (for example: home care, employment, aged care, and disability services) would be excluded from a definition of 'government procurement'.

The list of social services listed in Annex 2 to the Agreement is not exhaustive, the definition of a 'public service' in the Agreement does not satisfactorily reflect the situation in Australia where many public services are provided on a commercial or competitive basis, and the position on utilities regulation is unclear.

ACOSS strongly believes that regulation and funding of public, social and essential services (broadly and flexibly defined) should not be open to challenge under the AUSFTA because of the critical importance of these services to the well being of the Australian community and to the individual consumers of those services.

The regulation of these services is particularly important to protect the rights of low income and disadvantaged groups to good quality social and essential services on an

³ See in particular the submissions by The Australia Institute (Subs 171, 171a, 171b, 171c); Drahos, Faunce, Goddard and Henry (Sub 424) and Dr Ken Harvey (Sub 80, referring to a paper at www.econ.syd.edu.au/drawingboard/digest/0403/harvey).

equitable basis – and especially so in an environment where quasi-market mechanisms are increasingly used to distribute and deliver social services where less powerful consumers are particularly vulnerable.

Democracy and domestic policy making

As the Australian Fair Trade and Investment Network (AFTINET) submission notes, ‘the AUSFTA establishes a series of committees that give the US increased influence over Australian law and policy making, and prioritise US trade interests over other social policy criteria. The agreement establishes committees on medicines and health policy, on quarantine issues and on technical standards like food labelling, including labelling of GE food. These are all areas where the US has identified Australian health and environmental policies as barriers to trade. In all cases the terms of reference of the committees give priority to US concerns about trade issues and not to Australian health or environmental policy.’⁴

It is our understanding that these committees will be comprised of trade representatives from both countries only and that decisions of the committees will be binding unless the AUSFTA’s enforcement provisions are to be invoked. We also understand that the deliberations of these committees will not be open to public and parliamentary scrutiny. If this is the case, these committees represent a significant incursion into, and an effective downgrading in the importance of, established democratic domestic policy making processes.

ACOSS sees no barrier to US suppliers of essential goods or services – including pharmaceutical and blood product companies - representing their interests through the same domestic policy making and lobbying channels as everyone else. We therefore see no justification for affording these interests a separate and unaccountable decision making forum, while others, including the consumers of these essential products, must work within established policy making processes.

Given these concerns, we urge the Committee to recommend that the Senate vote against the implementing legislation for the AUSFTA.

Yours sincerely

A handwritten signature in black ink, reading 'Andrew McCallum'. The signature is fluid and cursive, with the first name 'Andrew' and last name 'McCallum' clearly distinguishable.

Andrew McCallum
President

⁴ AFTINET Submission, Number 416