

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

Dear Committee members,

I am an I.T professional, part time software developer, open source user and concerned Australian citizen of voting age. I would like to make a submission to your enquiry. I would like to deal with several issues of great concern to me in turn. They are; effects on the powers of the Foreign Investment Review Board in Australia, the pharmaceutical benefits scheme, Agriculture & Quarantine controls, extension of copyright and patents, the effect of the provisions of the FTA on the software development community in Australia and the general public.

**1) Powers of the F.I.R.B.** – The raising of the threshold for national interest screening. The Office of the United States Trade Representative itself has estimated that had the proposed new threshold been in place for the last three years 90% of US investment in Australia would have fallen outside the screening scope of the Foreign Investment Review Board. *“The significance of the above changes needs to be put in the context of the FIRB’s ability to impose conditions for approval, rather than simply accept or reject proposed investments. According to the Financial Review, in 2003 [they] rejected only 79 of 4747 proposed investments from all countries, but specified conditions for 3566 of the approved applications. The ability to reject applications or specify conditions will be lost in respect of much future investment not only from the US but also Japan and New Zealand. Existing agreements with Japan and the US require a flow-on of the investment concessions granted to the US. While the FTA will have a government to government dispute-settlement mechanism, unlike the North American Free Trade Agreement it will not allow for investor-activated or investor-state disputes”*<sup>1</sup> Further U.S. trade representative Robert Zoellick, in a letter to Congress dated 13/11/2002 has targeted the abolition of the F.I.R.B. and minimum Australian ownership requirements.

**2) The Pharmaceutical Benefits Scheme** – ACA senior health policy officer Martyn Goddard has said “ *[The Free Trade Agreement] will effectively make the PBS pricing process unworkable, and will tilt the negotiating process firmly against Australia and*

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<sup>1</sup> Article: Australia - United States Free Trade Agreement (AUSFTA) - /what does it all mean? By Ted Murphy, Australian Fair Trade and Investment Network 18/02/2004 ([http://www.aidwatch.org.au/index.php?current=1&display=aw00545&display\\_item=2](http://www.aidwatch.org.au/index.php?current=1&display=aw00545&display_item=2))

*in favour of the large overseas drug companies ... The government has just agreed to have one hand tied behind its back in its future negotiations with these very powerful foreign companies.” It seems to me that the only people to benefit from the “review” process will be the pharmaceutical companies. Stephen Duckett, a health economist and former head of the federal Health Department, said the drug companies had won a “third bite at the cherry” to lobby for taxpayer subsidies on drugs that might not stand up to evaluation. “Obviously the pharmaceutical manufacturers hope the appeals process will increase the number of drugs listed that haven't met the cost-effectiveness criteria, and that will mean a bigger burden on the taxpayer that is not economically justified,”<sup>2</sup> The PBS works and is very popular with the public of Australia. I say “If it ain’t broke don’t fix it!”*

**3) Agriculture & Australian Quarantine laws** – I have struggled to find any net benefit to Australia in this area which is of concern as it is one of the main arguments used in favour of the FTA. Global Trade Watch<sup>3</sup> summarizes this nicely:

*Despite a promise by Prime Minister Howard on November 21 that “if we can't get something quite big on agriculture then we won't have a free trade agreement”, the FTA delivers almost no new export markets to farmers. At the same time, it threatens local markets by giving all US agricultural imports into Australia (many of them subsidised by the US government) “immediate duty-free access”, and by making changes to quarantine standards to allow more US produce in.*

*Quotas for Australian beef exports to the US will remain for the next 18 years, until 2022, when free trade will finally be instituted. According to the US, Australian dairy exports will increase to a tiny 2% of US imports. Sugar is excluded from the deal.*

*However, local produce which will be threatened with increased imports of subsidised US produce includes processed foods, soups and bakery products, fruits and vegetables, dried onions, fruit and vegetable juices, dried plums, potatoes, almonds, tomatoes, cherries, raisins, olives, fresh grapes, sweet corn, frozen strawberries, and walnuts.*

*Although the Australian government claims that “Australia's quarantine and food safety regimes, which ensure our health and our environment are protected, are not affected by the Agreement”, the US does not appear to agree. Rather, the US Government states that “food inspection procedures that have posed barriers in the past will be addressed, benefiting sectors such as pork, citrus, apples and stone fruit.”*

*In effect, this means that the government has agreed to changes to Australia’s quarantine system which has previously blocked imports of these products. Opening up to these imports will threaten Australian farms and environments.*

Of further concern is the Abolition of Food Labeling for food containing

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<sup>2</sup> **Cost of subsidised drugs will rise: critics**, By Misha Schubert – The Australian February 10, 2004

<sup>3</sup> <http://www.tradewatchoz.org/AUSFTA>

Genetically Modified Organisms (GMOs). As Hon. Doug. N. Everingham argues in his submission on proposed US-Australia Free Trade Agreement dated Saturday, 28 December 2002:

*"The US is the largest producer of food containing GMOs and lobbying and public promotion ('the manufacture of consent') by agribusiness companies has ensured that there is no US requirement for labeling to show GMO content in food. Australia and Europe have labeling requirements because informed consumers want to know what they buy. The US has threatened to take action in the WTO against European labeling for GMOs on the grounds that it is a barrier to US products. [They mention] the elimination of Australian 'unjustified measures' relating to 'food and agricultural products produced through biotechnology', which can hardly mean anything else than GMOs. To call such measures 'unjustified' is a commercially based judgment, highly undemocratic, with no impartial long term investigation likely to be welcomed or even conceded as desirable by the GMO lobbies."*

**4) Copyright/Patent extension** – These provisions will ensure that nothing will enter the public domain in Australia for the next 20 years! How can this be of benefit to anyone? As an example of this Electronic Frontiers Australia board member Dale Clapperton has stated :

*"Nothing published in the United States of America since 1923 has ever come into the public domain, thanks to lobbying from the music and motion picture industries to repeatedly extend the term of copyright. The public domain has ceased to grow, and unless these continual senseless extensions are stopped, it will never grow again."*

Additionally, the article "EFA dismayed by IP Clauses of Free Trade Agreement"<sup>4</sup> goes on to say:

*"Australian copyright law recognises only very limited 'fair dealing' rights, typically for the purposes of scholarly study or review. In contrast, Americans enjoy wide-ranging 'fair use' rights, which Australians do not, such as the right to record TV programs for viewing at a later time, or to copy a legally purchased Compact Disk onto an audio cassette. Unless very specific and limited exemptions apply, Australians who perform these acts are breaking the law."*

*"If the Howard government couples the draconian enforcement and prosecution provisions of the DMCA with the already unbalanced Australian copyright law, it will place every Australian at the mercy of a lawsuit for breach of copyright", ... "It will turn the Australian Internet industry into a litigation mill, as well-funded US media groups launch waves of prosecutions against Internet users and Internet Service Providers themselves."*

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<sup>4</sup> <http://www.efa.org.au/Publish/PR040212.html>

**5) Effect on open source software development** – I strongly urge the members of the committee to read the position paper published by Linux Australia<sup>5</sup> – available at <http://www.linux.org.au/papers/fta-paper.pdf> . Leaders in the open source community developed this paper and it more eloquently and succinctly presents the arguments in this area than I could hope to. The summary of this paper is as follows:

*Open Source software (aka Free Software) is important, and quickly growing more so in Australia. These stakeholders were not considered in the FTA process, nor in creation of some existing laws: for example it's illegal to distribute Open Source DVD players, and the FTA makes it illegal to even use them. This means that DVDs cannot be played on Linux computers (the third most popular Operating System after Microsoft Windows and Apple Macintosh). These restrictions are the antithesis of free trade and barrier reduction. The FTA implies laws which strengthen large software companies at the expense smaller players: Open Source encourages everyone to become a software producer and distributor, so the damage is far-reaching. The FTA also limits any legislative damage control we might attempt later, at a time when more people are becoming aware of the dangers of these laws.*

My reading of the FTA in this area would make most ordinary Australians criminals as any copy protection circumvention technology is outlawed. Many DVD players available in this country are what is termed “region free” which means that they can play DVDs from any region (eg foreign language films purchased overseas). This is a copy protection circumvention technique and under the FTA is illegal. Do you know if your DVD player is region free? Are you a criminal? The FTA would also criminalize any copying of legally purchased CDs. Do you or your children listen to MP3s? Even if you have legally purchased a CD and created MP3s from it to play in your personal MP3 player or on your computer you would be a criminal. How many of you or your children listen to MP3s? These provisions are solely designed to prevent you from using what you have paid for and to protect existing monopolies and profit margins of the record companies.

## **6) Other Concerns:**

**Australian culture and Media** - The Media, Entertainment and Arts Alliance reports that in fact, the FTA significantly limits the government’s right to regulate the Australian media, including:

- In the Multi-Channel environment for Free To Air TV, 80% of channels will be free of local content regulation.
- In the area of Australian film, the ability to regulate has been lost.

**Services** – The use of a “negative list” in the agreement means that all service sectors not specifically mentioned in the agreement are fully “liberalized”. This means that in

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<sup>5</sup> [www.linux.org.au](http://www.linux.org.au)

some areas, “US companies may be able to demand “market access” to bid for services currently supplied by the government. For example, in the area of “environmental services”, US corporations may demand access to the provision of national park conservation services. It may also make it difficult for the government to restrict the operation of some corporations. For instance, limits on the number or type of tourism service operators in environmentally sensitive areas could be a breach of the FTA. Also, the Australian reports that “free trade in higher education could see US universities setting up campuses in Australia receiving the same benefits as local institutions, while competing for staff, students and research funding.” Finally, of concern is a pledge to the US Government, signed by the Australian government, to privatise Telstra as part of the agreement.”<sup>6</sup>

Please take the time to read the references to this submission as they go in to much greater depth than I have been able to do here. I have not been able to find any real benefits to the people of Australia in this deal and am concerned that we are about to become an economic colony of the United States. I implore the members of the committee to actively oppose this “Free Trade Agreement” as it is definitely not in Australia’s national interest.

Yours Sincerely,

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<sup>6</sup> Explanation of Some Key Elements of the US-Australia Free Trade Agreement, and Predicted Impacts from the Agreement on Australia ,  
<http://www.tradewatchoz.org/AUSFTA/Index.html#Services>