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SUBMISSION TO THE JOINT STANDING COMMISSION ON TREATIES
THE AUSTRALIA US FAIR TRADE AGREEMENT (USFTA)

It is questionable as to whether the USFTA is needed at an economic level in Australia as there are relatively few trade barriers between the two countries which are already significant trading partners.

Our concerns are that it impinges on the controls we have in the fields of medicine, pharmaceuticals, copyrights, Australian content in the media, democracy in this country, foreign investment, regulation of investment and services, labelling of food products and quarantine. Job losses will occur owing to tariff cuts and changes to government purchasing rules. The economic benefits are most doubtful.

RESTRICTIONS ON AUSTRALIAN CONTENT RULES IN NEW MEDIA

The USFTA embodies strict limits on any future government's ability to ensure that Australian voices continue to be heard. Under Annex I Australia's existing 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.

For multi-channelled free-to-air commercial TV, Australian content is capped at 55% on no more than two 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% and the expenditure requirement for Australian content for subscription television is limited to 10% (which can rise to 20% for drama channels but only on conditions which allow the USA to challenge).

Because Public Broadcasting is not listed in either of the Annexes, it is not excluded from the Agreement. Funding is protected but 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 or ABC product marketing may not be excluded by this definition. This could mean that the US could challenge some regulation of public broadcasting claiming it is inconsistent with the USFTA.

USFTA DISPUTE PROCESS LIMITS DEMOCRACY

This dispute process enables a government to claim that a law or policy of the other country is in breach of the USFTA preventing it from getting the benefits expected from the Agreement (Article 21.2). If a dispute is not resolved it could end in the

hands of a panel of three agreed trade law experts. Hearings need not be made public and the panel may or may not invite submissions from the public. The panel can declare that a law could be changed or compensation paid. The decision may or may not be made public and cannot be appealed. (Articles 21.5-21.11).

FOREIGN INVESTMENT IN AUSTRALIA

Article 11.3 means that US investors cannot be required to use local products, transfer technology or contribute to exports (Article 11.9)

Existing limits on foreign investment are retained for newspapers and broadcasting, Telstra, Qantas, Commonwealth Serum Laboratories, urban leased airports and coastal shipping. However these limits cannot be increased. The threshold for FIRB review has been lifted from \$50 million to \$800 million. US investments in new business in areas not listed as reservations will not be reviewed at all. The US Government itself estimates that if these rules had applied over the last three years, nearly 90% of US investment in Australia would not have been reviewed. (US Trade Representative, *Summary of the US-Australia Free Trade Agreement, Trade Facts, p 1, 8th February 2004.*)

LABELLING OF FOOD PRODUCTS AND QUARANTINE

New processes have been established under the USFTA which will give the US Government direct input into Australian laws and policies on quarantine and technical standards including the labelling of GE food.

Australia's quarantine regulations should be made on a scientific basis in the interests of Australia, not as part of a trade dialogue with a much more powerful country. Promotion of trade and quarantine protection of Australia's environment, crops and livestock are separate roles which should not be combined.

The US has not any labelling of GE food and has challenged EU labelling laws through the World Trade Organisation and identified Australian labelling laws as a barrier to trade.

THE ENVIRONMENT

There is a general clause stating that Australia and the US will be able to make laws that are necessary to protect human, animal or plant life or health. However, these laws must not be a *disguised restriction on trade in services* (Article 22.1 incorporating GATS Article XIV).

Both the US and Australia have committed to encouraging the development of 'flexible, voluntary and market-based mechanisms for environmental protection'. (Article 19.4) Since much environmental regulation is not and cannot be voluntary or market based, this is an extraordinary statement to have in a trade agreement. However, this statement cannot be enforced through the disputes process, which

only applies to environment laws if a government fails to enforce its own laws (Article 19.7.5).

FEWER RIGHTS TO REGULATE ESSENTIAL SERVICES

'Services' include health, education, water, postal, energy and environmental services. The USFTA applies to all level of government, federal, state and local. The text states that the services chapter does not apply to public services (Article 10.1). These are defined as services not supplied 'on a commercial bases, nor in competition with one or more service suppliers'. This is obviously a flawed definition. In Australia many public services are supplied on a commercial basis or in competition with other service suppliers, including health, education, water, energy and post.

Water has not been excluded through any reservations, so any Commonwealth regulation of water services will have to comply with the USFTA. State and local water services regulation will be kept at 'standstill' so if they are changed the US could challenge them. Public water services may not be protected because many are delivered on a commercial basis.

Australia must treat US companies as if they were Australian companies. (Article 10.2). Australia must also give *full market access* which means no requirements to have joint ventures with local firms, no limits on the number of service providers and no requirements on staffing numbers for particular services. (Article 10.4).

Even blood services are treated as traded goods. A 2001 Review by Sir Ninian Steven said that blood products should be supplied by the Australian company, Commonwealth Serum Laboratories, for health and national security reasons. A USFTA side letter promises another review and commits the government to supporting US firms to be allowed to tender to provide this service.

These obligations apply to all services unless they have been specifically reserved. Water, Energy and public broadcasting services are not listed as reservations and are therefore included in the agreement.

SALE OF TELSTRA

A side letter outlines the Government's policy to sell the rest of Telstra. The US insisted on this letter. This issue is still being debated by the Australian Parliament as a matter of public policy and should not be part of a trade agreement.

HIGHER COSTS FOR MEDICINES

The USFTA changes the Pharmaceutical Benefits Scheme (PBS) process to allow drug companies to seek reviews of PBS decisions. The US wants drug companies to have exclusive patent rights for new medicines to produce them for twenty years. Common prescription medicines in the US cost three to ten times the price paid in Australia and consequently many people cannot afford them. Australian prices are affordable because the Government uses the PBS to buy medicines at low

wholesale prices by comparing the price and effectiveness of new medicines with the prices of similar generic medicines whose patents have expired. These are then made available by our Government at subsidised prices, \$20-\$30 for wage earners and less for pensioners. The difference between the wholesale price and the subsidised price is the cost of the PBS to taxpayers. This is very low per person compared with the US and other countries. (The Australia Institute, 2003) *Trading in our Health System*.

The Pharmaceutical Benefits Advisory Committee only lists new drugs for subsidy if they offer real health benefits, and offer value for money. US drug companies say this is unfair and they want higher wholesale prices.

FARM INCOMES

The ostensible object of the USFTA was to remove barriers between the USA and Australia thus leading to economic growth. but US negotiators identified regulation like price controls on medicines and Australian content rules in film and television a barriers to trade. The farmers are not helped because the US sugar market is excluded and beef and dairy tariff reductions are phased in over 18 years. This is **NOT A FREE** Trade Agreement.

We recommend that this Agreement not be endorsed by Cabinet and not come into force as it is contrary to the national interest and would make Australia lose its sovereignty

Jocelyn Hulme 12th April 2004