AUSFTA
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Please find attached the submission of WTO Watch Qld to the JSCOT inquiry into the US Australia Free Trade Agreement.

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14/4/04

Submission to the Joint Standing Committee on Treaties
The Australia US Free Trade Agreement (USFTA)

WTO Watch Qld

WTO Watch Qld is a grass roots organization which has grown out of concern among members of civil society about where the neo liberal policies of successive governments, an unquestioning faith in the ability of the free market to deliver wealth and well-being to the majority of the people, and a complete acceptance of the policies of free trade as embodied in the World Trade Organization are leading us. WTO Watch Qld has no political connections.

WTO Watch Qld compiles a regular e-bulletin dealing with issues related to trade and globalisation, which circulates widely throughout Australia.

CONSULTATION

WTO Watch Qld welcomes the opportunity to make a submission to the Joint Standing Committee on Treaties regarding the US Australia Free Trade Agreement. WTO Watch Qld has over the years provided submissions to various government inquiries, both state and federal, on matters concerning trade and related issues. These include, among others, the DFAT inquiry into the negotiations on the GATS, the Beattie government inquiry into PPP's, the JSCOT inquiry into the WTO, the White Paper on Trade and the FADTR inquiry into GATS and the AUSFTA. WTO Watch Qld has also participated in a number of face to face and phone consultations with the Department of Foreign Affairs and Trade.

Whilst the process of consultation on trade treaties has improved over the years, it is still far from satisfactory. NGO's such as WTO Watch Qld remain unconvinced that such consultation as now occurs with the NGO community is more than 'validatory consultation.' (Consultation that occurs to enable the government to say that consultation has occurred.)

For consultation to be meaningful, it is necessary for members of the public to have access to clear and understandable information to enable them to form opinions. So hand in hand with consultation goes education about trade issues and their pro's and con's. The information which is readily available (for example on the website of the Department of Foreign Affairs and Trade) is generally very one-sided, presenting the 'pro's' but not the 'con's'. The secrecy which attends the negotiation of trade treaties is a major problem for members of the community. Many of us believe that consultation which occurs with industry

bodies is at a much higher level, despite the fact that it is the community which bears the impact (often negative) of trade agreements. WTO Watch Qld holds information stalls to talk to members of the general public about trade and globalisation, and has found a very low level of general knowledge about trade and trade agreements. However, the AUSFTA is the exception to this rule. There is a good level of general knowledge about this agreement and precious little support for it. People seem to be very aware that it is a lop-sided agreement. This is no doubt because this agreement has had significant media coverage and there has been a much higher level of public debate than has occurred with the many WTO agreements and other bilateral agreements to which Australia is party. This merely serves to illustrate the fact that it is possible to engage and educate the public if the will is there to do so.

TRANSPARENCY AND ACCOUNTABILITY

The Foreign Affairs and Trade References Committee brought down its report into the GATS and the AUSFTA in November 2003 after calling for submissions and holding public hearings in all capital cities. Recommendation 2 of the committee (p40) was that....

The government (should) introduce legislation to implement the following process for parliamentary scrutiny and endorsement of proposed trade treaties:

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 priorities and 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 (FADTR) for examination by public hearing and report to the parliament within 90 days.

c) Both houses of Parliament shall then consider the report of the FADTR committee, and then vote on whether to endorse the governments 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.

The legislation should specify the form in which the government should present its proposal to parliament and require the proposal to set out clearly the objectives of the treaty and the proposed timeline for negotiations.

WTO Watch Qld supports this recommendation. For far too long, these trade treaties have been able to bypass the democratic process. This lack of democratic

oversight by elected representatives has stifled public debate and constituted a significant failure of the democratic process.

A process such as the one outlined would also make available timely and meaningful information to our elected representatives at all levels of government, among whom there is a worrying lack of knowledge of the detail and implications of these trade treaties.

It should be noted that a process similar to the one recommended by the FADTR committee occurs in the United States.

It should be also be noted by the committee that significant inconsistencies exist in the interpretation of the likely costs and benefits to each country of the AUSFTA. A reading of the comments of the US trade negotiators could almost lead one to believe that they were talking about a different trade agreement to the one that Australian negotiators are talking about. Comments from each side, for example, about the likely effects of the PBS differ markedly. The discrepancies are so marked as to make it difficult to dismiss the inconsistencies as mere grandstanding by the two sets of negotiators. Who is to be believed?

WTO Watch Qld urges the committee to question Australian negotiators closely on these discrepancies and inconsistencies regarding the costs and benefits to Australia of this agreement.

ASSESSMENT

a) The original CIE study commissioned by the government assumed that most, if not all, the barriers to trade would be removed. This study predicted gains to Australia of only 0.3% or US $2 billion after 10 years. ((Australian APEC Study Centre, An Australia-US Free Trade Agreement: Issues and implications Canberra, 2001). This translates into a mere AUS $26.05 for every man, woman and child over the next 10 years. Modest gains indeed……probably barely enough to cover the increased cost of prescription medicines.

US manufacturers estimate the export gains to them as a result of the FTA to be $US 2 billion per annum. That is US$ 20 billion over the next 10 years in just one industry.

A study by ACIL consultants predicted slight losses to the Australian economy, partly because of trade lost to other trading partners in the Asia Pacific area. (ACIL Consultants, A Bridge too Far? Canberra, 2003, www.rirdc.gov.au/reports/GLC/ACIL-ABridgeTooFar.pdf.)

The authors of an International Monetary Fund Working Paper found in relation to the USFTA that 'slightly negative effects on Australia are related to trade diversion from Japan, Asia, and the European Union in machinery and equipment, basic manufactured goods and textiles' (Hilaire, A., and Yang, Y., The United states and the New Regionalism/Bilateralism, IMF Working Paper, 2003, p.16).

There must be considerable doubt about the economic benefits to Australia, given that these studies show either losses, or very small gains. Given the fact that Australia has failed to secure significant market access in those areas where we are most competitive (agriculture, in particular beef, dairy and sugar), it is very difficult to see how future studies will be able to show evidence of significant gains.
WTO Watch Qld notes that the CIE (the only group to show a positive benefit for Australia in the earlier studies) have again been selected to do the economic modelling. After noting reports that the Australian negotiators had advised the government to reject the USFTA, Allan Wood wrote in The Australian on March 9, 'The modelling work commissioned by the government is not going to convince anyone if it simply confirms Howard's view. It certainly won't dispel the suspicion that the government has something to hide.'

b)
It should also be noted that Australia currently has a $9 billion trade deficit with the US. It would seem that, given the fact the Australia has not achieved significant market access in those areas in which we are most competitive, that that deficit is likely to increase.

STATUS OF THE AUSFTA IN RELATION TO WTO RULES

The following article by Colin Teese (a retired Deputy Secretary of the Department of Trade and GATT negotiator for Australia) appeared in News Weekly, 27 March 2004. It points out that the AUSFTA does not comply with WTO rules and that we will have no defence should other WTO members exercise their right to demand the same concessions that we have conferred upon the US.

"Article 1.1.1 of the agreement – among other things - states that it is a Free Trade Agreement consistent with the obligations that all parties have accepted in the World Trade Organisation. That is incorrect. First, the WTO has not ruled on whether or not AUSFTA has been concluded consistently with WTO rules.

Indeed, were AUSFTA to be considered by the WTO, it could not possibly be deemed to be consistent with WTO requirements on quite fundamental grounds. For a Free Trade Agreement to meet WTO rules, it must cover all of the trade, and that any "phase in" periods must be reasonable. AUSFTA meets neither of these requirements. It certainly does not cover all the trade. On manufactures, there are significant exclusions from free trade between the parties, and - at least on the US side - none of agriculture provides unrestrained access for Australia.

Presumably, the parties to AUSFTA feel confident to claim legitimacy for the agreement on the basis that the WTO membership has not challenged a very large number of similarly flawed agreements already negotiated. These include, in particular, the North American Free Trade Agreement between the US, Canada and Mexico, and the agreements the US has concluded with certain Latin American countries.

These considerations aside, the fact remains that AUSFTA does not meet WTO requirements: and ***we will have no defence should other WTO members exercise their right to demand the same concessions that we have conferred upon the US.*** (italics added)

The fact that none of the other flawed agreements has been challenged is, of course, puzzling, and perhaps, for Australia and the US comforting. But that does not confer legitimacy upon AUSFTA - even by default. What it means is that, for whatever reason, the WTO, as an organisation, for the moment, is not in a position to enforce its own rules."

Since Australia claims to be a supporter of the multilateral trading system as embodied in the WTO, this agreement should be rejected on the grounds that it does not comply with WTO rules.

GENERAL CONCERNS

a) INCREASED US INFLUENCE ON AUSTRALIAN POLICY

The agreement provides for new processes which will give the US government direct input into the development of Australian policy. A number of new committees are to be established with representatives from both countries.

One will deal with quarantine policy and processes and aims 'to facilitate trade' by 'resolving with mutual consent' matters which may arise between the parties. (Article 7.4) Another is a technical working group, which is also established with the objective of 'facilitating trade'. (Article 7-A para 1) And the third is a working group on medicines. (annex 2C) At issue are Australia's quarantine laws, our rules for labelling of food, in particular of genetically modified food, and our access to affordable pharmaceutical products, all of which have been identified by US negotiators as barriers to US access to the Australian market.

WTO Watch Qld believes it to be **outrageous** that the government and our trade negotiators have agreed to the setting up of these committees, which clearly have as their purpose the elimination of our GM labelling laws, the watering down of our quarantine laws and the undermining of our Pharmaceutical Benefits Scheme so that the US may gain unfettered access to the Australian market. It is surely unprecedented in the history of trade agreements that such a one-sided arrangement has been set in place. WTO Watch notes that there have been no committees set up to examine the subsidies paid to US farmers and the quota system which limits access to the US market for Australian agricultural produce, or to the eventual inclusion of sugar in the deal.

The government and the Department of Foreign Affairs and trade have repeatedly stated that our quarantine laws will not be 'traded away' and yet shortly after the text of the agreement was released, Biosecurity Australia announced a new draft Import Risk Analyses (IRA) which will facilitate the import of a number of

products of interest to the US, despite the fact that there is no new science to support this dramatic change of position.
Our GM labelling laws have wide support in the community, and indeed the labelling of GM food has wide acceptance throughout the developed world, with the notable exception of the US.
The PBS is the envy of the rest of the world and provides affordable access to pharmaceuticals for every Australian.
That the US should have direct input into these important Australian policies is completely unacceptable. This agreement prioritises the interests of the US trade over the welfare of Australians.
The whole thrust of this agreement is to coerce Australia into adopting US standards---for example on copyright, on the labelling of GM food, on the pricing of pharmaceuticals, on patent law, on the application of quarantine measures, and so on. It could be argued that it would be more appropriate for the US to move to Australian standards which are more in tune with the rest of the world.

But regrettably, there is more. Article 8.7 states that the Australian government will recommend that Australian non government bodies should also let the US government representatives have the same rights as Australian citizens to participate in Australian NGO processes for developing standards for Australia. (AFTINET "10 Devils in the Detail, April 2004)

The AUSFTA is an insult to this country and should be unequivocally rejected.

a) THE DISPUTE PROCESS

The disputes process set up under Article 21.2 may or may not be public and may or may not accept written submissions from non government organizations. If agreement cannot be reached after a process of initial consultations, followed by deliberations by a joint US and Australian government panel, a panel of three trade experts will be formed. The decisions made by this panel of trade experts may or may not be made public and cannot be appealed. The panel can order that the law be changed or that compensation be paid. (Article 21.5-21.11) There is no appeal.
This process can be used to challenge social or environmental policies which are accused of being inconsistent with the agreement. It is an assault on the right of governments to regulate in the public interest, and has been used under the WTO disputes process to overturn or water down important public interest or environmental regulation.
Although there is no process in the AUSFTA which allows corporations to challenge laws or sue governments, such as the notorious chapter 11 of NAFTA, the AUSFTA does set the scene for the development of such a process. . If there is a 'change in circumstances' an investor can request consultations with the other government to make a complaint. The other government is then obliged to 'promptly enter consultations with a view towards allowing such a claim and establishing such procedures' (Article 11.16.1). (10 Devils in the Detail, AFTINET flier April 2004.)
The secrecy and lack of transparency in this disputes process is not acceptable. It is also not acceptable that important matters of public policy should be decided purely on the basis of trade law, with no regard to other considerations, such as

the welfare of the people, the health of the environment or the many and varied policy objectives which are the reason the laws and regulations exist in the first place. Public policy duly enshrined in legislation by a democratically elected government must come before the perceived objective of to 'freeing up trade' and meeting the demands of business.

b) NEGATIVE LIST

The AUSFTA has a negative list structure for investment and services and this structure extends its reach much further than for similar agreements such as the WTO's General Agreement on Trade in Services. (GATS). All laws and policies in the services and investment areas are covered by the agreement unless they are specifically excluded. It should be obvious to even the most casual observer that there are potential problems with this kind of negative list agreement. Governments must remember to list all the non-conforming measures that they wish to preserve. A short trawl through the WTO's disputes process will give ample evidence of how difficult this is. The GATS is a positive list agreement, and countries must list, in the service sectors where they have made commitments, all non- conforming measures they wish to preserve. The EU made commitments in 'Transportation' but forgot to list its preferential banana regime with the Caribbean countries under 'Transportation' (the bananas needing to be transported from the Caribbean to Europe). The US challenged under GATS rules, and the EU lost. The Canadian government forgot to list a Most Favoured Nation exception under GATS for its Auto Pact, and a dispute panel delivered a finding against Canada. And in the most recent dispute under GATS rules, the US has been successfully challenged by Antigua and Barbados over its ban on internet gambling. The US had inadvertently made a commitment under GATS which covered internet gambling and was taken completely by surprise when the challenge was made, and was even more surprised when the panel decided against it.

The fact that three of the wealthiest and best resourced countries----the EU, the US and Canada----have all been caught out under the GATS, which is a positive list agreement, should indicate the difficulties of protecting important non-conforming measures under a negative list agreement like the AUSFTA.

An additional problem is that new service industries which may develop in the future will automatically be covered under the AUSFTA. The government has thus given away its right to regulate any new service industries of the future.

c) PUBLIC SERVICES

Elements of the services chapter of the AUSFTA are closely modelled on the GATS.

Chapter 10 Cross Border Trade in Services, Article 10.1 Scope and Definition uses the same ambiguous language as the WTO's General Agreement on Trade in Services (GATS):

Article 10.1 Scope and Coverage

4) This article does not apply to:

e) Services supplied in the exercise of government authority within the territory of each respective party.

A service supplied in the exercise of government authority means a service which is supplied neither on a commercial basis nor in competition with one or more service suppliers.

Article 10.7: Domestic regulation 2. (a), (b) and (c) that apply to qualifications and standards is the same as GATS Article VI Domestic Regulation 4. (a), (b) and (c):

4. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements do not constitute unnecessary barriers to trade in services, each Party shall endeavour to ensure, as appropriate for individual sectors, that such measures are:
a) based on objective and transparent criteria, such as competence and the ability to supply the service;
b) not more burdensome than necessary to ensure the quality of the service; and
c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

The Foreign Affairs, Defence and Trade References committee has noted in its report of November 2003 the very high level of concern among many diverse sections of the community over the wording of the GATS both in relation to the status of public services and also in relation to domestic regulation. The report says on p 69:
'It is clear that there remains a significant level of concern about the potentially broad ranging impact of the GATS on public services. Reassurances that all members of the WTO are certain of the meaning of Article 1.3 *(the definition of public services)* may mean that it is unlikely that there will be a dispute. However the Committee remains unconvinced that, in the event of a dispute, Article 1.3 would be interpreted in the broad or inclusive way suggested by DFAT. This would mean that public services now said to be exempt could be found to be subject to the obligations under part 11.' *(of the GATS)*

It is not the intention of WTO Watch Qld to delve yet again into these matters. We would refer the committee to the FADTR committee's report and emphasise that, because of the replication of GATS wording in the AUSFTA, the same concerns apply. However we do feel some disappointment that Australia's negotiating team agreed to wording about which there is such a high level of community concern.

Annex 11 lists some reserved areas where:

> Australia reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following services to the extent that they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health and child care.

However, this does little to clarify matters, because 'social services established or maintained for a public purpose' is not defined. Market ideology which

dominates, for example, the US health system interprets many areas of health care not as social services for a public purpose. Rather, individual responsibility and the relationship between the provider and consumer (patient) are paramount. And recently in the US, suggestions have been made that the social security system should be privatised.

We would also like to register our extreme concern that water, public broadcasting and energy are not listed as reservations and are therefore included in the agreement.

We note also that the government, in a side letter, has agreed to the sale of Telstra. This was included at the US government's insistence and is another instance of US interference in Australian policy making.

SPECIFIC AREAS OF CONCERN

Investment

Because of the negative listing structure all regulations relating to investment will be covered by the agreement. The government must give national treatment to US investors. US investors cannot be required to use local products, transfer technology or contribute to exports.

US investment in new businesses will be exempt from screening. Currently such investment is screened if over $10 million in value. The threshold for national interest screening of proposed US acquisitions has been raised from $50million to $800m, except for newspapers and broadcasting, Telstra, Commonwealth Serum Laboratories, urban leased airports and coastal shipping.

The USTR estimates that had the $800m threshold operated over the last three years, 90% of US investment in Australia would have fallen outside the screening scope of the Foreign Investment Review Board (FIRB)

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, the FIRB in 2003 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.

Manufactured Goods

97% of Australia manufacturing exports to the US will be duty free from the date of effect of the FTA, as will 99% of US manufacturing exports to Australia. Manufactured goods account for 93% of total US exports to Australia. US manufacturers estimate the exports gains to them as a result of the FTA to be $US2 billion per annum.

The tariffs on textiles, some footwear and " a handful of other items" will be phased out by 2015. In addition to each country retaining their anti-dumping and countervailing measures, there will be a special transitional safeguard measure for textiles and clothing.

Tariffs on car components and commercial vehicles will be eliminated from the date of effect of the agreement. Australian passenger vehicle tariffs will be phased out by 2010.
78,000 people work in the textile, clothing and footwear industry and most of these workers are women of non-English speaking background. The car industry employs almost 54,000 people, mostly men over 35, of whom 26% are of non-English speaking background. Both industries provides significant employment in regional areas where there is little alternative, including Northern Adelaide, Mt Gambier, Bordertown, Geelong, Albury, Ballarat, Burnie, Devonport, Launceston, Wollongong, Taree, Ipswich and Toowoomba (Productivity Commission Report on the Auto Industry, 2002 and the Textile Clothing and Footwear Industry, 2003, www.pc.gov.au).

The job losses which will occur if this agreement comes into force will have a severe impact on workers who will have little chance of finding alternative work and will further disadvantage regional areas.

Audio-Visual Services

Under the AUSFTA existing local content quotas are bound and if they are reduced in the future they cannot later be restored to existing levels.

Further restrictive quotas apply to multi channelled free to air TV and free to air commercial broadcasting and on interactive radio and/or visual services.

The USTR says that the FTA contains " important and unprecedented provisions to improve market access for US films and TV programs over a variety of media including cable, satellite, and the internet."

By accepting these restrictions, the government has set in train a process which will make it more difficult for Australian voices and stories to be heard in the future.

Pharmaceuticals

The Agreed Principles of Annex 2.C is hopelessly out of balance. It talks about the importance of 'innovation' and 'research and development' and 'the need to recognize the value of innovative pharmaceuticals through the operation of competitive markets or by adopting or maintaining procedures that appropriately value the objectively demonstrated therapeutic significance of a pharmaceutical'. There is no mention of equity or universal access to affordable medicines. This is in complete contrast to the objectives of the PBS - comprehensiveness, universality and responsible community cost.

The establishing of Medicines Australia gives the pharmaceutical giants an opportunity to seek a review of PBS decisions and a side letter gives them an opportunity to apply for price rises after the drugs have been listed.

Changes to patent laws embodied in the AUSFTA will delay access to generic medicines which will inevitably lead to price rises, either directly to the consumer or to the consumer as taxpayer.

It is perhaps worth noting in passing that the annual profits of the US pharmaceutical giants greatly exceed those of Microsoft.

Please note Annex 1, which is an article David Henry, a professor of clinical pharmacology at Newcastle University, a member of the South African drug pricing committee and former member of Australia's Pharmaceutical Benefits Advisory Committee and which appeared in the Sydney Morning Herald on January 27, 2004.

Changes to Copyright Law

Australia has agreed to adopt US copyright law, which will extend the period for which copyright payments must be made form 50 to 70 years. However, Australia has not adopted the US's more generous rules for the use of copying for research and educational purposes. The costs for libraries and educational institutions will inevitably increase, and of course these costs will be passed on directly or indirectly to the community. How far will the $26.05 gain per person per year predicted by ACIL stretch?

Government Procurement

The Australian government has not signed the WTO's Government Procurement Agreement. The Department of Foreign Affairs and Trade has stated on a number of occasions that this is a deliberate policy, because it was judged to be very important to retain the ability to foster local development through targeted government purchasing policies. It seems that this commendable policy has now been abandoned.
Schemes which give preference to local products or require foreign contractors to use local labour will not be allowed under the AUSFTA. Some state governments are considering whether to agree to be part of the government procurement part of the agreement and only about half of US states have signed up to this.

US federal government contracts over $US 6,725, 000 in construction and over $US 58,550 in other sectors will be open to Australian companies. The US federal procurement market is estimated to be worth $200 billion and Australia will join a list of over 80 countries able to compete for contracts.

DFAT states that most US state government purchases will also be open to Australian firms, while the USTR says that the extent of access at the state and territory level will be finalised over the next few weeks.

It is interesting to note that Public Citizen (a high profile NGO based in the US) has initiated a US-wide campaign to persuade the US states which have signed up.....to change their minds and withdraw from the agreement.

DFAT states that Australian procurement preferences for small business and indigenous people will remain. USTR states that the Commonwealth Government will eliminate industry development programs that require suppliers to meet local content or local manufacturing requirements.

WHAT'S IN IT FOR AUSTRALIA?

Australia's economy is very open, as is that of the US, with the notable exception of the US's agricultural sector. Successive Australian governments have progressively removed Australia's tariff protection and industry subsidies---often unilaterally and not in exchange for trade gains. The result is that we have few chips with which to bargain. In fact it has been suggested (albeit with tongue in cheek) that the Australian government should move quickly to put in place some very trade distorting tariffs and subsidies, so that in future negotiations, we WILL have something to bargain with. As it stands now, our only bargaining chips are important social and public policies---the PBS, quarantine, food labelling laws, the FIRB, local content rules for film and television, copyright and patent laws, and our only significant remaining tariffs on the textile, clothing and footwear industries and the motor vehicle industry which the government has tacitly, if not openly, acknowledged to be important for regional development and employment. And of course these are the things being targeted in these negotiations.

There can be little doubt that Australia has made major concessions in these important areas. But perhaps if the gains are significant, such concessions may be judged worthwhile.

At the very outset of the negotiations, the government made clear that its primary objective was to gain market access to the enormous US market for our agricultural produce and we know that out farmers are (arguably) the most efficient in the world. So now we need to consider agriculture.

Sugar

No access. This contrasts with the result of the US-Central America FTA negotiations where the US has raised the quota from Central America by 140 000 tonnes over the next 15 years. A massive rescue package for sugar farmers is likely, which will quickly eat into any gains which may or may not result from the agreement for the AUSFTA. Economic disadvantage will increase in regional areas as sugar farmers go broke and leave the land or struggle to diversify.

Beef

In quota tariffs for beef disappear immediately the AUSFTA comes into effect and quota restrictions will be phased out over 18 years. It is likely that four fifths of the increase in market access will not be delivered until year 18, and even after 18 years a price safeguard mechanism 'sensitive to market disruptions for high quality beef' will be available to US farmers. According to the Financial Review, the safeguard mechanism would allow two-thirds of the current tariff to be reimposed if US beef prices fall by 6.5% below a two year rolling average, an event that Meat and Livestock Australia states happened six times in the past decade.

Quota increases will not come into effect until the US beef market returns to 2003 levels (before the mad cow scare) or three years after the agreement is signed—whichever comes first.
Over –quota duties remain until year 9 of the FTA and are then phased-out over a further nine years.
It should be noted at this point that if any of the developing countries were to suggest in the WTO's agricultural negotiations that they needed an 18 year phase in period before their agricultural markets were opened to competition, they would be laughed out of town.

Horticulture
A safeguard mechanism for certain Australian horticultural imports to the US will also operate in the event of significant price-decreases for US producers.

Dairy

DFAT says there will be a three-fold increase in tariff quota dairy products from year 1, with an ongoing rise in quotas at the average yearly rate of 5%. The deal includes certain cheese, butter, milk, cream, and ice cream products that were previously excluded from the US market. The Financial Review claims that market access gains below the average rate apply to products that are sensitive to US interests, such as skim milk powder.

The USTR states that the increase in Australia dairy imports will be equivalent to about 0.17% of US dairy production, and 2% of the current value of total US dairy imports. The increased imports " are not expected to affect the operation of the Commodity Credit Corporation's diary price support program " and there will be no change in over-quota tariffs.

Onions, Garlic, Tomatoes, Pears, Apricots, Peaches, Orange juice and Grape juice

No access

Avocados, Peanuts
Quotas apply

Wine
Duty phased out over 11 years

Other product lines

Tariffs on other products such as lamb, oranges, cotton seeds, cut flowers, soybeans, fresh and processed fruits, vegetable and nuts, alcohol and processed food products such as soups have been eliminated.

Single Desk Marketing
DFAT states Australia's single desk marketing bodies for a range of agricultural products, can be maintained while the USTR claims that the parties have agreed to negotiate through the WTO to abolish such arrangements globally.

The Age estimates that even after all phase-out periods are over, a quarter of Australia's agricultural exports will still be subject to tariffs or quotas.

The USTR says all US agricultural exports to Australia, valued at $400m, will receive duty-free access to Australia as at the date of effect of the FTA. Access of US agricultural produce, in particular pork, to Australia's market has already been made easier by the decision of Biosecurity Australia to revise its Import Risk Analysis.

Conclusion
This is clearly not a free trade agreement. It is a lop-sided agreement which prioritises the interests of the US over those of Australia. Australia has made significant concessions in areas of great importance to this country in exchange for minimal gain.

This agreement is clearly not in the national interest.

I urge the committee to emphatically reject this so called free trade agreement.

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13/4/04

ANNEX 1

Why US drug firms want us to swallow their bitter trade pill
Sydney Morning Herald January 27, 2004

Australians are being pressured to cough up in order to protect an unhealthy cartel, write David Henry and Evan Doran.

Twelve days ago Nancy Pelosi, Democrat leader in the United States Congress, and eight House Democrats wrote to President George Bush expressing concern about his Administration's "effort to modify Australia's national pharmaceutical reimbursement program". Writing in The Guardian, David Fickling warned that "US pharmaceutical firms are using Australia's public medicine supply scheme for target practice". As we slumber through an Australian summer, it sounds as though they are trying to tell us something. Our Pharmaceutical Benefits Scheme (PBS) is still on the negotiating table at talks for a free trade agreement. The talks are reported to be at risk of collapse.

What proposals have been made by the US trade representative? Well, that's a secret, but the details have been seen by the US congressmen and they sound worried. The US demands appear to be the same as those made by the drug companies; the Democrats warn the proposal is "likely to raise [drug] costs both

for the Australian Government and its citizens". (Adoption of US prices in Australia would increase the existing drug bill by about $1 billion a year.) They worry that a number of elements in the proposal will raise drug prices in the US if applied there. Remember this is the country that already has the highest prices and poorest access in the developed world. So why are the international drug companies, with an annual turnover of about $520 billion, keen to undermine the PBS, which represents only 1 per cent of their market?

There are probably two main reasons. The drug companies view the Australian system of reference pricing of drugs as a significant threat, and if they can win concessions from the Australian Government it will set a precedent for future trade deals the US negotiates with other countries. The latter is important, as the drug companies have not got everything they desired from recent World Trade Organisation negotiations and they want the US Government to use its muscle on their behalf in forthcoming bilateral trade deals. In making recommendations to the minister about whether a new drug should be listed on the PBS, the Pharmaceutical Benefits Advisory Committee (PBAC) considers its efficacy, safety and cost relative to other drugs already listed for the relevant clinical indication. If the new drug offers no clinical advantage it can be listed, but usually at the same (or lower) price as the "reference" product. If the research data shows that a new drug is superior, it may be offered at a higher price if the clinical gains justify the higher costs; in other words, if it offers value for money.

The drug companies consider this a restrictive practice and want the freedom to set higher prices to recoup their development costs. They argue that Australia is not paying its fair share of drug development costs and is free riding on the backs of American taxpayers. They are also worried that the US Medicare, which provides health care for the over-60s and in future will include pharmaceutical benefits, may some day adopt a version of the Australian pricing scheme.

There are a number of problems with these arguments. It is silly to dissociate drug prices from clinical performance. A drug may be expensive to develop but perform poorly. If the price is high, money will be wasted that would be better spent on other more effective or cheaper treatments. Second, drug development costs are not as high as the companies claim and are no greater than those borne by some other industries. Pharmaceutical manufacturers are enormously profitable, consistently ranking at the top of the Fortune and Global 500 lists. Actual manufacturing costs of drugs are estimated to be less than 10 per cent of the selling prices, and this has allowed the industry to make lazy profits and spend huge sums lobbying politicians. Protected by their profits, they are inefficient, with high administration and marketing costs, double what they spend on research and development. True competition is rare and international companies have featured prominently in court cases, usually for anti competitive behaviour. Their profitability has been accompanied by considerable aggression and they have been quick to take legal action, for instance against members of the PBAC and the South African Government , when they did not get their way.

So the demands from the US trade negotiators are part of a concerted campaign by the drug industry to maintain unhealthy profits and avoid true competition. While recent reports suggest there are still significant obstacles to overcome in the FTA

negotiations, there is a continuing risk to the public medicine schemes. We can only hope that the Australian negotiators see through these spurious arguments and do not trade an essential part of our public health system for a few tonnes of sugar.

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