

Government Response to the Final Report of the Senate Select Committee on the Free Trade Agreement between Australia and the United States of America

Recommendation 1

Labor Senators recommend that the Senate agree to the Australia-US Free Trade Agreement Implementation Bill.

Response

The Government agrees with this recommendation.

Chapter 2 - Process

Recommendation 2

That the Prime Minister order a review of the Treaties Council with particular consideration to ensuring that when international agreements are being negotiated there is:

- **timely consultation with States and Territories regarding National Interest Analyses,**
- **a more systematic approach to consultation and consideration of when negotiations should be elevated to Ministerial level.**

In addition, because of the significant increase in negotiation of bilateral agreements, the review should consider mechanisms to ensure that current legislation/regulation across all jurisdictions, conforms and continues to conform to treaties.

Response

The Treaties Council was established according to the Principles and Procedures for Commonwealth-State/Territory Consultation on Treaties, which were adopted by the Council of Australian Governments (COAG) in June 1996. The Council has an advisory function to consider treaties and other international instruments of particular sensitivity to the States and Territories. The Council has in fact convened only once, in November 1997, and its advisory function is primarily performed by the Commonwealth / State and Territory Standing Committee on Treaties (SCOT), which meets twice a year (and can meet more frequently if required), and comprises officials representing the Premiers' and Chief Ministers' Departments and the Commonwealth Departments of the Prime Minister and Cabinet, Foreign Affairs and Trade and the Attorney-General.

Conducting effective and timely consultation between the Commonwealth and the States and Territories in regard to international agreements, as well as ensuring that legislation across all jurisdictions conforms to concluded treaties, is already a primary purpose of existing consultative mechanisms, including the SCOT. The Government believes that these mechanisms are adequate to achieve their goals, however, a review of the consultative arrangements is currently being conducted by COAG senior officials. The first session, to settle its terms of reference, was held in Canberra on 5 May 2005.

Recommendation 3

Labor Senators recommend that the Government 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 for examination by public hearing and report to the Parliament within 90 days.**
- (c) Both Houses of Parliament will then consider the report of the Joint Standing Committee on Foreign Affairs, Defence and Trade, and then vote on whether to endorse the Government's proposal or not.**
- (d) Once Parliament has endorsed the proposal, negotiations may begin. 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.**
- (e) The treaty and the implementing legislation are then voted on as a package, in an 'up or down' vote, i.e. on the basis that the package is either accepted or rejected in its entirety.**
- (f) 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.**

Response

Under Section 61 of the Australian Constitution, treaty making is the formal responsibility of the Executive rather than the Parliament. However, the Government considers that it is only proper that Parliament has a role in scrutiny of trade agreements. The constitutional system ensures that checks and balances operate, through Parliament's role in examining all proposed treaty actions and in passing legislation to give effect to treaties and the judiciary's oversight of the system. The Joint Standing Committee on Treaties (JSCOT) - a committee initiated by this Government - provides for Parliament's involvement. In those cases where an agreement might go beyond existing regulation, the Parliament has the right to vote on legislative change required as part of that agreement.

The Government considers the efficiency and certainty of the current process enables it to negotiate with its overseas counterparts with authority and credibility. This is particularly important in trade negotiations which are often characterised by offers and counter-offers, for which negotiators require some level of flexibility to respond.

The Government considers the report's recommendation on trade treaties and the Parliamentary process would be unworkable. It would circumscribe the capacity of the Government to secure the best possible trade outcomes from trade negotiations. It would undermine the Executive's constitutional authority to sign treaties. Furthermore, it is not clear why trade treaties should receive additional scrutiny to any other treaties.

The Government is committed to ensuring that information on trade negotiations is made readily available to the community and to consulting those likely to be affected by the Government's negotiating position. While all treaties are tabled in both Houses of Parliament for at least 15 sitting days prior to binding treaty action being taken, since negotiations for major multilateral treaties are generally lengthy and quite public, parliamentary debate often takes place for a much

longer period than this, as the issues become publicly known. In cases when implementing legislation is necessary prior to ratification, Parliament has a further opportunity to debate the treaty. The Government makes its decision on whether a treaty is in the national interest based on information obtained during consultations with relevant stakeholders. Inevitably, the final decision necessarily involves a balancing of competing interests. The Government considers that the objective of ensuring both that the Government is able to energetically pursue opportunities for trade growth, and that appropriate consultation on negotiating objectives is undertaken with the broader community, are best met by current Parliamentary and consultation processes and practices.

Recommendation 4

Labor Senators recommend that Australian governments - prior to embarking on the pursuit of any bilateral trading or investment agreement - request the Productivity Commission to examine and report upon the proposed agreement. Such a report should deliver a detailed econometric assessment of its impacts on Australia's economic well-being, identifying any structural or institutional adjustments that might be required by such an agreement, as well as an assessment of the social, regulatory, cultural and environmental impacts of the agreement. A clear summary of potential costs and benefits should be included in the advice.

Response

The Government agrees with the need for appropriate assessments of the likely economic and other impacts of bilateral FTAs prior to their conclusion. It has followed that approach in relation to AUSFTA, Singapore-Australia FTA (SAFTA) and the Australia-Thailand FTA (TAFTA). As well as commissioning independent assessments of the likely effects of these agreements prior to negotiations, DFAT commissioned a detailed assessment of the economic and environmental impacts of AUSFTA as finally agreed. That study, by the Centre for International Economics was released on 30 April 2004.

It may be appropriate in some circumstances to request the Productivity Commission to undertake assessment of aspects of trade agreements. It is unlikely that any study could definitively answer all the issues addressed in the recommendations prior to commencing negotiations, in the absence of the detail of outcomes of the agreement. The Government's approach has been to use economic modelling and analysis prior to agreements as a guide to the potential benefits available from a particular negotiation. At the same time it is conscious that there will be additional benefits and other implications that cannot be captured by economic modelling. In relation to the AUSFTA and other agreements, the Government has consulted extensively to ensure that the fullest possible account is taken of potential impacts of a proposed agreement, in order that relevant concerns and implications are reflected in the government's objectives and the instructions given to negotiators.

Recommendation 5

Labor Senators recommend that all committees and working groups prescribed by and established under the AUSFTA report annually on their activities and outcomes. These reports should be tabled in the Parliament by the Minister for Trade within 15 sitting days of their receipt. Each report shall be accompanied by a statement from the Minister setting out the Government's views on the report received and drawing attention to any notable outcomes.

Response

The establishment of the various committees and working groups was a significant outcome to the AUSFTA negotiations, and one that was strongly pursued by Australia. The committees and working groups will provide important fora for pursuing issues of ongoing importance to Australia. The Government is putting considerable effort and resources into the activities of these bodies, however appropriate reporting times will depend on the work program of the particular committee or working group. The Government will consider the most appropriate way of consulting with the public, parliament and other stakeholders on the work program of these committees on a case by case basis.

Chapter 3 - Intellectual Property

Recommendation 6

Labor Senators recommend that the Senate establish a Select Committee on Intellectual Property to comprehensively investigate and make recommendations for an appropriate IP regime for Australia in light of the significant changes required to Australian IP law by the AUSFTA.

Response

The Government has no plans to propose that the Senate establish such a committee. The content of Australia's intellectual property legislation is extensively governed by standards set in multilateral treaties to which Australia is a party as well as bilateral agreements including the AUSFTA. Australia was represented at the diplomatic conferences at which these multilateral treaties were negotiated. Various aspects of Australia's intellectual property legislation have been reviewed by independent expert advisory committees in recent years.

Recommendation 7

Labor Senators recommend that the Commonwealth Government enshrine in the *Copyright Act 1968* the rights of universities, libraries, educational and research institutions to readily and cost effectively access material for academic, research and related purposes. Labor Senators further recommend that the issue of such use of copyright material should be referred to the Senate Select Committee on Intellectual Property to investigate whether universities, libraries, educational and research institutions should be exempt from paying royalties after 50 years.

Response

The *Copyright Act 1968* incorporates a number of exceptions which allow libraries to provide access to copyright material in certain circumstances, including reproducing and communicating material in response to requests by users undertaking research or study. Universities and other educational institutions are covered by statutory licences which allow use of copyright materials, subject to the payment of equitable remuneration.

Students, researchers and academics have access to copyright materials under the 'fair dealing' provisions of the Copyright Act which allow dealing in copyright material for a number of purposes, including research and study.

The Free Trade Agreement does not require the Government to alter any of these general exceptions that allow access to copyright material. However, changes will be required to implement obligations in relation to technological protection measures (TPMs). The

Government has until 1 January 2007 to implement these obligations. There will be public consultation as part of the implementation process.

As to the recommended reference to a Senate select committee, see the response to recommendation 6.

Recommendation 8

Labor Senators recommend that the Senate Select Committee on Intellectual Property investigate options for possible amendments to the *Copyright Act 1968* to expand the fair dealing exceptions to more closely reflect the 'fair use' doctrine that exists in the United States and to address the anomalies of 'time shifting' and 'space shifting' in Australia.

Response

The Attorney-General has commenced a review, being conducted by the Attorney-General's Department, of whether an exception or exceptions based on the principles of 'fair use' should be added to the Copyright Act. An issues paper was released on 5 May 2005, with submissions invited by 1 July 2005.

Recommendation 9

Labor Senators recommend that the Senate Select Committee on IP review the standard of originality applied in Australia in relation to copyright material with a view to raising the threshold to a standard such as that in the United States.

Response

The standard of originality in Australian copyright law is not an issue arising from the AUSFTA. Any legislative change to the standard of originality could have major implications for established industries. The Government has no immediate plans to review originality under the *Copyright Act 1968*.

Recommendation 10

Labor Senators recommend that the Senate Select Committee on Intellectual Property should investigate the possibility of establishing in Australia a similar regime to that set out in the *Public Domain Enhancement Bill 2004 (US)*, with a view to addressing some of the impacts of the extension of the term of copyright, in particular the problems relating to 'orphaned' works.

Response

Works of which the copyright owners are untraceable – or 'orphan' works – are within the scope of the 'fair use' review referred to in the response to recommendation 8.

Recommendation 11

Labor Senators recommend that the Senate Select Committee on Intellectual Property investigate amendments to *Copyright Act 1968* to provide that a contract that purports to exclude or modify exceptions to copyright infringement such as fair dealing is not enforceable.

Response

This issue was the subject of an inquiry and report by the Copyright Law Review Committee, *Copyright and Contract*. The report is under consideration by the Government.

Recommendation 12

Labor Senators recommend that the Commonwealth Government use the two year implementation period applying to effective technological protection measures to ensure exceptions will be available to provide for fair dealing including temporary copies, research and study and the legitimate private use and application of all legally purchased or acquired audio, video, DVD and software items on components, equipment and hardware, regardless of the place of acquisition.

Response

This recommendation will be taken into account in the Government's consideration of implementation of the obligations of the AUSFTA concerning circumvention of TPMs referred to in the response to Recommendation 7, and in the Attorney General's Department's review of a possible 'fair use' exception referred to in the response to Recommendation 8.

Recommendation 13

Labor Senators recommend that the Commonwealth Government use the two year implementation period applying to effective technological protection measures to ensure exceptions will be available to provide for the sale and distribution of legitimate audio, video, DVD and software items, as well as related components, equipment and hardware, regardless of the place of acquisition.

Response

The provisions of the *Copyright Act 1968* regarding distribution of copies of copyright materials, including audiovisual items and computer programs, were the subject of review and report in the *Review of intellectual property legislation under the Competition Principles Agreement*. The Government's response to that report was implemented by the *Copyright Amendment (Parallel Importation) Act 2003*, allowing the importation and distribution of legal copies of computer software and computer games.

Recommendation 13 will be taken into account in the Government's consideration of implementation of the obligations of the AUSFTA concerning circumvention of technological protection measures (TPMs) referred to in the response to Recommendation 7.

Recommendation 14

Labor Senators recommend that the Commonwealth Government ensure that specific exceptions will be available in the implementation of Australia's obligations in relation to Technological Protection Measures (TPMs) to provide for the manufacture of interoperable software products.

Response

This recommendation will be taken into account in the Government's consideration of implementation of the obligations of the AUSFTA concerning circumvention of TPMs referred to in the response to Recommendation 7.

Recommendation 15

Labor Senators recommend that the Commonwealth Government implement Recommendations 15 and 16 of the Digital Agenda Review report prepared by Phillips Fox to ensure that temporary reproductions and caching are explicitly protected under Australian law.

Response

Amendments to the *Copyright Act 1968* concerning temporary reproductions were included in Part 10 of Schedule 9 to the *US Free Trade Agreement Implementation Act 2004* and in the *Copyright Legislation Amendment Act 2004*. These amendments effectively supersede Recommendation 15 of the Phillips Fox report. The Government is considering Recommendation 16 of that report as part of the Government's broader review of the Digital Agenda reforms.

Recommendation 16

Labor Senators recommend that any notice and take-down scheme introduced by regulations should balance the interests of copyright owners while appropriately protecting the personal information of Internet users. Regulations should ensure that carriage service providers are not required to disclose personal information about their customers unless compelled to do so by a court order.

Response

Amendments to the *Copyright Act 1968* to give effect to Article 17.11.29 of the AUSFTA regarding a scheme for limitations on liability of carriage service providers were set out in Part 11 of Schedule 9 to the *US Free Trade Agreement Implementation Act 2004* and in the *Copyright Legislation Amendment Act 2004*. Complementary amendments were also made to the *Copyright Regulations 1969*. The scheme came into effect on 1 January 2005.

The provisions reflect Australia's legal and social environment and have been developed with regard to the issues experienced in the USA. The procedure for obtaining subscriber details relies on existing Federal Court processes.

Recommendation 17

Labor Senators recommend that the reasonable costs to internet service providers of complying with a notice and take-down procedure should be met by the issuer of the notice.

Response

The Government does not agree with this recommendation. The scheme for limitations on liability of carriage service providers referred to in the response to Recommendation 16 provides legal incentives for carriage service providers to cooperate with copyright owners in deterring the infringement of copyright. The scheme limits the scope of remedies available against service providers where the service provider complies with certain conditions. Therefore, while the carriage service provider incurs costs in complying with the scheme, they derive a benefit by doing so. In these circumstances, it was not considered appropriate that the issuer of the notice be required to reimburse a carriage service provider for reasonable costs incurred in complying

with takedown notices. To minimise abuse of the notice and takedown procedure, the scheme provides for remedies against a party issuing a notice who knowingly makes a misrepresentation.

Recommendation 18

Labor Senators recognise that assessing whether a copyright infringement has occurred is a complex issue, appropriately determined by a court. Any notice and take-down scheme should not require a carriage service provider to assess whether a copyright infringement has occurred, or the relative seriousness of any infringement.

Response

The scheme that came into effect on 1 January 2005 does not require a carriage service provider to assess whether a copyright infringement has occurred, or the relative seriousness of an infringement. Where a notice of claimed infringement is received from a copyright owner the carriage service provider is required to expeditiously remove or disable access to the material referred to in the notice and no independent assessment of the material is required by the carriage service provider. Expeditious takedown is also required if the carriage service provider becomes aware, by some other means, of facts and circumstances that make it apparent that the material is likely to be infringing. In this case, some assessment is required, but only in relation to the likelihood that the material is infringing.

Chapter 4 - Pharmaceuticals

Recommendation 19

Labor Senators support Joint Standing Committee on Treaties (JSCOT) recommendation 5 that any independent review must ensure the fundamental integrity of the PBS listing processes, should not consider information that was not before the Pharmaceutical Benefits Advisory Committee (PBAC) and should base its recommendation on the same criteria as PBAC. The submission of the pharmaceutical company to the independent review should be made public.

Response

The Minister for Health and Ageing released a statement on the implementation of Australia's AUSFTA commitments, under Annex 2-C, on 4 February 2005. This statement sets out comprehensive principles for the operation of the independent review.

An independent review will be made available only where the Pharmaceutical Benefits Advisory Committee (PBAC) has declined to recommend the listing of a drug on the Pharmaceutical Benefits Scheme (PBS). An applicant, in requesting a review, will be required to identify specific issues in dispute to be subject to review and the review may only consider those issues. The review may consider only the information submitted to the PBAC and any documents generated as part of the PBAC process. No new information or data may be considered. The reviewer will not make a recommendation but will present findings concerning the specific issues in dispute.

Once a review has been completed, it will be provided to the PBAC, together with any comments from the sponsor. The PBAC will then reconsider the application taking into account the findings of the review. The outcome of the PBAC's reconsideration of the application will be made publicly available.

Under the *National Health Act (1953)* the PBAC remains the only body which may recommend to the Minister for Health and Ageing which drugs may be listed on the PBS.

Recommendation 20

Labor Senators recommend that an evaluation of the review process should be carried out after 12 months of operation and every 12 months thereafter. As well as assessing the accountability, transparency and practicality of the review process, the evaluation should consider the impact of the review process on the rate at which new drugs are listed on the PBS or the prices at which they are listed. The outcomes of the review should be tabled in Parliament.

Response

The Government notes this recommendation. In his statement on implementation of the pharmaceutical commitments of the AUSFTA on 4 February 2005, the Minister for Health and Ageing noted that the Independent Review would be evaluated after 12 months of operation.

Recommendation 21

Labor Senators recommend that the ANAO or the Productivity Commission should be asked to carry out an independent audit of the PBS listing process after the additional transparency mechanisms are implemented. This audit should examine the cost and efficiency of the new procedures and whether they benefit the Government, consumers and pharmaceutical companies. It should assess whether the transparency requirements affect the process of negotiating pricing agreements with pharmaceutical companies.

Response

The Government does not consider an independent audit of the PBS' listing processes to be necessary.

Many of the transparency and process provisions of the AUSFTA reflect standards and practices that already apply when the PBAC considers applications for new medicines to be added to the PBS. These include:

- Ensuring that applications from companies seeking to have products added to the PBAC are considered by the PBAC within a specified timeframe;
- Publishing the procedural rules and guiding principles that govern the PBAC's consideration of these applications;
- Providing applicants with an opportunity to discuss their application with technical staff of the Department of Health and Ageing prior to lodging it;
- Providing applicants with opportunities to provide comments at relevant points in the decision making process;
- Providing applicants with detailed explanations of the PBAC's recommendations of their application.

Furthermore, the timelines applying to the Independent Review mechanism have been determined so as to ensure that the IRM does not give rise to delays to the PBAC processes.

Finally, the transparency provisions of the AUSFTA have no effect on the PBS' pricing processes.

Recommendation 22

The Government must ensure that increased information on PBS listing procedures is balanced. Where the Government provides more information on PBAC decision making processes, it must ensure it can disclose the clinical and economic data that forms the basis of those decisions. There must be clear guidelines on determining what material is 'commercial-in-confidence' and this should be only material that is genuinely pertinent and sensitive to the business operations of a pharmaceutical company.

Response

The statement made by the Minister for Health and Ageing detailing the implementation of commitments under the AUSFTA (refer Recommendation 19) describes the approach that will apply to the disclosure of information regarding PBAC processes:

- Details of PBAC recommendations will be available to the public in a timely manner following each PBAC meeting
- A Public Summary Document (PSD) will be generated to provide to the public information pertaining to PBAC recommendations
- The information will include sufficient relevant clinical, economic and utilisation data to enable stakeholders to understand submissions to the PBAC and the PBAC's view of those submissions.

The information contained in the PSD will be consistent with that included in the PBAC minutes pertaining to a particular recommendation. The PBAC will consult with the sponsor in preparation of the PSD and the PBAC will take into account the Commonwealth's duty of confidence to sponsors, where such a duty exists.

Where circumstances warrant the disclosure of information for which the Commonwealth has a duty of confidence, the PBAC and the sponsor will negotiate in good faith to seek a solution which, while protecting confidential information, will enable stakeholders to have adequate information to understand PBAC recommendations.

Recommendation 23

Labor Senators recommend that the Government should table in Parliament a statement of the terms of reference and schedule of meetings of the Medicines Working Group established under the Agreement as soon as they are determined. The Government should also be required to table an annual statement in Parliament on the operations of the Medicines Working Group. This statement should include details of each meeting, including: who attended, what topics were discussed, the outcomes of those discussions including any commitments made by Australia and what consultation took place with stakeholder groups before and after the meeting.

Response

The Government's response to recommendation 5 addresses Australia's objectives for such groups and their methods of operation.

Recommendation 24

Labor Senators recommend that the Government monitor the impact of the new legislation on the rate at which generic drugs enter the market following expiration of a patent and consult with the generic pharmaceutical industry on the impact of the changes. An independent study of the entry of generic drugs to the market and the strategies of patent holders before and after the legislative changes should be undertaken and the results tabled in Parliament. If the new procedures are found to create incentives for 'evergreening' patents, the Government must amend the legislation so as to minimise the legal obstacles to putting generic drugs on the market once the original patent has expired, while ensuring the integrity of the patent system.

Response

The Government is committed to maintaining a viable generic medicines industry. The obligations under the AUSFTA have not compromised this.

The changes to the procedures for market approval in the *Therapeutic Goods Act 1989* (Section 26B: Certificates required in relation to patents) complement existing legal rights and obligations of both patent holders and generics manufacturers under Australian patent law. They are consistent with existing principles that the primary responsibility for resolving any patent dispute rests with the patent holder and the party challenging the validity of a patent.

In addition, existing provisions of the *Patents Act 1990* (sections 128-132) are available against unjustified threats of infringement against generics manufacturers, and the courts also have inherent powers to prevent abuses of courts' processes that could result in delay of entry to market of generic drugs.

Recommendation 25

Labor Senators recommend the creation of an offence for the lodgement of a spurious patent claim that delays the entry of a generic drug onto the market. The validity of a patent claim would be determined by a court.

Response

Under Australian law, it is not possible to delay the entry of generic medicines into the market by lodging patent claims, 'spurious' or otherwise.

Recommendation 26

Labor Senators recommend that consistent with the terms of the Free Trade Agreement that the Commonwealth Government ensure that:

- **Whenever possible all blood products to be used in the Australian medical system must be sourced from Australian blood plasma.**
- **That Australian blood plasma continue to be collected by voluntary donation.**
- **If plasma fractionation is to occur outside of Australia that Australian plasma should be processed on separate production lines.**
- **If plasma fractionation occurs outside of Australia then overseas suppliers must satisfy at least the same level of medical standards that apply to Australian suppliers.**

Response

The Government agrees with this recommendation.

Chapter 5 - Sanitary and Phytosanitary Measures

Recommendation 27

Labor Senators recommend that both the bilateral committees operate under a terms of reference that does not provide any avenue for influence on Australia's quarantine decision-making process.

Response

The Government made clear from the commencement of negotiations on the AUSFTA that there could be no compromise on Australia's standards of quarantine. This objective was achieved in the AUSFTA chapter on SPS in which Australia and the US each reaffirm existing commitments to the WTO SPS Agreement. The Agreement preserves the integrity of Australia's quarantine regime and our right to protect animal, plant and human health.

The establishment of a Committee on Sanitary and Phytosanitary Matters and a Standing Technical Working Group on Animal and Plant Health will provide for enhanced understanding of each country's SPS measures and associated regulatory processes, as well as a framework for exchange of technical information. Such exchange of technical information on quarantine processes will assist in achieving resolution of quarantine issues within each country's existing systems, but will have no impact on the science-based nature of our decision-making processes.

Recommendation 28

Labor Senators recommend that a process to engage key industry and community stakeholders to participate in committee discussions be developed.

Response

The consultative arrangements on SPS matters under the AUSFTA are intended to facilitate consultation between technical experts and regulators. Decisions on quarantine and food safety will continue to be made by Australian authorities under Australian processes, which are transparent and consultative. The current level of stakeholder consultation in matters likely to be considered under the AUSFTA arrangements is therefore considered to be appropriate.

Recommendation 29

Labor Senators support the Joint Standing Committee on Treaties recommendation 8 for greater stakeholder consultation.

Response

The Government continues to consult widely with stakeholders to reinforce its commitment to a rigorous, science-based and conservative quarantine regime.

Recommendation 30

Labor Senators recommend that Australia's Quarantine Import Risk Assessment process be enshrined in regulation to insulate the process from external pressures.

Response

The Government has taken steps to boost the independence and reinforce the science-based nature of the quarantine import risk analysis (IRA) process through the establishment of

Biosecurity Australia as a prescribed Agency on 1 December 2004. The Government has also established an Eminent Scientist Group to review final draft IRAs to ensure stakeholder comments have been properly taken into account.

Chapter 6 - Local Media Content

Recommendation 31

Labor Senators acknowledge the concern expressed by many witnesses on the 'ratchet' nature of Australia's commitments for local content. Labor Senators therefore recommend that Australia's local content requirements for free-to-air television, subscription television and radio be enshrined in legislation, so that reductions in these quotas require reference to the Parliament.

Response

This recommendation was implemented by the Government.

Recommendation 32

Labor Senators recognise that the Free Trade Agreement means that Australia's local content quotas cannot be increased above their current level except in limited circumstances. However they also recognise that over the longer term future technologies are likely to result in these quotas becoming an ineffective mechanism for encouraging the creation of local content. Labor Senators therefore recommend that the Government consider new or increased direct incentives to encourage local content production, but that local content requirements apply in emerging technological platforms, wherever possible.

Response

The Government continues to appropriately encourage local production.

Chapter 7 - Manufacturing

Recommendation 33

Labor Senators recommend that the Government refer the following to an independent commission of inquiry as a matter of priority.

The review should canvass but should not be limited to:

1. the effect of the Agreement on the manufacturing industry generally, and in particular the Textile Clothing and Footwear (TCF), chemicals, plastics, pharmaceuticals and automotive industries immediately and over the next 20 years. This would include the scale of the threat from imports, affect on employment, investment (capital and research and development), prices, exports, skill acquisition, knowledge transfers, brand recognition;
2. whether the agreement will lead to closer integration between US subsidiaries in Australia and their parent companies in the US, and the potential impact of this integration;
3. the means through which manufacturing, in particular the automotive and TCF sectors, can inoculate itself from these threats through both their own initiative and through assistance from Government;
4. the extent to which industry development measures will be necessary for manufacturing, in particular automotive and TCF manufacturing, and the components and cost of such a package;

5. the impact of the Agreement on manufacturing businesses in regional Australia;
6. the extent to which industry development measures will be needed for regional Australia, the components of these measures / packages, and the cost;
7. the impact of the Rules of Origins provisions on industry, the compliance costs, and whether there are opportunities to achieve greater uniformity through existing agreements; and
8. legislative changes required to facilitate industry development; and
9. the impact on Australian industry of the government procurement provisions on Commonwealth, State and Territory government purchasing policies, and regional Australia.

Response

The Government commissioned a detailed assessment of the economic impacts of the AUSFTA as finally agreed. That study, by the Centre for International Economics was released on 30 April 2004. The government will keep the implementation of the AUSFTA, and its economic impact, under ongoing review.

Recommendation 34

Given a possible negative impact of the agreement on the Automotive Components Sector, Labor Senators recommend that the Government develop as a matter of urgency an Industry Development Plan to assist the sector meet future challenges. At a minimum, this package should include:

- a new 10 year industry strategy and vision for the sector to replace the outdated Action Agenda;
- a non-means tested labour adjustment package to assist in education, retraining, developing English language skills, and finding new employment;
- a program that encourages greater linkages across the automotive supply chain and clustering;
- a Research and Development (R&D) grants program dedicated to the industry to assist it to meet emerging markets overseas and to build on existing niche capability, that will assist it to compete with the US; and
- a regional component to assist restructuring in regional towns and cities - both labour adjustment and industry restructuring.

Response

The Automotive Competitiveness and Investment Scheme (ACIS) commenced in 2001. It is designed to provide transitional assistance to encourage competitive investment and innovation in the Australian automotive industry in the context of trade liberalisation. ACIS is expected to deliver an estimated \$2.8 billion to the Australian automotive industry over the period 2001 to 2005.

On 13 December 2002, the Government announced its post-2005 assistance package for the Australian automotive industry. This package will deliver an estimated \$4.2 billion to the industry through ACIS over the period 2006 to 2015. This assistance package was timed to coincide with, and help the automotive industry adjust to, a decline in the general automotive tariff from 15 per cent to 10 per cent on 1 January 2005 and then to 5 per cent on 1 January 2010.

The *ACIS Motor Vehicle Producer Research and Development Scheme* (MVP R&D Scheme) will run for the duration of ACIS Stage 2 (2005-2010 inclusive). It is expected to cost \$150

million and aims to increase the amount of research and development undertaken by motor vehicle producers in Australia. All motor vehicle producers registered as ACIS participants are eligible to take part in the MVP R&D Scheme.

Details of the scheme are available at

<http://www.industry.gov.au/content/sitemap.cfm?objectid=48A4BC98-20E0-68D8-EDA38FAAA771F059>.

Recommendation 35

Given the possible negative impact of the Agreement on the Textile Clothing and Footwear sector, Labor Senators recommend that the Government develop as a matter of urgency an Industry Development Plan to assist the sector meet future challenges. At a minimum, this package should include:

- a new 10 year industry strategy and vision for the sector to replace the outdated Action Agenda;
- a more generous non-means tested labour adjustment package to assist in education, retraining, developing English language skills, and finding new employment;
- an R&D grants program dedicated to the industry to assist it to meet emerging markets overseas and to build on existing niche capability; and
- a regional component to assist restructuring in regional towns and cities - both labour adjustment and industry restructuring.

Response

The Government's TCF Post-2005 Assistance Package includes:

- a 10 year extension of the TCF Strategic Investment Program (the TCF Post-2005 (SIP) Scheme);
- non-means tested return-to-work assistance for redundant TCF workers (under the *Job Network* element of the TCF Structural Adjustment Program);
- grant support for TCF R&D and innovation (Type 2 grants under the TCF Post-2005 (SIP) Scheme); and
- grant support for restructuring in regional Australia under the Restructuring Initiative Grants Scheme component of the TCF Structural Adjustment Program).
- Details of the TCF Post-2005 Assistance Package are available at www.industry.gov.au/tcf.

Recommendation 36

Given the possible negative impact of the Agreement on the Chemicals and Plastics sector Labor Senators recommend that the Government develop as a matter of urgency an Industry Development Plan to assist the sector meet future challenges. At a minimum, this package should include:

- a new 10 year industry strategy and vision for the sector to replace the outdated Action Agenda;
- a more generous non-means tested labour adjustment package to assist in education, retraining, developing English language skills, and finding new employment;
- an R&D grants program dedicated to the industry to assist it to meet emerging markets overseas and to build on existing niche capability; and
- a regional component to assist restructuring in regional towns and cities - both labour adjustment and industry restructuring.

Response

Action Agendas are a key element of the Government's industry policy. They provide a partnership between industry and Government to facilitate industry leadership in specific sectors to realise opportunities and overcome impediments to growth, with a particular emphasis on identifying the actions that industry itself will take to realise its full potential.

The **Chemicals and Plastics Action Agenda**, which was completed in August 2004, was a successful partnership for both industry and Government. Key outcomes of the Action Agenda were:

- greater cohesion and cooperation which enabled the industry to establish its long term vision and to focus on strategies to improve its long term growth and competitiveness;
- significant progress in the key area of **Regulatory Reform**, particularly under the Low Regulatory Concern Chemicals (LRCC) initiative;
- formation of the Chemicals and Plastics Leadership Group (CPLG) to oversee the Chemicals and Plastics Action Agenda. This has been a useful vehicle for high level communication between industry and Government. As a result, Government has already agreed to recognise the continuing industry nominated and fully industry funded CLPG as a representative body for the chemicals and plastics industry and to meet periodically with the Group to ensure Industry/Government consultation continues;
- encouragement of the CPLG to work with the Manufacturing Industry Skills Council and with the State and Territory training agencies to progress its objective of supporting the development of a learning culture in the industry. The Department of Education, Science and Training will continue to respond to proactive requests from the industry in relation to activities that fall within the realm of existing skill development funding programmes such as those identified by the CPLG; and
- increased industry awareness of existing Government programs and their use to boost industry investment, innovation and export performance.

Recommendation 37

Labor Senators recommend that the Government establish a Manufacturing or Industry Council, similar to that which was established in the late 1970s and abolished by the Government in 1996. The Council should:

- **involve industry associations, individual businesses, unions and the research sector;**
- **undertake an analysis of the state of the manufacturing industry in Australia;**
- **have a significant research capacity; and**
- **be provided with adequate resources to represent all industry sectors, to meet regularly, to engage experts as required, and to undertake significant research tasks.**

Response

The Government does not support establishing a Manufacturing Industry Council. Action Agendas are a central element of the Government's industry strategy. There are twelve active Action Agendas for manufacturing industries and seven completed manufacturing industry Action Agendas. Action Agendas aim to foster industry leadership, and in doing so they have succeeded in helping industries develop strategies for growth, agree on priorities and make commitments to change.

Recommendation 38

It is recommended by Labor Senators that the Industry Department be provided with additional resources to:

- **undertake its own analysis of the impact of the AUSFTA on Australian industry, in particular manufacturing industries;**
- **ensure it is fulfilling its function of providing up to date statistical information on the performance of industry sectors including investment in research and development;**
- **contribute, in an informed manner, to the development of future trade agreements with other countries; and**
- **contribute to analysing, at least every 5 years, the impact of existing agreements on certain industry sectors.**

Response

A core business of the Government's Department of Industry, Tourism and Resources (DITR) is monitoring the performance of the manufacturing, resources and energy, and tourism industries and small and medium enterprises through the Office of Small Business. These monitoring activities encompass all aspects of Australia's domestic and international trade and economic environments, including the impact of all multilateral and bilateral trade agreements.

DITR is a significant contributor to the Government's trade policy agenda of multilateral engagement through the WTO, supported by targeted bilateral free trade arrangements. DITR actively participated in negotiating the Singapore, Thailand and United States FTAs and is currently involved in negotiations being conducted within the WTO Doha Round and with China, Malaysia, the ASEAN grouping of nations, and the United Arab Emirates. DITR undertakes significant analysis and works closely with industry, business and other areas of government in contributing to these negotiations. Funding for DITR to pursue these activities is sought through standard budget procedures, as required.

Chapter 8 - Investment

Labor Senators acknowledge that there is likely to be a net benefit to Australia from the increase in the threshold for Foreign Investment Review Board (FIRB) screening of foreign investment in Australian companies from \$50 million to \$800 million. Indeed all of the economic modelling examined by the Committee assigned the majority of projected gains to the effects of investment liberalisation.

Labor Senators are however concerned that the implementation of AUSFTA leads to an unusual situation in which investment from the United States is treated more generously to investment coming from any other country. There is also a further concern that such discriminatory treatment may breach Australia's obligations to Japan under the Treaty of Nara and to New Zealand under the Australia-New Zealand Closer Economic Relationship.

Recommendation 39

Labor Senators therefore recommend that the Productivity Commission examine the economic and other impacts of extending this measure to investment from any country. It is further recommended that if the Productivity Commission finds that there is an overall

benefit from applying FIRB liberalisation to investment from all countries that this should then be implemented.

Response

The Government rejects this recommendation. The granting of preferential treatment to United States investors under the AUSFTA is neither unusual, nor does it breach Australia's international treaty obligations on investment. Free trade agreements grant preferential access to each party's goods and services suppliers including through investment. World Trade Organisation rules (Article XXIV of the GATT and Article V of the GATS) allow members to enter into such preferential deals (without passing the benefits through to all WTO members) provided the agreement is comprehensive in scope and covers substantially all trade in goods and services. Australia's existing bilateral FTAs are consistent with WTO rules.

The Government does not believe there is a need for a Productivity Commission inquiry to determine the benefit to Australia from extending the investment liberalisations granted under AUSFTA to all countries. The Government will continue to consider both in a bilateral and multilateral context, further opportunities for liberalising its foreign investment policy.

Chapter 9 - Services

Recommendation 40

Labor Senators recommend that the Professional Services Working Group address immediately the issues of mutual recognition of qualifications and the movement of natural persons involved in service provision, and make recommendations to the Parties for removing as rapidly as possible any outstanding impediments to these functions. The report of the Working Group should be presented to the Parties within twelve months of the establishment of the Group.

Response

The Working Group on Professional Services provided for in Annex 10-A of the Agreement has a broad mandate which includes consideration of issues relating to the recognition of professional qualifications as well as other issues of mutual interest relating to the supply of professional services. The Working Group was a significant outcome to the negotiations, which was strongly pursued by Australia, and the Government agrees that mutual recognition issues should be a priority in its work.

The Government is continuing to pursue the issue with the US and has already had constructive discussions with the US in which we have identified our key interests in this area. The first meeting of the Working Group was held in June 2005. Given the complexity of the issues involved it is not feasible for the Working Group to report within twelve months of its establishment, however Annex 10-A requires that it report to the Joint Committee within two years of the entry into force of the Agreement.

While the Agreement does not contain any provisions on movement of business people, Australia and the United States already have well developed and liberal business entry arrangements. There is strong recognition on both sides of the importance of appropriate arrangements in relation to temporary entry to underpin and complement the opportunities which will be opened up under AUSFTA, including particularly in services and investment. Bilateral discussions parallel to the Agreement have already reaped benefits for Australian professionals

with the US Congress passing legislation establishing the E-3 visa. The E-3 visa applies to Australians with a university degree or its equivalent in their 'specialty occupation' seeking temporary residence in the United States to work, sponsored by a business in the United States that is prepared to employ them.

- This Visa is subject to an annual quota of 10 500 Australian applicants, not including accompanying spouses and children.
- Spouses of E-3 visa holders are able to work.
- E-3 holders are permitted an initial stay of two years, and indefinite extensions of two years.

Recommendation 41

That the Australian Government press assiduously, through all available diplomatic, official and professional channels, for the removal of all impediments to the mutual recognition of qualifications and the movement of people involved in cross-border service provision.

Response

The Working Group on Professional Services will provide a high profile and effective means of pursuing Australia's interests in relation to the mutual recognition of qualifications. The Government agrees that, where appropriate, other channels of communication with US authorities, including peak professional bodies and assessment and registration authorities, should also be utilised.

With regard to movement of business people, see response to Recommendation No. 40.

Chapter 10 - Agriculture

Recommendation 42

Labor Senators recommend that Australia should, as a matter of high priority, commence negotiations with the United States to obtain a commitment, through treaty or other process, which will ensure that both Parties to the Agreement will not give more favourable access in agricultural products to any third country without also providing the same access to the other Party.

Response

The Government will continue to use every avenue available to it to increase market access opportunities for Australian farmers to all markets of interest, including the US market. Article 3.2 of the Agreement, for example, establishes a high level Committee on Agriculture where issues of access can be discussed.

Recommendation 43

Labor Senators recommend that the Commonwealth Government should invest significant effort into maintaining the strong relationship of the Cairns Group of countries, as the best vehicle for achieving significant agricultural liberalisation in the next WTO round.

Response

The Government agrees with this recommendation.

RECOMMENDATIONS BY ONE NATION RELATING TO THE AUSTRALIA- US FREE TRADE AGREEMENT

Chapter 1 Establishment of Free Trade Area

One Nation has considered this chapter and is particularly concerned by Article 1.2 : General Definitions which states in part:

For the purposes of this Agreement, unless otherwise specified:

10. **GATS** means the *General Agreement on Trade in Services*, contained in Annex 1B to the WTO Agreement;

11. **GATT 1994** means the *General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the WTO Agreement;

22. **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 1.2 General Definitions (22.) is identical to the definition in GATS. This definition in strictly legal terminology can possibly be enforced by the US enabling access to our hospitals, education (including teaching staff), water, railways, law enforcement agencies (police), ownership of our national highways as all of these fall within the definition of not being exclusively provided by a government authority. Therefore, services provided by the Australian governments such as hospitals, education, transport are not excluded from this Agreement.

Recommendation 1.1

One Nation recommends that all services which are supplied in the exercise of a governmental authority

(i) central, regional or local governments and authorities; and

(ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

are excluded from the Australia- US Free Trade Agreement.

Response

The Government agrees that services supplied in the exercise of governmental authority are excluded from coverage by the AUSFTA.

Chapter 2 National Treatment and Market Access for Goods

National treatment is a fundamental principle of free trade. It requires that imports be afforded 'no less favourable' treatment than domestic goods.

Recommendation 2.1

One Nation calls for specific exclusion of water from the National Treatment clause.

Response

The Government is not aware of any current or future plans to import water as a commodity into Australia, therefore the National Treatment obligation under Chapter Two is not relevant.

Recommendation 2.2

One Nation recommends that National Treatment and Most Favoured Nation status only apply for US companies that pay Company Tax in Australia.

Response

The obligations of National Treatment and Most Favoured Nation status, under Chapter 2 attach to goods of US origin, not to the producer, exporter, importer or other companies involved in trading such goods.

Recommendation 2.3

Regarding Chapter 2, Article 2.3 Elimination of Customs Duties, One Nation recommends that no tariff reduction shall apply until a public consultative and evaluation process is initiated to evaluate the economic, social, cultural and environmental impacts of tariff reductions, including the financial impacts on government appropriations and receipts due to loss of employment and the cost shifting from taxpayers to social welfare recipients.

Response

The Government agrees with the need for appropriate assessments of the likely economic and other impacts of bilateral FTAs prior to their conclusion. It has followed that approach in relation to AUSFTA, Singapore-Australia FTA (SAFTA) and the Australia-Thailand FTA (TAFTA). As well as commissioning independent assessments of the likely effects of these agreements prior to negotiations, DFAT commissioned a detailed assessment of the economic and environmental impacts of AUSFTA as finally agreed. That study, by the Centre for International Economics was released on 30 April 2004. The Government has also consulted extensively to ensure that the fullest possible account is taken of the potential impact of the agreement.

Recommendation 2.4

One Nation recommends that Article 2.3 (2) of the FTA will not apply where the public consultative and evaluation process in Recommendation 2.3 finds that the wellbeing of Australia's social, economic, cultural or environmental status would be jeopardised unless a protection tariff is introduced.

Response

The Government does not accept this recommendation.

Recommendation 2.5

Regarding Annex 2-C- Pharmaceuticals 1. Agreed Principles, One Nation recommends that the following text be inserted:

(e) Nothing in this Agreement will preclude Australia from continuing, expanding, or altering measures necessary to ensure the continuance of Australia's pharmaceutical benefits scheme in its current form including improved access to generic pharmaceuticals.

Response

The Government does not agree with this recommendation. The price of prescription medicines will not increase as a result of AUSFTA. Access by Australians to affordable medicines and the long term sustainability of the PBS will not be affected by the Agreement. The only commitments on the PBS in the AUSFTA relate to transparency and process issues. As part of the Agreement, more information will be made publicly available about the reasons for recommendations by the Pharmaceutical Benefits Advisory Committee (PBAC) to add medicines to the PBS. Also, a 'review' mechanism for medicines that have been rejected for listing on the PBS will be established. However, the review will not have the power to override the authority of the PBAC as the recommending body or of the Health Minister as the final decision-maker. Nor will it have the capacity to compromise the scientific integrity and independence of the PBAC.

Chapter 3 Agriculture

Under this agreement, all US agricultural imports into Australia - many of them grown on corporate farms which are heavily subsidised by the US government - will gain immediate duty-free access.

Recommendation 3.1

Regarding Article 3.1: Multilateral Cooperation, One Nation recommends that the following text be inserted

3.1.(3) Nothing in this Agreement will preclude Australia from taking such actions or measures necessary to ensure the viability of rural and regional economies and the viability of the family farm.

Response

The Government does not agree with this recommendation. Article 3.1 commits Australia and the US to cooperation in further efforts to liberalise agricultural markets in multilateral fora including the WTO. These efforts will improve export prospects for Australian agricultural producers.

Recommendation 3.2

One Nation recommends that tariff rate quotas should be structured to provide more protections for import-sensitive products.

Response

The Government does not accept this recommendation.

Recommendation 3.3

One Nation recommends a request-and-offer tariff negotiating approach, as opposed to across-the-board zero-to-zero initiatives to ensure special protections for import-sensitive Australian products.

Response

The Government does not accept this recommendation.

Recommendation 3.4

One Nation recommends exemptions from tariff phase-out should be negotiated for the most highly sensitive Australian agricultural products.

Response

The Government does not accept this recommendation.

Recommendation 3.5

One Nation recommends improved Safeguard Measures to deliver temporary relief to injured, import-sensitive Australian Industries and improved safeguard provisions to provide relief against import surges. These provisions must allow only a specified quantity of a selected product to enter at zero duty rates. Higher tariffs should be automatically triggered when imports reach a specified level or volume.

Response

The Government believes that Chapter Nine of the Agreement contains adequate provisions for safeguard measures in the event of serious injury to a domestic industry.

Recommendation 3.6

One Nation recommends that Australia must have the ability to restrict imports for temporary periods if, after investigations carried out by competent authorities, it is established that imports are taking place in such increased quantities (either absolute or in relation to domestic production so as to cause serious injury to the domestic industry that produces like or directly competitive products.

Response

See response to recommendation 3.5.

Recommendation 3.7

One Nation recommends the implementation of a mechanism to cushion the effects of currency devaluation.

Response

The Government does not accept this recommendation.

Recommendation 3.8

The FTA fails to establish a system for the prompt and effective resolution of private commercial disputes in agricultural trade. The absence of a formal system will become a problem for Australian producers, who will need a viable commercial dispute settlement mechanism to handle the unique marketing characteristics of perishable crops, particularly tropical fruits.

The Agriculture Committee, established under Article 3.2 is only established in very broad and generalised terms.

One Nation recommends that the Government clarify:

- **The membership of the committee and that the committee comprises at least two:**
- **Representatives from family farming**
- **Small business (businesses with less than ten employees) and**
- **Non government Consumers representatives**
- **Non government Environmental experts including one in Genetic Modification**

And that the Government confirms:

- **when the Committee will it be established**
- **Its terms of reference**
- **Its powers**
- **Whether resolutions of the committee will be binding**

Response

The Agriculture Committee established under Article 3.2 is a government to government committee. The Government does not envisage that membership of the Committee will extend beyond officials of the parties. However, the Government will continue to consult fully with all stakeholders on implementation of the Agriculture Chapter.

The Dispute Settlement provisions of the Agreement, and in particular Articles 21.6 and 21.7, provide for accelerated timeframes where a dispute relates to perishable goods.

Chapter 4 Textiles and Apparel

Recommendation 4.1

One Nation recommends that nothing in this Agreement will preclude Australia from taking such actions or measures necessary to ensure the viability of the Australian textile, footwear, apparel and leather industries.

Response

The Government has introduced the TCF Post-2005 Assistance Package to assist the TCF industry in Australia to become viable and more competitive in a freer trade environment. Details of the TCF Post-2005 Assistance Package are available at www.industry.gov.au/tcf.

Recommendation 4.2

One Nation recommends that Australia retains the right to vary the rules of origin subject to consultation.

Response

The parties to the Agreement may, by consensus, amend the Agreement as necessary.

Recommendation 4.3

One Nation recommends that emergency action taken by Australia in relation to TCF industries may be maintained by Australia for more than two years with extensions and there be no limit after the commencement of the agreement under which emergency action can commence.

Response

The Government believes that Chapters 4 and 9 provide adequate and effective safeguard mechanisms.

Chapter 5- Rules of Origin

Recommendation 5.1

One Nation recommends that Australia retains the right to vary the rules of origin subject to consultation.

Response

See response to recommendation 4.2.

Chapter 7 Sanitary and Phytosanitary Measures

Recommendation 7.1

Regarding article Article 7.2 : Scope and Coverage One Nation recommends that the following text be inserted:

7.2 (3) Nothing in this Agreement will preclude Australia from taking such actions or measures necessary to ensure the protection of the environment, including assessing by public consultation the economic, social, cultural and environmental impacts of the adverse effects to the Australian environment or an imported product or produce.

Response

Article 22.1 reaffirms the general exceptions provisions in the *General Agreement on Tariffs and Trade 1994*, and in particular article XX(b), which specifically includes measures for the protection of the environment.

Chapter 10 Cross-Border Trade in Services

Recommendation 10.1

Regarding Article 10.1 : Scope and Coverage, One Nation recommends that the following text be added:

4 (f) All services which are supplied in the exercise of a governmental authority
(i) central, regional or local governments and authorities; and
(ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;
are excluded from the Australia- US Free Trade Agreement.

Response

See response to recommendation 1.1.

Chapter 11 Investment

Recommendation 11.1

One Nation recommends that nothing in this Agreement will preclude Australia from requiring the senior management of an enterprise or a majority of a board of directors be of a particular nationality.

Response

The government does not accept this recommendation which would be contrary to article 11.10 of the Agreement.

Recommendation 11.2

One Nation recommends that nothing in this Agreement will preclude Australia from maintaining its national telecommunications body as a statutory body.

Response

The Agreement has no impact on the ownership of Telstra.

Chapter 14 Competition-Related Matters

Recommendation 14.1

One Nation recommends that nothing in this Agreement will preclude Australia from designating a monopoly or establishing, maintaining or allow a monopoly including a government monopoly enterprise.

Response

The Government agrees with this recommendation.

Chapter 15 - Government Procurement

Recommendation 15.1

One Nation recommends that nothing in this Agreement will preclude Australian governments

- (i) central, regional or local governments and authorities; and**
- (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;**

from positive discrimination in favour of a local provider.

Response

The Government does not accept this recommendation.

Chapter 16 - Electronic Commerce

Recommendation 16.1

One Nation recommends that nothing in this Agreement will preclude Australia from affording more favourable treatment on the basis of the nationality of the author, performer, producer, developer, or distributor of the products that are created, stored, transmitted within Australia's territory.

Response

The Government does not accept this recommendation.

Chapter 17 - Intellectual Property Rights

Recommendation 17.1

One Nation recommends that nothing in this Agreement will preclude Australia from legislating to ensure that no additional financial burden or other restrictions as may be applicable to intellectual property rights is experienced by any person or entity embarking upon scientific development, research or experimentation.

Response

The *Copyright Act 1968* incorporates a number of exceptions which allow libraries to provide access to copyright material in certain circumstances, including reproducing and communicating material in response to requests by users undertaking research or study. Universities and other educational institutions are covered by statutory licences which allow use of copyright materials, subject to the payment of equitable remuneration.

Students, researchers and academics have access to copyright materials under the 'fair dealing' provisions of the Copyright Act which allow dealing in copyright material for a number of purposes, including research and study.

The AUSFTA does not require the Government to alter any of these general exceptions that allow access to copyright material. However, changes will be required to implement obligations in relation to technological protection measures (TPMs). The Government has until 1 January 2007 to implement these obligations.

Recommendation 17.2

Regarding Article 17.3 copyright, nothing in this Agreement will preclude Australia from ensuring its sovereign right to install all of those measures that are appropriate for the protection, preservation of our culture.

Response

Older Australian cultural materials that are in the public domain are not subject to copyright. As to cultural materials that are protected by copyright, that protection consists of a bundle of rights relating to the use of a work. Copyright does not deal with legal title to a physical item embodying a work, such as a picture, sculpture or manuscript, which may be considered an important cultural item.

Recommendation 17.4

One Nation recommends that nothing in this agreement will preclude ownership and decision-making concerning cultural life being majority controlled by Australian interests.

Response

AUSFTA is consistent with Australia's cultural objectives, particularly the need to ensure the availability of Australian voices and stories on audiovisual broadcasting services now and in the future.

The outcome of the negotiations on audiovisual and broadcasting services preserves Australia's existing local content requirements and other measures and ensures Australia's right to intervene

in response to new media developments, subject to a number of commitments on the degree or level of any new or additional local content requirements.

Australia's reservations under the Chapters on Cross Border Trade in Services and Investment permit Australia to maintain the existing 55 per cent local content transmission quota on programming and the 80 per cent local content transmission quota on advertising on free-to-air commercial TV on both analogue and digital (other than multi-channelling) platforms. Sub-quotas for particular program formats (eg drama, documentary) will continue to be able to be applied within the 55% quota.

In relation to digital multi-channelling, Australia will be able to impose a 55% local content requirement on programming on either two channels or 20% of the total number of channels (whichever is greater) made available by an individual broadcaster. No local content transmission quota could be imposed on more than three channels of any individual commercial television service broadcaster.

With regard to subscription television broadcasting services, the FTA allows Australia to ensure its cultural objectives are protected through maintaining the current requirement for 10 per cent of expenditure on predominantly drama channels to be allocated to new Australian production. This may be increased up to a maximum level of 20 per cent. In addition the FTA allows scope for any future Australian government to introduce new expenditure requirements of up to 10 per cent on four additional program formats, such as the arts, children's, documentary and educational.

Finally, nothing in the Agreement will affect in any way the Government's right to support the cultural sector through the allocation of public funding of activities such as the public broadcasters (ABC and SBS), public libraries or archives, or in relation to Government funding for Australian artists, writers and performers.

Chapter 19- Environment

Recommendation 19.1

One Nation recommends that nothing in this Agreement will require Australia to enter in, embark upon or be forced to participate in any activity, material or otherwise, detrimental to the Australian environment.

Response

See response to recommendation 7.1.

Chapter 21 - Institutional Arrangements and Dispute Settlement

Recommendation 20.1

One Nation recommends that the dispute settlement panel may, not to the detriment of Australia, suspend any benefit under the Agreement.

Response

The Government does not accept this recommendation.

Chapter 22 - General Provisions and Exceptions

Recommendation 22.1

One Nation recommends that the Agreement shall not afford to any entity Australian or US, a general exception in taxation that is less than the burden of the equivalent Australian entity or person.

Response

The Agreement does not exempt Australian or US entities from their taxation obligations.

Chapter 23 - Final Provisions

Recommendation 23.1

One Nation recommends that nothing in this Agreement will preclude Australia from withdrawing from any or all provisions of the Agreement upon resolution of 50% plus 1 of the Australian population eligible to participate in a referendum.

Response

The Government does not accept this recommendation.

Recommendation 23.2

One Nation recommends the inclusion of a sunset clause in the Text of the FTA and in all related enabling legislation relating to the FTA that is passed by the Federal Parliament, state or local governments.

Response

The Government does not accept this recommendation.

Recommendation 23.3

One Nation recommends that the Senate be granted a conscience vote on all enabling legislation pertaining to the FTA.

Response

This recommendation is no longer relevant.

Recommendation 23.4

One Nation recommends adoption of the Senate Foreign Affairs, Defence and Trade Committee recommendations, *Voting on trade The General Agreement on Trade in Services and an Australia-US Free Trade Agreement* in relation to the 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 for examination by public hearing and report to the parliament within 90 days.**

- (c) Both Houses of parliament will then consider the report of the Joint Standing Committee on Foreign Affairs, Defence and Trade, and vote on whether to endorse the government's 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, i.e., on the basis that the package is either accepted or rejected in its entirety.

Response

See response to recommendation 3 of the Recommendations of the Labour Senators.