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## AFTINET Bulletin 100, 13 August 2004

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#### 1. USFTA legislation passed: What Next?

The government today agreed to the ALP amendments to the USFTA implementing legislation and it has passed through the Senate. However Prime Minister Howard has signalled that the US government may yet object to the amendment and the US Trade Representative has said that the US government reserves the right to examine both the amendment and the legislation to ensure that they are consistent with the text of the agreement (see **Australian Financial Review** Article below). If the US decides that the legislation is consistent with the agreement, the final confirmation of the agreement should occur in October, and the agreement will come into force from January 2005.

The Prime Ministers' comments confirm that the USFTA gives the US the right to object to legislation that does not conform to the agreement on medicines policy and on other policy areas that are included in the agreement. This is a reduction in our sovereignty and democratic rights to determine our own policies.

Now that the legislation has passed we need to assess the achievements of our campaign, and think about the next steps.

#### Campaign Achievements

The AFTINET campaign started nearly two years ago, as soon as the negotiations were announced in November 2002. It has included 90 community groups and many individuals. Together our achievements include:

- Immediate detailed submissions to the government outlining the dangers of US negotiating

targets, including the PBS, Australian media content, regulation of investment and services, quarantine and other issues

- Distribution of over 80,000 hard copies of two publications and many more through our website which receives 40,000 hits per month
- Talks to over 100 city and country community and union meetings, ranging from national conferences to local groups, and links to experts in health and media groups
- Articles in many community and union publications
- Public meetings and rallies in most capital cities and a number of regional areas
- Regular local, state and national print, radio and TV media coverage, including opinion pieces and letters to the editor. Opposition to the USFTA spread beyond our networks and came from health experts, film and TV stars, economists and journalists and was greater in the media than in any previous trade debate
- Intensive training on the USFTA provided to 40 people from a range of unions and community organisations, and staffers from all opposition parties
- Lobbying of MPs through letters and personal meetings
- Adoption by all opposition parties of critical policies on the USFTA, support for the Senate Inquiry and pledges to oppose the implementing legislation and thus defeat the agreement if the USFTA was not in the national interest

### **ALP divided, then supported the USFTA**

While the Greens and Democrats kept this pledge, the ALP was divided on factional lines. Arrayed against our campaign were the US government, major business lobby groups and the Murdoch-owned News Limited media, which campaigned openly for the agreement.

The ALP Left opposed the USFTA but Mark Latham was convinced by the majority Right faction, especially key pro-US front benchers, to support the USFTA. The ALP Senators' report on the Inquiry admitted that the USFTA could result in higher medicine prices, less Australian content in new media, higher copyright costs, reductions in quarantine protection and manufacturing job losses, yet recommended support for the legislation.

Mark Latham's amendments to penalise abuse of patents by drug companies and to protect current media content rules were in part a response to the issues we raised. They were also a clever political move against the government and exposed those issues to further public debate. But they only address one aspect of each of these issues. They will not protect Australian content in **new** forms of media, nor will they comprehensively prevent delays in the production of generic drugs, which would require a range of other laws and policies.

### **Monitoring the USFTA**

We now have a USFTA that

- gives US drug companies rights to seek reviews of decisions by the Pharmaceutical Benefits Advisory Committee and despite the ALP amendments, gives priority to protecting the intellectual property rights of drug companies over the principle of access to affordable medicines.
- restricts Australian voices in new media by limiting Australian content rules for **new** forms of media, and allows the US government to challenge these rules as a barrier to trade.
- adopts US copyright law, meaning higher costs for libraries and schools and negative

effects for small IT software firms, including the Australian local Open Source software industry

- sets up joint committees on quarantine, opening us to US pressure to reduce standards. The American Farm Bureau Federation expects many gains for US exporters because of these committees
- gives greater access for the US to Australian manufacturing markets than Australian access to US markets. This could mean significant loss of Australian jobs in regional areas of high unemployment
- “binds” or freezes state and local government regulation of essential services at existing levels, unless they are listed as exceptions. This limits the ability of future governments to regulate in many areas. Water, electricity, public transport and aged care have not been listed as exceptions.
- limits the power of the Foreign Investment Review Board to assess whether US investments are in the national interest by increasing the threshold from \$50 to \$800 million for all but a few exempt sectors,
- has not been subject to an environmental impact assessment, leaving many questions about the environmental consequences of the FTA unanswered, and
- has a disputes process which allows the US government to challenge many Australian laws and policies before a trade tribunal based on trade law without considering impacts on health, culture or the public interest.

### **Where to from here?**

AFTINET will monitor and publicise the impacts of the agreement in these areas.

The ALP has said that if it wins government, it will take measures to protect some of these areas (See details below). But some of these measures may not be legally effective, since the US government can challenge laws or policies that are not consistent with the agreement. The Senate Inquiry also supported a more open and democratic process for dealing with future trade agreements. AFTINET will continue to pursue these issues.

Once the USFTA is implemented, the only remaining remedy is for the Australian government to use the termination clause to give 6 months notice to end the agreement. This is rarely done, and would not be easy as the agreement would be strongly supported by those sections of business that will achieve some gains from it.

But if the US government does use the USFTA dispute process to challenge an Australian law or policy, this could form the basis for a campaign to end the agreement.

As well as pursuing USFTA issues, AFTINET will continue to campaign on the WTO agreements, especially GATS, and on other proposed bilateral agreements.

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## **2. Labor's plan for national interest safeguards on the USFTA (note that some of these may be challenged by the US government if they are not consistent with the agreement)**

### **Pharmaceutical Benefits Scheme**

Labor will protect the viability, independence and transparency of the Pharmaceutical Benefits Scheme by:

- Requiring that, all documentation submitted to the Independent Review Mechanism established to examine unsuccessful drug listing applications on the PBS be published on the internet within 48 hours, subject to commercial in confidence constraints.
- The Productivity Commission will be required to monitor and report annually on the impact of the FTA on the PBS, including the impact of the Independent Review Mechanism. If the differential between US and Australian drug prices is narrowing, then a Labor Government will change the Independent Review Mechanism.
- If the Independent Review Mechanism is used, each acceptance by PBAC and the Minister for Health of the recommendations of the independent review will be reported to Parliament in a Ministerial Statement.
- The Terms of Reference of the Medicines Working Group will include a commitment to the principle of universal access to affordable medicines. The Medicines Working Group will not consider any policy issue that could be seen to undermine the principle of universal access to affordable medicines. The Medicines Working Group will operate with appropriate transparency in regard to agenda items, minutes and recommendations.

### **Australian Content**

Labor will ensure Australians continue to see and hear Australian faces and voices through their popular media by:

- Ensuring the FTA provides flexibility to regulate for local content on future media, Labor will legislate to ensure the FTA definition of 'interactive audio and/or video services' includes, but is not limited to, future media already identified (See Attachment B); and
- Announcing a policy package to encourage further investment in Australia's film and television industry before the next election.

### **Copyright and Intellectual Property**

Labor will ensure that Australia's copyright and intellectual property laws continue to provide a fair balance between the interests of creators, owners and users by:

- Requiring the Attorney-General to report annually to Parliament on the impact of changes to the Copyright Act 1968 on universities, libraries, educational and public research institutions, particularly in regard to any increased costs they may bear;
- Examining options for broadening the 'fair dealing' and copyright usage provisions of the Copyright Act 1968. In doing so, a Labor Government will draw on the recommendations from a numerous Government initiated reports addressing copyright issues that have not yet been acted upon; and
- Ensuring that it is permissible to sell, purchase and use legally manufactured video, DVD and related software items, including components equipment and hardware, regardless of place of purchase.

- Establishing a Senate 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.
- Implementing recommendations 7-9 made by Labor Senators on the Senate Select Committee on the AUSFTA.

### **Manufacturing**

Labor will boost enterprise, exports, growth and jobs in the Australian manufacturing sector through:

- A \$25 million Centre of Excellence for Advanced Manufacturing;
- An Australian Manufacturing Council;
- A 10-year National Manufacturing Strategy to revitalise manufacturing;
- An Industry and Manufacturing Minister 100% committed to Australian manufacturing industries;
- A restructured and revived Industry Department with a renewed focus on manufacturing;
- A commitment to make AUSTRADE and the Australian Trade Commission work harder to promote Australian manufacturing in our region, deeper engagement with countries such as China and the world;
- New investments in training, especially through TAFE places and apprenticeships to overcome skills shortages in manufacturing; and
- Establishing a Commission of Inquiry to look at the impact of the FTA on Australian manufacturing, particularly automotive components, and the textile clothing and footwear industry.

### **Quarantine**

Labor will deliver an import risk assessment (IRA) process with greater scientific integrity immune from inappropriate trade pressures. Labor has already announced plans to strengthen Australia's IRA regime by:

- Requiring that both qualitative and quantitative science based risk assessment processes are used in developing IRAs; and
- Enshrining the Import Risk Analysis Process Handbook in regulations that would require the consent of both Houses of the Parliament before the process could be varied.

### **Agriculture**

- Labor will utilise the Annual Ministerial Meeting arrangements established under the FTA to seek an MFN provision from the US on agriculture.
- Labor will closely monitor the Government's sugar compensation package to ensure it achieves significant reform in the cane farming and milling sectors.

### **Blood Products**

Labor will ensure that Australia retains control of its blood supply by:

- Amending the Therapeutic Goods Act 1989 to ensure that any blood plasma fractionation products approved for use in Australia must be manufactured in accordance with Australia's policy of self-sufficiency, using Australian blood, and in accordance with currently established Good Manufacturing Practice, which requires dedicated processing facilities;
- Ensuring transparency around the Plasma Fractionation Agreement currently being negotiated with the Commonwealth Serum Laboratory, the review of this agreement that the FTA requires by 2007, and any subsequent tender process for blood plasma products. Future Trade Agreements

- Prior to entering FTA negotiations, a Labor Government will table in both Houses of Parliament a document setting out its priorities and objectives. This will include an assessment of the costs and benefits of any proposals that may be negotiated. The assessment will also consider the economic, regional, social, cultural, regulatory and environmental impacts which are expected to arise. Once the negotiation is completed, a Labor Government will table in Parliament the proposed treaty together with any implementing legislation.
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### **3. Bullying' big pharma puts pressure on Howard, Tony Walker Australian Financial Review, 13/08/2004**

US Trade Representative Robert Zoellick's warning to Australia that an amended free-trade agreement might conflict with the letter and spirit of the original agreement was prompted by bullying from the American pharmaceuticals industry, according to a US trade adviser. "This is a town where bullies rule the roost," said the adviser, who works for one of Washington's biggest law firms and who is familiar with the US PhRMA's concerns about Labor's amendments.

PhRMA (Pharmaceutical Research and Manufacturers of America), the powerful lobby group for the pharmaceutical industry, has been agitating behind the scenes over Labor's amendment to penalise frivolous lawsuits aimed at stopping cheaper, generic drugs coming on to the market. "Zoellick's intervention suggests to me that the pharma lobby has taken a look at Labor's amendment and said we can't live with this," said the trade specialist, who would not be identified.

The US pharmaceutical industry's worries about Labor getting away with the amended legislation reflect intense concern about Australia's Pharmaceutical Benefits Scheme becoming a model for the US. The high cost of drugs has emerged as an important issue in the US presidential election campaign, with the Democrats looking seriously at ways in which cheaper drugs can be made available as part of an attempt to bring down health-care costs.

US states have been trying to introduce bulk purchasing schemes, like the PBS, to lower the cost of drugs, but have been stymied by fierce opposition from the pharmaceutical lobby, which is capable of deploying enormous resources. One of the devices used by these companies to protect their products against generic drugs is to lodge bogus patent applications to stop these cheaper products coming on to the market. This is called "evergreening".

The US trade specialist said that any attempt to unravel the free-trade agreement would run into strong opposition from American manufacturers, who stand to benefit from a reduction in tariffs from January 1. US industry has estimated that American manufacturers will reap an additional \$US2 billion (\$2.8 billion) in sales annually from the free-trade agreement.

But the trade specialist warned that with the Bush administration, special interests were "tough to override". He also observed that the US side may have been seeking to "rattle [Prime Minister John] Howard's cage" to ensure that there was no more backsliding over the FTA.

On the other hand, he said it was also difficult to imagine that the administration would "want to walk that particular horse back into the barn", meaning that the Bush White House would be reluctant to put the FTA on hold. Another factor to consider, the trade adviser said, was that the Bush administration's position may be academic since it was possible there would be a change of management after November 2. A Kerry administration would be less susceptible to pressure from the pharmaceutical lobby.

