



AFTINET Ltd  
Level 1, 46-48 York Street  
Sydney NSW 2000  
Phone: 02 9299 7833  
Fax: 02 9299 7855  
Email: [lsouthalan@piac.asn.au](mailto:lsouthalan@piac.asn.au)  
Website: [www.aftinet.org.au](http://www.aftinet.org.au)  
ABN 83 659 681 462  
ACN 097 603 131

## AFTINET Bulletin 106, 24 November 2004

If you would like to contribute to the Bulletin, please contact Louise Southalan via email at [lsouthalan@piac.asn.au](mailto:lsouthalan@piac.asn.au) or on (02) 9299 7833. Our website is <http://www.aftinet.org.au>.

### Contents

- 1. USFTA finalised but US to act to delay generic medicines**
- 2. Minister warns on deal with Beijing**
- 3. Trade deal with China on agenda in PM's visit**
- 4. Reminder: AFTINET seminar on China FTA: Sydney 7 December**

#### **1. USFTA finalised but US may take action to delay generic medicines: AFTINET's response**

Below is an article revealing that the US has signed off on the FTA legislation but drug companies and the US government want to use the USFTA dispute process to challenge the amendment intended to prevent big drug companies from delaying access to generic drugs. AFTINET's media release in response is also below. We were interviewed on the ABC Radio National AM program on November 24 and had letters published in the Sydney Morning Herald and the Australian Financial review on November 20 and 22.

#### **US wins legal pledge on generic drugs** By Lenore Taylor

23/11/2004 Australian Financial Review

The United States pharmaceutical industry says the Howard government has promised that US drug companies will be able to take legal action to keep some generic medicines out of Australia as part of the deal to clinch a US free-trade agreement.

"We appreciate that US negotiators sought and received a clarification by Australia that

patent-holders will be assured of adequate opportunity to seek injunctive relief against patent infringers, before infringing products are put on the market in Australia, as required by the agreement," the Pharmaceutical Research and Manufacturers of America said in a statement. PhRMA lobbied intensively after the Australian election against Labor's pre-election amendments to the free-trade agreement.

Labor's amendments aimed to stop drug manufacturers abusing the patent system by taking legal action to lock out cheaper generic drugs.

The federal government refused to repeal the amendments, but said it would make minor modifications to Australia's US-FTA law during the final two weeks of parliamentary sittings this year.

The US government said it had "agreed to disagree" with Australia on the drug patent issue. It said it would watch how the Australian law was implemented then take action bilaterally, or in the World Trade Organisation, if it believed US drug manufacturers were being dealt with unfairly by the Australian laws.

According to PhRMA, the US government told Australia that Labor's FTA amendments were "unjustifiable, counter-productive and violate Australia's international obligations".

PhRMA said it was "disappointed that the Australian government, which expressed concern with these very amendments when they were introduced, is not taking immediate action to repeal them".

It said the amendments could also "undermine advanced biomedical research and life sciences investments in Australia".

The FTA is due to come into effect by January 1. Under the Labor amendments, drug companies face penalties of up to \$10 million for "vexatious or unreasonably pursued" patent protection claims

### **AFTINET media release: Public Interest Groups condemn drug industry call to use USFTA to lock out cheaper medicines**

"US drug companies' claims that the USFTA gives them the right to take legal action to delay Australians' access to cheaper generic medicines are unacceptable and confirm the fears of community groups about rising costs for medicines," said Dr Patricia Ranald, Principal Policy Officer with the Public Interest Advocacy Centre and Convenor of the Australian Fair Trade and Investment Network of 90 community organisations (AFTINET).

The US Pharmaceutical Research and Manufacturers of America (quoted today in the Australian Financial Review p.4) condemned the ALP amendments to the USFTA implementing legislation passed by the Australian Parliament, and expressed disappointment that the Australian government is not immediately seeking to repeal

them. The amendments seek to prevent big drug companies from using legal tactics to delay access to cheaper generic medicines.

This follows the widely reported US government statement last week that it would not demand immediate repeal of the amendments but would lodge a dispute to challenge the ALP amendment after the USFTA is implemented next January.

“The US government will have the right to challenge the amendment, have the dispute heard under trade rules, and get a ruling against the amendment, backed up by trade sanctions,” explained Dr Ranald. “Such a ruling would be possible because the USFTA principles protect the patent rights of drug companies, not the rights of consumers. This undermines the Australian Parliament’s democratic right to decide medicines policy and will lead to higher prices for medicines.”

---

## **2. Minister warns on deal with Beijing**

Steve Lewis and Katharine Murphy

The Australian

23 November 24, 2004

A FREE trade deal with China was both an opportunity and a "threat" for Australian manufacturers, federal Industry Minister Ian Macfarlane has warned.

As John Howard hailed "quite good progress" towards a trade deal with China, Mr Macfarlane said yesterday the manufacturing sector faced its biggest challenge since the tariff reforms of the mid-1980s to avoid cheap imports swamping the domestic market. "We do need to get cautiously onto the front foot and position ourselves for a long term market interaction with China," he said.

Mr Macfarlane has assured industry he would stand up for its interests in cabinet -- even if that made him unpopular among more zealous ministers. His comments reflect a vigorous debate emerging within the Government about whether China's economy and laws were up to the standard demanded of a modern market economy.

"Whilst it's a great opportunity for the rest of my portfolio -- Tourism and Resources -- I'm just a little wary of any price that industry would be expected to pay," Mr Macfarlane told The Australian.

The minister's remarks on a trade deal with Beijing come as business has also raised concerns that China has lax laws on issues such as copyright, dumping and legal protection of contracts. "If an FTA is going to deliver free access for Australian industry to that market, those issues have to be on the table," said Australian Industry Group chief Heather Ridout.

Australia's trade deficit with China has ballooned in recent years, reaching \$5 billion last year -- up sharply from \$2.5 billion in 1999. China's cheap labour costs have seen a flood of clothing and other manufactured goods imported into Australia, a trend that would

only accelerate under an FTA. But the links were already so advanced that Australia's economy relied heavily on Chinese manufactures.

About 70 per cent of Australian clothing, for example, or \$2 billion of imports are made in China -- more than double our total wool exports to the world. An acid test for cabinet will be when ministers consider whether to grant China's high-growth economy "market status" -- a precondition for any FTA.

This would allow China to bypass many of the anti-dumping rules, which exist to prevent developing economies from undercutting Australia's domestic manufacturers.

Mr Macfarlane is determined that the interests of Australian manufacturing are not trampled in a rush by the Government to conclude an FTA. "China at some stage will be able to demonstrate itself as a market economy but that should be done and assessed on the basis of due process -- it shouldn't be politicised or short cut because of political expediency."

Mr Macfarlane also hopes Australian firms see the deal to push further reforms in the way that tariff cuts drove marked improvements in efficiency and competitiveness. "If we don't get it right, then industry will be the loser, and that is the challenge and that is why we have to be cautiously on the front foot," he said.

The Prime Minister emerged from talks with Chinese President Hu Jintao during the APEC summit in Chile with an upbeat message on the progress of preliminary FTA talks. "It is agreed by both sides that we are making good progress and that we have a fantastic economic relationship that has just burgeoned unbelievably over the last few years," Mr Howard said.

Mr Macfarlane also believes a bilateral pact is likely. "I think we are seeing the possibility of an (FTA) with China in three to four years -- we just need to ensure that all due process is taken."

---

### **Trade deal with China on agenda in PM's visit**

By Tom Allard, Foreign Affairs Reporter in Santiago and agencies  
Sydney Morning Herald  
November 23, 2004

Australia is likely to begin formal negotiations towards a free trade pact with China in April, when the Prime Minister plans to visit the country.

John Howard met the Chinese President, Hu Jintao, on Sunday as the Asia-Pacific Economic Co-operation forum concluded, with leaders optimistic of continued strong economic growth in the region and successful World Trade Organisation talks next year.

Leaders from the 21 Pacific rim economies also endorsed a drive against corruption, and

issued a statement condemning terrorism and supporting efforts to curtail weapons of mass destruction.

After meeting Mr Hu, Mr Howard said both leaders had agreed that a study into a free trade agreement was progressing, despite the sensitivities. Australian manufacturers and Chinese farmers could lose under a free trade agreement, but benefits to Australia are potentially huge.

Mr Howard said: "It's agreed by both sides that we are making progress." He said he would visit China in April for the Bao Economic Forum, China's version of the World Economic Forum in Davos, Switzerland. He will also meet Chinese leaders.

Officials described their talks as congenial, with Mr Howard advocating more contracts for Australian liquefied natural gas producers and discuss the nuclear stand-off on the Korean peninsula.

The two leaders met after the second APEC leaders' retreat had finished. Mr Howard said it had been the best APEC meeting for a number of years.

"There's a sense that the momentum has been regained. The meeting is taking place at a time when the world economy is at its best for around 27 years," he said. \_ Australian officials had started talks with China to explore the possibility of uranium exports, the Federal Government said last night.

The Australian mining company WMC Resources asked the Government to pursue the possibility of an export deal, which would require China to commit to Australian laws that the product not be used for military purposes.

---

#### **4. AFTINET Sydney Seminar on China FTA: 7 December**

##### **A China-Australia Free Trade Agreement: What about human rights?**

A seminar organised by the Australian Fair Trade and Investment Network (**AFTINET**), the **Public Interest Advocacy Centre (PIAC)** and the Australian Manufacturing Workers' Union (**AMWU**).

The Australian and Chinese Governments are discussing a possible Free Trade Agreement. China is one of the fastest growing economies in the world and is already Australia's second largest trading partner. But the lack of basic workplace and human rights mean many Chinese people are not sharing the benefits of economic growth. In Australia, complete removal of tariffs could mean higher unemployment at a time when workplace rights are also being reduced. Both governments are considering only economic impacts. This seminar examines the social and human rights impacts in both countries.

With:

• Dr Patricia Ranald, Public Interest Advocacy Centre and AFTINET (Chair)

- Doug Cameron, National Secretary, AMWU
- Sean Cooney, Senior Lecturer in Law, University of Melbourne

**Tuesday 7 December, 12pm-2pm**

**Jubilee Room, NSW Parliament House, Macquarie Street, Sydney**

Light lunch supplied

RSVP to Katharine Slattery, **AFTINET**.

Phone (02) 9299 7833 or email [kslattery@piac.asn.au](mailto:kslattery@piac.asn.au)

---