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Australian Fair Trade
& Investment Network Ltd

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AFTINET Bulletin 94, 26 May 2004

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1. Lobbying ALP Senators and federal MPs: update

Now is the time to tell your ALP Senator not to vote for the USFTA implementing legislation! Over 500 submissions have been made to the Senate Inquiry into the USFTA, and now we need to follow this up by urging the ALP to keep its pledge to vote against the USFTA if it is not in the national interest.

We have sent lobbying kits out to a number of AFTINET members now, and encourage you to take the time to contact your ALP Senator or Federal Member. AFTINET member Marcel Savary has kindly coordinated this project.

Contact details for ALP senators by state are available at this website:

<http://www.aph.gov.au/senate/senators/homepages/si-party.htm>

Please let us know how your visit goes.

2. Coalition faces Labor of love to sell deal

Australian Financial Review

May 20

Allesandra Fabro

The fanfare in Washington that accompanied the formal signing of the Australia-US free-trade agreement was in stark contrast to the silence in Australia yesterday morning, perhaps reflecting the fact that such a formality has little impact on the deal's acceptance over here.

Inking the deal was a necessary precursor to getting US Congress to ratify it, but in Australia the political lobbying has barely begun.

Instead, the focus is on the federal opposition as it considers its stance, deciding which, if any, of the provisions are sufficiently negative for Australia's national interest to constitute a deal breaker.

Labor's support for the FTA remains far from assured. After stepping back from an initial declaration by Opposition Leader Mark Latham that Labor would block the deal, Latham and trade spokesman Stephen Conroy took the more pragmatic line of what is in the "national interest".

At the moment Labor is not committing one way or the other, preferring to wait for the outcome of its Senate inquiry, for which hearings are still in progress. But one of Labor's real concerns is proposed changes to the multibillion-dollar pharmaceutical benefits scheme, PBS. Conroy reiterated Labor's stance over the PBS yesterday, as new suggestions surfaced that the cost of drugs would rise under the deal.

"Labor will vote the FTA down if it undermines the PBS," he said.

Although federal parliament does not vote on the agreement itself, it must pass a range of bills designed to amend existing laws and give effect to the deal. Current thinking is that more than 30 acts will need to be amended, probably in a series of omnibus bills.

The coalition is short four votes in the Senate, and the Democrats and the Greens have already indicated their intention to vote against any of the FTA-related bills.

If Labor agrees to support the deal, the bills will sail through. But if they oppose it, the coalition needs all four remaining senators, Brian Harradine, Len Harris, Shayne Murphy and Meg Lees, to pass the legislation. Former Democrat Lees and Independent Harradine have already expressed serious concerns, but said yesterday they were waiting to see the committee reports and discussions in next week's budget estimates hearings before deciding. The positions of One Nation's Harris and ALP-renegade Murphy remain unclear.

The government is also confronted by a tight timetable dictated by the pending federal poll. Once an election is called, legislation in effect stalls as a caretaker government steps in. The government is unlikely to introduce the bills before at least one of the two committees investigating the terms of the agreement - the coalition-dominated Joint Standing Committee on Treaties and the Labor-led Senate Select Committee on the FTA - have handed down their findings, lest it be accused of ignoring the parliamentary process.

But JSCOT is scheduled to hand down its report on June 23, the day before parliament rises for five weeks.

With an election possible any time from early August, it could leave little time for parliament to debate, and on a subject as controversial as the FTA, debate is expected to be very lively indeed.

The Senate Committee is planning to issue an interim report on June 21 with a final report by August 12 which - if an election is called - it may never get to issue. But these technical issues hide the fact that no one seems sure how the FTA will play in the electorate.

While most business groups support it, many do so with reservations on particular issues - intellectual property and the lack of progress on the movement of professionals are two commonly cited examples. The coalition has already begun attempts to ensure that those who think they will

suffer from the deal, such as sugar farmers, are made to feel a little bit better before they go to the polls. It has announced another multimillion-dollar package for sugar farmers wishing to leave the industry.

The Fair Trade and Investment Network, which represents 85 community groups, was quick yesterday to dispel any suggestions that the Washington signing made it a done deal.

"The signing ceremony is happening now to fit the timetable of the Bush administration for the US elections, even though Australia's two parliamentary inquiries are yet to report on the FTA," policy officer Pat Ranald said. "Hundreds of individuals and community organisations have made submissions to these inquiries and their voices must be heard before parliament votes on the implementing legislation."

If the submissions of individual citizens to the committees are anything to go by, a large percentage of the public are nervous or at best undecided.

3. WTO Panel Rules Against Special and Differential Treatment for Developing Countries

Trade report 21 May

In a landmark decision published in April 2004, the WTO panel ruling in the Telmex case interpreted the General Agreement on Trade in Services in ways that have strong negative implications for developing countries. The panel rejected all of Mexico's arguments that development objectives have to be considered in weighing whether a developing country is meeting its GATS commitments.

The Telmex decision is especially significant because, as the panel itself pointed out, it is the first WTO ruling made solely on the provisions of the GATS. In attempting to justify Mexican telecommunications regulations, Mexico drew on provisions in the GATS, the Telecom Annex, and the Telecom Reference Paper that appear to give governments the flexibility to meet development objectives. But none of these arguments was accepted by the panel.

Delegations from developing countries, pressured in the current round of negotiations to make services commitments in return for US and EU concessions in agriculture, should be alerted to the following statement made by the panel:

Mexico argues that commitments made by developing country Members have to be interpreted in the light of paragraph 5 of the preamble to the GATS, and GATS Article IV which recognize that these Members need to 'strengthen their domestic services capacity and efficiency and competitiveness'. However, we note that these provisions describe the types of commitments that Members should make with respect to developing country Members; they do not provide an interpretation of commitments already made by those developing country Members."⁽¹⁾

The panel therefore limited these special and differential treatment provisions to the stage of GATS bargaining. Once made, the commitments of developing countries will be interpreted as strictly as those of any WTO member. Mexico failed to convince the panel that its commitments to GATS pro-competitive rules should be directed to strengthening the capacity of Mexico's domestic telecommunications sector, not to making it easier for foreign-based companies like AT & T to exploit the Mexican market without making any investment.

Paragraph 4 of the preamble to the GATS recognizes "the right of Members to regulate" and "the particular need of developing countries to exercise this right." The rationale the panel gave for the different aspects of its ruling does not refer to this part of the preamble. Instead, at the same time that it finds against Mexico in most aspects of the case, the panel simply asserts: "We underline that our interpretation of Section 1 of the Reference Paper does not unduly limit the broad regulatory autonomy of WTO Members in the field of trade in services, including telecommunications." (2)

Mexico tried to defend its regulations on rates charged for terminating calls in Mexico on the basis that they were designed to include the costs of rolling out telecommunications infrastructure - a particular need of developing countries. So Mexico said that the different GATS telecommunications rules requiring "cost-oriented" or "reasonable" rates had to factor in this objective: "... account must be taken of Mexico's clear policy goal of promoting universal access to basic telecommunications service for its population. Accounting rate revenues [charges for terminating international calls] remain an important potential source of funds for infrastructure development...Mexico has had an established policy to promote the construction of telecommunications infrastructure with a view toward broadening the availability of telephone and related services. Neither the Reference Paper, nor the GATS more generally, should be interpreted in such a way as to prevent Mexico from carrying out this policy."(3)

But the panel accepted the US argument that the rates charged should be based solely on the specific services foreign companies required. No contribution to development of Mexico's telecommunications infrastructure could be included in the rate:

"The qualification of 'cost-oriented rates' by the word 'reasonable' would not therefore permit costs to be included in the rate that were not incurred in the supply of the interconnection service. Thus, contrary to Mexico's position, the general state of the telecommunications industry, the coverage and quality of the network, and whether rates are established under an accounting rate regime, are not relevant to determining a proper cost-oriented rate."(4)

The implications of the Telmex decision are far reaching as well in terms of:

- The very expansive way the panel interprets "pro-competitive" commitments, drawing on OECD recommendations and other sources to enlarge the concept of what is a prohibited anti-competitive practice. The panel's interpretation means much of what was sought in a competition agreement - one of the Singapore issues rejected by a majority of WTO members - can apparently be achieved through the GATS.

- The extreme difficulty involved in making meaningful limitations on commitments. The panel rejects Mexico's market access limitation on commercial presence because it is "temporal" and not "quantitative". But many countries have listed market access limitations that are not quantitative. The panel's reasoning would suggest that all of these have no legal effect in limiting market access.

(1) "MEXICO - MEASURES AFFECTING TELECOMMUNICATIONS SERVICES
Report of the Panel", 2 April 2004, WT/DS204/R, para 7.214

(2) para 7.267

(3) para 4.182

(4) para 4.183

4. Thailand: Trade, Labour and Rights: Sydney public meeting 8 July

Oxfam Community Aid Abroad will host a public meeting in Sydney where Thai garment workers will describe labour conditions in clothing warehouses in Thailand. AFTINET is a sponsor of the event, and Louise Southalan will speak on the Thai Australia FTA in the context of the general move towards bilateral agreements, including the USFTA.

Other speakers will be confirmed shortly.

Where: Sydney Mechanics School of Arts, 280 Pitt Street Sydney
When: Thursday 8 July, 6.00 for 6.15

5. USFTA talk Melbourne 7 June

The Australian Fabian Society (Victorian Branch) in Association with the Mietta Foundation Invites you to attend a presentation in the 'Mietta's Monday's' program on 'For Better or for Worse? Implications of the US Free Trade Agreement for Australia'

Speakers

1. Victorian Minister for Manufacturing and Export Tim Holding,
- Global Renewables Limited Managing Director John White and
- Policy analysts Alan Oxley and Nixon Apple.

Chaired by former Hawke government Trade Minister and Attorney General Michael Duffy.

When: Monday, 7 June, 5.45 for 6.00pm to 7:45pm
Where: at fortyfivedownstairs 45 Flinders Lane.

Admission:

AFS members and Foundation patrons free, non-members \$10, concession \$5.

For further information:

phone/fax (03) 9826 0104
e-mail: race@netspace.net.au
web site: www.fabian.org.au

6. USFTA Demonstration Melbourne: 7 June

The Reclaim Globalisation collective will perform a stunt outside the Senate Inquiry into the USFTA, which will hold public hearings in Melbourne on 7 June.

Please go along and support this if you can, and attend the public hearings into the USFTA.

When: 7 June, 11.30 am
Where: Institute of Management, 181 Fitzroy St St Kilda.
Contact: Liz Turner, Friends of the Earth (03) 9419 8700
liz.turner@melbourne.foe.org.au