

January 21, 2003

Ms. Gloria Blue
Executive Secretary
Trade Policy Staff Committee
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: Proposed United States – Australia Free Trade Agreement – Written Comments

Dear Ms. Blue:

On behalf of The Humane Society of the United States (HSUS), its 7.5 million members and constituents and its international affiliate Humane Society International (HSI) we hereby provide comments on the proposed United States – Australia Free Trade Agreement (FTA) pursuant to the instructions provided in the Federal Register notice.¹

The HSUS is actively involved in international trade issues and policy and serves as a member of the Trade and Environment Policy Advisory Committee (TEPAC). HSI is active in several countries around the world including a presence in Australia.

General and commodity-specific negotiating objectives

The proposed United States – Australia FTA provides both countries the opportunity to address important trade issues in bold and innovative ways. The United States and Australia, through these negotiations, could provide pathways for creative solutions to some of the toughest issues being discussed at the World Trade Organization (WTO) and in the Free Trade Area of the Americas (FTAA). For example, an agreement between the United States and Australia concerning the very difficult issue of agriculture liberalization could provide momentum for the WTO negotiations. In addition, there are Cairns Group² members that are included in the FTAA negotiations.

As two countries with similar world views and as long-standing allies the United States and Australia are presented with a unique opportunity to craft an FTA that is forward looking, innovative, progressive and build on mutual respect and trust. The HSUS strongly encourages both the United States and Australia to take advantage of this opportunity and work to create an FTA that sets a new standard for all other free trade agreements.

¹ *Proposed United States – Australia Free Trade Agreement*, 67 Fed. Reg. 76431 – 76433 (Dec. 12, 2002).

² Cairns Group members include: Argentina; Australia; Brazil; Canada; Chile; Colombia; Hungary; Indonesia; Malaysia; New Zealand; Philippines; Thailand and Uruguay.

Economic costs and benefits to U.S. producers and consumers of removal of tariffs and non-tariff barriers to U.S. – Australian trade

As mentioned above, the United States and Australia are somewhat similar countries and are often allies in international trade, economics, political and defense issues. At a minimum the U.S. and Australia come to these negotiations with a degree of trust and familiarity not often present in negotiations with other countries. The strong bond of friendship and similar level of development the U.S. and Australia share provides a sound foundation for the FTA negotiations.

The consumers in the United States are familiar with Australian products as consumers in Australia are familiar with U.S. made products. There should be little disagreement about opening up each other's markets for these. A more pertinent question is to what extent to will each country will be respectful of the others laws, priorities, environmental, animal, species and habitat protections.

Treatment of specific goods

The HSUS respectfully requests that products produced in a humane and environmentally beneficial way be given immediate access to the U.S. market at zero duty. Products that are produced in a manner that protects endangered species, promotes animal welfare and are beneficial to the environment should be encouraged and given special market access privileges. The United States and Australia should discuss ways in which the proposed FTA can be a mechanism to encourage producers in both countries to produce products that are animal, environmental and consumer friendly.

Examples of such products include, but are not limited to, organic fruits and vegetables, free range eggs, chickens, animals and products that are not force-fed or injected with antibiotics or other growth promoting drugs, animals that are reared in a humane way and fish and seafood that are caught in a manner that does not harm dolphins or endangered animals (such as the sea turtles).

Consumers have a right to know what they are purchasing and how that product is produced. Consumers strive to make informed, humane and healthy purchases and it is the responsibility of governments to ensure adequate and accurate information is provided by producers.

Existing Australian sanitary and phytosanitary (SPS) measures and technical barriers to trade

Australia has some of the toughest sanitary and phytosanitary standards in the world today. There are good reasons for the Australian measures. First, Australia has a unique and fragile eco-system to protect. The Australian government must ensure the health and safety of its people, animals, crops and environment. Intrusions into the Australian environment by non-native species can have severe detrimental consequences (*e.g.*

introduction of rabbits by European settlers). Second, Australia is an agricultural exporting country and must protect this important sector of its economy from pests and other intruders coming into its territory. Third, tourism is an important aspect of Australia's economy and it must protect its native flora and fauna from non-native predators and diseases.

The United States must be sensitive to these issues as it negotiates for an FTA with Australia. As long as the laws, regulations and rules are clearly stated (published) and producers and exporters are informed of Australian requirements and these measures are not applied in a protectionist manner then the United States should not attempt to undermine these measures.

Trade in Services

Trade in services as contemplated under the provisions of the General Agreement on Trade in Services (GATS) provides for access to the services markets for a wide-range of services. There are a number of service sectors important to both the United States and Australia but these comments will focus on only a small number of sectors.

Animal Transport Services

The HSUS believes that animal transport services should be regulated to ensure that all animals are treated humanely for the entire period of transport. All too often animals are transported in overcrowded conditions with sick or downed animals. Animal transport providers should be required to provide humane transport for all animals. The laws, regulations and rules for humane animal transport of each country should be part of the FTA negotiations and provide the basis for an agreement on this important topic.

Animal transport by commercial airlines should be addressed in the FTA negotiations just as commercial animal transport. Airlines should be required to meet the highest standards for protection and humane treatment of animals whether the animals are in the cabin or the cargo hold. The United States and Australia should consider implementing standards for both animal transport services and commercial airlines in the proposed FTA.

Veterinary Services

Veterinary service providers should be held to the highest standards and academic requirements. The U.S. and Australia should attempt to harmonize standards for veterinary service providers so that a free and open exchange of these professionals is possible.

Agriculture

Agriculture is an important aspect of the economies of both the United States and Australia. As such it is also an extremely sensitive sector and will provide negotiators with the largest obstacles in the FTA negotiations. There are no easy ways to address the concerns stated by both the United States and Australia over agricultural liberalization.

The HSUS respectfully recommends that the United States and Australia strive for a new paradigm in agriculture where government intervention in the sector is limited to promoting environmental protection and animal welfare.

The WTO Agreement on Agriculture contemplates environmental and animal welfare payments or subsidies to farmers under the provisions of Annex 2, paragraph 12. Such payments are to be for a “clearly-defined government environmental or conservation programme”³ Government support for environmental or animal welfare purposes should not be linked to production and would therefore not be market distorting.

The concept of compensation payments or subsidies to farmers has yet to be fully fleshed out at the WTO and there appears to be some disagreement over how such a program would work. The U.S. and Australia could agree to include such payments in the FTA and spell out specific criteria for farmers applying for such payments to ensure that the programs would not distort agricultural markets. Including compensation payments in the FTA would assist each country in assessing the strength of such a program and would allow each country to develop views on how the program could be implemented on a multilateral basis.

Environmental and Animal Welfare issues (economic, political and social objectives)

The United States and Australia both recognize the importance of environmental protection, animal welfare standards and habitat and endangered species protection. Rather than focus only on commercial interests and tariffs, the United States and Australia should focus on achieving agreement on issues that are impacted by international trade rules but rarely are squarely addressed in the negotiations.

The U.S. and Australia should agree that animal welfare is an important issue to the citizens of each country and is an issue that should be addressed in the FTA. The HSUS respectfully requests that each country identify its animal welfare laws and regulations (Federal and state level) and that these provisions provide the basis for agreement on animal welfare standards in the FTA.

For example, the United States requires humane slaughter of animals used for human consumption and requires all imports to comply with those requirements. Both the

³ WTO Agreement on Agriculture, Annex 2, paragraph 12.1.

United States and Australia should commit to the full implementation and enforcement of humane slaughter laws and regulations.

The state of Queensland in Australia recently passed the Queensland Animal Care and Protection Act of 2001, a far reaching and progressive law designed to promote the responsible care of animals.⁴ The Queensland Act and accompanying regulations establish a duty of care on persons in charge of animals.⁵ The Queensland Act may provide the basis for a national animal welfare law in Australia.

In 2000 the United States banned the importation of products made with cat and dog fur because the “[t]rade of dog and cat fur products is ethically and aesthetically abhorrent to United States citizens. Consumers in the United States have a right to know if products offered for sale contain dog or cat fur and ensure that they are not unwitting participants in this gruesome trade.”⁶ The United States leadership on this issue is vital. The law illustrates the importance of the right of the consumer to know what they are buying and how the product is produced so that they may make informed and ethical purchasing decisions.

On November 5, 2002 Florida voters passed Amendment 10, a statewide ban on gestation crates for pregnant pigs.

Gestation crates inhibit practically every normal pig behavior, and as a result, sows suffer physical ailments, such as crippling foot and leg maladies, muscle weakness, and lameness. They have sores on their bodies from lying on the hard concrete floor and from constantly rubbing against the metal bars of their cages. They can develop urinary tract infections and other diseases. They also experience chronic stress, depression, and other psychological disorders.⁷

Florida voters decisively passed the ban on gestation crates by a vote of 55 percent to 45 percent. The vote in Florida illustrates that voters are sensitive to the suffering of animals and when given a choice, will vote to outlaw needless suffering.

The HSUS believes that the Florida ban on gestation crates is only the first step in what will be a complete transformation of U.S. agricultural practices. Producers must respond to the demands of their customers, and consumers are demanding humane treatment of animals and greater information on how products are produced. The Queensland and Florida initiatives demonstrate that voters are willing to take a stand against cruel and inhumane treatment of animals. This political commitment to the issue should inspire trade negotiators of both countries to address animal welfare in the context of the FTA to

⁴ Animal Care and Protection Act of 2001, Queensland, Australia (March 2002) (reprint 1). Animal Care and Protection Regulation 2002, Queensland, Australia (Mar. 1, 2002).

⁵ Animal Care and Protection Act of 2001 at § 4.

⁶ Tariff Suspension and Trade Act of 2000, P.L. §§ 1441-1443 (Dog and Cat Protection Act of 2000).

⁷ Florida: Initiative to Ban Cruel Gestation Crates, The Humane Society of the United States, *available at* www.hsus.org (2003).

provide assurances that animal welfare is as important to the government as it is to the voters/citizens of each country.

By addressing animal welfare standards in the FTA, both Australia and the United States will have the opportunity to recognize each other's laws and work toward strengthening animal welfare laws and standards. Agreement on this important issue in the FTA could provide the basis for greater harmonization and strengthening of animal welfare laws and standards globally.

Another, but perhaps less obvious benefit for including animal welfare in the proposed U.S. – Australia FTA will be to address a major issue in the WTO Agriculture negotiations. In June 2000, the European Communities (EC) tabled a proposal concerning animal welfare in the WTO Agriculture negotiations.⁸ The EC is under intense political pressure to ensure that animal welfare provisions are included in any agreement on agriculture. Both the United States and Australia have questioned the EC's motivations concerning this issue and on the EC's commitment to liberalizing its agricultural market. The United States and Australia have an opportunity to discuss, develop and formulate animal welfare policies that are non-trade distorting. An agreement on this issue between Australia and the United States could pave the way for a negotiated solution on animal welfare at the WTO.

The proposed FTA provides both the U.S. and Australia with a unique opportunity to address an issue that is important to citizens of both countries, in a way that is open, consultative, and non-trade distorting. The HSUS strongly encourages the U.S. and Australia to take advantage of this unique opportunity.

Transparency and Civil Society Participation in International Trade Policy

Unlike the proposed FTA negotiations announced earlier, the proposed FTA between the United States and Australia pairs two developed democracies with a long history of transparent government actions and participation by civil society in all government policies not just international trade policy. With this history in mind, the HSUS believes that the proposed U.S. – Australia FTA should be the most open and transparent FTA ever negotiated. The HSUS understands that access to the actual negotiation process may need to be limited to ensure full and frank discussions but overall the process should be transparent and open to input from civil society.

The United States submitted a proposal to the WTO to allow for greater transparency and public participation in dispute settlement.⁹ That proposal should provide the foundation for transparency and public participation in dispute settlement and for all aspects of the FTA with Australia. The United States and Australia should endeavor to make the

⁸ European Communities Proposal Animal Welfare and Trade in Agriculture, G/AG/NG/W/19 (28 June 2000).

⁹ Contribution of the United States to the Improvement of the Dispute Settlement Understanding of the WTO related to Transparency, Communication of the United States, TN/DS/W/13 (22 Aug. 2002).

proposed FTA negotiations as transparent as possible and as open to the participation of civil society as appropriate.

Conclusion

The HSUS hopes that these comments provide helpful guidance to the United States on the proposed FTA with Australia. The HSUS looks forward to working with USTR to address the important issues contained in these comments specifically and in the proposed FTA generally. The HSUS hopes to be a partner to both the United States and Australia in the effort to successfully negotiate the proposed FTA.