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Australian Fair Trade
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Plasma Fractionation Review Secretariat
Acute Care Division
MDP 47
GPO Box 9848
Canberra ACT 2601

Dear Review Committee

The Australian Fair Trade & Investment Network (AFTINET) thanks the Review Committee for the opportunity to make a submission on the arrangements for plasma fractionation under the AUSFTA.

This submission will primarily focus on term of reference (3): issues arising as a result of an increase in competition for the provision of plasma fractionation services for Australia.

Overview of AFTINET

AFTINET is a network of over 90 organisations, including church, union and health advocacy groups, supporting the fair regulation of trade. AFTINET conducts research and advocacy to ensure that trade agreements do not undermine the ability of governments to regulate in the public interest.

AFTINET made detailed submissions in 2004 to the Senate Select Committee on AUSFTA (2004) and to Joint Standing Committee on Treaties Inquiry on AUSFTA. The Public Interest Advocacy Centre hosts AFTINET and has prepared this submission on AFTINET's behalf.

Restrictions on the government's right to regulate health policy

The AUSFTA side letter of 18 May 2004 regarding blood plasma products and blood fractionation services (**the side letter**) commits the Commonwealth government to recommending to states and territories that future arrangements for the supply of fractionation services be done through competitive tendering processes consistent with chapter 15 of AUSFTA on government procurement (point 2, side letter).

At the time of negotiating AUSFTA, AFTINET raised concerns that the side letter imposes restrictions on the Government's future policy making regarding the regulation of blood fractionation services. It effectively dictates the policy position

that the Government must take during the current review process. It is unacceptable for a trade agreement to dictate the health policies of a future government.

Health and national security concerns

AFTINET is concerned that the competitive tendering of blood plasma products and blood fractionation services may weaken health standards and raise national security concerns. Specifically, AFTINET is concerned that competitive tendering may lower Australian fractionation standards and increase the risk of infectious diseases being transmitted through blood products. AFTINET is also concerned that Australia maintain a central entity in Australia (currently CSL) to supply of blood plasma products and fractionation services in the event of natural or man-made emergencies. It is important that Australia maintains the national capacity to supply our blood needs in the event of an emergency.

In 2001 the National Blood Authority Committee of Inquiry, chaired by Sir Ninian Stephen, undertook a review of the Australian Blood Banking and plasma product sector (**the 2001 Review**). The review recommended that Australia's blood products continue to be supplied by a central entity in Australia for national security and health reasons. Specifically, to ensure that there was continued national capacity to supply these products. This report followed a lengthy inquiry, including submissions and hearings (<http://www.nba.gov.au/review.htm>). AFTINET notes that the requirements imposed on future Australian governments in the AUSFTA side letter directly contradict the recommendations in the 2001 review.

The side letter further requires that regulations to ensure the safety, quality and efficacy of blood products "shall not be prepared, adopted, or applied with a view to or with the effect of creating unnecessary obstacles to trade" (point 4, side letter). AFTINET is concerned that this criteria undermines the Government's ability to regulate blood fractionation for health or national security reasons. By inserting this commitment into AUSFTA, future Australian regulations for health or national security purposes, may become subject to AUSFTA dispute settlement provisions on the basis that the regulations are an unnecessary barrier to trade.

Thank you for the opportunity to make this brief submission to this review. We welcome the opportunity to expand on our submission at the discretion of the Review Committee.

Yours faithfully

Jemma Bailey
Trade Justice Policy Officer