

AUSFTA attempt to trade away Blood Processing prevented by community campaigning

Presentation by Dr Patricia Ranald, Australian Fair Trade and Investment Network, at the “What Have we traded away?” Seminar on the Australia-US Free Trade Agreement, held at NSW Parliament House, July 4, 2007.

I want to discuss the attempt by the US government representing particular corporate interests to use the USFTA to change government policy on the supply and regulation of blood products. This is a good news story, in that the attempt was prevented by community campaigning and strong public opinion, and the decision was able to be blocked by State Governments. But it shows how trade agreements can be used to undermine democratic policy processes in key areas like health.

In Australia, blood is donated by individuals through a national voluntary scheme run by the Australian Red Cross and is processed into blood products by an Australian company, CSL. The scheme is regulated through the National Blood Agreement, a joint agreement between the Federal and State Governments, as the hospital system that uses most of the blood products is run by state governments.

In 2001 the National Blood Authority Committee of Inquiry recommended that Australia’s blood products continue to be processed by CSL, for both health and national security reasons, to ensure that there was continued national capacity to ensure timely and continuous supplies. This report followed a lengthy inquiry, including public submissions and hearings (National Blood Authority, 2001).

In line with this policy, the government procurement chapter of AUSFTA specifically exempted blood products from being opened up for competitive tendering by US firms. However, at the last minute in the negotiations the US government insisted that a side letter was added that required the Australian government to conduct a review and to recommend to state governments that the rules of the AUSFTA procurement chapter be applied to blood products. This would open up the supply of blood products to tendering by US firms, directly contrary to the findings of the 2001 Report.

This side letter was the result of lobbying by Baxter Healthcare (the Australian subsidiary of US Baxter Health Corporation). Baxter’s submission to the Joint Standing Committee

on Treaties stated: ‘Baxter referred its concern ...to the United States Government which then added the issue to its agenda, and in 2003 the topic was discussed at length in the FTA negotiations. The Side Letter describes the results of those negotiations’ (Baxter Healthcare 2004: 3). One again this is an example of specific industry interests' success in lobbying for provisions in a trade agreement which were contrary to public health policy.

The USFTA side letter required a review of Australia’s blood processing arrangements in 2006, but also specified that the Federal Government ‘will recommend to Australia’s States and Territories that future arrangements for the supply of such services be done through tender processes open to US firms under the same rules as other government procurement. However, the wording of the Side Letter did not bind the States and Territories to agree with the Federal Government’s recommendation.

Further, AUSFTA imposed a trade test even on the safety and quality requirements that Australia may place on suppliers of blood products. These requirements ‘shall not be prepared, adopted or applied with a view to **or with the effect of** creating unnecessary obstacles to trade’. Thus blood products could become subject to the dispute settlement provisions of the AUSFTA.

The review was conducted in 2006. Many health and community organizations, health academics, the Australian Red Cross, and AFTINET made submissions to the review, urging retention of the current system, and there was a public media debate (Australian Red Cross, 2006, Bambrick et al, 2006, AFTINET, 2006). The Australian State Health Ministers’ Conference also made a public statement in April 2006 re-asserting the national policy principle of self-sufficiency in blood products.” (Australian Health Ministers’ Conference, 2006).

The review report recommended against tendering, concluding that the voluntary collection of blood in Australia and self sufficiency in blood products should remain key objectives of Australian policy. Tendering to US firms would involve substantial additional costs for transport and return of Australian blood plasma, and substantial safety compliance and risk management costs. It would also increase the lead time between the collection of blood plasma and its clinical use, and increase the risk of interruption to supply. (Flood et al, 2006, pp 6-8).

Despite these recommendations, Federal Health Minister Tony Abbott announced that the

terms of AUSFTA obliged him to contradict the review and recommend to the states the application of AUSFTA tendering rules to open provision of blood products and services to competitive tendering by US firms. (Abbott, 2006).

A meeting in March 2007 of all State and Territory Health Ministers rejected the government recommendation for tendering. The Federal Health Minister then announced that, since there was no consensus for change, the current arrangements would continue without competitive tendering (Abbott, 2007).

The Trade Minister Warren Truss appeared publicly to accept the right of state and territory governments to refuse to accept the Federal Government recommendation. He was quoted in the media as saying “We’ve met our commitment under the FTA. The commitment was to conduct a review, and we have asked the states, we have done everything we can do within our sovereign powers. We’re quite satisfied we’ve met the obligations. I’m not saying the US won’t continue to raise the issue with us” (Breusch and Sutherland, 2007).

The US Embassy did indeed criticise the findings of the review (Breusch and Sutherland, 2007). It remains to be seen whether the US will use the disputes process to argue that Australia has not met its AUSFTA obligations .

This issue is a clear example of the way in which trade agreements can undermine the democratic process of policy making. The Federal government was bound by AUSTFTA to conduct a review by health policy experts and was then bound to ignore its findings, an absurd situation. Because of the prior Commonwealth-State Agreement, the state governments remained free to decide the issues on the basis of health policy as indicated in the review findings, and refused to accept tendering. The Federal Government was then able to declare that it had met its AUSFTA obligations. However, it is still open to the US government to use the government to government dispute process to challenge the outcome. There is also some evidence of pressure to use a greater proportion of imported specialised blood products from overseas (currently these make up a small proportion of total supplies), which could be a back door method for undermining the blood self-sufficiency policy. We will need to remain vigilant about this issue.

References

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