

9th February 2014

Mr David Sullivan

Committee Secretary

Senate Foreign Affairs, Defence and Trade References Committee

PO Box 6100

Parliament House

Canberra ACT 2600

Dear Mr Sullivan

Inquiry into the Commonwealth's treaty-making process

I agree with Professor Geoffrey Lindell (submission one to this inquiry) who recommends the adoption on a trial statutory basis a proposal to require parliamentary approval for Australia's entry into international treaties. The view adopted by Professor Geoffrey Lindell is clearly explained and referenced in his submission one to this inquiry.

I have very real concerns that such treaties can become law without having to be put to the Parliament of Australia for debate and approval, prior to agreement. International trade treaties have ramifications for many Australian citizens (and citizens of foreign nations) and it is important for there to be public discussion on the merits or otherwise of aspects of trade treaties that may have the potential to conflict with our rights, for example, to democratic governance, to laws designed to protect our environment or our water supplies or our access to affordable medicines or our right to be aware of the contents and treatment of our food to name a few. These are important rights that extend well beyond short or medium term trade advantages and will affect future generations.

The negotiations for the current TPP have been conducted relatively secretly and public interest groups and some key government organisations have thus far been excluded from accessing the draft terms of the agreement. However, it would appear that there are large groups of "advisers", comprising mainly industry lobbyists, who have been able to gain full access to the draft TPP agreement. I recognise that the negotiation process may need to be conducted with some secrecy, given the existence of industry sensitive information, however before any final agreement is reached full public scrutiny should be permitted via the parliament.

Transparency, the public interest and due parliamentary process should ultimately be a feature of any international treaty agreement. Of great concern is the presence of ISDS (investor state dispute settlement) clauses in international trade agreements. The presence of ISDN clauses has the potential to impose unexpected pressures on the government budget and thus to burden taxpayers for decisions that are outside their control, and to weaken or limit the power of our governments to make laws in the best interests of all Australian citizens, both current and future. In recent years the number of international ISDS disputes has increased dramatically and some governments have been excessively and some would suggest, unfairly, burdened. Any clause such as this should trigger an automatic requirement for full public disclosure of the terms of the agreement with parliamentary approval prior to agreement.

The plain packaging cigarette laws have already cost our government millions of dollars in legal defence costs after Phillip Morris (Asia) chose to take its case to private arbitration with the United Nations Commission on International Trade Law, despite cigarette companies unsuccessfully challenging these laws twice in the High Court of Australia. Phillip Morris (Asia) is relying on a 1993 free trade agreement with Hong Kong that included ISDS provisions.

Most notably, only foreign investors can sue States under investment treaties ISDN clauses and only States can be held liable to pay damages for breach of treaty. No individual or State can initiate a claim against a foreign investor under an international treaty. This makes the investor state arbitration process unbalanced, favouring the foreign investor over any individual or government, permitting the foreign investors, especially major companies, access to a special tribunal outside any court.

Investor treaties often have long life spans, in some cases up to 30 years. It contradicts the principles of democracy that the actions of one government acts to bind successive governments for years to come. Therefore it is very important that the powers of the Commonwealth to make international trade treaties is subject to full public disclosure of the final terms of the treaty with agreement to the treaty terms, the outcome of due parliamentary process and approval.

Yours Faithfully

Alanna Hardman