

The Foreign Affairs, Defence and Trade Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600

To the Committee Secretariat,

I am writing as an extremely concerned citizen regarding the multi-lateral international treaty-making process, specifically apropos of the Trans-Pacific Partnership (TPP) that is currently being negotiated, ostensibly on behalf of the Australian people by its alleged representatives. I will refer to the terms of reference of the Committee, as available on the web this day of 8<sup>th</sup> February, 2015:

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Foreign\\_Affairs\\_Defence\\_and\\_Trade/Treaty-making\\_process/Terms\\_of\\_Reference](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Treaty-making_process/Terms_of_Reference)

The Commonwealth's treaty-making process, particularly in light of the growing number of bilateral and multilateral trade agreements Australian governments have entered into or are currently negotiating, including:

- a. the role of the Parliament and the Executive in negotiating, approving and reviewing treaties;
- b. the role of parliamentary committees in reviewing and reporting on proposed treaty action and implementation;
- c. the role of other consultative bodies including the Commonwealth-State-Territory Standing Committee on Treaties and the Treaties Council;
- d. development of the national interest analysis and related materials currently presented to Parliament;
- e. development of the national interest analysis and related materials not currently presented to parliament, such as the inclusion of environmental impact statements;
- f. the scope for independent assessment and analysis of treaties before ratification;
- g. the scope for government, stakeholder and independent review of treaties after implementation;
- h. the current processes for public and stakeholder consultation and opportunities for greater openness, transparency and accountability in negotiating treaties;
- i. a comparison of the consultation procedures and benchmarks included by our trading partners in their trade agreements;
- j. exploration of what an agreement which incorporates fair trade principles would look like, such as the role of environmental and labour standard chapters; and
- k. related matters.

Of particular concern to me is the utter lack of transparency of this process (point f) and the current complete *absence* of consultation with 'stakeholders' until *after* the process has been completed and the treaty both signed and implemented (point h). I am also highly concerned that environmental impact statements (EISs) are not currently part of treaty information presented to parliament. Of additional concern are the actual contents of the current TPP, various aspects of which are reported or rumored to be counter to the sovereign governance of our country, which bear on the role of government in such negotiations (points a and b), my concerns regarding which I will first delineate.

International trade treaties are long-term, binding contracts governing the exchange of goods and services between corporations based in different countries and therefore last far beyond the minimum tenure of any government. Moreover, given that the previous government of Australia rejected the premise of the TPP on the behalf of the Australian populace whom it represented, it is highly arguable that something as ephemeral as a change of government should change the actual value of an international contract to the principal stakeholders affected by the treaty; at any one time, any given government may have as little as ~50% of the stakeholder support at the last election, and frequently may have less thereafter, such as is currently the case. Thus, at the very least, any international trade treaty should have super-majority support in federal parliament, to ensure that the majority of the stakeholders – the Australian public – are adequately represented in the process. This would mean that the executive would have a role to initiate such negotiations, but not to pursue them; any treaty should be placed before parliament in its entirety and voted on with a two-thirds majority required for acceptance. The role of committees should continue to be to provide advice to parliament, but as such advice will substantially derive from the people composing those committees, the composition of parliamentary committees is of some concern.

I suggest that parliamentary committees for review of trade negotiations are comprised of representatives from all parties in proportions that reflect the actual primary vote that those parties received during the most recent federal election. This is a more general rule that could be applied to all parliamentary committees, as it would more accurately reflect the wishes of the constituent population, which is very poorly represented in our current single representative system. I realize this would put significant strain on the minor parties, but increasing staff support to an adequate level to allow participation in more committees could ameliorate this to a substantial extent. With specific regard to international treaties, which have a great many sections, each section should be separate from the others in the legislation tabled in Parliament, thus allowing the elected representatives of the Australian people to decide on each section, thereby avoiding their being forced to accept lesser evils for minor goods at their discretion.

It is the balance of advantages and disadvantages that is mostly in question in such negotiations. This is a balance that is not easily determined, involving as it does predictions of future effects of the agreements, and one that is of great concern to stakeholder citizens who are prevented from reviewing the documents in the case of the current TPP negotiations. Gone are the days when the capability for analysis of such documents was the principal domain of experts in the public service – elected or otherwise. Now, expertise abounds in the public domain. This expertise should be utilized in the process of establishing social license: rather than perceiving the public as the ignorant or foolish enemy of such processes, it would be far wiser to enlist said public in the decision-making process. This is a tried and true approach that has allowed the development of great numbers of projects for community benefit, projects that would surely never have been realized, had they been developed in secrecy and without open community consultation.

The question of secrecy in any government is a highly vexed one and bears some examination; only in secret may the greatest of evils be done, as decent people, who comprise the overwhelming majority, will simply not tolerate miscreants. Thus, while asylum seekers may be hidden away from local public view by deportation to other countries and their treatment apparently tolerated by the majority, the same sort of vile, divisive neoliberal ideologies enacted at home are resulting, this coming week, in a leadership 'spill' for the greatest political ideologue of our current age, the Prime Minister, Tony Abbott. This is the culmination of over a year of autocratic policy implementation enacted against the wishes of the public and without any kind of social license. Regardless of the outcome of the leadership

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spill, the message is clear: governments acting without social license are doomed to failure and dismissal.

Similarly, here in Victoria, the recently dismissed Napthine government used a secretive, autocratic process to create a contract for the East-West Link, in full knowledge that the electorate had never ratified the project; that there was enormous public resistance to it; and that other, more effective projects were already 'shovel-ready.' The contract was created and signed in secrecy, based on plans that were tabled without public oversight and ratification of independent experts, and is likely the principal reason that the Liberal Government was dismissed: not necessarily for the project itself, but for the high-handed and autocratic way in which Napthine went about managing the implementation of such an unpopular project.

It is absolutely true that governments do have to make unpopular decisions, on occasion, but the way to successfully realize their goals is not to treat their constituent citizens like cattle, to be goaded with fear and loathing into absentmindedly voting for the wrong party, but to treat citizens like rational people who are capable of recognizing that long-term benefits sometimes require immediate sacrifice. This is a dialogue that political ideologues are unlikely to initiate on their own, so having rules that enforce their compliance – starting with abolishing the capacity of governments to keep secrets – is an absolute necessity. This will also have the additional benefit of ensuring that disastrous contracts are not entered into against the will of the public, which will only listen to truly independent review provided by other more capable, educated citizens, who are not in the employ of either governments or corporations.

Returning to the most concerning point of all: the aspects of international treaties that permit foreign companies to sue governments for making laws that *may* negatively impact their profits. Such a threat to sovereign governance must not be tolerated; nor should the political means to allow such a contract be permitted to exist. This is the triple bottom line: no government should ever be allowed to enter into a contract that compromises the realization of the will of the people; democracy is governance by the people, of the people, for the people. Foreign multinational corporations do not enter into that relationship. Ever. This returns us to point 'a' with reference to point 'd': one role of government is to identify threats to the national interest and what greater threat could there be than the compromise of our collective right to self-govern as a nation? This is nothing less than invasion and annexation by economic means and you are obliged by your mandate from the people to ensure that nothing like this is permitted now or in the future.

I have every hope that you will recommend that the process, by which treaties such as the TPP are ratified, is rendered transparent to the public, that said process will require extensive bipartisan support; and that elements, which prevent our government from pursuing the mandate of its electors, are forever banned from such treaties.

Sincerely,

Dr. Clem Stanyon, BSc, PhD.

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