

Foreign Affairs, Defence and Trade Committee

Department of the Senate

PO Box 6100

Parliament House

CANBERRA ACT 2600

fadt.sen@aph.gov.au

SUBMISSION ON THE COMMONWEALTH'S TREATY-MAKING PROCESS

Thank you for the opportunity to make a submission on this process, particularly in light of the growing number of bilateral and multilateral trade agreements which Australian governments have entered into or are currently negotiating.

TOR 1. It seems that at present only Cabinet, rather than the elected Parliament of Australia, plays the key role of negotiating and approving proposed treaty action. The text remains secret until the Prime Minister and Cabinet Ministers make the decision to sign the agreement. Parliament and the public do not see the text of the agreement until after it has been signed and cannot be changed.

TOR 2, 3. In light of the above, there seems to be no role for parliamentary committees, or other consultative bodies including the Commonwealth-State-Territory Standing Committee on Treaties, and the Treaties Council, in reviewing proposed treaty action.

I **object** to this current process because it is secret and undemocratic. I understand that there are growing numbers of examples of public release of trade agreement texts before signing. Since 2003, World Trade Organisation draft texts have been placed on the [WTO public website](#). The Anti-Counterfeiting Trade Agreement (ACTA) text [was released](#) in 2011 before it was signed. The EU is negotiating a Transatlantic Partnership (TTIP) with the US, and has agreed in January 2015 to release its [own negotiating documents](#), and the [final negotiated text](#) publicly and to the European Parliament before it is signed.

Parliament currently only gets to vote on the implementing legislation of treaties, not the whole text of the agreement. The current process is additionally unacceptable because many aspects of trade agreements which limit future government action do not require legislation. For example, legislation is not required for the [right of foreign investors to sue governments](#) for damages in an international tribunal if they can claim that a change in a domestic law or policy "harms" their investment, known as Investor-State Dispute Settlement (ISDS). I have previously made two submissions on the ISDS clauses in the KAFTA.

TOR 4, 5, 6, 8. In view of the above, there seems to be no allowance, in Australia, for public participation in contributing to the development of national interest analysis of these treaties.

I **object** to this current process because it does not provide safeguards against "groupthink" in the Executive. Trade agreements are legally binding on governments but are negotiated in secret. Trade agreements like the Trans-Pacific Partnership (TPP) now deal not only with traditional trade issues like tariffs

or taxes on imports, but with a wide range of domestic law and policy which affect our lives, like access to medicines, internet regulation, data privacy, cultural policies, food, tobacco and alcohol regulation, labour rights and environmental policies.

TOR 7, 9, 10. For me, these are among the most important terms of reference for this inquiry. I would like the Committee to document, in its report, what evaluations have been done of the long term effects of prior bilateral and multilateral trade agreements, across the world. For example, I ask you to note the following article about one of the long-standing multilateral trade agreements, NAFTA, at <http://www.bloomberg.com/bw/articles/2012-08-01/nafta-20-years-and-not-there-yet>

TOR 11. In conclusion, I **recommend** the following changes to the trade agreement process:

- 1) The Trade Minister should report to Parliament before trade negotiations begin, with an assessment of potential costs and benefits to Australia.
- 2) Parliament should decide whether to enter trade negotiations, and define clear benefits to be obtained from the negotiations.
- 3) There should be widespread community consultation during negotiations, including the release of negotiating proposals for public discussion.
- 4) The final text of the agreement should be released for public and parliamentary discussion before it is signed, and subject to a public and independent evaluation of its economic, social and environmental impacts to determine whether it is in the national interest
- 5) Following this public discussion and evaluation, Parliament should first vote on the whole text of the agreement to determine if it is in the national interest, or if changes should be made
- 6) If the agreement is approved, Parliament should then vote on any legislation needed to implement it.

Yours sincerely

(Dr) Romaine Rutnam

13 February 2015