

Dissenting Report by Senator Peter Whish-Wilson

Australian Greens Senator for Tasmania

1.1 The Australian Greens acknowledge the relatively measured tone of the committee report. This is notable in comparison to the more partial tone of the report of the Joint Standing Committee on Treaties (JSCoT) report on ChAFTA.

1.2 The Australian Greens agree with a number of the conclusions made by the references committee, which are summarised in the statement:

The committee continues to have misgivings regarding ChAFTA, including in relation to the sectors which will be affected by inequitable tariff changes, the requirements to conduct labour market testing and the eventual scope of the ISDS mechanism.

1.3 The Australian Greens also support the conclusion that “the unfinished nature of the ISDS provisions within ChAFTA is concerning” and support the intention of Recommendation 1 being to ensure that the future review of the ISDS provisions in ChAFTA does not further erode Australia's sovereignty. There is a very real prospect that the most insidious aspects of ISDS that are absent in the current provisions, such as indirect expropriation, will be put on the negotiating table during the future review of these provisions. This fear is based on the explanation provided by DFAT as to why the ISDS chapter is unfinished. DFAT stated during the JSCoT public hearings that China preferred to wait until it had completed bilateral negotiations with the EU and the US before finalising ISDS provisions. In other words, China will wait to see what it works out with the EU and the US, and will then likely ask Australia to replicate whatever is agreed to with the EU and the US.

1.4 As such, the Australian Greens do not support the final recommendation of the committee that binding action be taken. The Australian Greens do not support justification for this recommendation on the basis that Australian businesses are assured to benefit from ChAFTA. One of the fundamental problems with Australia's treaty-making process is that there is no requirement for an independent economic analysis of the benefits of a trade agreement before it is signed or enabled. Even so, the economic analysis commissioned by the department shows that ChAFTA is only expected to provide a competitive advantage to Australia for the next five years, principally because China is in the process of negotiating bilateral treaties with the EU and the US.

1.5 Further, the Australian Greens believe that the incomplete protections provided for labour-market testing requirements, and the absence of any consideration of environmental standards, are further reason for the committee to recommend that binding action not be taken.

Recommendation 1

1.6 That binding treaty action not be taken in relation to the Free Trade Agreement between the Government of Australia and the Government of the People's Republic of China.

**Senator Peter Whish-Wilson
Australian Greens**