SUBMISSION 14 – Mr Roger Jowett

By email: Mr Roger Jowett

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Joint Standing Committee on Treaties

Parliament House

Canberra ACT 2600

Dear Committee Secretariat

I am strongly opposed to the China Australia Free Trade Agreement (**ChAFTA**) and call on the Australian Parliament to reject it. The Agreement has number of provisions which are not in Australia's national interest.

In particular the Memorandum of Understanding attached to the Agreement on the issue of "*Investment Facilitation Agreement*" allows a company with 50% Chinese ownership to bring in Chinese workers for a proposed infrastructure development project. The scope of the infrastructure project covers a wide range of industries including food and agribusiness, resources and energy, transport, telecommunications, power supply and generation, environment and tourism sectors.

My prime concern with this provision is the impact on job opportunities for Australians, particularly young people and those in regional and remote communities where more often than not face unemployment levels which are considerably higher than for other areas of the economy.

The current pathway for skilled immigration is the 457 visa program. This arrangement has had a chequered history as immigrant workers are the most vulnerable and have been the subject of repeated violations of their industrial rights.

Despite these shortcomings, which have been highlighted by both the Deegan Review and the 2013 review of the Australian Parliament the 457 program has an institutional framework which contains a number of threshold matters.

The 457 visa program has been targeted at higher skilled migrants who are sponsored by employers subject to a number of tripwires including:

1) Occupations must be listed on the Consolidated Sponsored Occupations list (CSOL)

2) Employers must show evidence of failed recruitment efforts

3) Visa holders must meet certain English language requirements and

4) Visa holders must be paid above the Temporary Skilled Migration Income Threshold (currently$53000)

The **ChAFTA** represents a massive change to Australia's worker immigration program and introduces a totally new direction in Australia's free trade agreements. The **ChAFTA** arrangements must be rejected by the Australian Parliament as they

1) Will lower the occupational qualifications including the English language skills required. This can lead to workers not knowing their rights and increasing occupational health and safety risks.

2) Extend occupational coverage to lower skill occupations

3)Lead to Australian workers being excluded from employment opportunities as their will be no requirement to undertake, as is required with the 457 program, labour market testing designed to ensure there are genuine skills shortages and that there are no local workers available to perform the job.

4) Will lower the wages and conditions of employees as there is the ability for "**concessions**" to be made which are lower than the TSMIT of $53,000.

5) Overturn existing institutional arrangements for 457 temporary skilled workers from employer sponsored schemes which often involves workers and their organisation being involved in the setting of wages and conditions to the Department of Immigration negotiating in private with the Chinese company. This represents a major erosion of transparency and accountability through the transfer of powers to the Executive Branch of Government which will not be subject to public oversight.

The other area of major concern is the provision which allows Chinese investors to sue the Australian Government for damages in an international tribunal on the grounds that a change in Australian laws or policy harms their investment.

Alarmingly the ChAFTA has yet to detail the precise criteria that could be used to pursue such cases by foreign investors. The details are left to be negotiated within three years. However any outcomes of negotiations subsequently incorporated into the agreement will not be voted on by the Australian Parliament. This proposed path must be rejected.

At a general level investment state dispute settlement (ISDS) provisions in Australia's FTA's are rejected for the following reasons:

1) **ISDS has developed expanded legal rights for investors which are not found in national legal systems**

   The original intention of ISDS was to pay financial compensation to foreign investors in the event of the actual expropriation or taking of their property by host governments. Thus the circumstances envisioned for the operation of the provisions were rare.

   The concept of ISDS has been expanded beyond the scope of their meaning in national legal systems to enable investors to lodge claims against domestic law or policy on the grounds that it reduces the value of that investment.

2) **Lack of legal protections found in national legal systems.**

Disputes under ISDS are heard by international investment tribunals which operate under different sets of rules compared to the rules of national legal systems such as those found in Australia or the rules of the International Court of Justice which were recently highlighted in the action taken by Australia in relation to Japanese whaling.

These differences include proceedings and results often being not available to the public, arbitrators not coming from a recognised judiciary, normal legal rules relating to precedents and lack of appeal rights not applying.

The third party funding of cases is leading to international law firms actively soliciting ISDS business and thus encouraging large claims.

3) Increasing numbers of ISDS cases against health and environmental and other public interest legislation.

Recent examples of cases taken include

- The Phillip Morris Tobacco Company (revenues 2011US$ 76 b) suing the Australian Government over regulation of tobacco packaging. The laws passed by the Australian Parliament with the overwhelming support of the Australian people for public health reasons have the potential to save tens of thousands of people from a painful and lingering death.

  The WHO indicates smoking *"is the greatest single cause of preventable death globally."*

  Australia faces separate disputes from five countries trying to overturn its plain packaging laws.

- the Eli Lilly pharmaceutical company suing the Canadian national government over a court decision to refuse a medicine patent
- the US Lone Pine mining company suing the Québec provincial government of Canada over environmental regulation of shale gas mining
- the Swedish energy company, Vattenfall, suing the German government over its decision to phase out nuclear energy

4) Costs to government and taxpayers.

The costs of running ISDS cases (OECD estimates an average of $8 million per case, with some cases costing up to $30 million) can be significant. Furthermore the compensation awarded to foreign investors, (often hundreds of millions and in some cases billions of dollars) can discourage governments from proceeding with national legislation.

The highest compensation award so far is $1.8 billion against the government of Ecuador. This is damaging for any government, but particularly damaging for developing countries, and can have a freezing effect on national legislation.

For the reasons referred to in my submission I request the JSCOT to conclude that the ChAFTA is not in Australia's national interest. If you have any queries or require further information concerning this submission please do not hesitate to contact me at rogerjowett@bigpond.com

Yours sincerely

Roger Jowett

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