



V T Moore

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

Sir,

Outcome

As a constituent of the Commonwealth of Australia, it is my will that the following conditions to be forensically examined and that the agreement not be ratified until the following be investigated fully and transparently before reporting back to this committee

- That the Productivity commission be instructed forthwith to review and report on the benefits to the taxpayer of Australia of the TPP.
- That the Investor State Dispute Settlement clause within the Trans Pacific Partnership, be structured within the ambit of each signatories sovereign court system.

Preamble:

Given that all previous submissions to a number of cognate committee's have been totally ignored by the Abbot/Turnbull Liberal Government, and that entreaties for support to the Labor Party have fallen on deaf ears, it is fact that the Trans Pacific Partnership appears to now be a fait accompli, waiting only ratification.

It is beholden of those who have the interest of the community of Australia at heart, to argue for the best outcome for that community in relation to the more aggressive corporate intentions of the Trans Pacific Partnership.

Under the stewardship of Prime Minister John Howard the 2005 AUSTFA did not include an ISDS clause as Howard, and indeed the negotiators from the USA, did not see the necessity, as both countries had robust court mechanisms for resolving disputes within the existing legal systems.

This view was continued by the Gillard government, when in 2011, it considered Australia's approach to international trade would not include any ISDS clauses in bilateral or regional agreements. The principal that, "any government's right to regulate to protect the public interest should always be paramount to the right of investors to protect any perceived threat to profit through legislated community concern", was paramount.

In 2015, under the leadership of Prime Minister Tony Abbott, the cautious approach of previous governments was disregarded with the signing of the Trans Pacific Partnership, by an enamoured Trade Minister Andrew Robb. Abbott and Robb actively supported the inclusion of the ISDS clauses and proceeded to acquiesce to the wishes of the negotiators, particularly, of the USA, except for the exemption of Tobacco. Tobacco had been compromised by a court case brought by Phillip Morris before both in the Australian Courts and latterly at a WTO

ISDS tribunal sitting in Singapore. That Phillip Morris lost both cases was ipso facto in excluding the tobacco industry from the agreement.

In every other clause, the Abbott/Robb team ceded a majority of rights required to achieve a considered outcome for the Australian taxpayer, to mainly, the USA negotiators.

Productivity

The benefit of the TPP to Australia has been set by The World Bank (Potential Macroeconomic Implications of the Trans-Pacific Partnership 2014 Chapter 4) as:

- 0.07%/a for the next 30 years.
- Australia will also have one of the smallest overall increases in exports by 2030 of about 5 per cent, compared with about 30 per cent for Vietnam and 10 per cent for the US.
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- This is hotly disputed by the politicians yet they categorically refuse to have the Productivity Commission investigate those benefits.
- The Productivity Commission reviewed the Bilateral and Regional Agreements in 2010. The Commission recommendations were that the government not include ISDS provisions in its trade agreements.
- The Commission found no evidence of the existence of a market failure relating to sovereign risk. The Commission opined that most governments desire to retain a good reputation with foreign investors was sufficient to quell any impulse to expropriate.
- The Commission could not find any evidence that regulation (in Australia or abroad) is systematically biased against foreign investors.

There appears to be no significant difference in trade commerce, now to then, for such radical departure from the original review to have been promoted.

ISDS Clause Amendments.

Particular attention is to be directed to:

- More emphatic description to record the ability and rights of Government to regulate at all levels, investment protection.
- All Investor Disputes appeals will, in the first instance, be reviewed by the involved governments legal system i. e. courts, to ensure the outcome of decisions are correct for that governments laws and any rectification required is immediate.
- The members of the tribunal will no longer be appointed by the investor and the state involved in a dispute but instead appointed in advance by the Parties to the TPP agreement, and shall not be beholden to either litigant in any way.
- Transparent, detailed commitments on ethics, to avoid any conflicts of interest eg dual cases ect. be included.
- That Australia commit to instigate a permanent multilateral investment court with a standing appeals mechanism within the Australian legal system dealing with Dispute Settlement Clauses in any Trade Agreement.

Yours Faithfully

Vince Moore