

# **Additional Comments by Senator Rex Patrick**

## **TTP-11, even less beneficial than TTP-12**

### **but with all the same faults**

#### **The Work of the Committee**

1.1 I thank the committee for the work it has done in relation to this inquiry. I also thank the secretariat for their behind the scenes efforts.

1.2 I support the general findings in this report and the recommendations that flow from them, but they do not go far enough.

#### **Economic Benefit**

1.3 During the 2017 Senate inquiry into the TPP-12 Agreement, the National Interest Analysis (NIA) pointed out that *modelling by the World Bank 'suggests that Australia is set to benefit from the TPP-12 through GDP growth of around 0.7 per cent by 2030'. It also notes that 'similar findings were made in modelling by the Peterson Institute for International Economics and the Research Institute of Economy Trade and Industry, which found increases of 0.6 per cent and 1.9 per cent respectively to Australia's GDP, over similar time periods'*.<sup>1</sup>

1.4 For TTP-11, a modelling study conducted by Professor Peter Petri of Brandeis University and Michael Plummer of Johns Hopkins University modelling shows that GDP will only improve by or 0.5 per cent of GDP.

1.5 It is keenly apparent that the economic benefits of the TPP-11 have deteriorated even from the questionable levels of TPP-12. To further illustrate the downside of it, it must be appreciated that the Productivity Commission<sup>2</sup> has found that predictions for growth and jobs from free trade agreements have rarely been delivered, because the economic models employed exaggerate the benefits, ignore many of the costs and assume away unemployment benefits.

1.6 There is questionable benefit in the TPP-11, but clear downsides. Signing up to this deal without removing the downsides makes little sense.

#### **Lack of Transparency**

1.7 I agree with the lack of negotiation transparency discussed at length in this report. A neat summary of the situation is found in Professor Clinton Fernandes new book, *Island Off the Coast of Australia*, where he states:

*...small number of DFAT officials and their counterparts overseas, along with a few hundred corporate lawyers and lobbyists, negotiate free trade agreements in secret.*

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<sup>1</sup> Senate Report into the TPP-12 Agreement, 07 February 2017.

<sup>2</sup> Productivity Commissioners Trade and Assurances Review 2014-15.

*Once the insiders have agreed to the terms, they are presented to the Parliament in a “take it or leave it” deal.”*

1.8 ‘Take it or leave it’ will remain a strategy of the bureaucracy until such time as the Parliament rejects this approach by Government.

### **Recommendation 1**

**Noting Ministers seem unwilling to challenge the trade orthodoxies within the Foreign Affairs and Trade bureaucracy, the Parliament must draw a line in the sand before any change will occur. The Parliament must reject the enabling legislation and state a clear objection to the closed manner in which these treaties are negotiated.**

### **ISDS Provisions**

1.9 Investor-state dispute settlement (ISDS) provisions in the TPP-11 (as is the case for other free trade agreements) allow foreign corporations to sue the Australian Government if they believe they have been affected by changes in public policy. The sole aim of the provisions is to protect foreign investment, shifting sovereign risk from the investor to the taxpayer.

1.10 ISDS provisions are also discriminatory in that they grant a right to foreign companies that is not available to local companies. They are also an attack on Australian legal sovereignty.

1.11 In 2012 the High Court determined that legislation relating to plain packaging of tobacco products was constitutional. That did not deter Philip Morris from shifting some assets to Hong Kong, claiming to be a Hong Kong company, and using the ISDS provisions in an obscure 'Agreement between the Government of Hong Kong and the Government of Australia for the Promotion and Protection of Investments' to try to usurp the High Court's decision.

1.12 The case was heard by a tribunal of investment lawyers meeting in Singapore. Thankfully, Australia won the case on jurisdictional grounds, but only after 4 years and \$39 million in legal costs to the Australian taxpayer.

1.13 In 2014, Chief Justice French laid out his views on ISDS provisions when he said:

*The possible inclusion of an ISDS provision in the TPP has become an issue of intense debate with some critics seeing it as a Trojan horse for the enhancement of the power of international corporations at the expense of national sovereignty and interests.*<sup>3</sup>

1.14 ISDS provisions must go before the Parliament passes the TPP-11 enabling legislation.

### **Recommendation 2**

**ISDS is a discriminatory regime that seeks to transfer sovereign risk from foreign corporations to the Australian taxpayer. ISDS provisions are also an attack on our legal sovereignty. The Parliament must reject the enabling**

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<sup>3</sup> Investor State Dispute Settlement – A Cut Above the Courts, Chief Justice RS French AC, 9 July 2014, Darwin.

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**legislation and state a clear objection to ISDS provisions being in any future trade agreements.**

### **Labour Market Testing**

1.15 While concerns of underemployment and low wages are at an all-time high in Australia, the TPP-11 in its current format would see labour market testing waived for ‘contractual service suppliers’ for six signatory countries. This would mean workers from Canada, Peru, Brunei, Mexico, Malaysia and Vietnam would be able to fill jobs in Australia without these jobs being offered to Australians first.

1.16 Under the current arrangement, more than 450 professions could currently be covered by the term ‘contractual service supplier’ - this includes electricians, plumbers, carpenters and nurses – yet no other country has provided Australia with these generous reciprocal visa rights and it remains unknown why these concessions were given by this Government. It must be stated that foreign workers play a role in contributing to the Australian economy, but it is fundamental that Australians are offered employment first, with foreign workers only being brought into the country only once there is a proven need for these workers. Australia’s temporary migration system is designed to supplement the skills of Australians, not replace the ability of Australians to get jobs. Under the TPP-11, the integrity of the temporary migration system would be severely compromised.

### **Recommendation 3**

**The waiving of labour market testing is an unnecessary assault on Australian workers and is therefore an unacceptable proposition. The Parliament must reject the enabling legislation and state a clear objection to the waiving of labour market testing in any future trade agreements.**

**Rex Patrick**

Senator for South Australia

