



Jon Stanhope MLA

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BY:.....

CHIEF MINISTER
ATTORNEY GENERAL MINISTER FOR THE ENVIRONMENT
MINISTER FOR COMMUNITY AFFAIRS

MEMBER FOR GINNINDERRA

TT 12 May 2004
Submission No:5.....

Dr Andrew Southcott MP
Chair
Joint Standing Committee on Treaties
Parliament House
CANBERRA ACT 2600

Dear Dr Southcott

Thank you for your letter of 18 May 2004 inviting the ACT Government to make a submission to the Joint Standing Committee on Treaties (JSCOT) inquiries into the following treaties:

- *Exchange of Letters constituting an Agreement between the Government of Australia and the Government of New Zealand to amend Article 3 of the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) of 28 March 1983;*
- *Treaty between the Government of Australia and the Government of the French Republic on Cooperation in the Maritime Areas Adjacent to the French Southern and Antarctic Territories (TAAF), Heard Island and the McDonald Islands (Canberra, 24 November 2003); and*
- *Thailand-Australia Free Trade Agreement (TAFTA) and associated exchange of letters.*

The ACT Government has no objection to binding treaty action with regard to the Amendment of Article 3 of ANZCERTA, and the TAFTA and associated exchange of letters.

However, the ACT Government does wish to take this opportunity to reiterate its concerns in relation to the issue of Commonwealth-State consultation, as expressed in the ACT Government's submission to the Commonwealth JSCOT inquiry into AUSFTA.

Although the consultation annex of the National Interest Analysis on TAFTA states that consultation with States and Territories was a 'high priority during the negotiations', it should be understood that the level of consultation on this agreement was much less substantial than that undertaken in relation to both the Australia-Singapore Free Trade Agreement and Australia-United States Free Trade Agreement (AUSFTA).

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Given the Commonwealth Government's declared intention of negotiating further bilateral Free Trade Agreements, including the possibility of a Free Trade Agreement with China, the ACT Government is of the opinion that a more effective and inclusive State and Territory consultation process should be conducted. As stated in the ACT Government's submission in relation to the AUSFTA, it is very important that the Commonwealth consult the States and Territories on a timely basis throughout major trade negotiations.

In this regard, consideration should be given to the role of the Australian Treaties Council. The Council of Australian Governments (COAG) agreed to the establishment of the Treaties Council in June 1996. Premiers and Chief Ministers welcomed this initiative and saw it as a potentially important new Federal institution. Since then, however, the Treaties Council has met only once, in conjunction with the November 1997 COAG meeting. Negotiations of the significance of the AUSFTA should be the subject of consultation at the level of Heads of Government through the Treaties Council.

The ACT Government also notes that in its November 2003 report on the General Agreement on Trade in Services and the AUSFTA, the Senate Standing Committee on Foreign Affairs, Defence and Trade made a series of bipartisan recommendations regarding treaty negotiations and Commonwealth parliamentary processes. These recommendations were:

"The Committee recommends that the government introduce legislation to implement the following process for parliamentary scrutiny and endorsement of proposed trade treaties:

- a) Prior to making offers for further market liberalisation under any WTO Agreements, or commencing negotiations for bilateral or regional free trade agreements, the government shall table in both Houses of Parliament a document setting out its priorities and objectives, including comprehensive information about the economic, regional, social, cultural, regulatory and environmental impacts which are expected to arise.
- b) These documents shall be referred to the Joint Standing Committee on Foreign Affairs, Defence and Trade for examination by public hearing and report to the Parliament within 90 days.
- c) Both Houses of Parliament will then consider the report of the Joint Standing Committee on Foreign Affairs, Defence and Trade, and then vote on whether to endorse the government's proposal or not.
- d) Once parliament has endorsed the proposal, negotiations may begin.
- e) Once the negotiation process is complete, the government shall then table in parliament a package including the proposed treaty together with any legislation required to implement the treaty domestically.
- f) The treaty and the implementing legislation are then voted on as a package, in an 'up or down' vote, i.e. on the basis that the package is either accepted or rejected in its entirety.

The legislation should specify the form in which the government should present its proposal to parliament and require the proposal to set out clearly the objectives of the treaty and the proposed timeline for negotiations."

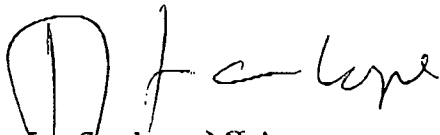
The ACT Government believes that further consideration should be given to measures that would provide greater transparency and opportunities for timely input by stakeholders, including State and Territory Governments, during the treaty negotiation process.

Treaties will often have substantial implications for State and Territory legislation and process, and these are expected to become increasingly complex, particularly in areas such as bilateral trade agreements where a number of different arrangements are proposed for the same areas of Government regulation.

I hope that these observations are of assistance to the Joint Committee in its inquiries.

The ACT Government has no comment to make in relation to the agreement concerning cooperation in the maritime areas adjacent to the Australian and French Antarctic Territories.

Yours sincerely



Jon Stanhope MLA
Chief Minister

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