

A•S•U

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24 February 2015

Foreign Affairs, Defence and Trade Committee
Department of the Senate
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Parliament House
CANBERRA ACT 2600

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Dear Committee Secretary,

RE: Commonwealth's treaty-making process, particularly in the light of the growing number of bilateral and multilateral trade agreements

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Union**

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The Australian Municipal, Administrative, Clerical and Services Union, trading as the Australian Services Union (ASU) welcomes the opportunity to make a submission to this important Inquiry, particularly given the potential far-reaching impact of the growing number of bilateral and multilateral trade agreements Australian governments have entered into or are currently negotiating.

The ASU is one of Australia's largest Unions, and represents approximately 120,000 employees. Our members work in the public services and private sector industries and occupations. The ASU is a member of AFTINET (Australian Fair Trade & Investment Network Ltd) and as such, we are in receipt of their well-researched information on issues related to trade agreements.

The Union is concerned that the trade agreement processes are secret and undemocratic. Whilst they are legally binding on governments and can have far reaching impacts, it is disturbing that they are negotiated in secret.

Trade agreements, such as the Trans-Pacific Partnership (TPP), now deal not only with traditional trade issues like tariffs or taxes on imports, but with a wide range of domestic law and policy issues that affect workers, families and communities. These include issues affecting medicines, internet regulation, data privacy, cultural policies, food, tobacco and alcohol regulation, labour rights and environmental policies.

These policy issues should be decided through public democratic parliamentary processes, not secretly traded away behind closed doors.

The current process for trade agreements is a Cabinet process, not a public process of the whole Parliament. The text is secret until the Prime Minister and Cabinet Ministers make the decision to sign the agreement.

Parliament and the public do not see the text of the agreement until after it has been signed and cannot be changed.

This situation means that there is no effective role for Parliament, Parliamentary committees, or other consultative bodies such as the Commonwealth-State-Territory Standing Committee on Treaties, or the Treaties Council in reviewing proposed treaties prior to them being signed. They are not given the opportunity to review or change the text before it is signed, even if significant issues of public interest are at stake.

Parliament only gets to vote on the implementation legislation, not the whole text of the agreement.

Parliament must take a greater role in public scrutiny and opening the process to make it more transparent and accountable.

At the time the processes of Government were developed, it was not envisaged that Trade Agreements would be evaluated and signed-off to the extent that they are now. The current process must be opened up to Parliamentary rigour, rather than a simple rubber stamping. Citizens of Australia should be given a say, just as with any laws in our country. Whilst we have laws governing the collection of litter and parking infringements, the far reaching consequences of Trade Agreements do not get the same degree of scrutiny and accountability.

We object to the current process because it is secret and undemocratic. There are alternatives to this procedure and the Union is aware that there are growing numbers of examples of public release of trade agreement texts before signing.

For example, since 2003, World Trade Organisation draft texts have been placed on the WTO public website. The Anti-Counterfeiting Trade Agreement (ACTA), text was released in 2011 before it was signed. The European Union is negotiating a Transatlantic Trade and Investment Partnership (TTIP) with the US, and has agreed in January 2015 to release its own negotiating documents, and the final negotiated text publicly and to the European Parliament before it is signed.

The Union understands that under the United States Constitution, trade agreements are negotiated by the Executive but the Congress must approve the aims and objectives of the negotiations before they commence. Furthermore, Congress can request regular reports on the negotiations and must see and vote on the whole text of the trade agreement before signing, legislation and ratification.

In Australia, the secret and less democratic processes have become of increasing concern as more recent trade agreements deal with a wider range of regulatory issues. Many aspects of trade agreements which limit future government action do not require legislation. For example, legislation is not required for the right of foreign investors to sue governments for damages in an international tribunal if they can claim that a change in a domestic law or policy "harms" their investment, known as Investor-State Dispute Settlement (ISDS).

Given the experiences of many nations in relation to ISDS, it seems incredulous that the Australian government would include such provisions in any free trade agreement. ISDS provisions enable corporate interests to override legitimate public policy measures which are in the interest of community health, workers' rights and environmental protection.

Global experience of the use of ISDS provisions has indicated the readiness of wealthy corporations to use ISDS provisions against the interests of communities and nation states. The efforts of the Philip Morris Tobacco Company in suing Australia and Uruguay over tobacco packaging regulation is an example which drew the particular attention of other nations which are considering similar plain packaging legislation. The Union is of the view that citizens and their governments have a right to determine how best to safeguard public health and it should not be over-ridden by the interests of powerful foreign companies.

The inclusion of ISDS provisions in a free trade agreement sends a signal to the community that the Australian Government is prepared to put foreign company interests ahead of the interests of its own people, its own resources and its national wealth. It also indicates that it would not be concerned about the consequences of such provisions on the citizens of other nations. For these reasons the Union opposes the ISDS provisions in free trade agreements and believes the treaty-making processes should be more accountable and democratic.

In the light of the issues discussed above, the Union recommends that the following changes be made to the trade agreement processes:

- The Trade Minister should report to Parliament before trade negotiations begin, with an assessment of potential costs and benefits to Australia. Parliament should decide whether to enter trade negotiations, and define clear benefits to be obtained from the negotiations.
- There should be widespread community consultation during negotiations, including the release of negotiating proposals for public discussion
- The final text of the agreement should be released for public and Parliamentary discussion before it is signed, and subject to a public and independent evaluation of its economic, social and environmental impacts to determine whether it is in the national interest
- Following this public discussion and evaluation, Parliament should first vote on the whole text of the agreement to determine if it is in the national interest, or if changes should be made
- If the agreement is approved, Parliament should then vote on any legislation needed to implement it.

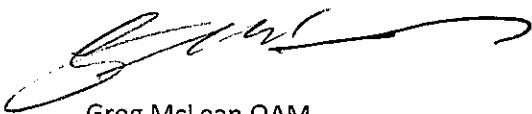
In addition, the Union recommends that:

- Trade agreements should not undermine the ability of government to regulate essential services.
- Public services should be clearly exempted and there should be no restrictions on the right of governments to regulate services in the public interest.
- Trade agreements should require the adoption and implementation of applicable international standards on labour rights, enforced through the Government to Government dispute processes contained in the agreement.
- Trade agreements should require the adoption and implementation of applicable international environmental standards including those contained in the UN environmental agreements.
- Trade agreements should not contain provisions for Investor-State Dispute Settlement (ISDS) as it is a restriction on the Government's ability to govern.

Whilst the above items cover many of our major concerns, we take this opportunity to express our strong endorsement of the submission which AFTINET made to the current Inquiry.

Once again, we thank you for the opportunity to participate in this Inquiry and advise that we would be willing to participate in a public hearing on the matter should that be possible.

Yours faithfully,



Greg McLean OAM
Assistant National Secretary