



Australian Government
Department of Foreign Affairs and Trade

Deputy Secretary

16 November 2017

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

Dear Committee Secretary

I wish to correct my and Mr Graham Fletcher's testimony at the Senate Foreign Affairs, Defence and Trade Supplementary Budget Estimates hearing on 26 October 2017.

The first clarification regards the Investment Facilitation Arrangement (IFA) Memorandum of Understanding (MOU) between Australia and China. This is mentioned on page 116 of the proof Hansard (attached).

Mr Fletcher described the IFA MOU as being 'negotiated' as part of a package with the reviews of the Investment and Trade in Services chapters of the China-Australia Free Trade Agreement (ChAFTA). These two chapters of ChAFTA and the IFA MOU are currently being reviewed, not negotiated.

Separately, in the context of questions about the Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA), Senator Gallacher asked about what has already been agreed between Australia and Indonesia. The discussion is referenced on page 120 of the proof Hansard (attached).

An early outcome of the IA-CEPA negotiations was a decision for Australia to eliminate its tariffs on pesticides and herbicides, and for Indonesia to reduce its tariffs on sugar to five per cent (rather than eliminate these tariffs entirely as mentioned in the Hansard).

I would appreciate if you could pass on my apologies to the Committee and bring these corrections to their attention.

Yours sincerely

Justin Brown

Senator GALLACHER: This is the press release. It says: 'Review our investment facilitation arrangement MOU by the end of the year.' It hadn't actually been used.

Mr Fletcher: That's correct, yes. There was one application that did not meet the criteria so it didn't proceed.

Senator GALLACHER: There was a potential use of it but it didn't meet the criteria.

Mr Fletcher: Yes. It could have been used several times, but there were no applications that came forward.

Senator GALLACHER: What did the application that didn't meet the criteria look like? What does that mean?

Mr Fletcher: It was the way that the investor had structured their ownership arrangements in China and Australia, which meant that it didn't meet the criteria set out in the MOU. The applicant didn't want to amend their structure, because they were structured in such a way to make sense from a tax and business point of view.

Senator GALLACHER: Okay. That opens up a whole new line of questioning, though, doesn't it? If you structured it to make sense from a taxation and business point of view, what is the point of an MOU that would unravel that?

Mr Fletcher: The MOU was designed to answer China's concerns that some of their big investment projects in the past had had difficulty finding sufficient labour in Australia because of our resources boom. So it was designed as a mechanism so that if we should ever get back into that situation again, a foreign investor would not be prevented from proceeding with a big investment because of shortage of staff. It's like a safety valve, in a way, to give investors assurance and confidence that if they wanted to go ahead with a big project we could be flexible.

Senator GALLACHER: For a layperson, you have always got to remember that this agreement is looking both ways. We tend to just look one way. So what you have said is quite intriguing. This was an attempt to deal with something that happened historically for Chinese investors?

Mr Fletcher: Yes. When China came to us to talk about what they wanted in the agreement, they often talked about—

Senator GALLACHER: I am not being critical.

Mr Fletcher: labour access. We said: 'Australia doesn't operate like a lot of other countries, where we just want to import people to build things; we've got plenty of people here that can do that. We recognise you've had trouble in the past. Here is a way we can deal with your concerns and also protect the integrity of our own system.'

Senator GALLACHER: I've got two more questions on this. Is there a new time table for completion of this?

Mr Fletcher: No. We always want to do things quickly, but to do them properly takes a little time.

Senator GALLACHER: What would the review specifically do to make this more effective, so to speak, or to encourage more use of it? What would it actually do?

Mr Fletcher: We think the particular MOU is fine as it is. China may have suggestions or concerns about its scope, which we can talk about, but it is part of a package. There is the services chapter and there is the regular investment chapter, and the three items are being negotiated together.

Senator GALLACHER: We often hear that there are going to be three large populations in the world. It will be Chinese, Indians and elderly Chinese, and there are opportunities for aged-care services and the like. Is this the sort of MOU that deals with that sort of investment?

Mr Fletcher: We already have access into China for aged-care and healthcare facilities. China wants to import services from abroad to deal with that issue and we have an opening for that in the FTA as it currently is.

Senator GALLACHER: But it's not particularly part of this MOU?

Mr Fletcher: It's part of this negotiation, or it can be. But we already have the access.

Mr Brown: Just to be clear, Senator, we are reviewing the services and investment elements of the agreement. There is no automaticity about moving to negotiations on services following that review.

Senator GALLACHER: So it doesn't automatically follow—is that what you are saying?

Mr Brown: The commitment on the services elements is to review the operation of the agreement with regard to services elements. We would obviously like, as Mr Fletcher has just said, to expand and enhance the quality of the services package, but there is not yet a commitment to move to negotiations on services following the review.

Senator GALLACHER: Thanks for that. We'll move to another thing that's been traversed through the day in various ways, but I only have six questions. DFAT and Adani. Is someone able to—

CHAIR: I think we have traversed that today.

Senator GALLACHER: The four by four and the two by two are matters for the agriculture department?

Mr Fletcher: Yes.

Ms Adamson: Yes. They listen to their stakeholders on each side—farmers and producers—and try and get a sense of what the priorities are. And rather than having a very, very large number on each side, they reached an agreement quite a number of years ago to work on them in groups.

Senator GALLACHER: Does the department get consulted in the decision about which ones they're going to pursue? Is it in the agreement?

Ms Adamson: No. It is a question between the Department of Agriculture and Australian industry to identify the priorities.

Senator GALLACHER: A vegetable is a vegetable. So long as they meet the appropriate standard—you can eat them, they're grown organically or whatever—why is there a list down to leaks, lettuces and onions? I don't shop but I have been in a shop. There's Chinese garlic there and there's garlic from Mexico there. Why do we have such detail in these agreements? Is it that big?

Mr Fletcher: Yes. There are thousands of tariff lines which countries operate between each other in trade in goods.

Senator GALLACHER: So carrots and celery would have a different tariff?

Mr Fletcher: Yes. With the free trade agreement it will all be down to zero.

Senator GALLACHER: When? When is the blue sky—five years, 10 years?

Mr Fletcher: I think the longest is around 11 years—

Senator GALLACHER: We might be exporting them to the UK by then.

Mr Fletcher: but only for particular products. All this information is on the FTA portal. There's tariff information about any product you care to enter.

Senator GALLACHER: I think that's what's driven the questioning. A lot of people would think a free trade agreement allows access. The agreement is signed and the trumpets are blown and everybody celebrates. But when you try to get a box of carrots into China you might have to wait 11 years for them to be tariff-free—that's if they're on the list of items even to be spoken about.

Mr Fletcher: Yes, almost everything is on that list.

Senator MOORE: Mr Fletcher, I am getting the tariff portal up now. Does it include the end dates for each of them? Is it that detailed?

Mr Fletcher: I believe so, yes.

Senator GALLACHER: I'm trying to understand the Indonesia-Australia Comprehensive Economic Partnership. Will negotiations be completed by the end of the year?

Mr Brown: That's our objective.

Senator GALLACHER: Are you able to brief the committee on what has already been agreed between Australia and Indonesia?

Mr Brown: I think you're referring to the outcomes that have been announced by the two governments on sugar and pesticides and herbicides. As an early outcome from the negotiations a decision was made for both sides to eliminate tariffs on those products. Indonesia eliminated its tariff on sugar and we did the same for pesticides and herbicides. Aside from those, the negotiations are ongoing on all other issues that are currently on the agenda.

Senator GALLACHER: So we're exporting sugar to Indonesia?

Mr Brown: Yes.

Senator GALLACHER: Which way is the pesticides issue—is that coming or going?

Mr Brown: That's coming—we're importing.

Senator GALLACHER: We're importing pesticides. And we've taken tariffs off that?

Mr Brown: Yes.

Senator GALLACHER: Will the Indonesia-Australia Economic Comprehensive Partnership have investor-state dispute settlement mechanisms?

Mr Brown: The negotiations are ongoing, so it's not appropriate at this stage of the process to speculate as to whether certain aspects will be included, including ISDS.