

Submission re: Australia providing an Interpretative Declaration of article 21.4(4) prior to ratification of the Korea Australia FTA

This submission has one core idea; to interpret the current *Korea Australia FTA* to promote openness and public access to information. To achieve this it is not argued that there should be a renegotiation of the text. What is required is simply an interpretative declaration by the Government promising an interpretation of the *Korea Australia FTA* which promotes such public access.

An interpretive declaration is not a reservation, and is permitted under international law as an expression of a State's interpretation of a particular treaty obligation. It is well known that words can have a number of possible meanings and international legal texts are also open to differing interpretations. The interpretive declaration simply promises to the people of Australia that Australia's approach to the interpretation of the Korea Australia FTA will be one which, given silence or ambiguity in the treaty text, will promote public access to information.

There is a key article of the agreement, article 21.4(4), that operates depending on its interpretation, to either promote or inhibit transparency and public knowledge of the operation of the agreement. **This submission asks for an interpretation to be provided by the Government, prior to ratification, which promises an open transparent interpretation of 21.4(4).**

Public availability of Committee Reports.

Under article 21 there are a series of committees created by the FTA. These committees are vital to the operation of the agreement and so is the information created under and by them. The committees collate and create the understanding and operation of the agreement and report to the Joint Committee. Article 21.4(4) reads as follows.

The committees and working groups under the auspices of the Joint Committee shall inform the Joint Committee of their schedule and agenda sufficiently in advance of their meetings. They shall report to the Joint Committee on their activities at each regular meeting of the Joint Committee. The creation or existence of a committee, working group or other bodies shall not prevent either Party from bringing any matter directly to the Joint Committee.

The Korea Australia FTA is silent on whether the committee reports created under the agreement are to be made publically available. Given this silence and the object and purpose of the treaty (which in a democratic society, is to promote information and engagement between societies and its peoples over trade matters) the following interpretive declaration is requested before ratification by Australia.

Australia makes the following interpretive declaration in order to clarify its practice under 21.4(4)

"This declaration is made to clarify Australia's interpretation that Committee reports will be made public under 21.4(4). This is made also as a undertaking to the Australian public that Australia's interpretation of the *Korea Australia FTA* as an open agreement. As a general approach at points of ambiguity in the text or where the text is silent on the matter, as in 21.4(4), Australia will favour an interpretation that supports open and public provision of information to the public."

Such an interpretative declaration is urgently required by Australia because presently it appears that there is an intention of not allowing the committee reports to automatically be open to the public. In correspondence with DFAT undertaken in order to establish current thinking on this matter and to provide information to the Senate, it was stated that *"Joint Committee reports and documents would not be publicly released unless the Committee decided to do so."* (Correspondence with Korea- Australia FTA- DFAT 26/8/2014.)

I should note my appreciation for the open and transparent answering of questions by DFAT. However it is important to note, the above position by Australia is not required legally under the *Korea Australia* FTA. Given the silence of article 21.4(4) and the object and purpose of prompting open trade within the societies of Australia and Korea, it is available to Australia to have an alternative interpretation which supports openness. This interpretation should be stated and promised to the Australian people before ratification. In doing so Australia would secure the open, transparent and good faith practice in the creation and operation of this agreement. The effect of such an interpretation is that information would flow, over the life of the agreement.

Trade agreements evolve and information is needed in order to see their effects, which can only be known over time. Through the public provision of both narratives and information by the committee's charged with administering the agreement under 21.4(4), the peoples of both societies would understand the effects of this legal agreement, which after all, has been made for them.

Sincerely

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