

The Committee Secretary
Joint Standing Committee on Treaties
PO Box 6021 Parliament House CANBERRA ACT 2600

By email: jsct@aph.gov.au

Dear Committee Secretary,

Summary

We write to you in response to the call for submissions on the Australia-Hong Kong Free Trade Agreement (“FTA”). We note that the FTA has already been agreed between the HK SAR and Australian Governments and there would seem to be little opportunity, if any, for any changes to be made to the text of the FTA itself.

Nevertheless, against the backdrop of the increasing erosion of Hong Kong’s civil liberties, rule of law and judicial independence that were guaranteed under the “one country, two system” framework under the terms of the 1984 Sino-British Joint Declaration and Hong Kong’s Basic Law, as exemplified by the controversial Extradition Bill which post-dated the FTA’s negotiation and the response of the Government to the protests, we believe the Australian Government should be watching such developments with great concern. In particular, for the purpose of this submission, the efforts by the PRC Government’s undermining of the “one country, two system” framework, and the HK SAR Government’s own willingness to uphold its laws and international commitments, and therefore its ability to give full effect to the terms and spirit of the mutual protections and rights under the FTA.

We submit the Committee should consider these recent matters and advise against Parliament to take binding treaty action until assurances are received and ongoing safeguards built in in response to these recent developments. See section II below

I. Background

Under Hong Kong’s Basic Law and the 1984 Sino-British Joint Declaration, Hong Kong is to enjoy a high degree of autonomy and rights and freedoms, including an independent judiciary, rule of law, freedom of speech, freedom of the press, freedom of association and assembly and freedom from arbitrary arrest for 50 years after its handover to China. However, these have been under increasing threats

both from the Government of the People's Republic of China and the Hong Kong executive:

Hong Kong residents (including those holding Canadian, Swedish or British citizenship) and foreign nationals doing business in China have been illegally abducted from within Hong Kong and detained in the PRC.

The introduction of the Extradition Bill, which the Hong Kong Bar Association and Law Reform Commission has criticised for having the effect of enabling the extradition of persons in Hong Kong to Mainland China, be they residents of Hong Kong or persons merely passing through Hong Kong, under a curtailed procedure that lacks any adequate human rights and due process protection.

Furthermore, we draw the Committee's attention to local and international journalists who have either been expelled or assaulted for expressing views contrary to the Government's and Hong Kong's fall in world press freedom rankings (73rd in the world behind the Ivory Coast and Tunisia, down from 18th in 2002). The UN Human Rights Office has also identified Hong Kong's police use of force during the recent protests as being excessive and in violation of international norms.

Hong Kong is a vital gateway for Australian businesses looking to do business in China, and for Chinese/Hong Kong businesses seeking opportunities in Australia. As summarised in our Governments own briefing on the benefits of the proposed FTA, Australia has significant people and economic ties with Hong Kong. Hundreds of thousands of Australian expats travel to, and live and work in Hong Kong, and large Australian businesses base their regional headquarters in the Special Administrative Region because of the integrity of Hong Kong's rule of law and freedoms.

Developments like the introduction of the Extradition Bill seriously undermines this. Australia has a vested interest in preserving those rights and autonomy guaranteed under the Basic Law, and to enhance the integrity of Hong Kong's system of government as they are vital to the real success to this FTA and the protections of Australian businesses and persons abroad.

Furthermore, Hong Kong has become a base from which Chinese business gain access to Australian markets. Under this FTA, even greater access is being granted. The trade relationship must be, as well as the mutually beneficial relationship between Australia and Hong Kong (indirectly China).

Australian businesses and expats together have a substantial stake in the continued vitality, prosperity, and stability of Hong Kong.

II. Submission on matters the Committee should consider

We urge the Committee to consider these further matters:

The complete withdrawal of the Extradition Bill by the HK SAR Government and a commitment by the HK SAR to an independent investigation into police actions during the recent protests should be a precondition to the FTA being passed domestically in Australia.

Recommend the Government require the Department of Foreign Affairs to certify to the Senate Standing Committee on Foreign Affairs, Defence and Trade no less than bi-annual basis that Hong Kong is sufficiently autonomous (in accordance with the terms and spirit of the 1984 Joint Declaration and Basic Law) to justify special bilateral treatment and access offered under the FTA. The certificate should alert the Standing Committee on other issues e.g. interference in Hong Kong, that might be of concern.

Introduce human rights provision into the FTA and legal mechanism enabling Australian Government to take appropriate measures in case of serious breaches, including the unilateral suspension of trade commitments, similar to those that the European Union have included in their free trade agreements.

A Hong Kong that has an independent judicial system and rule of law, with full rights and freedoms, and on a path to democracy all in line with the 1984 Joint Declaration and Basic Law will return even more economic benefits to Australia in the long term by guaranteeing a doing business environment where rights and freedoms are protected. Please make Hong Kong's continued vitality and stability a priority.

Thank you for your consideration and please feel free to contact us if you would like to discuss this issue further.

Sincerely,

Claudia Ng

Organizer of Canberra HK Concern Group

Committee of Australia HK Link