

QUESTION ON NOTICE / Spoken

Monday 20 August 2018

1 – Senate Foreign Affairs, Defence and Trade References Committee

Topic: Annex 8-A

Senator Gallacher (Chair)

Question

CHAIR: I have a number of specific questions about this ability. The joint committee received submissions proposing changes to Annex 8-A in the Technical Barriers to Trade chapter, clarifying the Australian government's ability to prescribe how and where health information is presented on wine and spirits. Is that an area where there would be an impact, if we're not in the first six? What are your comments in respect of that proposal?

Mr Mina: I would simply note that the agreement does allow us to work cooperatively on matters relating to labelling and technical barriers. It would have some impact, if we weren't a full member at the outset. I can go into further detail, if you wish, but I'd probably need to draw you out a little on precisely the types of concerns that were referenced in the joint committee deliberations to which you refer.

CHAIR: You can understand there are concurrent inquiries, but there were submissions proposing changes to Annex 8-A, to the Technical Barriers to Trade chapter. Perhaps on notice, if you could have a look at that submission and provide us with some advice?

Mr Mina: Unless there's anybody here who wishes to go into further detail on 8-A? No, we'll take that on notice.

[Note: for additional context – this issue was raised in submissions from the Public Health Association of Australia (submission 20), Foundation for Alcohol Research and Education (submission 18) and Dr Deborah Gleeson (submission 4)]

Answer

The Department of Foreign Affairs and Trade has reviewed the submissions which proposed changes to Annex 8-A, referred to by the Chair. Annex 8-A to the TPP-11 does not prevent the Australian Government from regulating

labelling requirements for wine and distilled spirits. The TPP-11 also incorporates specific safeguards that recognise Australia's right to adopt measures for legitimate public policy purposes, including the protection of public health.

The TPP-11 provides for the establishment of a Committee on Technical Barriers to Trade (TBT), comprising representatives from TPP-11 Parties. This Committee can monitor the implementation of the commitments in the TBT Chapter, such as those in Annex 8-A, and provide a conduit for cooperation and technical discussions. Australia's ability to influence these discussions could be diminished if we are not in the first group of signatories to ratify the TPP-11.

2 – Senate Foreign Affairs, Defence and Trade References Committee

Topic: Stakeholder consultations – feedback mechanism

Senator Moore

Question

Senator MOORE: Can I just ask a supplementary on that. Mr Mina, you did give us the number of meetings and consultations you've had. At those consultations, do you hold any feedback discussions about how effective people found them and how effective the information sharing was?

Mr Mina: There were sessions that were full, long-day sessions, which I didn't participate in because I wasn't there.

Senator MOORE: Did they have evaluation mechanisms?

Mr Mina: I'll just turn to those on my left and right who may have been involved in those discussions—to work from memory, if there were such discussions. I would be surprised if there wasn't some kind of interaction about how that process was working.

Senator MOORE: You may want to take that on notice. I'm interested as there seems to be such a difference of opinion—not about how many; but about the value and the way it operated. Is there some form of standard evaluation mechanism used for getting feedback from people about what did or didn't work, which seems to be a pretty standard process when people have meetings? I will put that on notice.

Mr Mina: I'm sure there was some kind of interaction. The point I would make—in respect of both the chair's and Senator Moore's comments—is that we certainly do not deny that there'll be those who feel their views weren't carried. These are questions, obviously, that are sometimes contested and debated but what I can assure you is that views were heard at the outset, during and throughout the negotiations, and there was adequate provision—unprecedented levels, in our view—of access to our negotiators, including on the spot during negotiations wherever they may have been around the world. It's certainly true to say that people don't always feel that they've got satisfaction on the outcomes, but the process was a good one.

Answer

Individuals and organisations consulted throughout the TPP negotiations were able to provide feedback on the adequacy of the process either to officials in person or through correspondence. The Department of Foreign Affairs and Trade did not implement any additional formal feedback or evaluation mechanisms in respect of TPP stakeholder consultations.

The Department welcomes all feedback from stakeholders on how the Department can improve its consultation processes.

3 – Senate Foreign Affairs, Defence and Trade References Committee

Topic: Issues relying on ISDS

Senator Moore

Question

Senator MOORE: Is that a fair assessment of what you're saying? You said that there was significant interest in ISDS. My take on that was: there are people who wanted to keep the ISDS provisions in there the way they are—is that right?

Mr Mina: Yes. The point I'm making is there are substantial investment interests engaged on behalf of Australian business, and this represents something like 15 per cent of our global investment stock in TPP-11 markets—that's the first point. The second point I would make is: having regard to some of the concerns that we have been hearing right throughout this process about how ISDS could be potentially applied in a manner that limits Australian public policy flexibility, we have been assiduous in ensuring that we have built into this agreement substantive and procedural safeguards such that we can continue to legislate in the public interest in areas like health and education and so forth. That's been a quite explicit project of the negotiators as they've gone through. We have succeeded in that project to develop an ISDS mechanism that really does allow for some of those modern best-practice approaches. Perhaps, if you allow me, I'll ask Mr Schofield to add to that answer.

Mr Schofield: The first point I would make is, obviously, Australia's investment profile in the TPP-11 countries is significantly different to that of New Zealand. New Zealand's made their own assessment in terms of their national interest and, on the Australian side, we have a different set of considerations that would factor into that.

Senator MOORE: Can we have them identified on notice? What are the particular issues—not the particular organisations, thank you; I really appreciate that list I got. What are the issues that rely on having an ISDS mechanism? I have never seen that itemised.

Answer

The Government considers the inclusion of Investor-State Dispute Settlement (ISDS) provisions in FTAs on a case-by-case basis in light of the

national interest. Factors which are taken into account include: the significance of Australia's current and potential investment profile, the inclusion of procedural and substantive safeguards, the protection of Australian investors overseas, and the overall balance of the agreement.

4 – Senate Foreign Affairs, Defence and Trade References Committee

Topic: Accredited and cleared advisers

Senator Gallacher (Chair)

Question

CHAIR: Could the department manage such a change? And if there was such a change of cleared and accredited advisers brought in by Australia, could the department manage that change?

Mr Mina: All I'll say on this is what I was about to say earlier, which is that we have had elements of that practice in our experience, even in respect of the TPP-11, where we shared the text of the agreement with members and senators in Canberra on a confidential basis. That was part of our practice. To that extent, we have already got practice that gives effect to your request.

CHAIR: You know what I am talking about. The process of having cleared and accredited advisers to look at text and to propose changes, not to be shown it but to look at text and propose changes; that's what the US system is.

Senator MOORE: And not just parliamentarians.

CHAIR: Yes, accredited and cleared advisers. The US system is very clear. Our system isn't that. Were it to be proposed, would it present any difficulties in the department? In terms of process, what would need to be changed? If you want to have a think about that and put it on notice, that's fine.

Answer

The Department of Foreign Affairs and Trade has an extensive program of outreach on its free trade agreement (FTA) agenda, including broad and regular consultation with all interested stakeholders.

The US' system of cleared advisers is long-standing and reflects the particular circumstances of the US. This process provides some stakeholders a greater level of access than other stakeholders. Australia's practice has been to maintain an open, inclusive and flexible approach to consultation, to ensure all stakeholders who want to contribute views can do so.