

Joint Standing Committee on Treaties

ANSWERS TO QUESTIONS ON NOTICE

Division/Agency: Productivity Commission
Topic: Certain aspects of treaty making
Reference: Written
Senator: Senator Ayres

Question:

Senator Ayres: My questions follow on from the chair's and Senator Brockman's line of questioning about consultation. I'm grateful for the observations and the recommendations that you've made about consultation prenegotiation and pre-signature. I suppose I have always thought that the justification, without criticising the chair's outline of the reasons why one might take an alternative view, has always seemed pretty self-serving: it's in the interests of the executive and of the negotiators to adopt that position, but it does sacrifice some sort of democratic accountability. There are other reasons, aren't there, to argue that that would strengthen the country's negotiating position. Beyond the sort of breathless press release that surrounds these agreements, there's very little analysis done. The point that Senator Brockman was going to, which was what other jurisdictions adopt this kind of position—is it possible on notice to provide some examples of alternative approaches in other jurisdictions? I think that would assist the committee. I know that the American position is different to the approach that we've taken here. But is it possible to direct the committee to some alternative jurisdictions' approaches pre-signature and pre-negotiation?

Mr Brennan: Yes, we can have a look at that.

Answer:

Governments carry out assessments of trade agreements at various stages of the negotiation process: before negotiations commence, after terms have been agreed but before the agreements are signed, and after agreements have entered into force. Assessments take various forms, including 'National Interest Analysis'; economic impact analysis and assessment of environmental, social and human rights impacts. Some governments require some type of analysis for all agreements; others undertake analysis on an ad hoc basis.

In the United States the Trade Promotion Authority laws require the Administration to 'notify and consult with Congress, with the private sector and other stakeholders and with the public during the negotiations of trade agreements'.

The New Zealand Government:

- requires a National Interest Analysis (NIA) before any significant treaty comes into force. The analysis is done after negotiations have concluded and before ratification
- undertakes, on an ad hoc basis for some agreements, feasibility studies before negotiations, or once negotiations have commenced but before the final text has been agreed upon
- undertakes economic modelling of the effects of some trade agreements after they have been agreed.

The Government of Canada carries out assessments of the impacts of trade agreements on an ad hoc basis, either prior to negotiation and/or before signature. For example, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership was subject to an economic impact study before ratification (Global Affairs Canada 2018). The Government of Canada also assesses the environmental impacts of some trade agreements. Environmental impacts are assessed before and during negotiation.

The European Commission appoints external consultants to carry out Sustainability Impact Assessments (SIAs) on all trade agreements with the European Union. The SIAs are carried out during the negotiations and cover economic development, social development, human rights and environmental protection.