

SUBMISSION 9 – Mr Tor Larsen & Ms Darani Lewers

CHINA - AUSTRALIA FREE TRADE AGREEMENT

SUBMISSION TO THE JOINT STANDING COMMITTEE ON TREATIES

We appose the China - Australia Free Trade Agreement on the grounds that, like all free trade agreements such as the USFTA, it benefits China's larger economy at the expense of Australia's smaller one. The much touted-advantages to Australia of the existing USFTA have been shown to be marginal at best and greatly in favour of US businesses at worst. This agreement provides no assurance that Australia has secured an advantageous trade position with China, rather that the determination to push the agreement through has more to do with neoliberal ideology than economic good sense or mutual trading advantage. The following views are based on leaks, media reports and publication of selected sections of the agreement.

The Investor State Dispute Settlement (ISDS)

The inclusion of the ISDS clause in the trade agreement will give Chinese companies investing in Australia rights that threaten Australia's national sovereignty. If Chinese companies (especially large state owned companies) believe legislation introduced by the Australian Government interferes with their market access, they can take the Australian Government to an International Arbitration Tribunal. This is problematic in that it potentially limits the Australian government's ability to manage it's own economy and legislate in the national interest. There are many cases when the national interest must trump the interests of transnational corporations and free trade, such as protection of our health and education systems, the environment, employment and the preservations workers wages and conditions. In most cases tribunals rule in favour of foreign corporations, costing Governments billions of dollars in fines. It is our contention that corporations operating transnationally already have quite sufficient power to manipulate markets and governments and must be denied enhanced legal status with respect to states.

"Since the late 1990s, disputes brought under investment treaties have increased phenomenally: In 1997, there were 19 known cases brought against states. By 2007, there were almost 300 known cases, and, according to UNCTAD, 514 by the end of 2012" ([International Institute for Sustainable Development](#)). Numerous sovereign governments are currently being sued by powerful transnationals in areas where Governments have sought to protect the conditions and institutions mentioned above as well as local patent laws and intellectual property. These cases are likely to be the tip of an iceberg of litigation once transnationals really start to flex the trade agreement muscles they are being handed on a plate.

Trade Minister Andrew Robb maintains that health and education are protected

(carved out) from litigation in the China FTA. Unfortunately these protections have not been successful in past disputes. The trade agreement was signed in such haste that the exact criteria "for unfair competition" will not be resolved for three years when the provisions will be incorporated into the agreement without a vote by Parliament. In other words, while there is supposedly a "safeguard" clause to protect the public interest from ISDS, the unfinished clauses in the agreement, mean that it is not clear how the 'carve out' would work. There are also questions as to the transparency of ISDS procedure in cases brought by transnationals or other companies. The public has a right to know the details of any findings against Australia and the right to contest outcomes that are not in Australia's public interest. The failure of the China FTA ISDS to address these and other issues makes it impossible to maintain a position of equality and independence with our most powerful neighbor and trading partner: China, the superpower of the 21st century!

The China FTA is lopsided

According to articles 9.3.1-9.3.5 of the agreement, Australia is obliged to give national treatment and non-discrimination to the establishment and acquisition of Chinese investment, as well as to ongoing investments. However China is not held to this general obligation for establishment and acquisition of Australian investment. Given the already large disparity in the size of our respective economies this imbalance is unfair and a poor reflection on the Australian government negotiators of the agreement.

Chinese Investment

Under the trade agreement Chinese companies with a 50% equity or a project in which China has a substantial interest have the right to bring Chinese nationals to work in Australia. The Chinese workforce can receive lower wage and conditions than Australian workers. There is no equivalent provision for Australian companies investing in China. Such major concessions constitute unfair competition and threaten Australian's fair wage levels and standards of living. Further more by allowing China exceptions to Australia's hard-won working conditions we are not only condoning China's exploitative employment practices but inviting social discontent when the inevitable comparisons are made between wage tiers of Australia's labour market as a result of such exceptions.

Lack of consultation

We strongly appose the undemocratic process involved in the China FTA negotiations. Cabinet authorized the signing of the China FTA in April 2015 and the text cannot be changed. Parliament can only vote on the implementing

legislation not the text of the agreement. The negotiations have been conducted in secret shutting out input from parliament and the Australian public. The process is undemocratic and is likely to lead to major mistakes. The government has argued that it is standard practice to conduct such negotiations in secret, citing the need to avoid broadcasting bargaining positions to counterparts in the negotiations. This argument is bogus! The Australian government negotiators have clearly been far more forthcoming with their opposite numbers in the China FTA negotiations than they have with their own people. The Productivity Commission's own analysis has shown that the latest free trade agreements have been costly, time consuming and bureaucratic. It will be difficult if not impossible for the terms of the agreement to be renegotiated by future governments, which may require the agreement to be scraped altogether.

Lack of Accountability

The Productivity Commission has also found there has not been a rigorous independent assessment of how costs might exceed benefits in regard to the Japanese and Korean agreements or the mechanisms by which outcomes can be monitored. These findings suggest that it will be equally difficult to verify the Australian Government's claims that the China FTA will generate wealth and jobs and be of general benefit to Australia.

We believe that the China FTA will potentially undermine Australia's sovereign rights to protect the welfare of its people.

Yours sincerely,

Tor Larsen
& Darani Lewers AM