



Our ref: 13611

RECEIVED
27 MAY 2004

BY:

Dr Andrew Southcott MP
Chair
Joint Standing Committee on Treaties
Parliament House
CANBERRA ACT 2600

Dear Dr Southcott

During the hearing of the Joint Standing Committee on Treaties in Perth on 23 April 2004, I undertook to supply information on the State and Territory representation for the Australia-United States Free Trade Agreement (AUSFTA) negotiations and suggested guidelines for State and Territory consultation in future negotiations.

State and Territory representation during the negotiations

The *Principles and Procedures for Commonwealth-State Consultation*, as agreed by Council of Australian Governments (COAG) in June 1996, states that:

In appropriate cases, a representative or representatives of the States and Territories may be included in delegations to international conferences which deal with State and Territory subject matters. Subject to any special arrangements, the purpose is not to speak for Australia, but to ensure that the States and Territories are well informed on treaty matters and are always in a position to put a point of view to the Commonwealth.

With respect to the actual representation in the AUSFTA, the national interest analysis states that:

One State and Territory representative attended the third round of negotiations, three attended the fourth round, two attended the fifth round, and one attended the sixth and final round.

This is not seen as a strictly accurate description.

Third round

The person referred to in this statement as attending the third round of negotiations was Mr Gary Stokes, Chief Executive Officer of the State Supply Commission of Western Australia. Mr Stokes was nominated at the Australian Procurement and Construction Ministerial Council meeting in June 2003 to be the Australian Procurement and Construction Council (APCC) representative. His role on the Australian delegation was that of observer for the negotiations on the government procurement chapter of the AUSFTA. As such he was not an actual 'State and Territory' representative.

The State and Territory representative, agreed to by all States and Territories, was Mr Mark Duckworth, Director from the Victorian Department of Premier and Cabinet. Quite a bit of work by the States and Territories was put into defining the role of the State and Territory representative and in providing him with a comprehensive list of issues that we each considered important, so that he was in a good position to fulfil his purpose as stated in the agreed principles and procedures (see above).

At the last moment, the Department of Foreign Affairs and Trade (DFAT) informed Mr Duckworth that he was not able to attend the negotiations. Consequently the States and Territories did not have an actual representative at the third round.

Fourth round

The Australian delegation included Mr Stokes, APCC representative, and Mr Duckworth, State and Territory representative. In addition DFAT had agreed to a second State and Territory representative, Mr Michael Otago, Queensland Department of State Development.

Fifth round

There was one State and Territory representative present during the fifth round of negotiations, Mr Duckworth. Mr Stokes also attended as the APCC representative.

Sixth round

There was no State and Territory representative at the last round. This was, however, due to the understanding that the representative would have limited access to the final discussions rather than him being denied attendance. The person referred to in the national interest analysis was the APCC representative, Mr Stokes.

Suggestions for future negotiations

As stated in the Western Australian Government's submission to the Joint Standing Committee on Treaties, the consultation process organised by DFAT is acknowledged and appreciated. There were, however, a number of difficulties with the consultation process. Western Australian's written submission included some suggestions to avoid such difficulties in the future. They are repeated below, with some additional recommendations.

- (i) In order to avoid situations such as the one that occurred just before the third round of negotiations, it needs to be established, prior to the commencement of the negotiations, that the Australian negotiating team will include at least one representative of the States and Territories.
- (ii) Given the complexity of some of the negotiations, such as the AUSFTA, it is extremely difficult for one, or even two, people to represent the States and Territories effectively. It is recommended that the number of State and Territory representatives reflect the complexity and size of the negotiations. This is consistent with the *Principles and Procedures for Commonwealth-State Consultation*.

- (iii) The national interest analysis states that:

The States and Territories . . . participated closely . . . in ensuring the appropriate framing of reservations to the Cross-Border Trade in Services and Investment Chapters.

While the States and Territories were asked to provide their input into Australia's Annex II list (in early January), it is disappointing they were not kept informed of the results of the negotiations in the area, even when they specifically asked the Commonwealth for information during a teleconference after the agreement was announced. Consequently, Western Australia was unaware that the reservations it had requested (and informed by telephone would be covered by Commonwealth reservations) were not in the final Annex II list until the draft text was made public.

It is suggested that in future the States and Territories be kept informed of developments during the final negotiations as soon as is practicable.

- (iv) It is disappointing that, despite agreeing to do so, the Commonwealth failed to provide the States and Territories with information on the outcomes of the negotiations or the draft text before these were made public.

While it is recognised that there are protocols to be observed during negotiations, it is recommended that State and Territory Governments be kept informed of progress, particularly on areas that affect them, during the final stages of the negotiations.

- (v) The establishment of the Treaties Council was agreed to by COAG in 1996 . . . to consider treaties and other international instruments of particular sensitivity and importance to the States and Territories . . . (from *Principles and Procedures for Commonwealth-State Consultation*). The Treaties Council was to meet at least once a year, usually at the same time and place as COAG. It has, however, only met only once, in 1997.

The Treaties Council should provide the opportunity for consultation with Heads of Government on significant international treaties, such as the AUSFTA, and should be called on to meet and function in line with the agreed principles and procedures.

Thank you for the opportunity to clarify and provide additional information on Western Australia's comments regarding the Commonwealth-State consultation process for international treaty negotiations.

Yours sincerely



Petrice Judge
EXECUTIVE DIRECTOR
OFFICE OF FEDERAL AFFAIRS

20 May 2004