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19 AUG 2008

Mr Kelvin Thomson MP
Chair
Joint Standing Committee on Treaties
Parliament House
Canberra ACT 2600

RECEIVED
27 AUG 2008
BY:

Dear Mr ~~Thomson~~ Kelvin,

Thank you for your letter of 18 June 2008 concerning the Joint Standing Committee on Treaties inquiry into the Australia-Chile Free Trade Agreement.

I am pleased to attach the Queensland Government's submission to this inquiry. I believe that the free trade agreement will deliver benefits to Queensland and Australia. However, the submission raises some concerns about specific aspects of the agreement which I believe should be carefully considered by the Committee prior to it reporting to Parliament.

I look forward to reviewing the Committee's recommendations.

Yours sincerely

Anna Bligh

ANNA BLIGH MP
PREMIER OF QUEENSLAND

Queensland Government

Queensland Government submission to the Joint Standing Committee on Treaties on the Australia-Chile Free Trade Agreement

The Chile FTA has been considered in terms of implications for the Queensland economy and industry and implications for the Queensland Government as service provider, regulator, and consumer.

Implications for the Queensland Economy and Industry

In 2006-07 Chile ranked as Queensland's 37th largest export destination. However it is considered a growth market under the Queensland Government's Export Strategy *Driving Export Growth for Queensland 2006-2011* in which Latin American markets are a key focus.

There is a concerted effort to develop key relationships with Latin American business to facilitate trade, particularly in the **mining** sector in Chile. The main Queensland export expected to benefit from free trade with Chile is coal. Australian coal exports to Chile are currently subject to a 6% tariff, which puts Australia at a disadvantage by comparison with other coal producers like Canada, which already enjoys a free trade agreement with Chile.

Mine expansions, new mining projects, exploration and infrastructure development in the key markets of Chile, Brazil, Peru and Mexico are expected to fuel import demand over the next five years, providing significant opportunities for Queensland exporters. The Queensland Government's Latin American Mining Initiative (LAMI) promotes the State's reputation and supply capacity in Latin America for services, technology and equipment to the mining sector. This initiative has broadened the base of Queensland mining suppliers to win contracts and improve awareness among Queensland exporters of the market potential of Latin America amongst Queensland exporters. From April 2006 to date, Queensland mining technologies and services companies involved in the LAMI have generated $52.5 million of export sales. In excess of 65% of the trade outcomes for the LAMI have come from Chile.

The Queensland Government considers Chile to be a market of great potential for diversification for Queensland **education and training** sectors. Generally, the FTA could provide a number of benefits to the education and training industry:

- The commitment by Chile to maintain an open and non-discriminatory market for Australian service suppliers should improve market access and reduce limitations for Queensland education and training service suppliers.
- The agreement includes provisions for upholding relevant regulatory requirements for trade in education services and requirements related to the establishment of an education and training facility in a particular jurisdiction.

- The FTA provides a framework for mutual recognition of professional qualifications which could potentially streamline articulation through courses between Chile and Queensland and improve graduate outcomes for students.

The agreement does not appear to interfere with the autonomy of institutions to maintain admission polices, set tuition rates and develop curriculum and course content or the accreditation and quality assurance procedures of Queensland intuitions. Nor does the agreement interfere with government funding, subsidies, grants, preferential tax treatment or other public benefits provided to education and training institutions.

Chile is an important emerging global **biotechnology** centre in Latin America. The biotechnology industry is a priority growth area for Chile's economy. In the past three years, the number of biotechnology companies in the country has grown by 30%. Currently, Chile boasts 166 biotechnology-related organizations including manufacturing and specialized services companies, university research institutions, technology transfer organizations and incubators. The sectors of focus in Chile include human health, agriculture and livestock, fishery, forestry and industrial biotechnology. In the clinical research sector Chile is making great strides to become a world-class platform for clinical trials and has adopted international standards of clinical practice.

The "head-turning" effect of the FTA could enable new alliances and market development linkages for the Queensland biotechnology industry (research institutes and companies), especially since Queensland's industry is at a similar stage of development and has research and development and/or commercialisation strengths in the health, agricultural and industrial biotechnology sectors.

Although Chile is not a current growth market for Queensland's **tourism** industry, the FTA potentially affords Queensland companies greater opportunity to export their expertise in key areas such as resort development and design, ecotourism development and management (40% of Chile is made up of National Parks and they are seeking to further develop tourism in these areas), training, hotel management and tourism marketing and promotion. An increasing number of young tourists including working holiday makers are also choosing Queensland as a destination for English language training as part of their tourism experience.

Chile is also not currently a major priority market for Queensland's **food processing** sector. Although Chile is one of the world's significant food exporters and a competitor to Queensland's food processing sector, the removal of the 6% tariff on Australian products is likely to present opportunities for Queensland suppliers. A new middle class of consumers is paying increasing attention to quality and healthier eating habits and because of Australia's reputation as a clean, healthy and disease-free environment, Queensland exporters may have a competitive edge in the market. The meat and dairy industries have also indicated they believe that an FTA would increase Australia's competitiveness in the Chilean market.

With respect to **agriculture**, food and fibre trade between Queensland and Chile is estimated at $14.5 million in 2006-07, representing around 8% of total goods trade between Queensland and Chile. Queensland's exports to Chile were under $2 million and consisted almost exclusively of beef. This represented only 13% of the total value of the State's goods exports to Chile. Queensland's imports of food and fibre from Chile were valued at $12.6 million, with wood products and wood pulp the major components.

Chile is one of the world's largest exporters of fruit, fish (including farmed salmon) and fishmeal, and forestry products. Chile's production and exports of wine have also grown strongly. The horticulture (mainly fruit) and salmon industries in Australia have expressed on-going concerns about the FTA, largely on grounds of increased competition in the domestic market, limited export opportunities and expectations of accelerated Import Risk Assessment processes.

Chile's fruit production is concentrated on grapes, apples, avocados, and pears. Queensland is also a significant producer of table grapes, apples and avocados. Imports (except grapes) already have a zero tariff so the FTA would have little effect from this perspective. However, the Queensland Government would not like to see any changes to Australia's scientifically-based Import Risk Assessment processes as a means to provide additional access for fruit from Chile.

Greater access to the Chilean market offers export opportunities for Queensland beef. Chile is currently seeking alternative sources to Argentina to source its beef imports. Chile closed its market to Argentinean beef in February 2006 following an outbreak of foot and mouth disease, with imports resuming in September 2006. The Argentinean government has also imposed several restrictions on beef exports in order to keep domestic beef prices under control. As part of the FTA, Australia and Chile will also negotiate a MoU affirming Chile's recognition of the Australian Meat Industry Classification System (AUS-MEAT) as equivalent to the Chile Beef Grading Scheme for the purpose of marketing Australian beef in Chile.

Australia's meat and dairy industries believe that the FTA will increase their competitiveness in the Chilean market and view Chile as the logical stepping stone into other significant markets in South America, particularly Brazil.

Sugar has been included in the agreement with the fixed 6% tariff to be eliminated over four years. However, Chile will continue to maintain a variable tariff for sugar under its price band system (PBS). Under the PBS, specific duties based on reference prices are added to the ad valorem rate to bring the import price up to the reference price. If the import price exceeds the reference price, rebates lead to a reduction in the applied tariff. The PBS has little effective impact on the potential for Queensland sugar exports to Chile. It is only feasible for Queensland produced sugar to compete in the Chilean market when the world price of sugar is very high, leading to a low or zero variable tariff in Chile.

Chile is noted as a significant **wine** producer. The FTA will remove tariffs in both countries in early 2009 (Australia's 5% tariff and Chile's 6% tariff). It would seem that there is no real benefit for the Queensland wine industry from the FTA. In fact, Chile is noted for its wine exports, and is regarded as a competitor for Queensland's wine industry, both in the domestic market, given its history of actively promoting its wines in the markets of its preferential trade partners, and in the Asian imported wine market.

Undoubtedly, the FTA's removal of Chile's flat 6% tariff on imports will assist in lifting the competitiveness of Queensland businesses in the Chilean market, particularly against the 54 countries that already have FTAs with Chile. However, the full extent of the risks/benefits of this FTA to Queensland industry and the Queensland economy have not been quantified. The Queensland Government notes while the NIA states that the FTA has "direct economic benefits" it does not quantify what the expected financial benefits are for Australia.

Queensland notes from the Regulatory Impact Statement and National Interest Analysis that there is no information on a potential review of the FTA. Reviews of bilateral FTAs should be undertaken regularly.

Implications for the Queensland Government as service provider, regulator and consumer

Most areas of state government operations are excluded or set aside from the FTA e.g. schooling, public health, public order and safety, as well as traditional government-owned corporation markets like energy and public transport, and areas where there are strong social imperatives, such as Indigenous policy and gaming.

The Queensland Government was invited to provide a list of existing **non-conforming measures** that pertain to the cross border trade in services, investment, and financial services chapters that will be annexed to the FTA. The government has noted that in doing so it reserves the right to continue these measures, so long as they are not made more trade restrictive in future.

Queensland's list contains non-conforming measures identified for the Singapore-Australia FTA and the Australia-United States FTA (AUSFTA). Additional measures relating to wildlife permitting, local industry preferences, biodiscovery commercialisation, and wine merchant licensing have been identified and listed.

Undertaking the task of identifying non-conforming measures is by no means simple. To effectively identify every potential non-conforming measure requires a thorough assessment of all Queensland legislation against a complicated array of obligations, chapters, definitions and scope exclusions. The additional measures identified for the Chile FTA exemplify the fact that some measures are inadvertently missed in the identification process. The Queensland Government takes great comfort in the Department of Foreign Affairs and Trade's (DFAT) advice on 1 July 2007 that there will be a catch-all cover note in the FTA that reserves the right to maintain and to add to its schedule any State and Territory non-conforming measure that is covered by the

AUSFTA (i.e. that existed as at 1 January 2005) but that was inadvertently omitted from the list when the Chile FTA entered into force.

DFAT's approach to listing state and territory non-conforming measures has raised a number of issues. There were a number of state measures that appeared to be at risk of non-conformance but DFAT officials advised against listing reservations for them for various reasons including:

- the measure concerned was not reserved in earlier agreements, and doing so in the Chile agreement risked raising questions about its status in regard to those earlier agreements; and
- the economic activity addressed by some measures were the subject of a pre-existing multilateral free trade commitment/offer, and so could not be the subject of a reservation.

Hence, it would appear that potential grounds for challenge remain. As the Commonwealth Government is party to this FTA, the Queensland Government recognises that it is ultimately the Commonwealth's responsibility to be satisfied that conformance with the obligations of the FTA exist.

Where there was agreed scope to list a reservation for a non-conforming measure, use of the reservation type which provides the most policy flexibility (Annex II) was denied by DFAT, even though full policy flexibility in the relevant area has been built into earlier bilateral agreements. The proliferation of trade negotiations and the complexities associated with the inter-relationships of bilateral FTAs and WTO commitments are significant in terms of the ongoing policy flexibility of State and Territory governments. It would seem timely for the Commonwealth Government to provide State and Territory governments with detail on the specific policy benchmarks that Australia's existing bilateral and multilateral commitments have established. This would also aid in the development of future FTAs, ensuring that assessment of non-conforming measures does not become a substantial task each time it is required to be undertaken.

A related issue is the matter of **ongoing FTA conformance.** There is currently no process in place nationally to ensure State and Territory governments do not introduce measures that may not conform with the obligations of the FTAs to which Australia has ratified. The Commonwealth Government, as party to these agreements, could be exposed in this regard.

The Queensland Government maintains its position outlined to this committee in 2004 for the AUSFTA on the **expropriation** provisions of the investment chapter. The extent of discretionary interpretation of many of the articles in this chapter and its annexes promotes uncertainty in the areas of government regulatory actions and governments' future policy options. Of particular concern is that there are insufficient guarantees to ensure the Queensland Government's future strategy for sustainable natural resource management will be unimpeded by the obligations imposed.

The Queensland Government holds the view that the expropriation and compensation provisions result in an extension of rights to property owners that do not exist currently under Queensland legislation and go beyond current Government policies. It is the Queensland Government's view that these provisions provide too much scope for Chilean companies to challenge the Queensland Government's decisions relating to measures taken to ensure sustainable water and land use and environmental protection.

The compulsory payment of compensation is not consistent with the Queensland Government's existing capacity to determine under what circumstances compensation is appropriate. No scope is given for exclusion of measures relating to the protection of exhaustible natural resources (for sustainable management purposes). The Singapore-Australia Free Trade Agreement (SAFTA) also carries expropriation provisions however a general exception exists for measures relating to the conservation of exhaustible natural resources. The Queensland Government questions why the AUSFTA and the Chile FTA need to be treated differently.

The Queensland Government is concerned that mandating the payment of compensation and extending that right to instances of indirect expropriation creates disparity between the rights of foreign and domestic investors and it also potentially limits the scope of State Parliaments to legislate. Ultimately this concern can only be clarified through case law developed out of dispute settlement on these provisions. On this basis the Queensland Government would like the Committee to note its opposition to the inclusion of mandatory compensation provisions with no exclusion for measures relating to the sustainable management of natural resources, as is provided in other trade agreements to which Australia is party, such as the SAFTA.

The Queensland Government has agreed to participate in the **government procurement** chapter of FTA and has provided a list of government agencies which will be subject to the provisions of the chapter.

The decision to participate was not driven by the same factors that existed in relation to Australia-United States Free Trade Agreement (AUSFTA). In that case, there were barriers to entry to the US government procurement market for Australian suppliers which AUSFTA overcame.

In relation to Chile, the Queensland Government was not aware of any particular barriers to entry to the Chile government procurement market for Queensland and Australian suppliers. However, it is recognised that the FTA provides non-discriminatory access to the Chilean central and subcentral government procurement market and effectively provides exporters with a level of access equal to competitors from other countries which have an FTA with Chile.

In deciding whether it was in Queensland's interests to participate in the government procurement chapter the Queensland Government was particularly keen to ensure that the text mirrored the requirements/provisions of AUSFTA so that government agencies were not faced with additional requirements. In addition, Queensland requested that the applicable thresholds be identical to AUSFTA. Queensland's requests were accommodated. The provisions of the chapter in relation to thresholds, tendering options, treatment of tenders and awarding of contracts and exceptions also substantially mirror AUSFTA. Consequently, compliance with the chapter is not considered onerous.