

Question on notice no. 110

Portfolio question number: 112

2020-21 Budget estimates

Foreign Affairs, Defence and Trade Committee, Foreign Affairs and Trade Portfolio

Senator Rex Patrick: asked the Department of Foreign Affairs and Trade on 29 October 2020—

Senator PATRICK: Okay. That then goes to the situation with the free trade agreement. When that was set up, Minister Birmingham said: This Agreement underpins Australia's support of the "One Country, Two Systems" framework in which Hong Kong operates.

That was on 17 January as we entered into the free trade agreement. On 9 July the Prime Minister said:

The National Security Law erodes the democratic principles that have underpinned Hong Kong's society and the One Country, Two Systems framework.

So it would appear that the circumstances have changed significantly. Have we suspended the free trade agreement-

Ms Lawson: No, we have not suspended the free trade agreement. We don't plan to suspend the free trade agreement. It continues to provide certainty and transparency for Australian businesses trading and investing in Hong Kong, including in an even more uncertain environment.

Senator PATRICK: We now have this paradox or, in some sense, a duplicity in saying one agreement has been suspended on the basis of a fundamental change in circumstances but then on the other hand we're not suspending this other agreement even though it also meets that criteria.

Ms Lawson: Thank you for that. We have looked very carefully at our arrangements with Hong Kong. The extradition treaty and the free trade agreement are two very different agreements which have different provisions underneath them. Our judgement on the extradition treaty was that, under the circumstances, it was best to suspend that treaty, whereas the free trade agreement continues to support the interests of Australian businesses operating in Hong Kong. We have 100,000 expatriates there and we want to support their interests. We continue to believe that the FTA does support their interests.

Senator PATRICK: I'm not in any way critical of the suspension of the extradition treaty; I think that was a very, very sensible move. You've taken a very, very principled approach on that front, noting the change in circumstances. But, on the other front, you might perhaps be putting business before those same principles.

Senator Payne: I think Ms Lawson has explained it very well. They are quite different agreements and serve quite different purposes. The free trade agreement, as Ms Lawson said, does provide what we think is very important certainty and transparency for Australian investors in Hong Kong. We do support a rules based system that provides recourse for Australian business and investors, and the free trade agreement offers that. If you would like us to go into further detail, we'd be happy to provide a

compare and contrast on notice on the differences between the suspension of the extradition treaty and the operation of the free trade agreement.

Senator PATRICK: That would be helpful.

Answer —

Answer attached

QUESTION ON NOTICE / Spoken

112 – Budget Estimates

Page: 24

Topic: Australia-Hong Kong FTA

Senator Rex Patrick

Question

Senator PATRICK: Okay. That then goes to the situation with the free trade agreement. When that was set up, Minister Birmingham said:

This Agreement underpins Australia's support of the "One Country, Two Systems" framework in which Hong Kong operates.

That was on 17 January as we entered into the free trade agreement. On 9 July the Prime Minister said:

The National Security Law erodes the democratic principles that have underpinned Hong Kong's society and the One Country, Two Systems framework.

So it would appear that the circumstances have changed significantly. Have we suspended the free trade agreement—

Ms Lawson: No, we have not suspended the free trade agreement. We don't plan to suspend the free trade agreement. It continues to provide certainty and transparency for Australian businesses trading and investing in Hong Kong, including in an even more uncertain environment.

Senator PATRICK: We now have this paradox or, in some sense, a duplicity in saying one agreement has been suspended on the basis of a fundamental change in circumstances but then on the other hand we're not suspending this other agreement even though it also meets that criteria.

Ms Lawson: Thank you for that. We have looked very carefully at our arrangements with Hong Kong. The extradition treaty and the free trade agreement are two very different agreements which have different provisions underneath them. Our judgement on the extradition treaty was that, under the circumstances, it was best to suspend that treaty, whereas the free trade agreement continues to support the interests of Australian businesses operating in Hong Kong. We have 100,000 expatriates there and we want to support their interests. We continue to believe that the FTA does support their interests.

Senator PATRICK: I'm not in any way critical of the suspension of the extradition treaty; I think that was a very, very sensible move. You've taken a very, very principled approach on that front, noting the change in circumstances. But, on the other front, you might perhaps be putting business before those same principles.

Senator Payne: I think Ms Lawson has explained it very well. They are quite different agreements and serve quite different purposes. The free trade agreement, as Ms Lawson said, does provide what we think is very important certainty and transparency for Australian

Senate Standing Committees on Foreign Affairs, Defence and Trade

Budget Estimates 2020 - 2021

investors in Hong Kong. We do support a rules based system that provides recourse for Australian business and investors, and the free trade agreement offers that. If you would like us to go into further detail, we'd be happy to provide a compare and contrast on notice on the differences between the suspension of the extradition treaty and the operation of the free trade agreement.

Senator PATRICK: That would be helpful.

Answer

- The imposition of the National Security Law (NSL) on Hong Kong constitutes a fundamental change of circumstances in respect to the Extradition Agreement to those which existed at the time of the treaty's conclusion.
- The NSL has undermined the high degree of autonomy, democratic principles and rule of law that have underpinned Hong Kong's success
 - and on which we had deepened our engagement and cooperation with Hong Kong.
- Given the impact of the enactment of the NSL on the application of the criminal law in Hong Kong and Australia's confidence in its legal processes, Australia considered the continued operation of the Extradition Agreement no longer tenable in the circumstances.
- We are not alone in our concerns; of the twenty countries that had extradition agreements with Hong Kong, nine have suspended them since the NSL was introduced (see table 1).
- The FTA, in contrast, provides certainty and transparency for Australian businesses trading and investing in Hong Kong and remains in Australia's interest.
- Before the FTA, Australia's trade relationships with Hong Kong were governed by Hong Kong's obligations under the WTO Agreement, which were far less open than its applied settings
 - For example, Hong Kong was able to unilaterally increase its applied tariffs on up to 52.3 per cent of its tariff schedule including on commodities of importance to Australia.
- The FTA sets in place rules to facilitate and grow trade in goods and services including:
 - addressing non-tariff barriers and ensuring efficient customs settings, particularly for food and beverages;
 - delivering certainty of continued access for those services sectors which are well represented by Australian businesses in Hong Kong, including financial services, education, transport, tourism and professional services;
 - modern e-commerce rules, so that business can be conducted virtually without impediments such as local data storage requirements or customs duties imposed on electronic transmissions;
 - legally binding access to Hong Kong's government procurement market on a non-discriminatory basis; and
 - the Investment Agreement provides an updated set of rules to govern our significant investment relationship and replaces the outdated 1993 Agreement.

Senate Standing Committees on Foreign Affairs, Defence and Trade
Budget Estimates 2020 - 2021

Table 1: Countries that have concluded extradition agreements with Hong Kong

Countries with extradition agreements with Hong Kong	Suspended
Australia	Yes
Canada	Yes
Germany	Yes
The Netherlands	Yes
The Philippines	No
India	No
United States	Yes
United Kingdom	Yes
New Zealand	No
Singapore	No
Malaysia	No
Indonesia	No
Sri Lanka	No
Portugal	No
South Korea	No
South Africa	No
Finland	Yes
Czech Republic	No
Ireland	Yes
France	Yes (ratification halted)