

# **Minority Report by Government Members**

## **Senators Johnston and Macdonald**

1.1 The Government Members of the Senate Foreign Affairs, Defence and Trade References Committee do not accept a number of the findings and recommendations of the Committee's (majority) Report into the World Trade Organisation General Agreement on Trade in Services and the Australia-United States Free Trade Agreement.

1.2 In conducting trade policy, the Government seeks to increase the opportunities for the improvement of Australia's trade performance. In so doing it leverages Australia's relatively open regime to secure benefits in the global trading environment. This open regime has been the product of decades of reform, and of parliamentary process. Our approach in trade negotiations overwhelmingly reflects this open regime.

1.3 Some of the recommendations in the report would undermine the Government's capacity to negotiate trade agreements in a way which maximised the benefits to the Australian community. Certain recommendations would take away the flexibility and timeliness of the Government's negotiating approach, and consequently, put at risk the very substantial gains this trade policy approach offers.

1.4 Moreover, there is no evidence that such a different approach would be practical, necessary or beneficial.

1.5 It is only proper that Parliament has a role in scrutiny of trade agreements. The current JSCOT system - a process initiated by the Howard Government - provides for this. In those cases where an agreement might go beyond existing regulation, the Parliament has the right to vote on legislative change required as part of that agreement. The report's recommendation on Treaties and the Parliamentary process would be unworkable. It would circumscribe the capacity of the government to secure the best possible trade outcomes from the negotiations. It would undermine the Executive's constitutional authority to sign treaties.

1.6 The power to enter into treaties is an executive power within Section 61 of the Australian Constitution. Under the Constitution, treaty making is the formal responsibility of the Executive rather than the parliament. Decisions about the negotiation of international agreements, including determination of objectives, negotiating positions, the parameters within which the Australian delegation can operate and the final decision as to whether to sign and ratify are taken at Ministerial level, and in many cases, by Cabinet.

1.7 Proposed treaty action must be tabled in both houses of Parliament to facilitate public consultation and scrutiny by the Joint Standing Committee on Treaties (JSCOT). Treaties that represent major political, economic or social significance are

tabled for 20 days. Treaty texts are automatically referred to JSCOT which reports on the proposed treaty action within 20 sitting days.

1.8 Treaties are tabled in the parliament with a National Interest Analysis (NIA) which notes the reasons why Australia should become a party to the treaty. NIAs can include a discussion of the foreseeable economic, environmental, social and cultural effects of the treaty action; the obligations imposed by the treaty, its direct financial costs to Australia; how the treaty will be implemented domestically; what consultation has occurred in relation to the treaty action and whether the treaty provides for withdrawal or denunciation.

1.9 The Government is committed to ensuring that information on trade negotiations is made readily available to the community and to consulting those likely to be affected by the Government's negotiating position. To this end, the Government has engaged in an extensive, and unprecedented, process of consultation on both the GATS and the US FTA, including extensive consultations with a wide range of stakeholders. The Committee during its deliberations heard much evidence about the painstaking consultative process undertaken in both these negotiations and welcomed the commitment the Government had made to ongoing consultation. It noted also that there is evidence that the diversity of community concerns evident during the consultative process had been taken into account in Australia's negotiating approach for both the GATS and US FTA.

1.10 In these circumstances our view is that the objective of ensuring both that the Government is able to energetically pursue opportunities for trade growth, and that appropriate consultation on negotiating objectives is undertaken with the broader community, are best met by current parliamentary and consultation processes and practices.

1.11 Finally, Government members of this Committee believe it is unnecessary for this Committee to examine or report on the final text of the Australia-US FTA.

**Senator Sandy Macdonald**  
**Deputy Chair**

**Senator David Johnston**