

Friday 24 July 2015

Committee Secretary
Joint Standing Committee on Treaties
PO Box 6021
Parliament House
Canberra ACT 2600
Via email: jsct@aph.gov.au

Dear Committee Secretary

RE: Treaty tabled 17 June 2015 – China Australia Free Trade Agreement

I write regarding the treaty tabled on 17 June 2015, the Free Trade Agreement between the Government of Australia and the Government of the People's Republic of China (ChAFTA). CHOICE has been helping Australian consumers for over 50 years through both our advocacy and advice, making us the country's leading consumer organisation. With over 160,000 members, we are completely independent and accept no advertising or sponsorship. Our website www.choice.com.au is Australia's leading online hub for information and advice about consumer issues, and we also publish CHOICE magazine.

CHOICE would like to take this opportunity to raise a concern regarding the potential for ChAFTA to prevent future reform of Australia's food labelling laws. Broadly, CHOICE opposes the inclusion of Investor State Dispute Settlement (ISDS) provisions in trade agreements due to the risk they pose to future policy changes in the interest of Australian consumers.

The ISDS provision in ChAFTA may prevent future positive reform to Australia's food labelling policy and regulation. CHOICE draws attention to the potential impact that ChAFTA Chapter 6 (Technical Barriers to Trade) could have on food labelling policy in Australia. This chapter largely reflects the World Trade Organization (WTO) Agreement on Technical Barriers to Trade, with one important distinction. The WTO Agreement already ties the Government's hands in relation to

food labelling, making reform to labelling laws in Australia difficult.¹ Just this week, we saw an example of existing trade obligations restricting the Government's options for improving food country-of-origin food labelling requirements,² shaping an outcome which in CHOICE's view fell short of providing the information consumers require for informed decisions. Looking forward, the WTO agreement allows only for state-to-state dispute settlement, whereas the inclusion of ISDS in ChAFTA expands this to include corporation-to-state dispute settlement.

Article 6.12 (2) of ChAFTA Chapter 6 states that "neither Party shall have recourse to the provisions in Chapter 15 (Dispute Settlement) for any matter arising under this Chapter". Chapter 15 provides for state-to-state dispute settlement. However, Chapter 6 is silent on the application of Chapter 9 (Investment), which contains an investor-state dispute settlement mechanism in Section B. Article 9.11(4) of Chapter 9 provides a carve-out for "measures of a Party that are non-discriminatory and for the legitimate public welfare objectives of public health, safety, the environment, public morals or public order".

We are concerned that many food labelling policy challenges, for instance proposals to label products containing palm oil, may not fall within these categories. It therefore remains open that investors of a party will have recourse to the provisions in Chapter 9 for matters arising under Chapter 6, including in relation to food labelling.

Accurate and useful food labelling is a priority issue for Australian consumers. CHOICE welcomed the Government's recent commitment to improving labelling of food products in relation to the country of origin of ingredients. Over 26,000 consumers have joined our campaign supporting better labelling laws and this issue is consistently rated the most important issue by CHOICE members and the general public when we ask them about Issues they care about.

CHOICE believes that it would be to the public detriment to implement a free trade agreement that further restricts the Government's ability to legislate changes to Australia's country of origin labelling framework or to other food labelling policies. More open consultation and analysis of trade agreements and treaties prior to their finalisation could assist in avoiding this risk in future.³

¹ See the US country of origin labelling WTO case, <http://www.abc.net.au/news/2015-05-19/wto-says-united-states-not-cool/6479728>

² See Proposed reforms to country of origin food labels, overview, <http://industry.gov.au/industry/IndustrySectors/FoodManufacturingIndustry/Pages/Proposed-reforms-to-country-of-origin-food-labels-overview.aspx>

³ See CHOICE, 27 February 2015 submission to the Foreign Affairs, Defence and Trade References Committee inquiry into the treaty-making process, http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Treaty-making_process/Submissions

CHOICE is not in a position to offer a full analysis of the potential economic and other benefits and risks arising from ChAFTA, but urges the Committee to consider the risks posed to food labelling reform, and from the inclusion of ISDS generally, when it evaluates the agreement as a whole.

For further information please contact CHOICE on sagar@choice.com.au.

Yours sincerely,

Sarah Agar,

Campaigns and Policy Advisor