

30 September 2020

Bilateral Investment Treaty Reform Coordinator
Regional Trade Agreements Division
Department of Foreign Affairs and Trade
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RE: REVIEW OF AUSTRALIA'S BILATERAL INVESTMENT TREATIES SUBMISSION – AUSTRALIAN PETROLEUM PRODUCTION & EXPLORATION ASSOCIATION

The Australian Petroleum Production & Exploration Association (APPEA) is the peak national body representing upstream oil and gas explorers and producers active in Australia. APPEA's member companies account for more than 90 per cent of Australia's petroleum production. Further information about APPEA can be found on our website, at www.appea.com.au.

APPEA works with Australian governments to help promote the development of the nation's oil and gas resources in a manner that maximises the return to the Australian industry and community. APPEA aims to secure regulatory and commercial conditions that enable member companies to operate safely, sustainably, and profitably.

The Australian oil and gas industry has a long history of foreign investment in its operations and this investment has resulted in substantial economic and social benefits to all Australians. In the past decade, the industry has invested more than \$350 billion in Australia and accounts for more than 80,000 direct and indirect jobs.

The Australian economy has been a significant beneficiary of foreign trade in the past and it continues to support our high standards of living. Foreign trade will be increasingly important as the global economy recovers from COVID-19 global pandemic. Trade and investment supports high paying and highly skilled jobs in Australia and other nations.

APPEA welcomes the opportunity to comment on the Australian Government's *Review of Australia's Bilateral Investment Treaties (BITs)*. APPEA supports reforms to the trade regime that expand trade and investment opportunities and enhances Australia's standing as a destination for global investment.

The BITs being reviewed were negotiated between the late 1980s and early 2000s. BITs and the investor protections included help negate protectionist tendencies of governments, particularly in times of economic difficulty and/or political difficulty that can impact on investments. The investor protections are an important part of the global trade rules and architecture which has supported global capital flows and led to prosperity globally.

APPEA supports the review as a means of ensuring agreements reflect modern provisions that provide investment certainty, foster a supportive investment environment and help improve bilateral diplomatic relationships between nations. Enhancing the BITs will have a positive impact on the economic engagement between Australia and our trading partners and reinforce our economic partnerships.

Australia has already incorporated modern provisions into many of the BITs negotiated in recent years. These provisions better reflect the contemporary economic, legal, investment and trade relationships between Australia's and its partners. These agreements include modern investor-state dispute settlement (ISDS) terms, enshrine the principle of non-discrimination, protect against sovereign risk and facilitate the movement of persons for trade and investment purposes. Additionally, they give effect to national treatment – the principle that foreign and domestic businesses should be treated equally under the law.

The investment protections in BITs provide protection and greater certainty for companies making long-term investments, mitigating some of the sovereign risk associated with protectionism and nationalism.

ISDS clauses, which allow investors to seek mediation and arbitration where they claim that a government has breached the investment commitments it has made under the agreement, are an important component that provides for their enforceability. They play an important role in protecting the rights and interests of foreign investors and promoting transnational investment. The ISDS mechanism contributes to the resolution of disputes based on the rule of law, avoids economic disputes between investors and host countries escalating into political conflicts between nations, and supports a business environment conducive to growth for many developing nations.

APPEA does not believe there is any threat to Australia's sovereignty arising from these agreements. The criticism of these provisions in the public discussion has been based on claims that the provisions might allow foreign investors to force outcomes that compromise the ability of governments to regulate in the public interest. This is based on agreements to which Australia is not a party, such as the North American Free Trade Agreement (NAFTA).

This is also borne out by the Australian experience with ISDS clauses. In the more than 30 years Australia has been subject to these provisions, no Australian law, regulation or public policy has had to be changed due to ISDS.

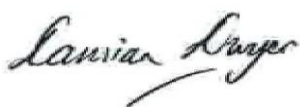
APPEA supports the continued modernisation of ISDS provisions to ensure there continues to be public confidence in these agreements and that they reflect contemporary expectations.

The Australian Government should approach its review of Australia's BITs to prioritise finding ways to enhance or maintain certainty and stability for international investment. It is essential to be able to attract investors and provide confidence to existing investors.

In the current economic climate attracting investment to support economic recovery and growth has never been more important. Australia's foreign trade regime must work to ensure that Australia remains competitive and attractive to foreign investors because the competition for investment has never been more intense than it currently is and will be over the coming decade as we look to recover from the COVID-19 pandemic.

To discuss any aspect of APPEA's submission, please feel free to contact me on 2647 0960 or at ddwyer@appea.com.au.

Yours sincerely



DAMIAN DWYER
Deputy Chief Executive