



UNITED STATES OF AMERICA TRADE TARIFFS

The Hon. ROD ROBERTS (18:53): This evening I speak about something that has wideranging implications for our nation but has its origins firmly in New South Wales: the Trump administration's imposition of trade tariffs. The appointment of Marco Rubio as the United States [US] Secretary of State marked new objectives, as foreign policy is recalibrated to America's national interest. Before any policy is pursued, three questions must be answered: Does it make America safer? Does it make America stronger? Does it make America more prosperous? I understand Trump's position. Perhaps we should consider it here at home. Why would Trump and the United States exempt Australia from tariffs? Australia's treatment of US companies and US investors has not always been fair. In fact, it has been the complete opposite in some cases.

Successive New South Wales governments have treated the free trade agreement with the US with utter contempt. We know that US investors in Australia, in particular in New South Wales, have been stripped of assets worth tens of millions of dollars and, even worse, denied due process and compensation. That is despite them being key pillars of the Australia-United States Free Trade Agreement. I am referring to the 2014 decision of the then Liberal Government and the financial impact it had on American interests when it stripped NuCoal Resources of its main asset: a coal exploration licence. American investors held 30 per cent of NuCoal Resources, then valued at \$400 million. The then Government not only took the asset but denied compensation and passed legislation to that effect. That denied investors the opportunity to seek a judicial review. As Chris Merritt wrote in *The Australian*:

This destroyed their faith that US investments are protected in this country not just by rule of law but by treaty obligations put in place to prevent arbitrary seizure of American assets.

NuCoal's licence was cancelled not because it had done anything wrong but because former Labor Minister Ian Macdonald had issued the licence corruptly to another company, which then onsold it to an innocent NuCoal. After years inside the justice system, it was determined that the only wrongdoing was inside the former New South Wales Labor Government. It was not NuCoal or the original licence holder. The impact of the decision was transferred to innocent shareholders. Australian investors, including mums and dads, along with American investors, were left with a worthless asset. Article 11.7 of the treaty is clear: Neither party may expropriate an investment unless it is followed by payment of prompt, adequate and effective compensation and done in accordance with due process of the law.

The Office of the United States Trade Representative, which is the equivalent of our trade Minister, is very aware of that abuse of the law. The office produces an annual report called the trade barriers report—in other words, what barriers are there to free trade between the two countries. That report first mentioned the cancellation of foreign investment projects in Australia as far back as 2017, noting that "cancelling foreign investment projects has prompted some concern about increased risks facing foreign investors in Australia". However, since 2021 it is starkly on the agenda, with the reports focused clearly on New South Wales cancelling a mining project and denying US investors the right to a meaningful judicial review.

The same circumstance applies to Cascade Coal, which also had investors from major trading partners such as the US and Japan. Cascade was stripped of its licence and also denied compensation. Nobody associated with Cascade has been convicted of anything. Taking all of that into consideration, why wouldn't Trump hold the belief that the rest of the world is taking advantage of the US? If the current New South Wales Government is reluctant and continues to refuse to redress that terrible wrong, whoever forms the next Federal government must insist that New South Wales abides by the terms of the US-Australia treaty and ensure fair treatment of NuCoal's US investors. How else could we sit at the trade negotiation table with a straight face and insist that we are friends of America?