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JSCFADT Inquiry into access to free trade agreements by small and medium sized enterprises 1 June 2018

Australian
Chamber of Commerce
and Industry

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WORKING FOR AUSTRALIA

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Australian Chamber of Commerce and Industry

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Australian Chamber of Commerce and Industry

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Recommendation 3	That the Federal Government continues to collaborate with industry representatives, such as the Australian Chamber and its members, to develop and deliver simple resources for SMEs to capitalise on Free Trade Agreements. These resources should be easily accessible to the public and reduce Non-Tariff Barriers to international trade.
Recommendation 4	That the Government undertake economic assessment of our existing and proposed trade agreements to ensure they are delivering (or likely to deliver) economic benefits to Australia.
Recommendation 5	That the Federal Government seeks to reduce Non-Tariff Barriers to international trade by harmonising existing Preferential Trade Agreements.
Recommendation 6	The Australian Government should undertake a "stocktake" to consider the value of maintaining bilateral preferential trade agreements where the same nations are party to wider regional agreements.
Recommendation 7	The Australian Government needs to continue to identify and seek to address non-tariff barriers that adversely affect trade, both domestic and international.
Recommendation 8	That the robust system of Certificates of Origin that is accepted globally and successfully used worldwide, and which are issued to the highest possible standards by the Australian Chamber and AiG in Australia, continues to be the standard and basis for trade facilitation of claims made about goods that pass from nation to nation.
Recommendation 9	That the Federal Government continues to collaborate with industry representatives, such as the Australian Chamber and its members, to reduce red tape in a manner that intelligently reduces Non-Tariff Barriers to international trade.

Australian Chamber of Commerce and Industry

Introduction

We welcome the opportunity to make a submission to the Inquiry into access to free trade agreements by small and medium sized enterprises

The Australian Chamber of Commerce and Industry is a champion of free trade and investment and recognises the importance of getting more Australian businesses internationally engaged. We support the Government's efforts to assist the development of Australian international trade through securing improvements through the multiple fora of unilateral reform, multilateral agreements, regional and bilateral trade and investment treaties.

Australia has relied upon international trade and investment since European settlement in 1788. Australian trade policy has evolved from being a relatively "closed" economy, with limited trading partners and the development and maintenance of significant barriers to entry, to the relatively open and liberalised economy we have today.

The greatest series of reforms can be traced to the period commencing in the 1980's when the then Hawke and Keating Governments sought to radically transform the Australian economy and expose it to the competitive pressures of global competition. These reforms included a floating exchange rate, privatisation of State Owned Enterprises and unilateral lowering of trade barriers, coupled to increased efforts to secure multilateral trade reforms through the GATT and WTO.

While reform has continued through to the present day and the world has experienced the global financial crisis – which Australia weathered well due to these previous reforms - Australia is now seeing increasing challenges to maintaining the current rate of growth and our standard of living.

This inquiry is focused on the use of free trade agreements by Australian businesses. It is important to recognise that the benefits of free trade to Australian businesses are about more than just increased exports. While boosting exports increases income and importing goods, services and IP benefits Australian businesses by lowering costs, which can boost profitability or increase production by improving competiveness, and providing opportunities to participate in the production of different goods and services through 'global supply chains'. Free flow of investment both in and out of Australia also provides access to new capital for domestic businesses, income generating opportunities overseas, and cutting edge business practices.

How many exporting businesses are there?

The ABS report 5368.0.55.006[1] details the Characteristics of Australian Exporters. 2015-16 is the latest year available and this indicates: (See Annex 3 for details)

- *The total number of exporters of goods and/or services in 2015-16 was 53,350, an increase of 2,454 (5%) from 2014-15.*

[1] http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/5368.0.55.006Main+Features12015-16?OpenDocument

- *The number of goods exporters increased by 2,611 (5%) and the number of services exporters decreased by 136 (-4%).*
- *The total value of goods and services exports decreased by $6b to $312b (-2%) from 2014-15.*
- *The decrease in the value of goods exports was $11b (-4%) to $243b. This was partially offset by an increase in the value of services exports, up $5b (9%) to $68b.*
- *The increase in the number of exporters was across the board, except for large goods exporters (between $50m and $100m) and services exporters.*
- *The number of goods exporters increased in each of the main industry divisions presented in this publication, except for Mining.*

The decrease in the value of goods exports was mainly driven by the Mining industry decreasing in value by $14b, following significant falls in commodity prices.

Unfortunately, the same level of statistics are not available for Australian importers. The only figures available relate to 2003-4[2]. This report noted:

The number of goods importers was estimated to be 60,661 in 2003-04, an increase of 3,328 (6%). The increase was mostly in importers in the $10,000 and less than $100,000 category, up by 2,209 (7%). The number of service importers fell by 91 to 2,150. Of the businesses engaged in service imports, 1,179 (55%) were also goods importers. Adjusting for the duplication, the total number of importers was derived at 61,632.

We understand that the Department of Home Affairs collects import information and so we assume that some statistics would be available from that source although they appear not to be publicly released.

Recommendation 1:

The Government should provide public data on both importers and exporters to improve understanding of the characteristics of these companies to assist with improved decision-making and support services.

"Free trade" impacts on the Australian Economy

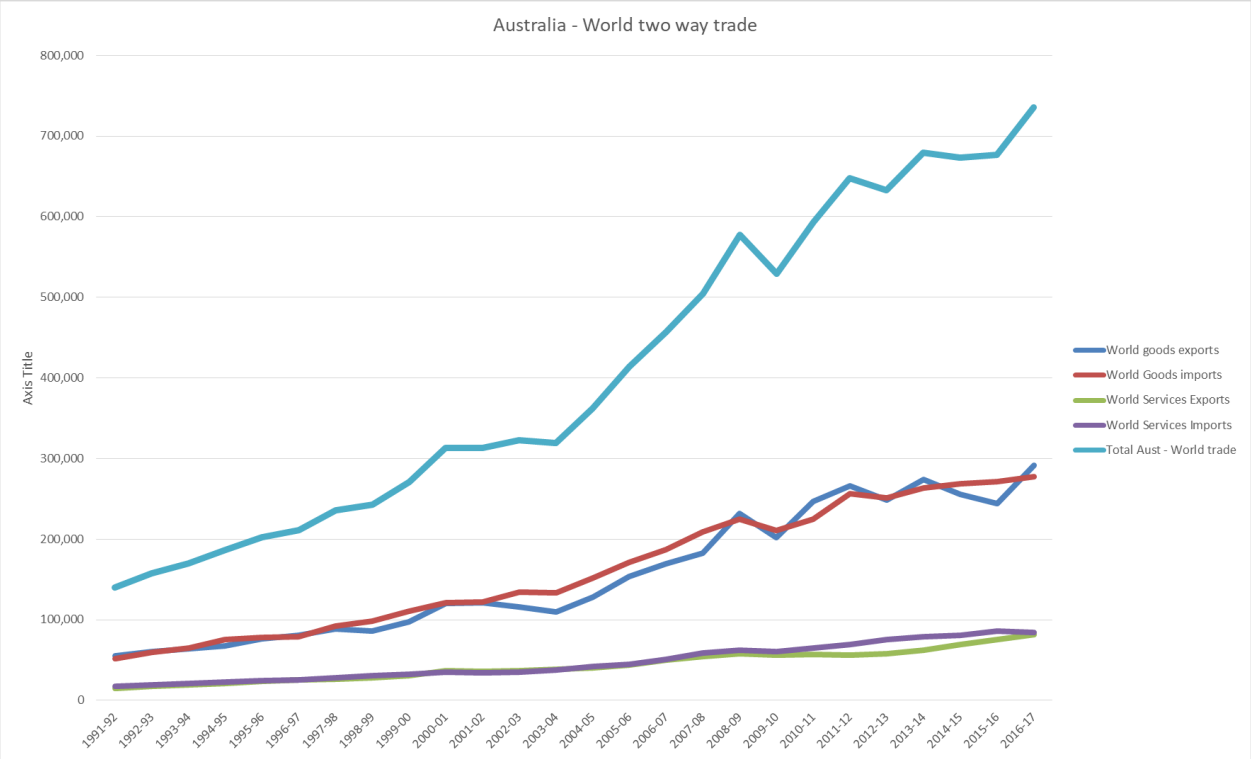
Australia's trade with the world is not generally impacted by the presence or absence of trade agreements. In fact trade agreements are more likely to foster trade diversion[3] than trade creation. It is therefore important for us to understand the various components of trade and what drive them.

The Productivity Commissions' 2010 report identified that Australia could expect about a 0.5% increase in GDP from unilateral actions without the need to pursue trade agreements. We need to

[2] http://www.abs.gov.au/ausstats/abs@.nsf/featurearticlesbytitle/0FFC229C8BE12B60CA256F85007A1602?OpenDocument

[3] http://www.pc.gov.au/inquiries/completed/trade-agreements/report/trade-agreements-report.pdf

better understand what the costs are to the Australian economy from the maintenance of trade barriers when negotiating bilateral and regional trade agreements.



The Productivity Commission's Trade and Assistance Review 2013-14 notes that international trade is driven by relative competitiveness, and a key part of this is:

'Institutional' comparative advantages, arising from, for instance, differences in the local system of labour market arrangements, the availability of finance and financial institutions, legal systems and the recognition of property rights, intellectual property arrangements and, foreign direct investment policy.

Government imposed taxation costs, regulatory costs, border adjustments, licencing costs, charges related to environmental management, control to a large extent, the availability of infrastructure and its costs along with the overall framework for items such as labour availability, etc.

All of these cost aspects can be controlled unilaterally. It is essential that the Australian Government fully consider international benchmarks and compare ourselves to global competitors in our region, such as Singapore, which is often higher placed on comparative league tables than Australia.

ACCI holds a constant vigil at an economy wide level over the multiple aspects of the economy:

- Economics and Industry policy;
- Industrial relations;
- Employment education and training; and
- Trade and International affairs.

Each of these provide significant opportunities for unilateral reforms which the Government can undertake immediately that will assist to reduce costs in the Australian economy, and increase international competitiveness for our industries.

We also note that the Productivity Commission releases its annual Trade and Assistance Review which continues to highlight the benefits of domestic reforms and the limitations of free trade agreements. The Productivity Commission is rightly highly regarded for its economic analysis, so we should give weight to its annual reports as well as its 2010 inquiry into trade agreements. Both found serious shortcomings in the ability of bilateral and regional trade agreements to improve welfare, and offered useful guidance on alternate approaches.

Of interest to the Inquiry may also be the March 2015 Austrade Trade And Investment Note - *Australia's Evolving Export Story: How Australia's Export Profile and Export Environment Have Changed since the Mortimer Review*. This report discusses the changes in our export profile in the seven years since the Mortimer review. It reports that the rise of China has been the dominant feature of our export profile and the commodities "supercycle" – where our major export has been resources. However outside of that, there has been little change in the profile of our exports. It is interesting to note that this report provides no commentary on the role of PTAs in Australia's exports.

Our members though, report that the PTA with China has been of benefit and is allowing them access to greater market opportunities. This comes despite continuing difficulties in market access for some agricultural products and recent increased scrutiny of the preference conferring criteria by Chinese authorities.

The Australian Chamber has welcomed the investment by the Government in recent years, of programmes committed to helping Australian business better understand Trade Agreements. Partly this will be used to support outreach seminars advising of the availability of each of the three North Asian deals, along with support for the development of an Australian online platform/portal that will enable the FTA content to be more accessible to Business. Alongside these developments however we would also welcome a closer ongoing relationship between ACCI, our members and the Government agencies in this field, to support the creation of an internationally engaged commercial sector and to avoid any crowding out of private sector initiatives.

Members of the Australian Chamber deliver a range export development programs and services. The Victorian Chamber of Industry and Commerce, for example, offers an FTA Export Pathway Program, Asia Gateway Voucher Program, export documentation services, migration services, and a Victoria Jiangsu Business Placement Program.

Recommendation 2:

That the Australian Government work with private sector representative bodies such as ACCI to deliver improved services to exporters in a collaborative approach to improve the reach of initiatives and reduce the risk that Government actions "crowd out" private sector led initiatives.

Increased promotion of government-developed tools

We have been pleased to see the efforts by the Federal Government to support increased understanding of Preferential Trade Agreement content. The Dept. of Foreign Affairs and Trade 'FTA Portal' is a good example of collaboration between Government and Industry to develop a widely accessible tool that improves the accessibility of the PTA benefits to businesses. The success of this tool indicates that improving education (particularly amongst SMEs) with respect to PTA's, is a viable method of reducing Non-Tariff Barriers.

We are heartened by the effort of the Federal Government to provide $10.5 million in 2018-19 to the Dept. of Home Affairs to 'transform and modernise Australia's international trade supply chain to deliver more efficient and secure trade processing.' This will be dedicated in large part to the 'completion of an initial business case to provide a 'single window' for international trade documentation, creating a system that is seamless, digital, automated and user-friendly.'[4]

However, it is important that the 'single-window' approach is developed with the assistance of peak bodies and industry members, so as to ensure that the functional aspects of the program does not obstruct current practice.

We would welcome further collaboration to develop and promote these simple tools for SMEs wishing to take advantage of a Preferential Trade Agreement.

Recommendation 3:

That the Federal Government continues to collaborate with industry representatives, such as the Australian Chamber and its members, to develop and deliver simple resources for SMEs to capitalise on Free Trade Agreements. These resources should be easily accessible to the public and reduce Non-Tariff Barriers to international trade.

Need for objective, independent economic analysis:

The rationale for trade agreements is to generate net economic benefits and an increase in aggregate trade flows between countries. Objective economic analysis, independent of the negotiating parties, needs to be conducted to provide confidence to both the Parliament and the public that the range of agreement in place and being pursued, is of benefit to the Australian economy.

The Australian Chamber is a staunch advocate for free trade and a strong supporter of the efforts of successive Coalition and Labor governments to liberalise trade and investment and open our economy. We have consistently raised concerns about aspects of Australia's treaty making processes and have monitored the response of government to recommendations from recent treaty inquiries. Notwithstanding significant interest from business, these processes are yet to be reformed in a way that meets these concerns (See Annex 1). The private sector, the main provider of jobs, creator of jobs and payer of taxes in Australia, wants to be assured that taxpayers' monies are spent wisely in the pursuit of trade agreements.

[4] Budget Paper 2, 2018-19 – Budget Measures, p. 133.

Engineering company comments

- *NTB is the biggest issue for companies like mine. If I want to develop a product, I need to fund it myself. My Overseas competitors get loans from the banks backed by the government, - level playing field?*
- *Being a technology company, lots of my costs go into Patents. I can claim these costs on EMDG but EMDG runs out after X years and I can no longer claim it. So, when companies like mine get to this stage, we fund it ourselves and sell it off to the highest overseas bidder, then it benefits another country rather than Australia. It's no good talking about FTA's when you are not fostering and nurturing new technologies and possible export business because the funding/loans/grants aren't there in the first place to grow these into reality*
- *To date I can't say that I have really benefitted from any FTA's. It might get me in the door knowing that there is one in place, but it is a fight to get there in the first place and then the fight to get business gets tougher, not easier. Like trying to row in a dinghy in rough seas with only one oar.*
- *Sorry for being pessimistic, but I hate seeing money spent on these things when technology companies could better benefit from the money spent elsewhere.*

Recommendation 4:

That the Government undertake economic assessment[5] of our existing and proposed trade agreements to ensure they are delivering (or likely to deliver) economic benefits to Australia.

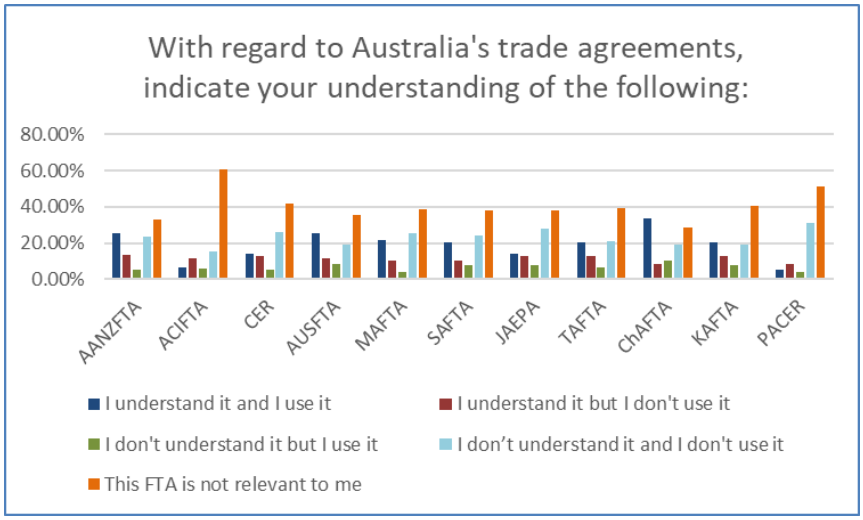
PTA utilisation studies

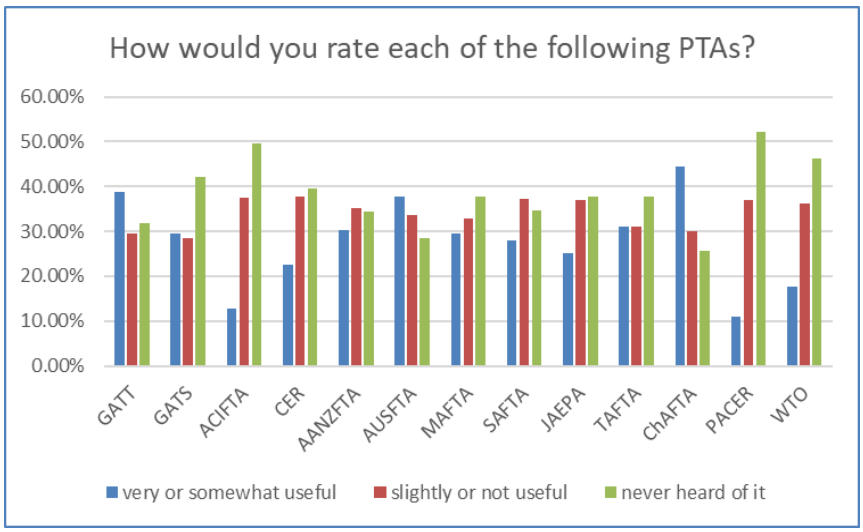
In response to comments from the Australian Chamber (and others) reflecting our annual trade surveys the Government should be congratulated for undertaking their own studies and negotiating with partner governments to increase information sharing about the rates of preference conferral as a result of our recent preferential trade agreements.

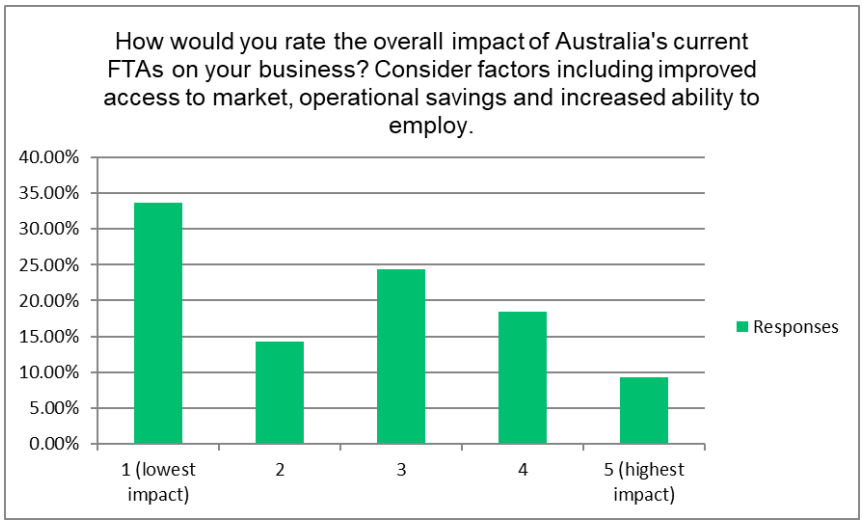
We have recently undertaken our 2018 study and while we have not completed the analysis of this at the time of writing, it appears to largely confirm previous responses, that in a broad sense

[5] http://www.pc.gov.au/news-media/speeches/free-trade-agreements

business doesn't understand our trade agreements and their impact on individual businesses is low.







Earlier this year, DFAT released a report they commissioned PwC[6] to undertake into utilisation of our trade agreements. The study draws upon figures from foreign Governments related to preferential entry. It is important that the inquiry understands that such figures reflect the understanding of importers about seeking lower taxes and who have compliance liability in the country of import, rather than the knowledge and active participation of the producers in the country of origin. This is due to the impact of *Incoterms* which determine the responsibilities of each of the commercial parties within a commercial contract.

The DFAT / PwC study doesn't include any economic analysis of the impacts of the trade agreement.

The inquiry should fully understand the various roles and the legal requirements for "importers" and "exporters" which can be counterintuitive to the general understanding of these categories of people.

Incoterm 2010	Export-Customs declaration	Carriage to port of export	Unloading of truck in port of export	Loading charges in port of export	Carriage (Sea Freight/Air Freight) to port of import	Unloading charges in port of import	Loading on truck in port of import	Carriage to place of destination	Insurance	Import customs clearance	Import taxes
EXW	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer
FCA	Seller	Buyer or Seller	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer
FAS	Seller	Seller	Seller	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer
FOB	Seller	Seller	Seller	Seller	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer
CFR	Seller	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer	Buyer	Buyer	Buyer
CIF	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Buyer	Seller	Buyer	Buyer
CPT	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer	Buyer
CIP	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer
DAT	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer
DAP	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer
DDP	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller

Source: https://www.miq.com/resources/international-shipping-tools/incoterms-2010/

Harmonising PTAs

ACCI was very pleased with the recommendations from the series of parliamentary inquiries (both the Joint Standing Committee on treaties and the Senate Standing Committees on Foreign Affairs Defence and Trade). However one aspect not well considered was the issue of how to harmonise the multiple treaties Australia has regarding attempts to liberalise trade.

While we acknowledge the benefits that can flow from bilateral and regional trade agreements to certain sectors, ACCI regularly points out the buildup of 'red tape" that is resulting from the compounding development of bilateral and regional preferential trade agreements and their compliance regimes. In 2014 this stance was endorsed by the B20 which reported to the G20

[6] http://dfat.gov.au/about-us/publications/trade-investment/Pages/free-trade-agreement-utilisation-study-pwc-report.aspx

about trade related issues[7] and noted, *although many PTAs have contributed to trade growth, poorly structured PTAs may not be used by businesses (especially SMEs) due to their complexity. Business surveys in many countries have indicated that poor implementation of PTAs has reduced the anticipated benefits for business. There is also concern regarding the effects of trade diversion and regulatory fragmentation.*

A common barrier for businesses using PTAs is understanding the 'Rules of Origin' (RoO) requirements for their products, and hence proving that they qualify to access the PTA benefits. RoOs are incredibly complex and often differ between trade agreements.

These issues have been highlighted by the Productivity Commission on a regular basis since their 2010 Inquiry into Australian Bilateral and Regional Trade Agreements.

The Australian Government has advocated that the development of bilateral agreements with major trading partners are "stepping stones" towards a final WTO agreement. As each agreement is different the question is how ~~will~~ these disparate agreements come together and be harmonised?

As the number of Preferential Trade Agreements available to Australian SMEs grows, so does the confusion and inconsistency within the overlapping agreements. The "noodle bowl" continues to grow, and this can be seen as a significant barrier to trade amongst Australian SMEs. While there are benefits to having both bilateral and multilateral PTA's in place, ensuring that there is a consistent approach across all agreements is important. The Australian Chamber has previously expressed concerns with respect to the harmonisation of the disparate agreements.[8] However, as the noodle bowl deepens, as does the complexity of harmonisation.

In addition to the overlapping agreements, there are agreements in places that are unnecessarily complicated. An example of this is the ASEAN-Australia-New Zealand Free Trade Agreement. Indonesia has not yet implemented the 'First Protocol' Certificate of Origin Template, despite the adoption from all other member nations. Such basic challenges provide unnecessary pitfalls for uneducated SMEs, and restrict access to the FTA. In this case, the Federal Government should continue to work to promote Indonesia's alignment to the First Protocol.

As we are now seeing the development of wider regional agreements, it should be possible to review and reconsider the value of the superseded bilateral agreements. The Government can significantly reduce the "noodle bowl" issues by commencing a programme of withdrawal from historic bilateral trade agreements that have been superseded by the newer regional agreements. The Government has already begun this task in terms of investment treaties and should now expand this to trade agreements.[9]

Recommendation 5:

That the Federal Government seeks to reduce Non-Tariff Barriers to international trade by harmonising existing Preferential Trade Agreements.

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[7] *B20 Trade Taskforce Policy Summary* http://www.b20australia.info/Documents/B20%20Trade%20Taskforce%20Report.pdf

[8] ACCI Submission to Joint Select Committee on Trade and Investment Growth 'Inquiry into the Business Experience in Utilising Australia's Free Trade Agreements', p 8.

[9] See previous submission by the Australian Chamber, *'JSCOT inquiry into the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (TPP-11)*, submitted 08 March 2018

Recommendation 6:

The Australian Government should undertake a "stocktake" to consider the value of maintaining bilateral preferential trade agreements where the same nations are party to wider regional agreements.

Non-Tariff Barriers

Despite the preferentially reduced tariffs for qualifying goods in certain markets under various Preferential Trade Agreements, increasingly we are hearing from members that non-tariff barriers (NTBs) are becoming a higher concern.

The B20 often raised concerns with the G20 about the global rise in NTBs, - *Of particular concern to the business community are non-tariff barriers related to localisation measures, state-owned enterprises (SOEs) and public procurement*[10]

NTBs preventing many businesses from accessing export opportunities include:

- Challenges identifying and developing relationships with distributors and customers.
- Difficulties navigating local languages, cultures, customs and business practices.
- Costs and uncertainty around the protection of intellectual property.
- Difficulties complying with local laws and regulation (in particular labour and tax laws).
- Restrictions or delays in the repatriation of funds to Australia.
- Resource intensive in-country product testing and validation requirements, some of which may be inconsistent with Australian requirements and practices.

Export quotas as well as sanitary and phytosanitary (SPS) measures also pose restrictions on trade, particularly for exports of agri-food products. These measures can significantly limit market access, regardless of whether an FTA is in place.

It is of considerable concern that nations that espouse "free trade" and sign agreements to this effect, also seek to create and implement new, novel and often much less transparent protectionist measures to support their local industries.

Recommendation 7:

The Australian Government needs to continue to identify and seek to address non-tariff barriers that adversely affect trade, both domestic and international.

[10] *B20 Trade Taskforce Policy Summary* http://www.b20australia.info/Documents/B20%20Trade%20Taskforce%20Report.pdf

Australian Chamber of Commerce and Industry

Rules of origin

Rules of origin are a non-tariff trade barrier created and maintained by Governments around the world – including Australia.

They are used to support the gathering of trade statistics, administration of tariffs and antidumping regimes along with preferential access to trade agreements. They bring with them administrative costs and liability upon industry with penalties for false and misleading statements for non-compliance. To assist with these issues, in the 1890's Governments of exporting nations created a globally recognised system to "certify" goods as a statement between Governments attesting to the origin authenticity of the goods in question. This system continues to be the predominant system used by Governments around the world. It is an essential component of international trade and needs to be more deeply understood.

To assist this understanding we offer the following points to clarify the important purpose of this global document in the context of the inquiry discussion:

A. For over 400 years, States and Nations have required the identification of the origin of goods. This has allowed Governments to apply border controls and generate revenue through taxation of goods moving across the frontier between nations. It has also allowed a mechanism for the application of differential and preferential treatment of goods from allies and commercial partners, as well as the exclusion or application of penalties to goods from less favours nations or those where sanctions are applying.

B. As such, the commercial parties involved with international trade have been required to identify the origin of their goods at the **entry point** of an importing country. Over time questions arose about how to efficiently make this claim. This resulted in the development of a system of standardised documentary controls of Government verification of the goods from the originating country so that the commercial trade could present reliable documents to the foreign Government as they attempted market entry.

C. A *Certificate of Origin* is a customary document of international trade in use worldwide, issued via government authority under the *1923 Geneva Convention Relating to the Simplification of Customs Formalities* to which Australia is a signatory, and also reflected in the *Revised 2006 Kyoto Convention* at Annex K. In modern trade the function of the document goes beyond mere origin, and provides importing Customs with a government-backed exporter statement for a range of determinations when the goods cross the border into the importing party. Determinations involve *inter alia* the implementation of anti-dumping procedures, tariff concessions, trade finance outcomes and assessing the value of the goods. As the importer has no legal standing to make such claims about the foreign goods (and has a vested interest in making beneficial claims to its own Customs), the document represents a verified traceable set of data, which is scrutinised by the exporting government before being provided to the officials of the importing Government. The ability of the exporting government to check, verify and adjudicate claims by its exporters on behalf of Importing Customs is the trade facilitating aspect of the system, now in use for 400 years, made possible only on the basis of the exporting government's personality under international law. Since 1889, Governments around the world have increasingly

recognised that this administrative task should be outsourced to appropriate "competent authorities" – usually, but not exclusively, national Chamber of Commerce.

D. This system has also been co-opted for use in support of the trade finance industry through the *International Standard Banking Practice* (ISBP) guide for examination of documents under *Uniform Customs and Practice for Documentary Credits*.

E. In Australia, as in many jurisdictions signatory to the *1923 Geneva Convention Relating to the Simplification of Customs Formalities*, the Australian Government's authority to scrutinise exporter's claims and issue Certificates of Origin has been delegated to the Australian Industry Group (AiG), and the Australian Chamber of Commerce and Industry (ACCI). Both of these groups are in turn required to maintain accreditation currency scrutinised by the Joint Accreditation Scheme for Australian and New Zealand.

F. The Australian Government has also mandated the use of ISO 17020:1998 standards in relation to ACCI and AiG's issuance of Certificates of Origin. This is an extremely costly but worthwhile standard of documentary issuance, which is mandatorily audited by the *Joint Accreditation System of Australia and New Zealand*. This accreditation provides the necessary confidence in the third party issuing system so that PTA parties can accept the certification process related to conferring concessions under Preferential Trade Agreements. Certification according to the *ISO/IEC Guide 2* is "a procedure by which a third party gives written assurance that the product, process or service conforms to specified requirements". Both ACCI and AiG have maintained this standard and continue to meet the audits, and as a result Australia has a world-class system of issuance of these trade documents. We also note that the Wine and Brandy Corporation also has some limited issuance rights but is not covered under this scheme.

G. While we appreciate the arguments of other groups in terms of wanting to remove what could be regarded as unnecessary paperwork by those that do not have a strong understanding of the system, we would also like to point out some examples of what happens when things go wrong. ACCI, on a weekly basis, provides support to Australia exporters and the corresponding importers (often in the horticultural field, but also minerals, processed foods, soft commodities, livestock and manufactured products) that are being investigated by foreign Government authorities about their claims of satisfying the preference conferring criteria under the terms of Australian trade agreements. (Most recently supporting Australian exporters being scrutinised by Chinese authorities under CHAFTA). At the extreme level the inquiry might like to consider the case of Toyo Inks (see *U.S., ex rel. Dickson v. Toyo Ink Manufacturing Co., 09-cv-00438, U.S. District Court, Western District of North Carolina (Charlotte))* who in 2012 agreed to a $45 million settlement over allegations of submitting false claims to the U.S. government to avoid import duties. In 2014 the USDA's Agricultural Marketing Service (AMS) Specialty Crops Inspection Division (SCI) was forced to implement a domestic certification system to enable preferential access to exports frozen concentrated orange juice under the US – Korea Free Trade Agreement (KORUS FTA) as the US has not sought to apply a system of certificates of origin under this PTA and Korean authorities would not accept the self declaration of US producers. Hence the globally established certificate of origin system is trade facilitating

because it is an accepted and trusted system that reduced costs to exporters as well as providing them with legal defences when things go wrong.

H. We finally note that Australia has now ratified the WTO's 2013 *Trade Facilitation Agreement*. This agreement is supported by the 2006 *Revised Kyoto Convention* inclusive of *Annex K* and the UN layout key for documents. Together they provide the standard frameworks for harmonising trade documentation.

Recommendation 8:

That the robust system of Certificates of Origin that is accepted globally and successfully used worldwide, and which are issued to the highest possible standards by the Australian Chamber and AiG in Australia, continues to be the standard and basis for trade facilitation of claims made about goods that pass from nation to nation.

Reducing Red Tape

We are hearing increased concerns that regulatory changes both actioned by and within the government will have negative effects on the effectiveness of FTA's currently in place.

As such, it is important for the Government to work with industry bodies to reduce red tape in such a manner that it will not increase Non-Tariff Barriers to international trade.

A number of our trade agreement negotiations overlay other existing agreements covering the same parties and supply chains in part of whole. Thus they will simply co-exist with these others and will in fact exacerbate the "noodle bowl" issue we have previously highlighted. It is important to understand that each agreement includes compliance terms which need to be satisfied in order to take advantage of the agreement. In the case of goods trade, this is the tariff regime where rules of origin must be satisfied. Zero preferential tariffs are different to the abolition of tariffs. Any tariff, even 0, requires the importers to satisfy the compliance rules and so red tape is retained. The governments party to some agreements have also sought to reduce costs to exporters through the application of a "self-certified" system of origin declaration. Unfortunately this continues the misconceptions created by generalised notions of

DEPARTMENT OF IMMIGRATION AND BORDER PROTECTION NOTICE

No.2017/16

Section 4 of the Customs Act defines "Owner" as follows:

"Owner " in respect of goods includes any person (other than an officer of Customs) being or holding himself or herself out to be the owner, importer, exporter, consignee, agent, or person possessed of, or beneficially interested in, or having any control of, or power of disposition over the goods.

This means that most parties participating in an import or export supply chain, including licensed customs brokers, may be considered the "Owner" for the purposes of the Customs Act.

"importers" or "exporters" rather than a close examination of who is the duty liable party. The Australian Customs Act 1901 defines the party responsible for duties is the "owner"[11]. The "owner" is one of a number of people potentially liable for duty payment and the application for preferential treatment.

False or misleading claims can result in heavy penalties applied to importers. Hence, they need effective and reliable systems to defend themselves when the validity of their claims is questioned or subjected to post entry verification processes.

International Commercial Terms (or "Incoterms"[12]) are important in this equation. The terms are used as common three letter acronyms in international commercial contracts to define the roles and responsibilities of importer and exporters. Some common terms are "Ex-Works" (EXW) or "Free on Board" (FOB). In both of these cases, if used, the seller has completed their roles in the transaction within the originating country. It becomes the responsibility of the buyer to arrange transport and market entry compliance. It is only when a term such as "Delivered Duty Paid" (DDP) is used that the seller is responsible for the payment of duties. Even if such a term is used, case law shows that the importer can still be liable for the payment of duties[13].

The reality is that in most countries, "importers" are required to make self declared "import declarations"[14]. However, the importer needs to provide sufficient evidence that their claim for preference is "true and correct". This is then sought from the supply chain and mostly supported by Government issued (or via approved bodied) "certified" statements of origin from exporters. The Government, in agreeing to self-certification in TPP11 and 12 has exposed Australian importers and exporters to major increases in liability, and verification costs and risks[15].

The Government can significantly reduce the "noodle bowl" issues by commencing a programme of withdrawal from historic bilateral trade agreements that have been superseded by the newer regional agreements. The Government has already begun this task in terms of investment treaties and should now expand this to trade agreements.

Some of our members have also informed us that although the Australian Government enters into these agreements in order to create advantages for exporters, other domestic regulatory actions can detract from the effectiveness of the agreement. For example, the medical device industry is concerned that the actions of the TGA directly conflict with the aims of trade agreements. They have proposed that all Australian Government legislation and regulation now needs to include a statement of trade agreement compliance in order for the parliament to understand these implications when making changes to domestic laws.

[11] https://www.homeaffairs.gov.au/Customsnotices/Documents/dibp-notice-2017-16.pdf

[12] https://iccwbo.org/resources-for-business/incoterms-rules/incoterms-rules-2010/
[13] http://www.ftalliance.com.au/data/news_attachments/studio%20fashion%20presentation%20.pdf,
[14] In Australia this is an N10 form. https://www.homeaffairs.gov.au/Forms/Documents/B374.pdf
[15] Hunt and Hunt Lawyers presentation TPP Issues for Customs Brokers, February 2018

One of our members has provided a summary of the cumulative compliance costs imposed on them by the Australian Government and foreign governments that make it difficult from them to export:

Medical device industry views

So to export a low-risk medical device, one of our members currently pays up to $550 up-front and $80 per year – this is set to increase to $1080 up-front and $90 per year courtesy of the TGA.

- *$170 Certificate of Free Trade / Export Certificate*
- *$80 DFAT signature on the CFT*
- *Foreign embassy notarisation fees should be understood to be trade barriers. $50 - 150 for signature from relevant Embassy*
- *Then $80 annually to maintain the product on the ARTG ($90 from 1 July 2018).*

The DFAT Notarial Services Handbook (p.18) states the following:

"Documents bearing the red stamp of the Therapeutic Goods Administration (TGA) or the live signature of a TGA employee can be accepted for legalisation. There is no need to have these documents notarised by an Australian Public Notary."

However, one of our exporters pointed out that while this is fine for importers, it has no weight or relevance for exporters. Foreign regulators do not accept this in practice.

I think the key takeaways are:
1. Cumulative domestic regulations and Government-charged or induced fees act as a barrier to Australian exporters.

2. The Australian Government should work to improve foreign recognition of documentation of Australian Departments and Agencies in a manner consistent with DFAT's notarial services guidelines.

There is much that a collaborative approach between industry and Government could address within our own economy that would assist to improve the competitiveness of Australian industry. The Australia Chamber has recently conducted a Trade Community System[16] proof

[16] https://www.tradecommunitysystem.com.au/

of concept project in conjunction with PwC and the Port of Brisbane where we identified up to $450 per container in built up domestic costs related to administrative duplication and logistics inefficiency in international supply chains, that could be reduced with the application of modern technology and communications systems.

Recommendation 9:

That the Federal Government continues to collaborate with industry representatives, such as the Australian Chamber and its members, to reduce red tape in a manner that intelligently reduces Non-Tariff Barriers to international trade.

Trusted Trader Scheme

The Department of Home Affairs is implementing a "Trusted Trader" (TT) scheme and currently around 150 companies have become "Trusted Traders" and the Department seeks to dramatically increase this level of participation.

The Australian Chamber supports the intent of this scheme but we question the design as the scheme and the benefits on offer. In relation to this we make the following points:

- While "trusted" traders may be part of this scheme, it automatically places those not in the scheme in the "untrusted" group, even though they don't pose any participate risks. We are hearing anecdotally that international buying companies are beginning to enforce TT compliance as a requirement for commercial dealings. This means it is becoming a barrier to trade.
- The scheme adds costs and compliance to companies that prior to the scheme, in general, already complied in terms of safety and regulatory compliance. Hence, it adds costs and red tape to otherwise compliant companies.
- We have argued that the design would be better if it assumed compliance for all company until they demonstrate non-compliance. That is, a demerits based scheme rather than a merits based scheme. Such a scheme in other places means points are removed from full compliance based on indiscretions rather than needing to demonstrate compliance in the first instance. Such a scheme would mean all traders were "trusted" until proven otherwise – an approach consistent with common law.
- We have also offered that the existing Certificate of Origin registration process and engagement, provides the basis for the "know your client" components necessary to create the foundations for such a scheme. We would be delighted to work with the Department to improve the scheme – particularly for SMEs.

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Services Industry Impacts

Older agreements focussed largely on goods trade, however more recent agreements have a wider scope and include issues aimed to liberalising services trade. Goods trade is relatively easy to measure because of the intervention of border agencies, but services lack the same statistical collect and so it is less easily analysed.

Services delivery is via 4 modes describes in Article I:2, of the WTO General Agreement on Trade in services (GATS) as:

a. from the territory of one Member into the territory of any other Member (Mode 1 — Cross border trade);
b. in the territory of one Member to the service consumer of any other Member (Mode 2 — Consumption abroad);
c. by a service supplier of one Member, through commercial presence, in the territory of any other Member (Mode 3 — Commercial presence); and
d. by a service supplier of one Member, through the presence of natural persons of a Member in the territory of any other Member (Mode 4 — Presence of natural persons).

These often manifest in trade agreements chapters on investment, movement of people and issues such as cross border data management and flows, standards and IP protections.

An example of how services are impacted is described in the section below on co-production.

Benefits of co-production treaties and cultural exceptions

Recent trade agreements have begun to consider issues beyond traditional trade in goods to incorporate measures to facilitate increased cooperation and investment. For example, co-production treaties allow for a producer in each state to partner to produce a television program or film, which is then afforded national treatment – the film or television production can then access any regulatory or taxation benefits in each country.

A longstanding stated purpose for co-production agreements is:

- to foster cultural and technical development and exchange by facilitating international co-productions
- open up new markets for Australian film and television productions
- enable a creative and technical interchange between film personnel, and
- increase the output of high quality production through the sharing of equity investment.

Co-production treaties are often negotiated on the sidelines of free trade agreements or included in the FTA itself (e.g. KAFTA). Like FTAs, to enliven an official co-production, a SME producer must have access to, and intelligence about, markets in countries with which Australia has a co-production treaty. There are barriers to SME participation in this process

which include capability and capacity, but there are other barriers that are put in place by government red tape. (see Annex XX for further details on these issues)

Our member, **Screen Producers Australia (SPA)** made the following recommendations to a House of Representatives Committee that conducted an inquiry into that industry last year.

The Government should commit a suite of reforms that will boost trade in the Australian film and television industry. Specifically, the Government should:

- *submit a proposal to the Cultural Ministers Council to develop a national trade strategy for the film and television industry*
- *conclude current negotiations for current co-production agreements with India, Denmark, Malaysia and the United Kingdom*
- *enter into new coproduction agreements with key markets, potentially on the margins of bilateral negotiations such as with Indonesia and plurilateral negotiations such as the Regional Comprehensive Economic Partnerships. In these negotiations, the Government should refrain from including the restrictions on co-production partners' common management*
- *seek to renegotiate existing agreements to remove the restrictions on common management, and*
- *develop a trade support scheme for the Australian film and television industry through Austrade.*

The Committee recommended that the Australian Government expands the current co-production program by negotiating agreements with additional Asian countries (recommendation 11).

Cultural exceptions

Separately, SPA strongly supports cultural exceptions included in all FTAs to allow Australia to reserve capacity to introduce regulation to meet cultural objectives (e.g. local content quotas).

Northern Australia Development

We hope that the inquiry will also consider actions we can take domestically to advance our interests and the advantages of proximity to global markets. For example, Australia considers itself "close" to the markets of Asia. Yet our major gateway cities are at least 5 hours flight from these markets. We need to think differently about the future of how we use the proximity of Northern Australia as a key opportunity to advance our nation.

ACCI welcomed the Northern Australia White paper. We urge the Government to consider the opportunities for Australia not simply in an expansion of exports from Northern Australia, but in terms of existing commodities and tourism as well.

If we considered a disruptive approach to the Australian economy, to make a dramatic step change, we could learn many lessons from the experience of the development of Singapore.

Singapore is a city state, on a tiny island that holds a strategically important geographic location within historic trade routes. However, it has no natural resources and prior to the 1960's, not a very large population. Ie it has few natural comparative advantages. Despite this, over the past five decades of so, it has become a global powerhouse economy, due to policy positions of world leading trade and investment openness, coupled to globally competitive tax and labour regimes.

We also draw the inquiries attention to the priority China is placing on an extraterritorial approach to the development of a "maritime silk road". This includes investment in ports and infrastructure around the major shipping routes from China, via SE Asia and to Europe via the Middle East. Improvements of this nature will also provide advantages to Australian freight routes.

This inquiry allows us to envision an alternate future pathway to our engagement with the world. Our history has seen the development of our "gateway" cities largely on the southern and eastern edge of our nation. Hence this is also where our major ports and airports have developed. Correspondingly our industry and internal transport lanes are focussed on access to and from these current gateways, which are almost as far away from global supply lines, as we can possibly get. This means higher costs and time delays for Australian produce and professionals to access global markets. With the exception of those coming from the East, most of Australia's tourists travel across a vast proportion of the Australian continent before they land and commercially interact with our economy.

If, however, we envisaged new opportunities for Australia and how we could develop an alternate value model for ourselves for the future that would enhance our commercial engagement with the world, we might consider that the northern tip of Australia is only a few hundred kilometres from the southern most parts of Indonesia and PNG and the billions of people north of us who are rapidly moving into the middle class.

These same parts are only slightly more distant than current global trade routes for major commodities and oil. The Straits of Malacca are becoming an increasingly congested waterway that are also not so far from the South China Sea, nor threats from less stable Governments and other non-state actors with unsociable intentions.

If we took a view that Australia could develop an economy emulating that of Singapore, being a major global freight hub, a base for critical global value adding and innovation and a nearby destination for students and tourists alike, then one should consider the unrealised assets we have within our northern areas.

If we wanted to undertake a vision such as this, then we should be encouraging the private sector to consider Darwin as one of our major gateways to Asia and the world. We would then need to reduce constraints to align our internal transport routes (road, rail and air) to a common northern focal point. Development of high speed freight rail (as is developing from China to Europe) would change the relative competitiveness of the equivalent sea freight currently being utilised.

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Obviously such concepts would need to be appropriately analysed for cost and benefits, but such a move could potentially see Northern Australia become a vibrant integrated part of southern Asia, where 21st century manufacturing, services, innovation and transport hubbing could develop to rival and complement Singapore.

It's a vision worth considering.

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Annex 1: Previous Parliamentary Inquiry recommendations and resultant actions.

Inquiry - List of Recommendations	Comment
JSCOT Report 165 – Transpacific Partnership – November 2016[17]	
Recommendation 1 The Committee recommends that the Australian Government consider changing its approach to free trade agreement negotiations to permit security cleared representatives from business and civil society to see the Australian Government positions being put as part of those negotiations. **Government response: August 2017** Recommendation noted.	There has been no discernable change to the involvement of industry or other stakeholders since this recommendation.
Recommendation 2. The Committee recommends that the Australian Government consider implementing a process through which independent modelling and analysis of a proposed trade agreement is undertaken by the Productivity Commission, or equivalent organisation, and provided to the Committee alongside the National Interest Assessment (NIA) to improve assessment of the agreement. **Government response: August 2017** Recommendation not accepted	Although the Governments position is that economic assessments are unable to assess the full economic impacts, it has now begun to publish links to third party modelling efforts. For example: From the **National Interest Analysis [2018] ATNIA 1** *30. The economic benefits to Australia can be expected to increase in the event that other significant economies join the TPP-11. The PIIE's modelling showed that in a TPP-16 scenario (TPP-11 plus Indonesia, the Republic of Korea, Philippines, Taiwan and Thailand),*

[17] https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/TransPacificPartnership/Report_165/section?id=committees%2freportjnt%2f024012%2f24215

	Australia's income would increase by 0.7 per cent by 2030. And from the CIE **Economic benefits of Australia's North Asian FTAs** report: In 2015 *The Department of Foreign Affairs and Trade (DFAT) commissioned the CIE to conduct economic modelling of the benefits of Australia's North Asian free trade agreements (FTAs).*[18] We note that both New Zealand and Canada released economic assessment of the revised treaty on the day of signature. Clearly economic assessment is both possible and has been used by DFAT in the past.
The Senate Foreign Affairs, Defence and Trade References Committee Proposed Trans-Pacific Partnership (TPP) Agreement - February 2017[19]	
Recommendation 2 5.15 **The committee recommends that the Australian Government expedite widely supported reforms to the treaty-making process in order to assist the completion of future trade agreements.** **Reform to the treaty-making process:** The committee welcomes and supports the recommendations of the JSCOT majority report on the TPP which relate to broader treaty-making processes. These include that the Australian Government: • consider changing its approach to free trade agreement negotiations to permit security cleared representatives from business and	**Government response of 6 July 2017** *The Government notes this recommendation* *The Government believe that Australia's existing treaty-making system is working well, but the Government will continue to explore new options for securing input from stakeholder and disseminating information on free trade agreements.* The Australian Chamber looks forward to the suggested reforms being implemented.

[18] https://dfat.gov.au/about-us/publications/Documents/economic-modelling-of-australias-north-asia-ftas.pdf

[19] https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/TPP/Report

civil society to see the Australian Government positions being put as part of those negotiations (Recommendation 1); and

- consider implementing a process through which independent modelling and analysis of a proposed trade agreement is undertaken by the Productivity Commission, or equivalent organisation, and provided to the committee alongside the National Interest Assessment (NIA) to improve assessment of the agreement (Recommendation 2).

5.11 The JSCOT recommendations reflect a growing consensus regarding the need for reform of the treaty-making process which was also evident in the submissions received for the committee's current inquiry. The TPP was perceived by some to be emblematic of problems in this area. A broad range of submitters highlighted issues with the transparency of treaty negotiations, the one-sided nature of consultations with stakeholders, the lack of adequate and independent assessment of trade agreements and the challenges the current treaty-making process presents to Australia's democratic values.

5.12 These recommendations also align with the committee's recommendations for reform made in Blind Agreement: reforming Australia's treaty-making process in 2015. At that time, the committee's recommendations were not accepted by the Australian Government. The committee considers these proposals for reform should be reassessed.

5.13 The committee notes that the JSCOT report highlighted a concern 'that Australia's long-term commitment to free

trade, from which Australia benefits immensely, is currently at risk from a resurgence of nationalism and isolationism internationally'. However, in submissions to the current inquiry there was wide acceptance of Australia's approach to trade as a vehicle for economic growth, job creation and rising living standards. Broad support was expressed for the development of fair trading relationships with all countries and the need to regulate trade through the agreement of international rules. 5.14 Both in Australia and overseas, a key aspect of community opposition to recent trade agreements has evolved from a lack of transparency and consultation in treaty-making processes, the extension of trade agreements into broader policy areas beyond tariffs and customs arrangements and a perceived 'democratic deficit' in the treaty-making process. The committee recommends the Australian Government should prioritise action to respond to the growing bipartisan and community support for reform of the treaty-making process. A reformed treaty-making process will be an important measure to assure continued public support for Australia's future trade agreements.	
Inquiry into the Business Experience in Utilising Australia's Free Trade Agreements[20] - 15 October 2015	
Recommendation 12 The Committee recommends that the Department of Foreign Affairs and Trade commission independent modelling of the potential benefits of free trade agreements. Modelling should be undertaken before	**Government response** March 2016 *The Government does not support the recommendation. While economic modelling simulations can provide helpful indications of the possible quantitative impacts of an FTA, such models have*

[20] https://www.aph.gov.au/fta

negotiations begin and be compared to the outcomes of a second modelling exercise, undertaken after negotiations have been completed, but before signing. The modelling results together with an explanation of variances should be made publicly available.	*limitations and their results should be regarded as only one input into the process for assessing the merits of trade agreements.* *DFAT does not consider that it would be practical or feasible to delay signature of FTA negotiations in order to conduct quantitative modelling of final outcomes. Critical market access outcomes are often the final elements agreed by the negotiating parties; undertaking modelling at that stage, or making signature contingent on the results of economic modelling, could prejudice Australia's negotiating position and impact on the Government's capacity to negotiate outcomes in the national interest.* *The Department of Foreign Affairs and Trade has, from time to time, commissioned independent modelling on the possible impacts of free trade agreements in consultation with government, and, where this occurs, will continue to ensure the publication of modelling results is accompanied by the assumptions upon which the modelling is based.* See our comments above.
Recommendation 13 The Committee recommends that the Department of Foreign Affairs and Trade formally involve representatives from Australia's peak industry bodies, both employer and employee, in free trade agreement negotiations, reflecting the US model.	**Government response** *The Government does not support the recommendation. The Government currently consults extensively with the public before a decision is made whether or not to enter into FTA negotiations, including through a wide call for submissions. This consultation process continues throughout the course of any FTA negotiations. Stakeholders or other interested parties are welcome to make a*

	submission, meet with relevant negotiators or join DFAT's regular (typically bi-annual) peak body trade consultations at any time. This Government-instituted model works well in both identifying commercially-significant impediments to increasing Australian trade and ensuring the Government is well informed when developing negotiating positions. There has been no discernable change to the involvement of industry or other stakeholders since this recommendation.
The Senate Foreign Affairs, Defence and Trade References Committee - Blind agreement: reforming Australia's treaty-making process June 2015[21]	
Recommendation 1 The committee recommends that parliamentarians and their principal advisers be granted access to draft treaty text upon request and under conditions of confidentiality throughout the period of treaty negotiations. The committee recommends that the government provides an access framework and supporting administrative arrangements. **Recommendation 2** The committee recommends that the Joint Standing Committee on Treaties adopt a process of ongoing oversight of trade agreements under negotiation. This process is to include: • private briefings from the Minister for Trade and Investment and the Department of Foreign Affairs and Trade under	**Government response** – February 2016 The Government did not accept any recommendations from this Inquiry. Note our comments elsewhere.

[21] https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Treaty-making_process/Report

conditions of confidentiality at key points during negotiations; • consultation with stakeholders with confidential access to negotiating texts, to enable JSCOT to form an evidence-base for its oversight work; • writing to the minister and inviting the minister to respond to its concerns; and • a summary of its ongoing oversight role, including relevant correspondence with the minister, as an annex to its public report on the agreement. Recommendation 3 3.90 The committee recommends that the Parliamentary Joint Committee on Human Rights consider the human rights implications of all proposed treaties prior to ratification and report its findings to parliament. **Recommendation 4** The committee recommends that on entering treaty negotiations, Australia seeks agreement from the negotiating partner(s) for the final draft text of the agreement to be tabled in parliament prior to authorisation for signature. In the absence of agreement, the government should table a document outlining why it is in the national interest for Australia to enter negotiations. **Recommendation 5** The committee recommends that, subject to the agreement of negotiating countries, the Department of Foreign Affairs and Trade publish additional supporting information on treaties under negotiation, such as plain English explanatory documents and draft treaty text. **Recommendation 6** The committee recommends that stakeholders with relevant expertise be	

given access to draft treaty text under conditions of confidentiality during negotiations. The committee recommends that the government develop access arrangements for stakeholders representing a range of views from industry, civil society, unions, consumer groups, academia and non-government organisations. **Recommendation 7** The committee recommends that the government, prior to commencing negotiations for trade agreements, tables in parliament a detailed explanatory statement setting out the priorities, objectives and reasons for entering negotiations. The statement should consider the economic, regional, social, cultural, regulatory and environmental impacts which are expected to arise. **Recommendation 8** The committee recommends that a cost-benefit analysis of trade agreements be undertaken by an independent body, such as the Productivity Commission, and tabled in parliament prior to the commencement of negotiations or as soon as is practicable afterwards. The cost-benefit analysis should inform the government's approach to negotiations. The committee further recommends that: • treaties negotiated over many years be the subject of a supplementary cost-benefit analysis towards the end of negotiations; and • statements of priorities and objectives and cost-benefit analyses stand automatically referred to the Joint Standing Committee on Treaties for inquiry and report upon their presentation to parliament. **Recommendation 9**	

The committee recommends that the government develop a model trade agreement that is to be used as a template for future negotiations. The model agreement should cover controversial topics such as investor-state dispute settlement, intellectual property, copyright, and labour and environmental standards and be developed through extensive public and stakeholder consultation. **Recommendation 10** The committee recommends that National Interest Analyses (NIAs) be prepared by an independent body such as the Productivity Commission and, wherever possible, presented to the government before an agreement is authorised by cabinet for signature. NIAs should be comprehensive and address specifically the foreseeable environmental, health and human rights effects of a treaty.	

Annex 2: Issues with co-productions

Australia has co-production treaties in force with the United Kingdom, Canada, Italy, Ireland, Israel, Germany, Korea, South Africa, Singapore and China, and Memoranda of Understanding with France and New Zealand. The Department of Communications and the Arts negotiates treaties on behalf of the Australian Government. The treaties are administered by Screen Australia, as the "competent authority".

A longstanding stated purpose for co-production agreements is:

- to foster cultural and technical development and exchange by facilitating international co-productions
- open up new markets for Australian film and television productions
- enable a creative and technical interchange between film personnel, and
- increase the output of high quality production through the sharing of equity investment.[22]

These treaties allow Australian producers to partner with producers from treaty-countries to access the benefits of each country's regulatory and taxation environments. For example, a film co-produced in Australia and the United Kingdom could get access to the producer offset in Australia, the United Kingdom's taxation incentives and the film would qualify as an Australian film as well as a UK/European film for the purposes of content regulation. The real effect of combining resources is to make film and television content that can more readily compete in a global distribution environment, for example, the television series *Cleverman* and *Beat Bugs*.

As at 31 December 2016, since Australia's first co-production in 1986-86 with the United Kingdom (a telemovie - *The First Kangaroos*), 171 official co-production titles with total budgets of $1.6 billion have either been completed or have commenced production.[23]

The treaties narrow the pool of eligible co-production partners

The policy objective of co-production treaties is to stimulate production activity in treaty countries. However, the Australian Government has negotiated several agreements that limit the pool of eligible co-production partners. Annexes to the agreements with the United

[22] National Interest Analyses: *Films Co-production Agreement Between the Government of Australia and the Government of Italy, done at Rome on 28 June 1993*, tabled in both Houses of Parliament on 23 November 1993 and *Films Co-production Agreement between the Government of Australia and the Government of the State of Israel, done at Canberra on 25 June 1997*, tabled in both Houses of Parliament on 21 October 1997.
[23] Source: Screen Australia.

Kingdom,[24] Canada,[25] China,[26] Ireland,[27] Israel,[28] Italy,[29] limit common management, ownership or control between co-production partners. This restriction is in the treaty text of the agreements between Korea,[30] Singapore,[31] South Africa[32] and the Memorandum of Understanding with New Zealand[33]. There are no such restrictions in Australia's agreements with Germany and France. Similarly, under the United Kingdom's agreements with India, Jamaica and South Africa, the competent authorities may jointly agree to allow common management or control between co-producers.[34]

Screen Australia emphasises that the purpose of the co-production program is facilitating new partnerships over established or continuing partnerships. By way of comparison, the guidelines published by Telefilm – the Canadian Government's competent authority for the administration of co-production treaties – does not restrict the eligible partners in the same manner as Screen Australia.

The result of this narrowing of eligible partners is to punish companies that have attracted foreign direct investment and exclude them from the benefits enjoyed by other companies. Further, it is contrary to Australian Government policy, which welcomes foreign investment.[35] As the market consolidates and restructures, this situation will become exacerbated; IBISWorld predicts that over the next five years, more and more local companies will seek strategic alliances with larger international companies.[36]

The Australian Government should explore renegotiating the annexes (which are less than treaty status) to provide Screen Australia with the power to approve co-productions with partners with common management.

Other barriers in the co-production treaties and their administration

Many of the co-production treaties were concluded before the internet, the rise of Asia as an economic power, and the emergence of Google, Facebook, Netflix and Amazon. As such,

[24] Clause 4(d), *Annex to the Films Co-Production Agreement Between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland*.
[25] Clause 4(d), *Annex to the Films Co-Production Agreement Between the Government of Australia and the Government of Canada*.
[26] Clause 3, *Annex to the Films Co-Production Agreement Between the Government of Australia and the Government of the People's Republic of China.*
[27] Clause 9, *Annex to the Films Co-Production Agreement Between the Government of Australia and the Government of Ireland.*
[28] Clause 9, *Annex to the Films Co-Production Agreement Between the Government of Australia and the Government of the State of Israel.*
[29] Clause 3(d) *Annex to the Films Co-Production Agreement Between the Government of Australia and the Government of Italy.*
[30] Article 3(d), *Annex 7-B, Australia-Korea Free Trade Agreement*
[31] Article 3(2)(a), *Agreement between the Government of Australia and the Government of the Republic of Singapore Concerning the Co-Production of Films*.
[32] Article 4(c), *Agreement between the Government of Australia and the Government of the Republic of South Africa Concerning the Co-Production of Films*
[33] Paragraph 1(6), *Memorandum of Understanding Regarding the Co-Production of Films*.
[34] *British Film Certification Co-production Guidance Notes* p 17.
[35] *Australia's Foreign Investment Policy*, p 1.
[36] IBISWorld Industry Report J5511: Motion Picture and Video Production in Australia, June 2016, p 8.

there are many anachronisms within the treaty texts that require updating to make them fit for purpose.

There are restrictions in the co-production treaties and their administration on:

- non-party involvement
- limits on the location of the provision of services, and
- multi-party co-productions.

Together, these barriers limit a producer's ability to source labour and other services efficiently and cost effectively, make co-productions less attractive and limit trade opportunities for the industry.

Annex 3: Number of Goods Exporters, by Industry of Exporter and Business Size

		Number of exporters		
Industry of exporter	**Size of Exporters (a)**	**2013-14 (TAU)**	**2014-15 (TAU)**	**2015-16 (TAU)**
		no.	**no.**	**no.**
Goods exporters with a TAU				
Agriculture, forestry and fishing				
	Large	r 90	r 100	113
	Medium	283	295	342
	Small	523	575	564
	Total	**r 896**	**r 970**	**1,019**
Mining				

	Large	230	r 235	211
	Medium	126	119	125
	Small	120	132	132
	Total	**476**	**r 486**	**468**
Manufacturing				
	Large	r 1,398	r 1,468	1,503
	Medium	3,591	3,642	3,683
	Small	3,793	3,946	3,939
	Total	**r 8,782**	**r 9,056**	**9,125**
Construction				
	Large	218	243	228
	Medium	558	610	609
	Small	661	709	785
	Total	**1,437**	**1,562**	**1,622**
Wholesale Trade				
	Large	r 1,773	r 1,854	1,943
	Medium	4,888	4,909	5,075
	Small	5,990	6,150	6,384

	Total	**r 12,651**	**r 12,913**	**13,402**
Retail Trade				
	Large	461	479	508
	Medium	1,216	1,317	1,491
	Small	2,321	2,465	2,621
	Total	**3,998**	**4,261**	**4,620**
Transport, postal and warehousing				
	Large	322	339	341
	Medium	460	478	502
	Small	524	562	618
	Total	**1,306**	**1,379**	**1,461**
Other (b)				
	Large	1,284	1,359	1,419
	Medium	2,570	2,713	2,941
	Small	4,948	5,234	5,496
	Total	**8,802**	**9,306**	**9,856**
All Goods Exporters with a TAU				
	Large	**5,776**	**6,077**	**6,266**

	Medium	13,692	14,083	14,768
	Small	18,880	19,773	20,539
	Total	38,348	39,933	41,573
Goods exporters without a TAU				
All Industries (c)				
	Large	6	8	9
	Medium	37	43	59
	Small	6,343	8,697	9,651
	Total	6,386	8,748	9,719
Total goods exporters				
	Large	5,782	6,085	6,275
	Medium	13,729	14,126	14,827
	Small	25,223	28,470	30,190
	Total Goods Exporters	44,734	48,681	51,292

Australian Chamber of Commerce and Industry

Australian Chamber Members

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