

## Conclusion

- 5.1 KAFTA is expected to be worth \$5 billion in additional income to Australia between 2015 and 2030 and to provide an annual boost to the Australian economy of approximately \$650 million after 15 years of operation. In its first year of operation, it is expected to create 1 700 jobs. Eighty-four per cent of Australia's current exports (by value) will enter Korea duty free. In addition to substantial tariff reductions, KAFTA is expected to significantly increase market access and improve Australia's competitive advantage for a range of Australian exporters.
- 5.2 Despite ongoing theoretical debate over the benefits of bilateral trade agreements, such agreements are playing an increasing role in the push to liberalise world trade. In practical terms Australia is compelled to utilise these agreements to retain and improve its trading position while supporting continuing efforts to conclude more inclusive multilateral agreements.
- 5.3 As with previous trade agreements it has examined, the Committee found KAFTA to be controversial. The nature of these agreements implies compromise, even if the aim is an overall net benefit for the Australian people and the Australian economy. Many of the issues raised during this inquiry reflect the ongoing concerns of both stakeholders and the community at large.

### **Investor-state dispute settlements**

- 5.4 The evidence suggests that the escalated use of investor-state dispute settlement (ISDS) mechanisms has produced unintended consequences for governments globally. While the Committee notes DFAT's assurance that ISDS mechanisms are evolving to address the changing environment it

would appear that there is some reason for concern. Australia, like other affected parties, is attempting to mitigate the risks by introducing appropriate safeguards to trade agreements.

- 5.5 The Committee notes that Australia has ISDS provisions with 28 other economies and recognises that the protective measures incorporated in KAFTA go further than safeguards in previous FTAs. The Committee also notes that the Australian Government will consider the inclusion of ISDS mechanisms in future agreements on a case-by-case basis. The Committee acknowledges that the context of each individual set of negotiations is different and suggests that the Government exercise a cautious approach regarding the inclusion of ISDS provisions in upcoming FTAs.
- 5.6 The Committee notes DFAT's statement that Korea would not have agreed to finalise KAFTA without the inclusion of an ISDS mechanism.
- 5.7 The Committee will continue to monitor developments in this area and watch closely the outcome of the current inquiries being conducted by various bodies including the European Commission.

## Intellectual property rights

- 5.8 The Committee notes ongoing concerns regarding the inclusion of intellectual property rights in FTAs. While it is not in a position to comment on the legal argument it does understand the need for flexibility to respond to the fluid nature of many areas affected by intellectual property rights. A less prescriptive approach may be beneficial and forestall future difficulties in responding to ongoing social and technological change.
- 5.9 The Committee notes concerns over the lack of recognition of the broader public interest in the intellectual property provisions in KAFTA regarding access to knowledge and information and suggests that the interests of both non-rights holders and rightsholders need protection.
- 5.10 The Committee also notes the Productivity Commission's recommendation that the costs and benefits of changes to intellectual property rights resulting from intellectual property provisions in trade agreements should be modelled on a standalone basis so that the broader benefits of reduced tariff barriers can be assessed:
- ... the Commission's view is that Australia's ... support for any measures to alter the extent and enforcement of IP rights should be informed by a robust economic analysis of size and distribution of the resultant benefits and costs.

The Commission considers that Australia should not generally seek to include IP provisions in further BRTAs, and that any IP provisions that are proposed for a particular agreement should only be included after an economic assessment of the impacts, including on consumers, in Australia and partner countries. To safeguard against the prospect that acceptance of 'negative sum game' proposals, the assessment would need to find that implementing the provisions would likely generate overall net benefits for members of the agreement.<sup>1</sup>

- 5.11 Given the concerns identified in the report regarding the transparency of these agreements and the inclusion of intellectual property provisions in such agreements, this modelling might usefully increase public confidence in the merits of *future* agreements.

## Certificates of origin

- 5.12 The Committee is aware that, notwithstanding concerns over nomenclature, the debate over the advantages and disadvantages of Certificate of Origin *versus* Declaration of Origin has been raised previously.<sup>2</sup>
- 5.13 While the Committee does not doubt the security provided by third-party certification, it recognises that self-certification, whether it is termed a Certificate of Origin or a Declaration of Origin, is advantageous for many rural or remote producers dealing with time sensitive goods.
- 5.14 The Committee suggests that this is one area where specific data regarding use would be beneficial in determining if there is any detrimental effect resulting from the type of document lodged.

## Economic modelling

- 5.15 The Committee acknowledges arguments that the predicted benefits to the overall Australian economy from the implementation of KAFTA appear minimal in statistical terms. However, the overwhelmingly positive response from business and industry indicates that the impact on individual sectors is expected to be substantial and significant.

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1 Productivity Commission, *Bilateral and Regional Trade Agreements*, November 2010, p. 264.

2 See for example Joint Standing Committee on Treaties (JSCOT), *Report 130: Treaty tabled on 14 August 2012: Malaysia-Australia Free Trade Agreement done at Kuala Lumpur on 22 May 2012*, pp.17-19.

- 5.16 The Committee cannot overlook the flow-on effects to other sectors and the potential increase in employment and economic activity, particularly in rural and remote areas.

## Utilisation of FTAs

- 5.17 The Committee notes reports of possible underutilisation of Australia's bilateral trade agreements. It is aware that the proliferation of regulatory requirements arising from the growing number of these agreements may present problems for some end users, an issue it has examined before.<sup>3</sup>
- 5.18 The Committee suggests that this is another area that would benefit from a structured process of monitoring and evaluation of such agreements and the collection of data for independent analysis and assessment.

## Treaty making process

- 5.19 The Committee acknowledges ongoing dissatisfaction with the treaty making process but recognises the constitutional constraints on the process in Australia and highlights the progress that has been made in improving the process over the last two decades.
- 5.20 The Committee notes the conflicting evidence over the level of consultation received by stakeholders and understands the frustration caused by a lack of access to the final draft treaty text for KAFTA (and other such agreements). The tension between the need for confidentiality and the need for transparency presents a conundrum that goes to the heart of the treaty making process.
- 5.21 However, the Committee notes that DFAT received 66 submissions and consulted 181 individual stakeholders during the negotiations for KAFTA. The Committee urges stakeholders to take full advantage of the existing opportunities for consultation during the negotiations of bilateral trade agreements and to be proactive in putting their case to the negotiators.
- 5.22 The Committee acknowledges DFAT's ongoing attempts to make the consultation process inclusive but suggests that negotiators take all possible measures to provide detailed information to stakeholders wherever possible.

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3 JSCOT, *Report 130*, pp. 15-17.

## Monitoring

- 5.23 The Committee found the lack of reliable, publicly available information on the implementation and impact of FTAs frustrating.
- 5.24 The Committee is conscious that a significant amount of time and resources go into negotiating and implementing these agreements. In order to justify that time and effort it would be useful to determine both the economic impact of the implementation of these agreements and the utilisation rate.
- 5.25 The Committee recognises that the removal of tariff barriers is only one factor that influences economic activity however, it would expect that a certain amount of relevant information on FTAs is available to establish if the anticipated outcomes are being achieved.
- 5.26 The Committee also considers that such information would enable future negotiators to identify issues and difficulties with existing agreements and improve both the process and the terms and provisions of future agreements.
- 5.27 The Committee therefore supports calls for systematic, structured monitoring and evaluation of FTAs and reminds the Government of its previous recommendations urging regular review of the economic, social, regulatory, employment and environmental impacts of such agreements.<sup>4</sup>

## Implementation

- 5.28 The Committee recognises that the implementation of KAFTA is only the starting point for some sectors of the economy. The financial services sector welcomed the agreement but told the Committee that it only provides the framework to enable access to the Korean market. More work will be required at government-to-government level for the industry to take full advantage of the agreement.<sup>5</sup>
- 5.29 The Committee is aware that a range of non-tariff barriers including phytosanitary regulations remain to be addressed.
- 5.30 The Committee understands the urgency expressed by stakeholders directly affected by phased tariff reductions for implementation of KAFTA before the end of the 2014 calendar year.

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4 JSCOT, *Report 130*, pp. 32–33.

5 Mr Andrew Bragg, Director of Policy and Global Markets, Financial Services Council, *Committee Hansard*, Sydney, 29 July 2014, p. 47.

- 5.31 Notwithstanding the importance of the broader issues raised regarding the provisions contained in FTAs generally and the more specific concerns regarding KAFTA, the Committee agrees that the Treaty should be ratified and binding treaty action be taken.

### **Recommendation 1**

**The Committee supports the *Free Trade Agreement between the Government of Australia and the Government of the Republic of Korea* and recommends that binding treaty action be taken.**

Mr Wyatt Roy MP  
Chair