

Chapter 2

Consideration of the bill

Trade agreements and current trade policy

2.1 The Department of Foreign Affairs and Trade (DFAT) declined to make a submission to the inquiry. However, in response to a question on notice from a Supplementary Estimates hearing in November 2013, DFAT advised that the government's current trade policy is as outlined in the *Coalition's Policy for Trade*, dated September 2013.¹ The policy focuses on concluding long-running free trade negotiations and enhancing Australia's commitment to regional and multilateral trade.² The policy will be implemented through priority given to free trade negotiations, restoring funding to the Export Market Development Grants, enhancing Australia's commitment to APEC and the WTO, and re-establishing the Trade Advisory Council.³

2.2 DFAT defines a Free Trade Agreement (FTA) as:

...an international treaty which removes barriers to trade and facilitates stronger trade and commercial ties, and increased economic integration between participating countries.⁴

2.3 Further, DFAT notes that Australia, as a member of the World Trade Organization (WTO), has to meet certain requirements in the design of its FTAs. These include:

- eliminate tariffs and other restrictions on 'substantially all the trade' in goods between its member countries, and
- eliminate substantially all discrimination against service suppliers from member countries (helping to increase trade in services).⁵

2.4 Australia has seven FTAs currently in force. These account for 28 per cent of Australia's trade.⁶ Australia is currently negotiating nine FTAs, including five bilateral

1 Department of Foreign Affairs and Trade, answer to questions on notice from Supplementary Estimates hearing, 21 November 2013, Question on Notice 253.

2 The Coalition's Policy for Trade, September 2013, <http://www.liberal.org.au/our-policies> (accessed 24 February 2014).

3 The Coalition's Policy for Trade, September 2013, <http://www.liberal.org.au/our-policies> (accessed 24 February 2014).

4 Frequently asked questions on Free Trade Agreements, 'What guides Australia's FTA policy?', <http://www.dfat.gov.au/fta/> (accessed 24 February 2014).

5 Frequently asked questions on Free Trade Agreements, 'What guides Australia's FTA policy?', <http://www.dfat.gov.au/fta/> (accessed 24 February 2014).

6 Frequently asked questions on Free Trade Agreements, 'What guides Australia's FTA policy?', <http://www.dfat.gov.au/fta/> (accessed 24 February 2014).

FTA negotiations. These will account for a further 45 per cent of Australia's trade.⁷ Negotiations on the Korea-Australia FTA were recently concluded, however the FTA is not yet in force.⁸

Provisions of the bill

2.5 The object of the bill is 'to encourage Australia's trading partners to ensure that workers in their country are protected by certain internationally accepted minimum standards about workers' rights'.⁹ To this end, the bill mandates that any trade agreements entered into include provisions binding each country to have in place 'minimum standards about workers' rights' and 'minimum wage fixing recommendations'. Definitions for these terms are given in clause 8 and clause 6(3) respectively and accord with the International Labour Organisation's standards. With regards to minimum standards about workers' rights, clause 8 also lists a number of international conventions.

2.6 The bill imposes a test on each potential trade agreement based on ministerial discretion. Clause 5 specifies that the Minister must be satisfied that the trade agreement includes a binding requirement to include minimum standards of workers' rights in the domestic law of countries party to the agreement. Clause 5 also prohibits the signing of any agreement which fails this test of ministerial discretion.

2.7 Clause 6, relating to minimum wage fixing, provides for a less stringent condition on the signing of trade agreements: 'the Commonwealth must endeavour to include a binding requirement' that the parties include minimum wage fixing recommendation standards in their domestic law. Unlike clause 5, should the Commonwealth fail to include a binding requirement on minimum wage fixing, there is no prohibition on signing the agreement. Clause 6, paragraph (2), stipulates that the Minister must table in Parliament a written explanation regarding why the requirement was not met.

2.8 The bill's definition of 'Trade Agreement' encompasses international agreements:

...it [Trade Agreement] is an international agreement that the Commonwealth has, or will, enter into with the government of another country, or with the governments of a group of countries, that will abolish or decrease tariffs (or other import charges) that are levied or charged by Australia at the time goods are imported into Australia.¹⁰

2.9 Given this definition, the bill would apply to FTAs, partnership agreements and other bilateral or multilateral agreements which have an element of trade. Clauses

7 Frequently asked questions on Free Trade Agreements, 'What guides Australia's FTA policy?', <http://www.dfat.gov.au/fta/> (accessed 24 February 2014).

8 Frequently asked questions on Free Trade Agreements, 'What guides Australia's FTA policy?', <http://www.dfat.gov.au/fta/> (accessed 24 February 2014).

9 *Fair Trade (Workers' Rights) Bill 2013*, Clause 3.

10 *Fair Trade (Workers' Rights) Bill 2013*, Clause 7.

5 and 6 of the bill extend the application of the bill to include both new agreements and amendments to existing agreements.

Evidence to the inquiry

2.10 A majority of submissions received by the committee support the object of the bill. The submissions in general note the benefits of mandating labour standards in trade agreements as:

- creating a level-playing field in trade by ensuring that all workers have access to the same basic wage rights and conditions;¹¹
- protecting Australian manufacturing interests;¹²
- promoting human rights;¹³ and
- assisting development and improvement of living standards.¹⁴

2.11 The Business Council of Australia submission opposes the bill:

...given the lack of identified shortcomings in Australia's current approach to considering workers' rights in trade agreements; the efficacy and flexibility of Australia's current policy; the potential for the proposed provisions to be a disguised form of protectionism; and the lack of evidence supporting the effectiveness of the proposed provisions in enhancing minimum standards for workers' rights in other countries.¹⁵

2.12 The submission supported a case-by-case approach to including labour standards in trade agreements and argued that Australia's current policy provides sufficient flexibility.¹⁶

2.13 The National Farmers' Federation (NFF) submission made a argument. It summarized the findings of the Productivity Commission's 2010 *Review of Bilateral and Regional Trade Agreements* to support its cautious approach to the bill:

The NFF supports the Productivity Commission recommendation that the government should adopt a cautious approach towards the inclusion of core labour standards in trade agreements, and should not include matters in bilateral and regional trade agreements that would serve to increase barriers

11 Home Loan Experts, *Submission 1*; Australian Fair Trade and Investment Network *Submission 2*; Australian Council of Trade Unions, *Submission 3*; Humanist Society of Victoria, *Submission 5*; CFMEU, *Submission 6*; Australian Lawyers for Human Rights, *Submission 7*; Australian Manufacturing Workers' Union, *Submission 8*; International Trade Union Confederation, *Submission 9*.

12 International Trade Union Confederation, *Submission 9*.

13 Australian Lawyers for Human Rights, *Submission 7* and Slavery Links, *Submission 12*.

14 Australian Council of Trade Unions, *Submission 3*.

15 Business Council of Australia, *Submission 4*, p. 2.

16 Business Council of Australia, *Submission 4*, p. 3.

to trade, raise costs or affect social policies without a transparent review of the implications and other options of change.¹⁷

2.14 Considering Australia's current approach to negotiating FTAs, the NFF concluded:

The NFF is of the view that current policy settings already allow provision on labour standards to be included in free trade agreements where there is a recognised need.¹⁸

Committee View

2.15 The committee appreciates the intention of the bill and commends Senator Madigan for his efforts to generate public discussion regarding workers' rights. The committee acknowledges the arguments put by all those who made submissions to the inquiry and thanks submitters for making the time to provide their views to the committee.

2.16 The committee draws to DFAT's attention the submissions received during the inquiry. The committee can see a benefit in the government giving further consideration to the issues raised in the submissions regarding inclusions in free trade negotiations.

2.17 However, the committee is not convinced that legislation is the best mechanism by which to ensure the inclusion of workers' rights and minimum wage recommendations. The committee agrees with the view of the NFF that there is no evidence of a policy failure with regard to Australia's current approach to negotiating FTAs:

NFF acknowledge that Australia has been a founding and active member of the International Labour Organisation (ILO). We are of the view that there is no evidence of a policy failure with regard to Australia's current approach to free trade agreements (FTAs) and workers' rights. In the NFFs view a more effective way of assisting developing countries to improve workers' rights may be through higher, rather than lower, trade and investment.¹⁹

2.18 The committee also notes the submission from the Business Council of Australia which argued for flexibility in the negotiation of FTAs. The committee agrees with this argument and is concerned that the proposed legislation may constrain FTA negotiations. However, the committee considers that inclusion of labour rights in FTAs is an issue worthy of further investigation.

17 National Farmers' Federation, *Submission 11*, pp. 9-10.

18 National Farmers' Federation, *Submission 11*, p. 12.

19 National Farmers' Federation, *Submission 11*, p. 5.

Recommendation 1

The committee recommends that the bill not be passed.

Senator Alan Eggleston

Chair

