

Introduction and summary

The Select Committee has conducted an exhaustive examination of the Australia-US Free Trade Agreement. The evidence gathered covers the full range of both expert opinion and the views of members of the general public. Close consideration has also been given to the various econometric reports that have been produced. The Committee's Report explores that range of views, and has sought to juxtapose the arguments and judgements in such a way that the debate is represented as robustly and comprehensively as possible.

Any trade agreement, especially one as unprecedentedly complex as the AUSFTA, necessarily entails both costs and benefits. One of the most difficult tasks for this Committee has been to try and assess those costs and benefits. Econometric studies can only ever provide a guide to the expected economic benefits, and even then it depends significantly on the assumptions made as to what the outcomes will be. Assumptions are invariably contestable, and the Committee has sought to reflect that fact in its own commentary on the merits of the various studies.

The Agreement has received strong support from those business groups who regard the AUSFTA as providing new and significant opportunities to do business with America, and facilitating access to American technology and commercial know-how. They applaud the greater integration of the Australian economy with what is undeniably the world's most economically powerful country, arguing that the benefits will be dramatically outweigh any downsides. Other business interests see only modest benefits.

For many people, however, the Agreement represents nothing but economic, cultural and employment risks from exposure to powerful United States interests. Some economists have argued that the trade diversion effects of the AUSFTA could work to the overall detriment of the Australian economy. Many have argued strongly that the Agreement will undermine Australia's sovereignty and erode social policy, and that many of the AUSFTA's provisions will severely restrict Australia's future capacity to direct and manage its own affairs.

Final assessments of the Agreement must be made with respect to Australia's national interest. Given that national interest is itself a highly contested notion, it is hardly surprising that the Committee has operated in an environment of claim and counter-claim, amidst the clash of big ideas and passionate and powerful arguments. The adversarial nature of much of the debate on the AUSFTA has not assisted sober analysis.

The main purpose of trade agreements is to remove as far as possible any tariff or other restrictions to the flow of goods and services between the parties involved, and to create an environment which facilitates rather than impedes the capacity of

companies to get on with business. There are several 'headline' areas of the AUSFTA that have drawn the most attention.

Agriculture has traditionally been a fraught area for trade negotiations. The AUSFTA has delivered overall benefits to Australia in this sector, although these are universally acknowledged to be less than what Australian producers and the government had hoped for. Sugar was omitted entirely from the deal. Some improved access to US markets for beef has been achieved, but with long phase-in periods and safeguards. While quotas remain in certain dairy products, there are valuable opportunities for value-added products. The horticultural industries and seafood exporters are also pleased with the opportunities that have opened up for them.

Investment is another area in which a relatively open market has been further liberalised. According to the government's commissioned study, the projected gains from such liberalisation are said to be the major area of economic benefit to Australia. But again, authorities in both Australia and the US have suggested that the AUSFTA will not usher in a flood of new investment. Much has been made of the proclaimed 'dynamic gains' arising out of the Agreement. These are very difficult to measure in practice, and the proof of the pudding will be very much in the eating.

Service industries are a major component of modern economies, and the AUSFTA provides for greater opportunities in cross-border trade in services. Much will depend on Australian firms' capacity to enter the US services market, and the government procurement area in particular. The gates have been opened; hopefully the service providers are at least in the starting blocks. Issues such as mutual recognition of qualifications and easier movement of business people between Australia and the US are still to be resolved.

While the removal of tariff and other barriers enhances Australia's access to the American markets, the opening of Australia's markets to highly competitive and export-oriented US firms will obviously have ramifications for Australian companies and their employees. Many Australian firms have already shown themselves to be good global competitors. But concerns about job losses have been pressed strongly by employee representatives, especially in the manufacturing industries, and the various econometric studies have confirmed that effects will be variable from sector to sector. This is a matter that governments at all levels will have to attend to carefully if they are to ensure their industry policies can proceed optimally.

Health services, and in particular the operation of Australia's Pharmaceuticals Benefits Scheme, has been one of the most hotly contested areas of the Agreement. This is the first time a trade agreement has included measures directly addressing a country's pharmaceutical policies. This Committee has heard heated debates about the possible impact of the FTA commitments on the PBS and on whether the concessions made here could drive up the price of drugs in Australia. The intellectual property provisions relating to generic drugs have been another area of concern. The changes made to Australian law and PBS procedures are complex, and the probable outcomes are contested. Many assurances have been given by ministers and officials, but these

are important issues with implications for Commonwealth and state governments' health spending as well as for Australian consumers. Chapter 4 of this report considers them in some detail.

Intellectual property emerged as one of the most significant aspects of the Agreement. The issues are significant, because it is a relatively new area for inclusion in trade deals. It is a complex and constantly evolving area in terms of both technology and government regulation, and it lies at the heart of 21st century 'knowledge industries'. It has enormous implications for innovation and all the benefits that flow from it.

The IP Chapter of the AUSFTA is the largest chapter in both form and substance and requires the most significant changes to current Australian law. The Committee has heard arguments that the changes to Australian copyright law required by the AUSFTA will upset the careful balance between the rights of owners and the interest of users that currently forms the basis of Australia's IP regime. The result is that, in some areas, Australia will be more protective of copyright than in the US.

While IP creators and owners, particularly large US copyright-owning corporations, stand to benefit from the greater IP protection, the changes may impose additional costs on Australian consumers and researchers. As a net importer of IP, the changes could have a negative impact on the Australian economy as a whole. Further, the changes required by the AUSFTA are essentially trade restrictive measures rather than trade liberalising ones as they strengthen the monopoly of IP owners. In many cases, the changes required by the AUSFTA have gone against the recommendations of IP law reform processes in Australia over the last few years.

In view of the complex and technical nature of the IP law changes, the Committee requested the Parliamentary Library to examine the IP aspects of the AUSFTA implementing legislation, the US Free Trade Agreement Implementation Bill 2004, in some detail. This paper should be read in conjunction with Chapter 3 of the Committee's report.

Some of the early debate about the AUSFTA was agitated by concerns about Australia's capacity to maintain proper regulatory regimes in a range of matters, including quarantine and environmental protection. Although there are various working parties and committees established under the AUSFTA that will provide forums for discussion on such matters, they have no authority or official standing in Australia's regulatory framework. Again, what flows from these various committees is yet to be seen. Even the details of their membership, their structure and operation is largely still not settled.

Perhaps the most notable matter thrown up by the whole AUSFTA experience is the question of proper process in negotiating international agreements. The current process, whereby the government can, without reference to the parliament, set out to strike a binding agreement with another country, is fraught with difficulty and does nothing to facilitate a measured debate about the treaty being pursued. Nor does the current process provide for the public to be brought along with any agreement.

State and territory governments, who are necessarily important players in facilitating the implementation of the AUSFTA, have an insufficient role in the negotiating process. The Treaties Council of ministers did not even meet to address the AUSFTA. This lack of transparency, and in particular the inability of the Commonwealth parliament to consider the AUSFTA until after the deal has been done – indeed not until after it has been officially signed – is clearly unsatisfactory. A proper framework for parliamentary scrutiny of treaty negotiations at all stages must be established as a matter of urgency. The Committee's report explores these process issues in some detail. It is a matter that cries out for resolution.

The Committee urges the government to take seriously all the matters raised by it in this Report. They have been comprehensively canvassed. The advice and commentary of officials, economists, industry and union groups, community bodies and individuals have all been exhaustively heard. This Report encapsulates all sides of the debate, and should provide the resources necessary to enable the parliament and the government to truly serve the national interest.