

Analysis

Introduction

- 3.1 Australia and Japan enjoy a strong, long-standing bilateral relationship based on common values: democracy, human rights, the rule of law. During his visit to Australia in July 2014, the Prime Minister of Japan, Mr Shinzo Abe, referred to the evolving nature of the 'special relationship' between the two countries as it expanded to take in closer security bonds and broader trade ties.¹
- 3.2 The relationship has been reinforced by a steadily developing complementary bilateral economic relationship. Although beginning earlier, the economic relationship accelerated in 1957 with the signing of the *Australia-Japan Commerce Treaty* and was further enhanced by the 1977 *Basic Treaty of Friendship and Cooperation*. Australia's resources have supported Japan's prosperity and Japan's manufactured goods have contributed to Australians' modern, affluent standard of living.
- 3.3 The complementary nature of this two-way trade between the two countries was emphasised throughout the inquiry.² In 2013, it stood at \$70.8 billion, worth more than 10 per cent of Australia's total trade. The Australia Japan Business Co-operation Committee drew attention to the importance of the sustained, long term relationships that have developed through this trade:

The mutual trust that has evolved amongst the bilateral commercial sectors via these solid relationships is not as well recognised as a 'hallmark' as is the oft-remarked 'complementary

1 His Excellency Mr Shinzo Abe, Prime Minister of Japan, *Hansard*, Tuesday 8 July 2014, pp. 7649-7650.

2 Australia Japan Business Co-operation Committee (AJBCC), *Submission 9*, p. [1].

nature' of the two-way trade – Australia as a reliable supplier of consistent quality energy, resources, and agribusiness product and importer of automobiles, consumer electronics and construction equipment.³

Japan-Australia Economic Partnership Agreement

- 3.4 The Japan-Australia Economic Partnership Agreement (JAEP A) is the first such agreement that Japan has signed with a major agricultural exporting economy. It has been welcomed by many as the 'most liberalising trade agreement Japan has ever concluded'⁴ and is expected to deliver significant commercial outcomes.⁵ In particular, JAEP A is seen as providing Australia with a preferential trading advantage over competitors.⁶
- 3.5 Despite wide recognition of the importance of JAEP A, there is also acknowledgement of the agreement's limitations. Japan has been reluctant to consider liberalising its traditionally highly-protected agricultural market. The beef industry told the Committee that JAEP A fell short of delivering the industry's objective of tariff elimination in Japan.⁷ The pork industry was likewise concerned, as was the dairy industry.⁸ Nonetheless, it was acknowledged that the review mechanisms included in JAEP A provide potential for further liberalisation as do a number of regional and multilateral agreements to which Japan is a negotiating party.⁹
- 3.6 The Australia Japan Business Co-operative Committee cautioned that the perceived shortcomings of the agreement should not detract from what has been achieved:

The conclusion of the agreement with Australia represents a seismic shift in Japan's traditional protections of many of its sectors and the recognition that in Japan's national interest, there is a need for the sectors to be globally competitive, not protected. An early date of entry into force would signal Australia's

3 AJBCC, *Submission 9*, p. [1].

4 Business Council of Australia (BCA), *Submission 4*, p. 1.

5 Export Council of Australia, *Submission 18*, p. [2]; Minerals Council of Australia (MCA), *Submission 17*, p. 3.

6 AgForce Queensland Industrial Union of Employers, *Submission 7*.

7 Cattle Council of Australia (CCA), *Submission 6*; AgForce Queensland Industrial Union of Employers, *Submission 7*; Meat & Livestock Australia Limited, *Submission 10*.

8 Australian Pork, *Submission 2*; Australian Dairy Industry, *Submission 22*.

9 CCA, *Submission 6*; AgForce Queensland Industrial Union of Employers, *Submission 7*; Canegrowers, *Submission 26*; Australian Sugar Industry Alliance Limited, *Submission 25*.

welcoming of the policy shift and the long term structural reforms being initiated.¹⁰

- 3.7 A number of witnesses also drew attention to the importance of JAEPA in raising awareness of the Australia-Japan relationship in both countries. Mr Tim Lester, an international lawyer with many years' experience in Japan, warned that there was a degree of complacency toward Australia's relationship with Japan that was inhibiting recognition of future opportunities and JAEPA could rectify this:

I am excited by entering into an agreement of this nature because it refocuses people's attention on the importance of the relationship and it deals with those critical aspects of the relationship around tariff reduction, movement of people, visas, recognition of professional qualifications, which are all essential elements to oiling the wheels of trade and commerce between the two countries.¹¹

Benefits

Multilateral v bilateral trade agreements

- 3.8 There is an overall preference for the trade liberalisation agenda to be promoted through multilateral trade agreements but an increasingly pragmatic acknowledgment that bilateral, regional and plurilateral agreements are necessary in the current climate.¹² Department of Foreign Affairs and Trade warned that Australia risks 'being shut out of our major markets at the moment' as competitors are negotiating bilateral trade agreements with those markets.¹³ Specifically with regard to JAEPA, the Minerals Council of Australia told the Committee that '[N]o other option' is open to Australia and that it would be 'pointless' to wait for the possible conclusion of other negotiations to maintain its competitive position in the Japanese market.¹⁴
- 3.9 Additionally, the bilateral agreement with Japan provided advantages over a multilateral agreement:

10 AJBCC, *Submission 9*, p. 2.

11 Mr Timothy David Baird Lester, Partner and Sector Leader, Japan, Allens, Lawyers, and AJBCC, *Committee Hansard*, Perth, 16 September 2014, pp 12-13.

12 Australian Industry Group (Ai Group), *Submission 31*, p. [1]; Export Council of Australia, *Submission 18*, p. [2].

13 Ms Frances Lisson, Assistant Secretary, North Asia Goods Branch, Department of Foreign Affairs and Trade (DFAT), *Committee Hansard*, 25 August 2014, p. 14.

14 Minerals Council of Australia (MCA), *Submission 17*, p. 2.

In terms of the cooperation and security that it provides to the Japanese and Australia on energy and security, you cannot get that in a multilateral agreement. So that bit that locks in, hopefully, that 60 per cent market share in iron ore and coal is not something that we could negotiate multilaterally or outside this sort of FTA.¹⁵

- 3.10 The Financial Services Council (FSC) told the Committee that the role bilateral agreements played in promoting awareness of Australia in the reciprocal country should not be underestimated:

While lower technical barriers to trade are important, the signalling effect of a bilateral FTA is important as it raises Australia's profile in the partner country and provides further impetus for Australian firms to export.¹⁶

- 3.11 Bilateral agreements are also seen as providing a useful tool for improving and enhancing multilateral negotiations. The Export Council of Australia pointed out that bilateral outcomes can be used to clarify the types of outcomes that are desirable from multilateral negotiations, citing the Trade in Services and Government Procurement chapter in JAEPA as an example.¹⁷

- 3.12 In particular, JAEPA is seen as a first step in improving the outcome of ongoing negotiations for regional agreements such as the Trans-Pacific Partnership Agreement (TPP) and the Regional Comprehensive Economic Partnership Agreement (RCEP). The sugar industry, for example, told the Committee that while JAEPA 'makes no material improvements in the terms of Australia's access to Japan for raw sugar' it was 'worthwhile because it improves the baseline for TPP negotiations with Japan'.¹⁸

Competitive advantage

- 3.13 Although Japan is already a major market for many Australian export products, evidence to the Committee stressed the importance of JAEPA in providing a competitive advantage for Australian business and industry. Evidence suggested that the Japanese market is highly sought after and that Australia's competitors are 'aggressively chasing market share'.¹⁹ JAEPA is seen as providing a preferential trading advantage and there is

15 Mr Brendan Pearson, Chief Executive, Minerals Council of Australia (MCA), *Committee Hansard*, Canberra 25 August, 2014, p. 4.

16 Financial Services Council (FSC), *Submission 30*, p. 2.

17 Export Council of Australia, *Submission 18*, p. [3].

18 Canegrowers, *Submission 26*; Australian Sugar Industry Alliance Limited, *Submission 25*.

19 Mr Gary William Dawson, Chief Executive Officer, Australian Food and Grocery Council (AFGC), *Committee Hansard*, 25 August 2014, p. 6.

concern that, without it, 'Australia would gradually lose competitiveness in important sectors of the' market.²⁰

- 3.14 While JAEPa is the first free trade agreement that Japan has negotiated with a major agricultural economy, the Committee was told that Japan has concluded 13 trade agreements and is negotiating a further 10.²¹ Several of Australia's competitors in the Japanese market have free trade agreements or economic partnerships with Japan, including ASEAN, Chile, India, Mexico and Peru.²² The European Union (EU), Canada, and the US are in the process of negotiating agreements that will impact on Australia's agricultural competitiveness.²³
- 3.15 Even industries that were disappointed with the outcome of JAEPa recognised the importance of the agreement in furthering Australia's competitive edge. For example, despite considering that JAEPa falls short of the industry's expectations, the beef industry identified the agreement as 'critical' to its future prospects in the Japanese market:

The Australian red meat and livestock industry is supportive of the JAEPa which upon entry into force will deliver preferential trading advantages. This agreement is critical to the long term positioning of Australian red meat in Japan, with a more liberalised import regime providing a welcome boost in an environment characterised by increasing competitive pressure.²⁴

First-mover advantage

- 3.16 Of particular significance is the 'first-mover advantage' provided to many Australian industries by JAEPa. Having signed a free trade agreement ahead of many of its competitors, Australia has established a benchmark that others will have to match and created a platform from which to secure further gains:²⁵

It allows us to compete more effectively ... It allows us to enter the market ahead of some of our competitors, create a foothold and build on that foothold in a way that, absent the agreement, we would not have had the capacity to do in competition with some

20 MCA, *Submission 17*, p. 1.

21 Mr Michael Rogers, Manager, Agribusiness Forum, AFGC, *Committee Hansard*, 25 August 2014, p. 8.

22 MCA, *Submission 17*, p. 7.

23 Mr Dawson, AFGC, *Committee Hansard*, 25 August 2014, p. 6.

24 Meat & Livestock Australia Limited, *Submission 10*, p. [1]. See also Cattle Council of Australia, *Submission 6* and AgForce Queensland Industrial Union of Employers, *Submission 7*.

25 Mr Dawson, AFGC, *Committee Hansard*, 25 August 2014, p. 6.

of the other countries that are vying for an economic presence in Japan.²⁶

- 3.17 DFAT told the Committee that ‘first-mover advantage’ goes beyond the obvious initial advantage of tariff reductions, instituting the basis for a broader and deeper association with the market:

... being a first mover is more that you are the first one with a preference in the market. You are able to develop a whole lot of relationships and have a presence with the consumers before your competitors do.²⁷

Maintaining market share

- 3.18 The need to maintain market share was also emphasised by witnesses. Although several of Australia’s resources already enter Japan tariff free, increasing competition is threatening that market. JAEPA will provide substantial benefits to these industries, offering Japan assurance regarding the long term viability and sustainability of Australian supply:

... this agreement will ... provide Japan with additional confidence that Australia will continue to be a reliable and steady supplier of these [coal and iron ore] and other commodities. In doing so, it will help reduce pressure for diversification of supply, which occasionally emerges in Japan.²⁸

- 3.19 On the other hand, Japan is one of the most important markets for Australia’s agri-food industry but it has lost market share in recent years; down from 13 per cent in 2006 to approximately 7 per cent in 2012.²⁹ The industry is looking to JAEPA to regain some of that market share.³⁰

- 3.20 The Export Council of Australia also identified the danger posed by increasing competition from international competitors to existing market share for many Australian industries and stressed the importance of JAEPA to retaining existing market share.³¹

Investment

- 3.21 The expected benefits of the investment provisions in JAEPA were singled out for particular attention by witnesses to the Committee. Raising the

26 Mr Lester, Allens, Lawyers, and Committee Member, AJBCC, *Committee Hansard*, 16 September 2014, p.13.

27 Ms Lisson, DFAT, *Committee Hansard*, 25 August 2014, p. 13.

28 Mr Pearson, MCA, *Committee Hansard*, 25 August, 2014, p. 1.

29 Australian Food and Grocery Council (AFGC), *Submission 16*, p. 4.

30 Mr Dawson, AFGC, *Committee Hansard*, 25 August 2014, p. 6.

31 Export Council of Australia, *Submission 18*, p. [3].

non-screening investment level to \$1 078 million was widely welcomed. Mitsui & Co. told the Committee that it would 'simplify the approval process' and 'sends a clear message to us that further investment is welcomed and encouraged by the Australian government'.³²

- 3.22 The Minerals Council of Australia indicated that the increase will benefit smaller Australian projects seeking funding.³³ The Council also told the Committee that the more secure but less restrictive investment environment would make Australia a more attractive option for many Japanese investors:

The combination of that resource nationalism elsewhere and firmer, stronger arrangements here through this agreement are a real net gain for prospects of increased Japanese investment in this country.³⁴

- 3.23 Asked whether Australian investors in Japan would receive equivalent benefits from JAEPA, DFAT reiterated that Australia does not seek to harmonise investment regimes between Australia and other countries, or negotiate strictly reciprocal conditions. However, under JAEPA, Australian investors and investments will not be treated 'less favourably, in like circumstances, than other investors with respect to the establishment, acquisition, operation and sale of investments in Japan.'³⁵

Review mechanisms

- 3.24 The review mechanisms in JAEPA are seen as providing a range of benefits. The opportunity for a review of existing conditions after five years for a number of industries has alleviated some of the concerns over the failure to achieve more favourable initial outcomes. For example, the beef industry acknowledges the potential for further liberalisation of the market provided by the mechanism.³⁶
- 3.25 The Australian Food and Grocery Council (AFGC) welcomed the inclusion of a wide range of committees in JAEPA and urged the Australian Government to take full advantage of these provisions:

AFGC encourages the use of these committees as part of broader efforts to liberalise trade with Japan, and to support continued

32 Mr Keizo Sakurai, General Manager, Perth Office, Mitsui & Co. (Australia) Ltd., *Committee Hansard*, 16 September 2014, p. 5.

33 Mr Pearson, MCA, *Committee Hansard*, 25 August 2014, p. 3.

34 Mr Pearson, MCA, *Committee Hansard*, 25 August 2014, p. 4. 'Resource nationalism' refers to the tendency of national governments to retain control over natural resources.

35 Department of Foreign Affairs and Trade (DFAT), *Submission 32*, p. 1.

36 Cattle Council of Australia (CCA), *Submission 6*; AgForce Queensland Industrial Union of Employers, *Submission 7*; Meat & Livestock Australia Limited, *Submission 10*.

domestic reform in Japan. The trade in goods committee includes specific reference to non-tariff measures which is a key area requiring ongoing attention. The AFGC supports active engagement in these committees by the Australian Government going forward.³⁷

Issues

Non-tariff barriers

- 3.26 While the significance of the tariff eliminations and reductions are generally acknowledged, there remains considerable concern over ongoing non-tariff barriers inhibiting access to the Japanese market. The market was described variously as ‘complicated’³⁸ and ‘difficult’³⁹ with unique trading arrangements.⁴⁰
- 3.27 The Export Council of Australia told the Committee that Japan’s ‘relatively complex and multi-layered regulatory framework’ proved a deterrent to Australian businesses attempting to operate in the Japanese market. A recent survey carried out for the Council in collaboration with Austrade, Efic and the University of Sydney found that the key barriers to doing business in Japan were: licences and standards (33 per cent), information about local culture (56 per cent) and regulations (44 percent).⁴¹
- 3.28 The FSC supports JAEPFA and sees significant potential in the Asian market for Australian financial services.⁴² However, the FSC identifies a range of impediments to taking full advantage of the opportunities including the lack of a licensing mutual recognition arrangement.⁴³ Additionally, its members identified a number of concerns regarding the regulatory decision making process for accessing the Japanese market, including:
- opaque regulation applicable to offering investment products;
 - wide discretion in decision making processes;
 - a lack of transparency of applicable criteria; and

37 AFGC, *Submission 16*, p. 9.

38 Ms Lisson, DFAT, *Committee Hansard*, 25 August 2014, p. 10.

39 Mr Dawson, AFGC, *Committee Hansard*, 25 August 2014, p. 7.

40 AFGC, *Submission 16*, p. 6.

41 Export Council of Australia, *Submission 18*, p. [4]. The survey was *Australia’s International Business Survey* (AIBS 2014).

42 FSC, *Submission 30*, p. 2.

43 FSC, *Submission 30*, p. 12.

- no set time limits for when decisions are to be made.⁴⁴
- 3.29 Phytosanitary restrictions remain a major concern for many Australian exporters. Apple & Pear Australia Ltd put it succinctly:
- Free Trade Agreements are worth little if market access is denied or compromised and if phytosanitary measures are uncommercial.⁴⁵
- 3.30 Apple & Pear Australia is particularly concerned that pears grown anywhere in Australia are prohibited from export to Japan and apples grown on the Australian mainland are also prohibited, making tariff reductions meaningless for many growers.⁴⁶ Apples from Tasmania, representing only 9 per cent of the Australian crop, are the only produce able to be exported to Japan. This proves a disincentive for Japanese importers:
- This in itself raises problems because scale is important to importers and Japanese retailers who seek commitments of steady sizeable volumes which may be beyond the capacity of individual growers in a small production region.⁴⁷
- 3.31 The Department of Agriculture stressed that negotiations on phytosanitary protocols are conducted separately to those for trade negotiations.⁴⁸ The Department explained that priorities for negotiations are identified by an industry-driven process managed by the Office of Horticulture Market Access.⁴⁹ According to the Department, currently apples and pears have not been identified as a priority by the horticulture industry and are not on the agenda.⁵⁰
- 3.32 Barriers also exist within the Australian system that discourage exporters from taking full advantage of the opportunities provided in JAEPa. The Committee questioned the high compliance costs imposed on some exporters. The Department of Agriculture explained that the costs cover inspection, audit and certification services.⁵¹ The Department asserted that the fees are cost-recovery for the services it provides but told the

44 FSC, *Submission 30*, p. 7.

45 Apple & Pear Australia Ltd., *Submission 3*, p. [1].

46 Apple & Pear Australia Ltd., *Submission 3*, p. [1].

47 Apple & Pear Australia Ltd., *Submission 3*, p. [2].

48 Mr Simon Murnane, Trade and Market Access Division, Bilateral Engagement and Regional Trade Negotiations Branch, Department of Agriculture, *Committee Hansard*, 25 August 2014, p. 13.

49 Department of Agriculture, *Submission 34*, p. [2].

50 Department of Agriculture, *Submission 34*, p. [2].

51 Department of Agriculture, *Submission 34*, p. [3].

Committee that a review of cost recovery policies and settings is currently being conducted.⁵²

- 3.33 FSC informed the Committee that Australia has a 'large, highly developed and highly skilled' funds management industry poised to take advantage of the Asian market with its growing middle class, rapidly ageing population and underdeveloped financial services.⁵³ However, the FSC indicated that there is a need for reforms to Australia's domestic tax policy and regulation, if the industry is to take full advantage of the enormous potential presented by this market:

In particular the tax treatment of funds managed on behalf of foreigners needs to be reduced and streamlined to ensure Australia is competitive against other financial services hubs in the region. Without these changes the benefits of free trade agreements are limited.⁵⁴

Demand for Australian resources

- 3.34 Minerals and energy resources make up the bulk of Australia's export trade with Japan, worth over \$24 billion and accounting for over 80 per cent of total merchandise exports in 2013.⁵⁵ Two areas of interest emerged from the inquiry: increasing pressure from competitors and changes in demand following the Fukushima Daiichi incident in 2011.
- 3.35 The Minerals Council of Australia (MCA) identified a range of major suppliers who are becoming significant competitors for Australia's minerals and resources sector, including Chile, Peru, Brazil and the Philippines.⁵⁶ However, the Council indicated that JAEPA will provide Japan with reassurance concerning energy and resource security, thus contributing to Australia's competitive edge.⁵⁷
- 3.36 With regard to demand for energy resources due to changing Japanese energy policy initiatives following the Fukushima Daiichi incident, the Council saw little cause for concern as Australia supplies all three energy resources to the Japanese market: gas, thermal coal and uranium.⁵⁸ The nuclear power plants are expected to come back into operation slowly and

52 Mr Murnane, Department of Agriculture, *Committee Hansard*, 25 August, 2014, p. 14.

53 FSC, *Submission 30*, pp. 2-3.

54 FSC, *Submission 30*, p. 2.

55 Regulation Impact Statement, Japan-Australia Economic Partnership Agreement, 12 May 2014 (hereafter referred to as 'RIS'), para 103.

56 MCA, *Submission 17*, p. 7.

57 MCA, *Submission 17*, pp. 2 and 7.

58 MCA, *Submission 17*, p. 5.

in the meantime imports of thermal coal from Australia have increased by 12 per cent.⁵⁹

Regulatory complexity

3.37 Concern was again raised over the regulatory complexity that is developing for Australian business and industry with the proliferation of bilateral trade agreements. The Australian Chamber of Commerce and Industry reiterated its call for harmonisation of requirements across trade agreements, pointing out that the growth of global supply chains is further complicating the issue for many Australian exporters.⁶⁰ ACCI cautioned that the looming conclusion of the Trans-Pacific Partnership (TPP) and the Regional Comprehensive Economic Partnership (RCEP) combined with existing trade agreement requirements will add to the administrative burden faced by exporters:

For example, there are current[ly] three border crossing protocols into Malaysia. With TPP and RCEP this will increase to 5 in Malaysia. In the USA it will be three; Thailand four; Japan three.⁶¹

3.38 AFGC also singled out the issue for attention, saying that each agreement 'invariably produces a new set of arrangements' adding to the existing requirements under the World Trade Organisation and bilateral and regional agreements already in place.⁶² The Council told the Committee that feedback from their members confirmed growing concern over the multiplicity of regulatory requirements:

A number of exporters have highlighted the time consumed in meeting the different and specific requirement of individual trade agreements in order to receive the preferential treatment under particular agreements. JAEPA will add to this task and while food and beverage exporters will welcome the implementation of JAEPA, there is growing concern about the administrative burden across agreements.⁶³

59 Mr Sakurai, Mitsui & Co. (Australia) Ltd., *Committee Hansard*, 16 September 2014, p. 6; Mr Pearson, MCA, *Committee Hansard*, 25 August, 2014, p. 2.

60 ACCI, *Submission 15*, p. 6.

61 ACCI, *Submission 15*, p. 14.

62 AFGC, *Submission 16*, p. 8.

63 AFGC, *Submission 16*, p. 8.