



Submission to the Joint Standing Committee on Treaties (JSCOT) on Certain Aspects of the Treaty-Making Process in Australia

The Export Council of Australia

Introduction to the Export Council of Australia (ECA)

What is the ECA?

The ECA is a not-for-profit, member-driven organisation. Its purpose is to support Australian entrepreneurs and firms in undertaking international business. Our advocacy program aims to make it simpler and less expensive for Australian businesses to internationalise. To pursue this aim we make submissions to relevant Parliamentary Inquiries and craft trade policy recommendations. Our recommendations and submissions can be found at <https://www.export.org.au/trade-policy/trade-policy-recommendations>.

What does the ECA do?

The ECA supports its members through various efforts, including:

1. Providing updated information – Members are alerted to news and reports, including on government policies and regulations, as well as market conditions.
2. On-going capacity building – Exporters benefit from tailored training to build on their knowledge and skills, as global rules and practices change, trade patterns shift, and technologies develop.
3. Advisory services – Exporters can get immediate insight on pressing challenges and questions, such as on licensing, clearances, access to finance and trade agreements.
4. Creating ecosystems – Facilitating crucial business relationships to help exporters progress opportunities, including facilitating logistical opportunities and channelling financial transactions.
5. Advocating on behalf of members – Members' views and concerns are articulated to government partners. Effective and sustainable solutions are best reached through collaboration with governments and other stakeholders.

Who are ECA's members?

The ECA's membership covers a wide range of industries and sectors. Its members are individuals, small, medium and large enterprises.

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Certain Aspects of the Treaty-Making Process in Australia Submission to the Joint Standing Committee on Treaties (JSCOT)

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The Export Council of Australia (ECA) welcomes the opportunity to make a submission to JSCOT on Certain Aspects of the Treaty-Making Process in Australia.

This submission will firstly focus on the importance of the treaties for Australian trade, particularly for SME exporters and secondly will provide some comments and recommendations for the Committee's consideration.

1. Importance of treaties for Australian Trade

International trade is vital to the strength and growth of the Australian economy. Australia has a strong history of pursuing multilateral and bilateral trading relationships that have become the foundation of our strong trading reputation.

The ECA firmly believes that it is vital that the trading community and the wider public have a good understanding and visibility of the Treaty-Making Process. Moreover, the active involvement and participation of key stakeholders including small and medium enterprises (SMEs) involved in both exports and imports is critical to the treaty making process. SMEs should be a key consideration for Government bodies who manage and have oversight over the process.

At a macro level, treaties are important in trading relationships as they facilitate stronger commercial ties between nations. Free Trade Agreements (FTAs) support Australian trade and exports by improving market access through the reduction or removal of tariffs. FTAs also address other trade issues including intellectual property, investment, standards, government procurement and customs administration and trade facilitation.

The value of Australian exports was over \$470 billion in 2018-2019.¹ This value represents over 260 different kinds of products² to over 190 different countries.³ Australia has been an active international actor supporting trade liberalisation through FTAs, with a current network of fourteen FTAs in force

¹ Department of Foreign Affairs and Trade (DFAT), 2020 Trade and Investment at a Glance 2020, <https://www.dfat.gov.au/sites/default/files/trade-investment-glance-2020.pdf>

² ABS. 5368.0 International Trade in Goods and Services. Table 12b Merchandise Exports, Standard International Trade Classification (3 digit), FOB Value. 2020.

³ TradingEconomics.com. Australia Exports By Country. 2018

with key trade partners located mainly in the Asia-Pacific region and another eight FTAs under negotiation. As of July 2020, Australia has an FTA in force with eight of our top ten trade partners and is in current FTA negotiations with the remaining two (India and the United Kingdom).

Although Australian exporters are characterised as large ‘rocks and crops’ businesses, SMEs account for 87% of all exporting businesses.⁴ SMEs provide a level of diversification to Australia’s concentration of fuel and mineral exports.

Australian exporters, particularly SMEs are a key part of the trade community and key source of employment and growth, with trade related activities creating 1 in 5 jobs, and foreign investment facilitating 1 in 10 jobs.⁵ SMEs although representing smaller value, provide an important proportion of trade employment. Therefore, the treaty making process has the ability to provide a vast number of advantages or disadvantages through the establishment of trade related treaties, such as FTAs.

Due to their liability of smallness and limited resources and capabilities, SMEs tend to utilise industry associations to voice their opinions and represent their interests within the treaty making consultation phase.

SMEs reliance on industry bodies in the treaty-making process can also reduce their technical knowledge of how to access and utilise FTAs. The limited understanding of bilateral treaties has been recognised in previous ECA submissions⁶ and the ECA supports any government initiatives that support the training and education of SMEs in the utilisation of FTAs.

SMEs have shown resilience in navigating the Covid-19 crisis and an ability to internalise new capabilities needed to continue to operate in the new ‘normal’ of trade. The disruption of supply chains, freight systems, and market access have shown that the creation of new mechanisms and technological processes such as single-window trade can create greater opportunities for smaller, but important players.

This submission will highlight how the treaty making process can be strengthened through the inclusion of SMEs in the consultation and negotiation phases.

2. Comments and Recommendations by the ECA

Related to the subject matter of this inquiry, the ECA has been involved in work including appearances before Parliamentary Inquiries into proposed legislation implementing Treaties, FTAs and other Treaties. Moreover, the ECA has provided advice to members, partners and others into the implementation of FTAs and other Treaties.

⁴ ABS ‘Characteristics of Australian Exporters 2017-18’ <https://www.abs.gov.au/ausstats/abs@.nsf/mf/5368.0.55.006>

⁵ DFAT 2018, ‘Benefits of trade and investment’ <https://www.dfat.gov.au/trade/resources/publications/Pages/benefits-of-trade-and-investment>

⁶ Export Council of Australia, 2018 ‘Submission 24’ to the Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into Access to Free Trade Agreements by Small and Medium Sized Enterprises, available at https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/Freetradeagreement/Submissions

As a direct result of the work above described, the ECA had extensive exposure to and involvement in the Treaty Process. The ECA is aware that the broader trading community has had a relatively low adoption of the benefits of FTAs, especially by SMEs. The ECA is committed to continuing work with the Government and its agencies to improve FTA use.

In that context the ECA makes the following comments and recommendations for the consideration of the Committee:

2.1. The role of JSCOT in respect to trade-related agreement, including during the negotiation phase

- JSCOT has an extensive role in the treaty-making process and fulfil their mandate to inquire into and report on matters arising from treaties and related National Interest Analyses (NIAs). As a result of this mandate, the role of JSCOT is limited in their participation in the later phases of trade-related agreements.
- This constrains JSCOT to enter during the most public phase of the process; the parliamentary review. JSCOT provide recommendations, however they are unable to challenge and/or change the established core principles and provisions of the trade agreement that has been signed by parties in the previous stage.
- ECA welcomes the Inquiry to increase the visibility and communicate the role of JSCOT more clearly in the formation of trade-related agreements. Yet there needs to be a key rationale that extends the scope of JSCOT to participate earlier in the process.
- We suggest the Committee evaluate whether the earlier integration of JSCOT into the consultation process would provide a net benefit to the trade community. The benefits of greater integration and participation of JSCOT with the diverse voices of the Australian trading community can facilitate greater benefits exporters can extract from trade agreements.

2.2 The consultation process undertaken by the Department of Foreign Affairs and Trade (DFAT) before and during the negotiation of trade agreements

- It is critical to the utilisation and participation of trade agreements that the trading community and the wider public has a greater understanding of the treaty making process. By promoting a greater understanding of the negotiation and consultation stage, it will have a flow on effect to generate an enhanced understanding of the treaty agenda, the benefits of treaties, the dates of adoption of treaties and success stories of Australian traders.
- Therefore, we suggest DFAT expand their engagement beyond the traditional channels of information, such as in the media, briefings, their website and network of agencies. The ECA has concerns that the current engagement reach is limited in scope and scale and does not trickle down to the SME exporters and businesses who wish to participate in international trade.

- The creation of new FTAs has large business ramifications for all exporters. The ECA believes it is crucial for those potentially affected by an FTA or other treaties are made aware that such agreements are subject to rigorous review and commentary before coming into effect. The nature of confidentiality around the negotiating processes perpetuates the idea that trade agreements are the result of a closed or limited review and engagement.
- The ECA believes that such direct communication should be the subject of a revised communication strategy from DFAT. Focusing on broader engagement through alternative channels and networks in addition to leveraging online based channels and mechanisms that have been developed and used to cope with the Covid-19 crisis, allows broader and wider participation. This is particularly important for SME exporters that due to distance or resource constraints have not been active participants in the past.
- As proposed in a previous ECA submission⁷, the Commonwealth's treaty-making process requires collaboration and engagement with others who deal with the public and the trading community such as: industry associations, financiers and service providers in the supply chain (such as licensed customs brokers, freight forwarders and transport companies).
- The ECA recognizes that additional engagement requires a greater allocation of resources and DFAT is limited by the department's resources. The ECA believes that such expenditure is warranted to create a more consistent engagement throughout the treaty making process. This ensures that DFAT's role is not concentrated in one phase of the treaty-making process, but weaves the lessons learnt from the consultation process and concerns of the trading community through the parliamentary process, implementation and utilisation of trade treaties.
- The consultations held by DFAT during the negotiation phase are unable to accommodate a diverse range of voices from the trade community due to their limited time and geographic scope. There is a tendency for the 'bigger end of town' to dominate the process due to the costs of participation being too high to justify. This can lead to an unintended distortion of voices in the consultation process that limits who and what perspectives are included. The adoption of digital platforms in parliamentary inquiries during the Covid19 pandemic illustrates that rural and remote enterprises can be included in the negotiation process outside of Canberra. Technology continues to afford greater inclusion and more digital resources should be implemented during the negotiation process.

2.3 The effectiveness of independent analysis to inform negotiation or consideration of trade agreements

- New trade agreements have the ability to promote growth, increase competitive and disrupt sectors of businesses. The inclusion of a robust analysis that informs the entire process of the feasibility, necessity and opportunities that FTAs and other treaties can represent is therefore crucial to the consideration and negotiation phases.

⁷ Export Council of Australia, 2014, 'Submission 91' Into the Commonwealth's Treaty Making Process, available at: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Treaty-making_process/Submissions

- These analyses and reports are crucial to inform the process of the net benefits and risks that accompany a new trade agreement. In the current process, the effectiveness of analysis is reduced in lengthy negotiations as they are unable to account for changes in circumstances. Fluctuations in the economy, geopolitical tensions, natural disasters, trade wars and health emergencies have the ability to radically alter the net benefits of trade relationships and agreements. Actors of free trade such as businesses and the private sector are vulnerable to out of date analysis reducing the benefits of trade agreements.
- The ECA suggests a more critical review and a more thorough approach beyond economic analysis to inform the negotiation process. Considering the disruption of Covid-19 and the lessons of how integrating macro, meso and micro independent analysis provides greater learning tools; the consolidation of a wider range of stakeholders from larger enterprises to SMEs will serve to enrich policy and agreements.
- Independent analysis should look into key areas that trade treaties impact such as market access, supply chains and potential contingencies in case of disruptions.

2.4 The Ministerial Advisory Council and its relevance on the treaty making process

- Beyond the terms of reference, the ECA believes that the inquiry should also acknowledge and discuss the role of the Ministerial Advisory Council (MAC) on FTA negotiations and other trade-related treaties.
- We acknowledge the number of governmental actors that are required to begin, approve and advance the treaty making process and applaud the excellent initiative that the MAC represents to enhance transparency around the negotiation of FTAs. The ECA encourages the continuation of the forum that allows a range of stakeholders to engage with the FTA process.
- As the MAC intends to increase diversity of voices and inclusion of stakeholders, the ECA encourages the inquiry to establish a review mechanism of membership and increase the visibility of the role Committee. By enhancing the profile of the Council, it facilitates the breadth and depth of discussions with relevant stakeholder networks.
- Whilst the Committee membership is representative of a broad range of sectors and businesses, it is still limited in scope. There is no representation from an enterprise or industry association that can be the voice for Australian exporters and importers views. Committee representatives can and should be elected by key stakeholders. Alternatively, membership on a rotating basis would also allow for a diverse set of viewpoints and insights relevant to the process to be addressed and integrated.

Our submission highlights some key pragmatic points relevant to be considered. We also believe in ensuring that the treaty-making process is successful in being reflective of Australia's diverse nature of trade.

We believe that by supporting Australian businesses in the treaty making process to gain greater visibility and knowledge of the process will serve to strengthen the continuing flow of trade and better our bilateral relations in the long term.

As the global trade becomes more unpredictable and the challenges spill over into more sectors, there is no better time to ensure the treaty making process is inclusive of micro, meso and macro analysis and is inclusive of more voices.

The ECA looks forward to further engagement on this important topic.