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# Senate Foreign Affairs, Defence and Trade References Committee TPP inquiry

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Chamber of Commerce  
and Industry



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## Executive Summary

The Trans-Pacific Partnership allows businesses to benefit from lower tariffs and greater clarity and certainty of trade rules.

The Australian Chamber of Commerce and Industry supports the negotiation of treaties that encourage prosperity in Australia and abroad. Individual treaties should accelerate regional and global trade liberalisation, serving as building blocks for an improved multilateral trading system. To achieve this, we support domestic policy measures that improve the negotiation and monitoring of treaties. This way, treaties have greater potential to deliver their forecast economic benefits.

The use of treaties by Australian businesses should guide future treaty activity. Australia's limited domestic consultation during trade negotiations means that treaties often contain provisions that stakeholders, including business, are only aware of after the treaty negotiations are concluded. This lack of transparency can lead to misunderstanding and alarmist politicisation of treaty provisions.

Many businesses report difficulties understanding regulatory divergence among Australian trade agreements. This can create administrative barriers for traders that could have been avoided if they were identified during negotiations. Such stumbling blocks add to red tape and prompt businesses to use time-consuming workarounds. This makes the affected trade treaties less desirable.

For it to succeed in Australia the TPP requires a strong foundation of understanding and support by the Australian people. This will be better achieved through assessment by the Productivity Commission at arm's length from negotiators.

The function of trade and investment liberalisation, and the differences between "free trade" and "preferential trade", need to be better understood.

It is counterproductive for Preferential Trade Agreements to be promoted using a mercantilist approach. Government needs to explain to the public that both positive and negative impacts come from trade and investment liberalisation. Acknowledging that there are "losers" (in the short term) is an important step in building empathy with the public and during the transitional journey to prosperity brought about by liberalised trade.

If the TPP does not enter into force, the Australian Government should unilaterally apply the domestic reforms envisioned. This would reduce costs and red tape, helping Australian firms to remain globally competitive.

## Recommendations

### **Recommendation 1:**

An independent Government body that is arms-length from negotiations – such as the Productivity Commission – should prepare the trade treaty National Interest Analysis (NIA) and Regulatory Impact Statement (RIS) documents that are provided to the Joint Standing Committee on Treaties and tabled in Parliament. Such a body should be tasked with objectively preparing both documents, on the basis of optimal, likely and minimum outcomes of concluding and implementing a given trade treaty. A body so tasked must be able to give frank and fearless advice to both the Joint Standing Committee on Treaties and the Parliament, with regard to the real economic benefits and costs of concluding a given trade treaty.

### **Recommendation 2:**

- The Productivity Commission – or similar independent body at arms-length from negotiations – should be tasked with an objective regular review and report on the performance of all in-force Australian trade treaties, comparing the economic objectives cited at their commencement. The report should be made available to the public in full.

### **Recommendation 3:**

- The direct costs to the Australian Government for the conduct of treaty negotiations should be transparently reported to the parliament through the annual budget process so that the Australian community is aware of the investment being made by the Government to secure any given treaty.

### **Recommendation 4:**

- That the Government should examine the merits of retaining current bilateral agreements where they have been superseded by larger and more modern agreements covering the same Parties.

### **Recommendation 5:**

- The Government should introduce an enhanced consultative procedure for the development of improved trade treaties, which would allow representative bodies to register for access to the draft treaty text within the terms of the relevant confidentiality agreements, in order to provide advice to negotiators throughout the negotiation process.

**Recommendation 6:**

- That Australia should champion a work programme at the World Trade Organisation level (and World Customs Organisation) to seek a global agreement on consistent rules and procedures for preferential and non-preferential border crossing arrangements within the context of the WTO Trade Facilitation Agreement.

**Recommendation 7:**

The Government must instruct its negotiators to ensure that new regional agreements (TPP and Regional Comprehensive Economic Partnership (RCEP)) harmonise the existing practices of the preceding bilateral agreements and Australia ASEAN, New Zealand Free Trade Agreement (ANZFTA), and also embrace the WTO Trade Facilitation Agreement and the provisions of the Revised Kyoto Convention of Simplification and Harmonisation of Customs Procedures – including Annex K – Rules of origin.

**Recommendation 8:**

That the Australian Government resists any calls to increase protections on Intellectual Property as a result of TPP entry into force actions.

**Recommendation 9:**

That the Government commit to unilaterally removing existing barriers to trade and investment to enable full benefits to flow to the Australian economy

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# 1 Contribution to economic prosperity from liberalised trade

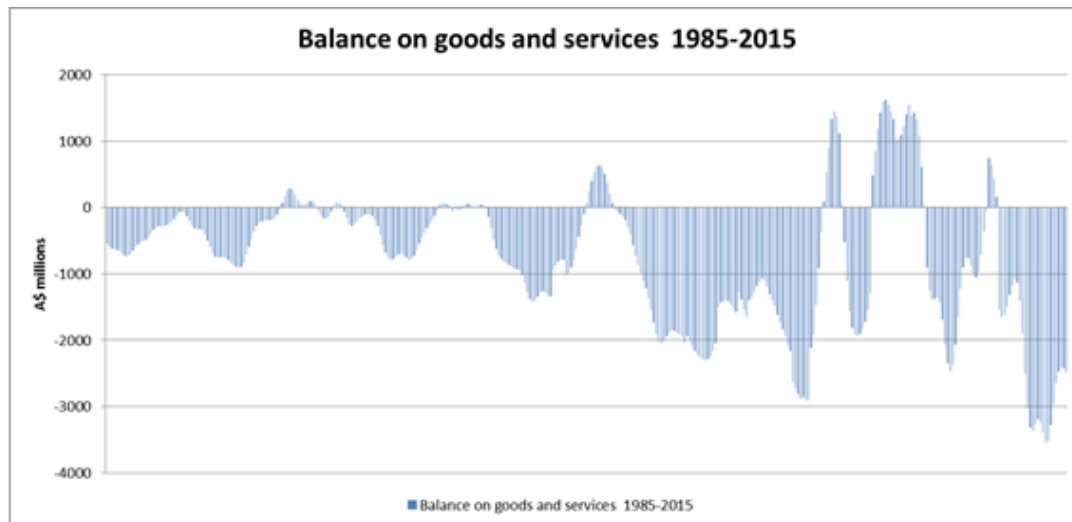
Australia is a nation whose economic performance is inextricably linked to our engagement with the world. As can be seen in the chart below, we are heavily dependent on both imports and exports. Since 2000 imports have grown strongly and are becoming an increasingly large component of our balance of trade.

**Figure 1: Australian Trade Indicators**



Source: DFAT and the Australian Chamber

**Figure 2: Balance of Goods and services trade**



Source: ABS 5368.0 International Trade in Goods and Services, Australia



This is important because while the Government has chosen to focus on our export performance, imports are important components of every Australian export. That is our minerals exports are dependent on imports of machinery and fuel, our agricultural exports are dependent on imported fertiliser and germplasm, our services exports rely upon imported computers and software, etc. It is important for all to recognise that reducing the costs of imports assists our economy to remain competitive.

The Australian Government controls the levels of trade restrictions (costs) that we maintain within our economy: tariffs, barriers to entry for people and investment, etc. These can be reduced by the government without the need to negotiate with any other country. Such actions are controlled “unilaterally”.

So when the government speaks of advancing “free trade” it is important to reflect upon those things that the Government can control and the costs that are retained and imposed on our economy while we negotiate with others. Such continued retention of costs reduces economic growth and competitiveness of the Australian economy.

During the 1980s and 1990s, the Government recognised that domestic reforms and unilateral tariff liberalisation were the keys to driving economic growth and lifting productivity. It also pursued an active international engagement in multilateral reforms through the WTO process – resulting in the Uruguay Round conclusion in 1994 and commencement of the Doha Round in 2001.

Earlier this year, the Productivity Commission noted that:

***Productivity and Australia's relative economic wealth***

*In recent years, despite comparatively low MFP growth, Australia has maintained its position in the rank of per capita GDP relative to other developed economies. In 2014, the Australian economy was ranked 5<sup>th</sup> in per capita GDP among OECD countries, behind Luxemburg, the United States, Iceland and Norway.*

*Australia held similar positions in the 1950s but its ranking slipped over the following two and a half decades. It dropped to 15<sup>th</sup> in 1983 and again in 1991 and 1992.*

*Since then Australia's international ranking has risen. This improvement has been linked to sustained economic reforms during the 1980s and 1990s, including: the opening up of trade and capital markets to competition; partial deregulation, commercialisation and privatisation of state owned enterprises; labour market reforms that reformed the centralized wage fixing system; and National Competition Policy reforms (PC 1999). These resulted in better utilisation of labour and capital by business and enabled the Australian economy to innovate, taking advantage of newly developed information and communication technologies.<sup>1</sup>*

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<sup>1</sup> <http://www.pc.gov.au/research/ongoing/productivity-update/pc-productivity-update-2016/comparing-australias-productivity-performance>





During the past decade trade liberalisation both unilaterally and within the WTO has stalled. Instead, Australia (and many other countries) has pursued efforts via bilateral and regional preferential trade agreements. These preferential trade agreements are widely acknowledged as a “third best” option and it is important that we reflect upon them as a component of Australia’s economic architecture as the Government seeks ways to lift productivity and growth. In this respect we welcome the Treasurer’s recent engagement of the Productivity Commission to advise on options for Australia's productivity performance.

“Free trade” only comes from two sources:

1. Unilateral actions with which a nation sets its own rules about how it will deal with all others; and
2. Multilateral agreements where the whole world agrees to act in unison.

This was acknowledged by DFAT in the testimony of DFATs Chief Negotiator for the TPP, Ms Elizabeth Ward at the original JSCOT hearings on February 22, 2016<sup>2</sup> (emphasis added).

*Over the last three decades, Australia's trade policy pursued by successive governments has reflected the philosophy which underpins our broader domestic economic policy settings: openness, competitiveness and flexibility. Australia's pursuit of more open trade, investment and movement of people and ideas across borders fundamentally is a means to ensure Australia retains a competitive environment that drives productivity and the efficient utilisation of resources within the Australian economy. An open trade economy, in short, stimulates economic activity and creates jobs.*

*Australia has already seen the benefit of substantial liberalisation of its own trade barriers, taken across the last several decades. **We know that unilateral reforms pays the greatest dividends.** But benefits also accrue to Australia from the reduction of barriers to trade and investment in the economies of our trading partners, particularly in the Asia-Pacific region. For as long as Australia's commercial interests are likely to remain focused in this dynamic region that will drive global growth in the 21st century, our trade policies will be focused on promoting open economies in that region as a priority.*

Preferential Trade Agreements (PTA) do not contribute to free trade. By their nature, they are a set of discriminatory terms with which parties will deal with each other at the exclusion of others. Once

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<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Fcommjnt%2Fd7e6bcb2-1294-4e25-aa1f-45a84518c77b%2F0001;query=Id%3A%22committees%2Fcommjnt%2Fd7e6bcb2-1294-4e25-aa1f-45a84518c77b%2F0000%22>



such an agreement is completed the result is that while some liberalisation of trade and investment may occur, other barriers to trade are retained and some new ones introduced.

The Productivity Commission reflects upon this issue in its annual Trade and Assistance Review. Apart from the costs to taxpayers of the assistance provided to Australian industry through various means, the Productivity Commission noted in its 2012-13 report that *Preferential trade agreements add to the complexity and cost of international trade through substantially different sets of rules of origin, varying coverage of services and potentially costly intellectual property protections and investor-state dispute settlement provisions.*

- *The emerging and growing potential for trade preferences to impose net costs on the community presents a compelling case for the final text of an agreement to be rigorously analysed **before** signing. Analysis undertaken for the Japan-Australia agreement reveals a wide and concerning gap compared to the Commission's view of rigorous assessment.*<sup>3</sup>

While welcoming the conclusion of the TPP negotiations and the process for entry into force, the Australian Chamber has previously flagged our increasing concerns over the creation of more complex and diverse discriminatory trading and investment arrangements which are at odds with the ideal of free trade. Raising such concerns is not anti-trade but in fact in defence of free trade.

Bilateral and regional agreements may well have benefits but unless they are harmonised and create the foundations of an eventual multilateral agreement then they can undermine free trade. Businesses represented by want to support efforts to open up the Australian economy to be more competitive and champion agreements which have this aim. In order to do this, there needs to be independent economic assessments of the outcomes of the final negotiation.

As the Productivity Commission has identified in its annual Trade and Assistance Review, and the 2010 report into Australia's Bilateral and Regional Trade Agreements, along with Dr Shiro Armstrong's review of the Australia – US FTA after 10 years in 2015, so called "free trade agreements" may well have a negative impact on the Australian economy. It is important that this inquiry seek appropriate advice on the economic costs and benefits as a component of its inquiry into this agreement.

We encourage the inquiry to consider Recommendation 10 of the recent Senate Inquiry into Australia's Treaty Making Process:

*The committee recommends that National Interest Analyses (NIAs) be prepared by an independent body such as the Productivity Commission and, wherever possible, presented to the government before an agreement is authorised by cabinet for signature. NIAs should be comprehensive and address specifically the foreseeable environmental, health and human rights effects of a treaty.*

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<sup>3</sup> <http://www.pc.gov.au/research/ongoing/trade-assistance/2013-14>

## 2 The promise and the delivery of our existing Preferential Trade Agreements

Australian trade treaties contain a vast array of commitments agreed between the party countries. These promises directly impact a range of Australian business sectors in a multitude of ways at the moment treaty obligations are transformed into practical domestic outcomes. Potentially positive economic outcomes feature strongly in the Department of Foreign Affairs and Trade (DFAT) promotional materials that accompany the treaty text release. These include the Regulatory Impact Statement and the National Interest Analysis (both authored by DFAT), which are usually presented on the basis of optimal economic outcomes in the event of complete implementation, and full uptake of a trade treaty by business in participating economies.

During the negotiation phase, the Government of the day and the responsible Minister advocate in support of the negotiations and highlight outcomes for the nation. The proof is in the pudding. A trade agreement will be good if industry realises its benefits in practice and national prosperity is improved.

The Australian Chamber has surveyed our members for the last three years and identified that despite the huge effort being expended in negotiation of preferential agreements, many businesses are either unaware of the agreements, or find them too difficult to use to be of significant benefit.<sup>4</sup>

See extract as follows.

### **Extract from the Australian Chamber's Trade Policy Survey 2016**

Respondents were asked to rate their level of concern regarding a wide range of trade issues. The results show that, in line with the 2014 and 2015 results, overall international competitiveness, red tape and a high exchange rate remain the top three trade issues for businesses. Over three-quarters (75.9 per cent) stated overall international competitiveness to be either a major or moderate concern. Around three-fifths of those surveyed noted red tape (61.9 per cent) and a high exchange rate (57 per cent) as second and third impediments. The top five trade issues in the period of 2014-2016 are listed in Table 3.1.

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<sup>4</sup> Australian Chamber Trade Policy Survey 2014, 2015 and 2016

**Table 2.1. Top five trade issues\* (2014-2016)**

	<b>2016</b>	<b>2015</b>	<b>2014</b>
1	Overall international competitiveness (75.9%)	Overall international competitiveness (80.5%)	Overall international competitiveness (83.1%)
2	Red tape (61.9%)	Exchange rate too high (70.7%)	Exchange rate too high (73.2%)
3	Exchange rate too high (57%)	Complexity of rules and red tape for international trade (57.4%)	Complexity of rules and red tape for international trade (67.7%)
4	Ability to service international markets (55.5%)	Customs and border crossing costs (56.2%)	Ability to service international markets (61.5%)
5	Market entry/access (e.g. ability to procure visas, cost of market presence) (52.7%)	Non-tariff barriers (such as regulation or standards) (55.7%)	Customs and border crossing costs (61.3%)

\* Based on the total percentage of major and moderate concern

### • **BUSINESSES' UNDERSTANDING AND UTILISATION OF TRADE AGREEMENTS**

Businesses were asked about their understanding and utilisation of a list of general trade and free trade agreements (FTAs). The results show that the majority of businesses continued to not understand and not use FTAs. The proportion of businesses understanding general trade and FTAs ranged from 18.1 per cent to 31.7 per cent. The figure for businesses using general trade and FTAs ranged from 5.6 per cent to 20 per cent. Most notably, the highest rate of businesses surveyed both understanding and using general trade and FTAs was only 15.3 per cent.

The most well understood agreement reported was the Australia-United States FTA with a result of 31.7 per cent. This was followed by the China-Australia FTA (31 per cent) and the ASEAN-Australia-New Zealand FTA (29.9 per cent). The Australia-United States FTA, China-Australia FTA and ASEAN-Australia-New Zealand FTA were also the most, second most, and third most utilised, respectively, by all businesses surveyed.

The least understood and least used agreement was the WTO agreement (most favoured nation provision), with nearly a half of businesses (49.7 per cent) stating they do not use this agreement and 39.9 per cent acknowledging that this FTA is not relevant to them. This is surprising given

Australia has been a WTO member since January 1995 and a member of GATT since October 1967. It may reflect the automatic nature of its provisions, meaning businesses use it without knowing.

**Table 8.2. Rating of businesses' understanding of general trade and free trade agreements – All business**

	I understand it and I use it	I understand it but I don't use it	I don't understand it but I use it	I don't understand it & I don't use it	This FTA is not relevant to me
ASEAN-Australia-New Zealand FTA	15.3%	14.6%	2.1%	21.5%	46.5%
Australia-Chile FTA	2.8%	15.3%	2.8%	19.4%	59.7%
Australia-New Zealand Closer Economic Relations	6.3%	16.1%	3.5%	25.9%	48.3%
Australia-United States FTA	15.2%	16.6%	4.8%	22.1%	41.4%
Malaysia-Australia FTA	10.6%	15.5%	6.3%	24.6%	43.0%
Singapore-Australia FTA	7.6%	15.3%	6.3%	28.5%	42.4%
Japan-Australia Economic Partnership Agreement	11.1%	13.2%	3.5%	24.3%	47.9%
Korea-Australia FTA	10.5%	14.7%	4.2%	21.7%	49.0%
China-Australia FTA (not yet in force)	12.4%	18.6%	6.2%	26.2%	36.6%
Thailand-Australia FTA	9.7%	15.9%	3.4%	24.8%	46.2%
WTO Agreement (most favoured nation provisions)	7.7%	11.2%	2.8%	38.5%	39.9%

Regarding the qualitative responses, managers were asked whether they used any of the free trade agreements. Most managers reported that they did not use the in-force FTAs. When asked why they did not use the in-force FTA, some managers stated that they were not aware of the FTA. For example, the owner of a wholesale firm stated "I really don't know how they work" (Manager/Owner, Case 25). There was also lack of understanding about the status of some FTAs and the opportunities/benefits they provided.



*Well Austrade hasn't even got through to signing it so ... you just get bogged down in all the details. ... Obviously there's free trade agreements, there's a lot of ads on TV...  
(Managing Director, Case 18)*

The Owner of a firm in the agriculture, forestry and fisheries industry also noted that it will take time before the benefits of FTAs are known, pointing out that free trade agreements impact businesses differently (Case 20).

*It takes some time for the real benefit of free trade agreements to become known and that's not being critical of anyone being secretive or anything like that. It just takes some time once the trade agreement has been signed, sealed and delivered and the market's been opened up to really understand what impact they're going to have over the years and what impact they're going to have. ... Some businesses can have a very quick and real advantage, other businesses will have to understand better how it operates when it goes right through the whole, the whole supply chain. (Owner, Case 20).*

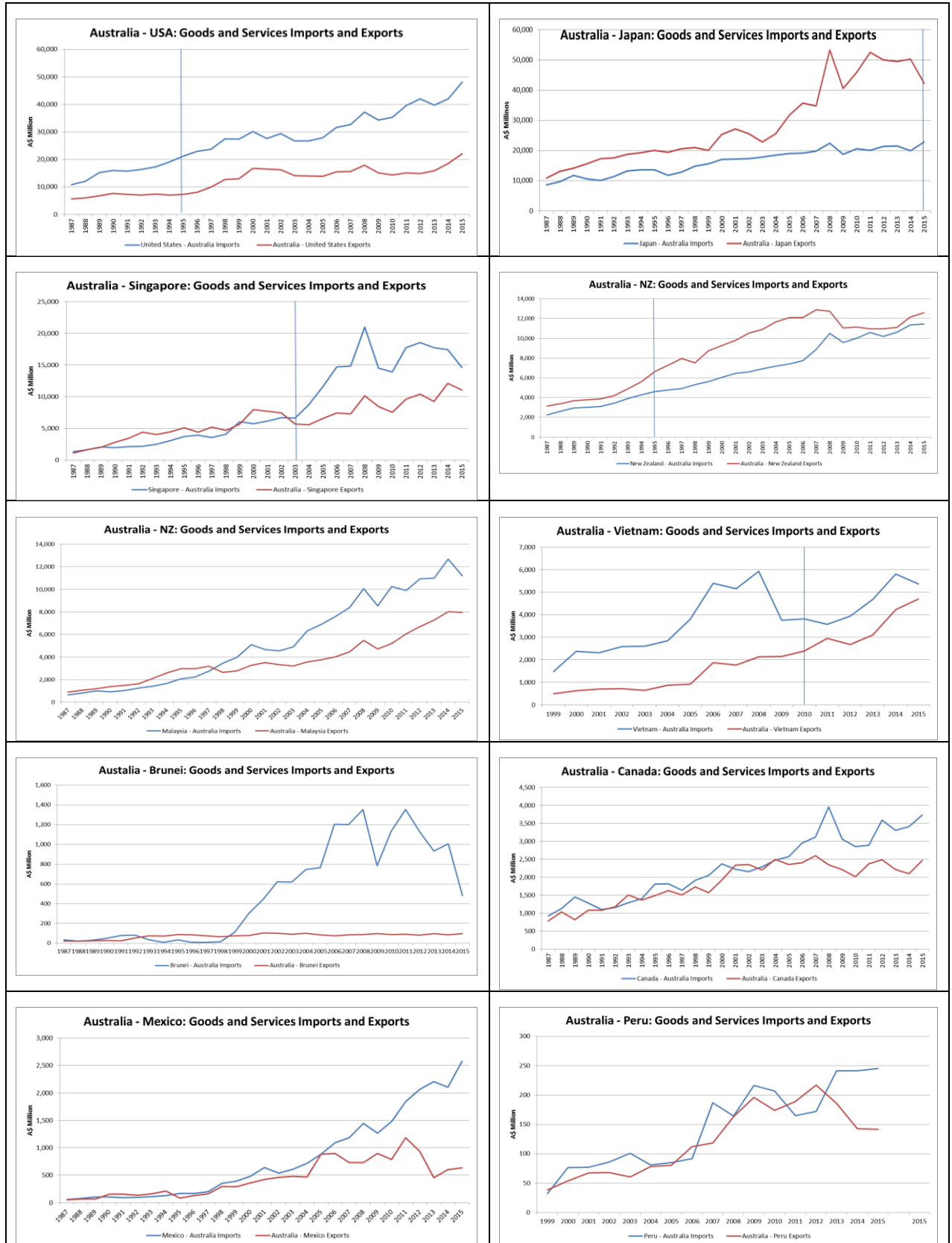
**END OF EXTRACT**

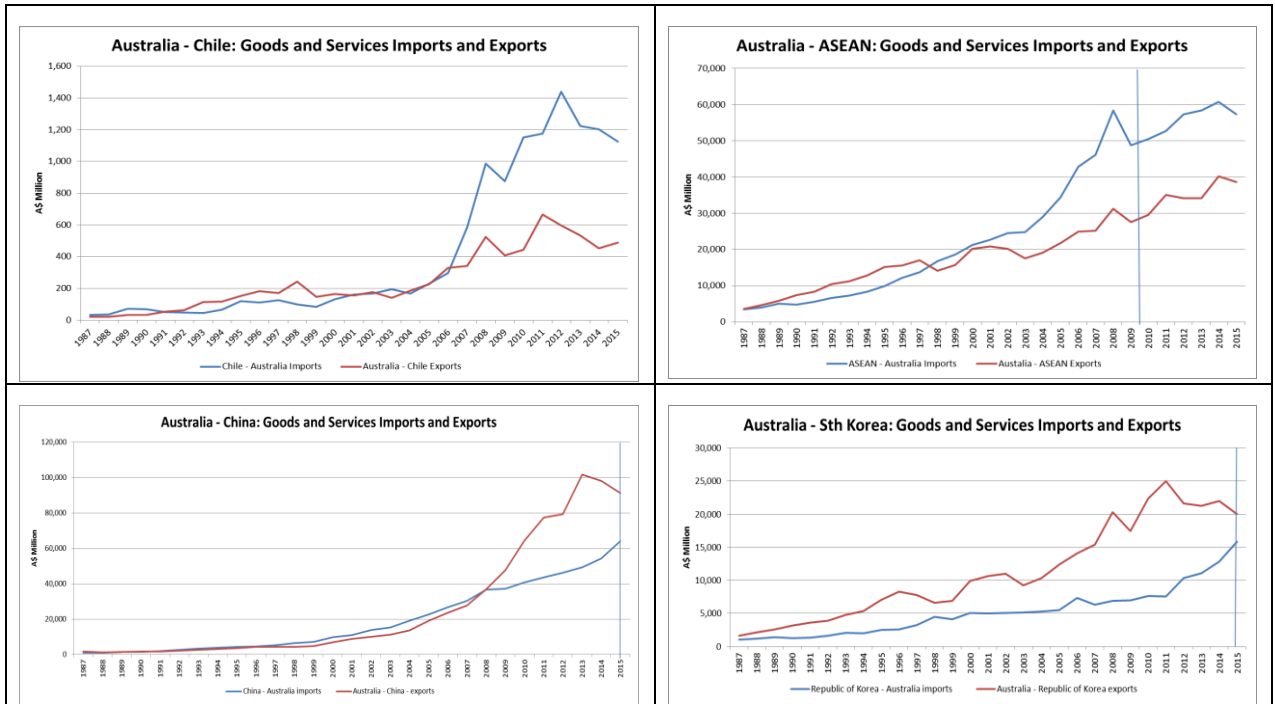
Given the above extract, and in the interests of ensuring the slated goals of trade treaties are achieved, it is important to ask questions as to how trade treaty promises are being implemented (and measured) in real terms.

It is worth reflecting on the trade performance of the TPP countries with which we have existing bilateral and regional agreements. The charts below indicate our historic trade in goods and services with the TPP parties, along with a total grouping of ASEAN. In each chart the blue line represents Australian imports, the red line represents Australian exports and the vertical line in some charts represents when an existing bilateral or regional agreement came into force (approximately). China and Sth Korea are also included for comparison as they are not TPP parties.



**Figure 3: Bilateral trade in Goods and Services for TPP countries, ASEAN, China and Sth Korea**





As can be clearly seen, the presence or absence of a trade agreement is hard to differentiate in the long term statistics as two way trade was increasing in each country long before any agreements were put in place, and by and large, the trajectory of growth in two way trade for each country has continued irrespective of any agreements being put in place. Also worth noting is that with this set of nations, Australia experiences a bilateral trade deficit with the exception of Japan, Sth Korea, China and New Zealand. It would therefore be reasonable to assume that the TPP will not greatly change this situation. It is also important to note that in most cases it is the import side which has seen the largest growth. This highlights that the benefits of trade and trade liberalisation are greater in our domestic consumptive market (including imports that assist to create exports). Hence, description of recent bilateral agreements as “Export Agreements” is misleading.

### 3 Treaty Making Apparatus:

Trade treaty goals and the economic benefits they promise are fully supported by the Australian Chamber of Commerce and Industry and applauded by the business community in general. However, what is not always clear is how the vast array of commitments in a trade treaty are to be given practical effect in the domestic business environment. The lack of detail – the lack of answers as to “how” the economic gains are achieved – allows room for confusion and politicisation, by vested interests trying to protect currently privileged positions of poorly-explained treaty provisions. This risks blunting the positive intended effects of trade treaties, and reducing public support for them.



It is not clear how Australia's active trade treaties are tracking in terms of key performance and ongoing national benefit. It is difficult to find reliable data –on what level of trade in goods and services is being achieved under each of Australia's active trade treaties, or whether the economic promises made at their commencement are being met. There should be a regular review by an independent body to make sure what is promised is being delivered.

Even though Australian trade treaties contain an array of goals across a large range of sectors, the bulk of regulatory transformations for most trade treaties in Australia appear to be mostly moderate amendments to the *Customs Act 1901* for goods being imported into Australia. It appears that implementation of the TPP treaty in the Australian business environment is made up of limited changes to our Customs legislation for goods coming into Australia.<sup>5</sup>

**Extract of DFAT website on Treaty-Making Process** (emphasis added):  
<http://www.dfat.gov.au/international-relations/treaties/treaty-making-process/pages/treaty-making-process.aspx>

***Do all treaties require legislation to operate in Australia?***

The general position under Australian law is that treaties which Australia has joined, apart from those terminating a state of war, are not directly and automatically incorporated into Australian law. **Signature and ratification do not, of themselves, make treaties operate domestically. In the absence of legislation, treaties cannot impose obligations on individuals nor create rights in domestic law.**

If it is the case, as described by DFAT above, that “signature and ratification do not, of themselves, make treaties operate domestically”, then the operational remainder is apparently reliant on executive power in an unexplained framework.

This leads to our proposal for a system of better consultation with representative stakeholders that is described below, and our following recommendations on the importance of independent bodies monitoring trade treaties at arms-length.

### **Recommendation 1:**

An independent Government body that is arms-length from negotiations – such as the Productivity Commission – should prepare the trade treaty National Interest Analysis (NIA) and Regulatory Impact Statement (RIS) documents that are provided to the Joint Standing Committee on Treaties and tabled in Parliament. Such a body should be tasked with objectively

<sup>5</sup> **Customs Amendment (Trans-Pacific Partnership Implementation) Bill \***  
**Customs Tariff Amendment (Trans-Pacific Partnership Implementation) Bill \***  
- amend the *Customs Act 1901* and the *Customs Tariff Act 1995* to implement the Trans-Pacific Partnership (TPP)

preparing both documents, on the basis of optimal, likely and minimum outcomes of concluding and implementing a given trade treaty. A body so tasked must be able to give frank and fearless advice to both the Joint Standing Committee on Treaties and the Parliament, with regard to the real economic benefits and costs of concluding a given trade treaty.

### **3.1 Monitoring trade treaties to ensure performance**

The Australian Chamber believes it is crucial for trade treaties to be monitored continuously during their operation to ensure their key economic and social objectives continue to be met. We note the Productivity Commission has recommended this oversight function numerous times in its reports.

As the cost of international negotiations (that can go on for years) is substantial to the Australian taxpayer, it is a natural expectation of the business community that the economic benefits of these treaties should be monitored on an ongoing basis by an independent body such as the Productivity Commission. This will also serve to tailor Australia's commitments and obligations under these types of treaties, helping negotiation stances develop and improve with the changing trading landscape.

Such transparency will also enable the Government to assess the effectiveness of our bilateral and regional treaty negotiating teams in securing outcomes that improve Australian's prosperity.

#### **Recommendation 2:**

- The Productivity Commission – or similar independent body at arms-length from negotiations – should be tasked with an objective regular review and report on the performance of all in-force Australian trade treaties, comparing the economic objectives cited at their commencement. The report should be made available to the public in full.

#### **Recommendation 3:**

- The direct costs to the Australian Government for the conduct of treaty negotiations should be transparently reported to the parliament through the annual budget process so that the Australian community is aware of the investment being made by the Government to secure any given treaty.



### **3.2 Termination of smaller trade treaties where superseded by improved regional agreements**

The TPP is a large regional agreement – sometimes termed a “mega regional agreement”. It is important that we consider the TPP in the context of our aggregate trading arrangements and not as a standalone agreement. The large number of international trade related treaties is often referred to as the “noodle bowl”, which provides a graphic image of the complex, intertwined and overlapping nature of bilateral and regional trade agreements. It is imperative that Australia monitors (via the means recommended above) situations in which newly created regional trade treaties end up overlapping trading partner countries with whom we already have active bilateral trade treaties. This will ensure no unnecessary conflict of obligations occurs, and ultimately cuts down on red tape for business in both economies.

Consolidation of bilateral agreements into newer regional agreements in such situations is ultimately a desirable end, in the objective of building towards an eventual global multilateral trading system. We would hope that new regional agreements would exceed older bilateral agreements in their ambition and benefit. An illustration of the overlap between regional (multilateral) trade treaties and existing bilateral trade treaties is as follows.

Country	AANZ	AC	SA	AUS	TA	JA	MA	KA	CHA	ANZ	TPP	RCEP	IA-CEPA
Type	Multilat. 2010	Bilat. Chile	Bilat. Singapore	Bilat. USA	Bilat. Thailand	Bilat. Japan	Bilat. Malaysia	Bilat. Rep of Korea	Bilat. China	Bilat. New Zealand	Multilat. Ratification pending	Multilat. Under neg.	Bilat. Indonesia. Unmder Neg.
Brunei	X										X	X	
Myanmar	X											X	
Cambodia	X											X	
Indonesia	X											X	X
Laos	X											X	
Malaysia	X						X				X	X	
Philippines	X											X	
Singapore	X		X								X	X	
Thailand	X				X							X	
Vietnam	X										X	X	
New Zlnd	X									X	X	X	
USA				X							X		
Canada											X		
Mexico											X		
Chile		X									X		
Peru											X		
Japan						X					X	X	
China									X			X	
India												X	
Rep of Korea								X			X	X	

The table above indicates the countries involved (or potentially involved) in regional trade treaties with Australia. AANZFTA (ASEAN-Australia-New Zealand Free Trade Area) came into force in 2010 and is Australia's most comprehensive trade agreement. It does not include WTO MFN trade

In previous submissions, the Australian Chamber has highlighted that for many of our trading partners we now (or will soon have) at least three (eg Chile) and as many of five (eg Malaysia) agreements covering trade with the same country, inclusive of the “most favoured nation” status of WTO members – the most common form of trade rules between member states.

Consolidation or termination of any bilateral trade treaty that is superseded by a newer regional treaty is important to simplifying trade. This is because each of these agreements contains agreement-specific unique compliance rules that provide the framework within which the commercial sector can access the benefits of the trade agreement, and exclude others from these advantages.

Across these agreements there are a range of administrative instruments in terms of both the methods for calculation to determine origin and also the documentary requirements. Australian companies must be aware of the differences in order to take advantage of the terms of the agreement and the documentary requirements. The requirement for knowledge of each agreement and the document handling process adds significant costs to business. Monitoring for potential consolidation of bilateral trade treaties – or their termination – where a subsequent overlapping regional trade agreement betters the terms of the original bilateral, is therefore desirable for trade facilitation generally and in the regional context.

#### **Recommendation 4:**

- That the Government should examine the merits of retaining current bilateral agreements where they have been superseded by larger and more modern agreements covering the same Parties.

### **3.3 Disclosure of draft text to pre-registered representative groups**

Trade-related treaties are usually negotiated in secret and covered by a confidentiality agreement. It is very difficult to understand the exact terms being negotiated despite “public consultations” by DFAT. In contrast, the international climate change treaty negotiations offer a relatively public set of texts and propositions. In the former case, negotiators argue that public release of draft trade treaty text would be detrimental and hinder the progress of negotiations. However, as is seen in the public discussion on the TPP, this secrecy is leading to mistrust of what exactly is being offered or given up. In the case of the climate change negotiations, interested stakeholders are often provided with large documents containing the negotiating positions of the various countries. This not only provides for a lot of public debate on the merits of each but also offers a great deal of insight into the positions of each nation and what they are seeking.

Australia has eleven concluded trade treaties that are presently in operation. Each treaty was negotiated on an individual basis. As a result of the differences in negotiation timings, each treaty receives the hallmarks of the political environment unique to the time a particular provision or section is negotiated. Chapters are “locked-in”, also at a point in time, and therefore internal components of trade treaties do not necessarily develop together at the same pace. This leaves Australian trade treaties prone to imperfections or distortions that are not altogether responsive to the contemporary trading landscape. All of them, once in force and with treaty text cemented, directly affect contemporary elements of Australian business and broad sectors of Australian society.

It is for this reason that the Australian Chamber has previously argued that the draft treaty text must be made available, at least to accredited representative groups of stakeholders, on a continuous basis, as it evolves over time. We envision such a system would be similar to the



United States' accredited adviser committee arrangements, which have been managed by the Office of the United States Trade Representative since 1974.<sup>6</sup> This will assist in ironing out unintended problems, and ensure negotiators keep returning to the touchstone of the sectors of Australian society who are supposed to use and benefit from the treaty. It also ensures that provisions of trade treaties are up-to-date and are actually going to be useful for business in the modern trading environment.

An appropriately tailored system of consultation during the development of an Australian treaty, followed by proper independent monitoring, will serve to keep treaty provisions relevant to Australian business. In this way, the democratic legitimacy of the ratification of the resulting treaty text will also be improved, and accordingly the in-force treaty will better tailored for the contemporary Australian (and wider) interests it is meant to serve. This enhanced legitimacy will result in interest groups assisting negotiators and being part of the treaty process, attaching to the treaty long after entry into force. Coupling the implementation of this proposed consultation system with ongoing monitoring mentioned above, Australian treaties negotiated to create improved economic outcomes will be more likely to be supported by Australian industry and civil society, and therefore more likely to achieve their stated objectives.

The Australian Chamber has been pleased to be part of the "Business Partnership Group" which is supporting the negotiation of the Indonesia – Australia Comprehensive Economic Partnership Agreement (IACEPA), and we believe that such models could be deployed for all future bilateral and region negotiations.

**Recommendation 5:**

- The Government should introduce an enhanced consultative procedure for the development of improved trade treaties, which would allow representative bodies to register for access to the draft treaty text within the terms of the relevant confidentiality agreements, in order to provide advice to negotiators throughout the negotiation process.

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<sup>6</sup> USTR Office of Intergovernmental Affairs & Engagement (IAPE) < <https://ustr.gov/about-us/advisory-committees> >.

## 4 Issues of interest:

### 4.1 US Trade Promotions Authority Certification

The US Trade Priorities Act of 2015 (S.995), which was passed in May 2015 to establish a new grant of Fast Track Authority for the TPP, includes Sec. 4(a)(2): 4

*CONSULTATIONS PRIOR TO ENTRY INTO FORCE – Prior to exchanging notes providing for the entry into force of a trade agreement, the United States Trade Representative shall consult closely and on a timely basis with Members of Congress and committees as specified in paragraph (1), and keep them fully apprised of the **measures a trading partner has taken to comply with those provisions of the agreement that are to take effect on the date that the agreement enters into force.***

This is a process commonly termed “Certification”. In practice, the US President withholds formal written notification to another party to a trade agreement that the US has satisfied *its* domestic approval processes until the US certifies *the other party* has altered that party’s domestic laws and policies to satisfy *US expectations* of what is needed to comply with the free trade agreement (FTA).

The TPP is the first treaty to come for consideration under the 2015 US Trade Promotions Authority and we urge the inquiry to consider the implications of this for Australia in ratifying the TPP. This means that, even if the US Congress has approved the TPP *and* that other country has satisfied its own domestic approval processes, it won’t come into force between the US and another country unless and until the US certifies the other country’s implementation. \

This certification process potentially gives the US leverage to rewrite the terms the parties reached during the negotiations and secure additional concessions *after* signing. No other country has this power. That is the US can be seen to be “first among equals”.

Every party retains its sovereign right to decide its own laws and policies, and stand by its interpretation, but exercising its sovereignty may come at a price. If the US refuses to certify compliance in a bilateral FTA, the other country is unable to enjoy any benefits it secured from the US, such as lower tariffs.

This power was previously exercised in the ratification of the Australia – US FTA where the Australian Copyright Legislation Amendment Bill 2004, which was introduced after the US was dissatisfied with the Australian Government’s US Free Trade Agreement Implementing Act (USFTAIA).

A list of potential areas where the US may seek additional negotiations in order for Australia to become “certified” is provided in Annex 1.

## 4.2 Economic studies

The Productivity Commission regularly, and the Senate Inquiry into Australia's Treaty Making Process, 2015 *Blind agreement: reforming Australia's treaty-making process* recommended:

### **Recommendation 8**

5.31 *The committee recommends that a cost-benefit analysis of trade agreements be undertaken by an independent body, such as the Productivity Commission, and tabled in parliament prior to the commencement of negotiations or as soon as is practicable afterwards. The cost-benefit analysis should inform the government's approach to negotiations.*

5.32 *The committee further recommends that:*

- *treaties negotiated over many years be the subject of a supplementary cost-benefit analysis towards the end of negotiations; and*
- *statements of priorities and objectives and cost-benefit analyses stand automatically referred to the Joint Standing Committee on Treaties for inquiry and report upon their presentation to parliament.*

No such study has been done for the TPP from an Australian perspective (Note Australia already has bilateral agreements with eight of the negotiating parties and so TPP is incremental to us, as opposed to the US which doesn't have such extensive existing connections)

Relevant international studies include:

- A Peterson Institute<sup>7</sup> study *The Economic Effects of the Trans-Pacific Partnership: New Estimates* (completed for the World Bank) shows that:
  - *In terms of the TPP's broader impact, the deal would lead to a 1.1 percent increase in the region's real income by 2030. The projected 0.5 percent increase for the U.S. is the smallest out of any TPP countries.*
  - *The biggest winners would be Vietnam, Malaysia and Brunei, with projected increases in real income of 8.1 percent, 7.6 percent and 5.9 percent, respectively. After the U.S., Australia has the next lowest projected real income growth at 0.6 percent, followed by Mexico with 1.0 percent growth.*
- A corresponding study *Trading Down: Unemployment, Inequality and Other Risks of the Trans-Pacific Partnership Agreement* by Tufts University<sup>8</sup> shows high levels of potential job destruction finding that:
  - *The TPP would lead to employment losses in all countries, totalling 771,000 lost jobs. Australia is estimated to lose about 39,000 jobs.*

<sup>7</sup> <https://piie.com/publications/wp/wp16-2.pdf>

<sup>8</sup> [http://www.ase.tufts.edu/gdae/Pubs/wp/16-01Capaldo-IzurietatPP\\_ES.pdf](http://www.ase.tufts.edu/gdae/Pubs/wp/16-01Capaldo-IzurietatPP_ES.pdf)



- *The TPP would lead to higher inequality, with a lower labour share of national income.*
- *The TPP would lead to losses in GDP and employment in non-TPP countries. In large part, the loss in GDP (-3.77 percent) and employment (879,000) among non-TPP developed countries would be due to losses in Europe, while developing country losses in GDP (-5.24%) and employment (-4.45 million) would reflect possible losses in China and India.*

Both studies were conducted from a US stand point and both are subject to the assumptions made within the models. The point is that without an Australian study undertaken by an appropriate independent group it is difficult to fully understand the implications for our economy.

Previous work by the Productivity Commission and Shiro Armstrong have highlighted the potential for some agreements to create a drag on our economy.

## 5 Specific Chapter issues:

Unless discussed below the Australian Chamber either supports the chapters or has no comment to make.

### 5.1 Chapter 3. Rules of Origin and Origin Procedures

Creating novel and divergent regulatory requirements for exporters and producers increases red tape. TPP introduces yet another set of rules and compliance for Australian importers and exporters.

The Australian Chamber's concerns are founded on the experience of Australian exporters and their claims with counterparty customs in precedent trade treaties. The risks to which we refer are of valid claims being rejected in the destination country; of non-party goods being claimed for preferential treatment; and to Australian exporters of exposure to direct investigation by foreign Customs authorities.

Our position is based on the practical questions arising from the type of issues Australian businesses face every day when engaging in trade, and how an exporter takes advantage of the preferences conferred in a trade treaty. This leads to simple questions such as:

- How does a company make a claim for preference?
- What happens to the Australian exporter when a valid claim for preferential tariff treatment is unfairly rejected?
- Who represents the exporter?
- What are the agreed timeframes for commercially responsive dispute resolution of the exporter's claim for preference, so that additional costs are not incurred?



- Who bears liability for costs and loss if the exporter's claim was perfectly valid but an administrative oversight causes a delay?
- What prevents non-party goods from being claimed?
- What prevents criminal networks from seeking to utilise the treaty?

Trade documentation and procedures have, over centuries, become international customary standards recognised by international practice, precisely because they answer these questions. Creating a new species of procedures and standards in each new trade treaty, however, makes processes opaque for Australian companies engaged in international trade and exposes them to greater risk when conducting trade. It also raises the possibility of fraudulent behaviour that will be harder to monitor, and provides avenues for non-party goods entering the trade zone, raising also the possibility of reputational risk for Australian products. It is these risks to importers and exporters which concern us.

Australia has now negotiated 11 treaties either bilateral or regional. Each one of these so far has contained a different set of rules and procedures for their use. If bilateral trade treaties are interim measures or 'building blocks' on the path to an eventual agreement at the multilateral level, then procedures for traders contained within these types of agreements must be harmonised in the horizontal sense in order to facilitate trade now, and under a future multilateral deal.

The recent public interest in the origin of products brings these rules and the way they are applied in trade treaties into focus. In order to claim preferential terms under the treaty, exporters must satisfy the appropriate conditions in calculating the "origin" of the goods. These claims are then scrutinised by the counterparty Government border control authorities. At present all trade treaties are silent about what happens when the counterparty Government agencies refuse to honour the treaty. However each one of Australia's trade treaties provides authority for the investigation of claims for preferential access by Australian exporters to be directly conducted by the agencies of a foreign Government.

TPP utilises a system of self-declaration for claiming preferential treatment in the country of import. The DFAT National Interest Assessment claims that the value of lower costs to Australian exporters is \$147, 823.62 annually. We contend that this information is incorrect in that while it may represent a level of savings in one area, it fails to consider additional costs for both importers and exporters.

Firstly the calculation is incorrect. Exporters are not required to provide any information about origin in order to export goods under preferential agreements. It is the importing country which requires information to be provided in order to provide appropriate information with which to claim the preferential terms. Because of jurisdictional controls, the responsibility for this rests with the importer, not the exporter. The importer is then required to substantiate their claim with reasonable



evidence of their claim. Historically this is supported via the provision of a Government issued certificate of origin to the exporter.

When countries negotiate so called “self certification” what they are doing is saying that their domestic border agencies will now allow **importers** to self declare the compliance with the terms of any given agreement. This is in fact the status quo. Then the issue becomes what are the “safe harbours” that importers can use in order to satisfy the evidentiary requirements for claiming preference (ie a reduction in border taxation) without incurring liability for false and misleading statements and associated penalties. The importer will then seek “appropriate” information from the supply chain (as the importer may not be directly in touch with the original exporter). The system requires documentary evidence that has legal standing. Relying on the word of others within the supply chain is not a legal defence. The presence of an exporter’s Government issued certification attesting to the origin of the goods has legal weight and so is a valued document that has supported international trade for centuries.

Under TPP, this system is upheld with the exception that the importer may self-declare the origin of the goods. However Chapter 3 confirms that the importer is in a position of liability and will need to provide reasonable evidence. We have held discussions with representatives of the US Government where they confirmed that the likely response in the USA will be higher bond levels in order to cover the risks of misdeclaration and they expect that importers will be required to increase their insurance coverage. In terms of the “reasonable” provision of information it was confirmed that the importer will need to have high degree of visibility of the process of manufacture of the goods and the logistics chain in order to satisfy the preferential import requirements of the TPP. These costs will be passed throughout the supply chain.

We note that we have experienced that the US Dept of Homeland Security have requested the exporter to produce a certificate of origin in previous investigations under AUSFTA and that certificate of origin issuance has increased up to 400% under JAEPA and other agreements where such a system also exists.

It is therefore unlikely that the “savings” suggested by DFAT in the NIA are realistic.

Finally, we note that Australian Government representatives are reported in minutes of the WTO Committee on Rules of Origin meeting of 22 April 2016 as (emphasis added):

*The representative of Australia thought that the presentation by the Secretariat offered a sobering picture of the difficulties which the HWP had encountered. During the information session, speakers had highlighted a number of key questions, including one about the policy reasons behind non-preferential rules of origin. He thought that it was important to reflect about that question and keep in mind what exactly the Committee was attempting to do. From Australia's perspective, non-preferential rules of origin were not important because MFN trade conditions were granted to all trade partners regardless of their*



*membership to the WTO. In addition, **it was no longer relevant to attribute the origin of a product to a single country. Linking marks of origin to harmonized rules of origin could be quite misleading in a context where inputs came from all over the world and in which firms were globalized.** This called for a careful assessment of whether harmonized rules would be a useful tool or not. His delegation stood ready to explore new ideas and to work with other delegations to answer those questions.*

While these comments are made in the context of non-preferential trade and domestic consumer law, the lack of a WTO consistent set for rules and procedures is giving licence to Governments to apply novel and divergent systems of rules and procedures for preferential trade. From the commercial perspective business doesn't differentiate the "why" aspect. They just deal with the compliance issues.

The Australian Chamber has championed the maintenance of the globally established systems of nationally certified origin and the global rules for calculation contained within the Revised Kyoto Convention of Simplification and Harmonisation of Customs Procedures – another treaty to which Australia has acceded (with the exception of its Annex K – Rules of origin).

In order to avoid a repeat of the mistakes of previous negotiations in developing yet further divergent sets of rules and administrative procedures, the Government must instruct its negotiators to ensure that these regional agreements

- i) harmonise the existing practices of the preceding MFN trade;
- ii) embrace the WTO Trade Facilitation Agreement and the provisions of the Revised Kyoto Convention of Simplification and Harmonisation of Customs Procedures – including Annex K – Rules of origin.

**Recommendation 6:**

- That Australia should champion a work programme at the World Trade Organisation level (and World Customs Organisation) to seek a global agreement on consistent rules and procedures for preferential and non-preferential border crossing arrangements within the context of the WTO Trade Facilitation Agreement.

### Recommendation 7:

The Government must instruct its negotiators to ensure that new regional agreements (TPP and Regional Comprehensive Economic Partnership (RCEP)) harmonise the existing practices of the preceding bilateral agreements and Australia ASEAN, New Zealand Free Trade Agreement (ANZFTA), and also embrace the WTO Trade Facilitation Agreement and the provisions of the Revised Kyoto Convention of Simplification and Harmonisation of Customs Procedures – including Annex K – Rules of origin.

## 5.2 Chapter 9 Investment

The Australian Chamber welcomes the significant inbound investment liberalisation which will be beneficial to foreign investors and Australian investment recipients. Under the TPPs MFN provisions it would appear that all TPP Parties will now be granted the equivalent FIRB thresholds as enjoyed by the US, Chile and NZ already. That is:

### Investment – new FIRB thresholds<sup>9</sup>

As the GDP implicit price deflator did not increase this year, the monetary thresholds in the table below will remain in place in 2016.

Non-land proposals		
Investor	Action	Threshold – more than:
<b>From FTA partner countries that have the higher threshold<sup>(a)</sup></b>	Acquisitions in non-sensitive businesses	\$1,094 million
	Acquisitions in sensitive businesses <sup>1</sup>	\$252 million
	Media sector <sup>2</sup>	\$0
	Agribusinesses	For Chile, New Zealand and United States, \$1,094 million. For China, Japan, and Korea, \$55 million (based on the value of the consideration for the acquisition and the total value of other interests held by the foreign person [with associates] in the entity)
<b>Foreign government investors</b>	All direct interests in an Australian entity or Australian business	\$0
	Starting a new Australian business	\$0

<sup>9</sup> <https://firb.gov.au/exemption-thresholds/monetary-thresholds/>



Land proposals		
Investor	Action	Threshold – more than:
<b>All investors</b>	Residential land	\$0
<b>Privately owned investors from FTA partner countries that have the higher threshold<sup>(a)</sup></b>	Agricultural land	For Chile, New Zealand and United States, \$1,094 million
		For China, Japan, Korea, \$15 million (cumulative)
	Vacant commercial land	\$0
	Developed commercial land	\$1,094 million
	Mining and production tenements	For Chile, New Zealand and United States, \$1,094 million
Others, \$0		
<b>Foreign government investors</b>	Any interest in land	\$0

(a) Agreement country investors are Chilean, Chinese<sup>3</sup>, Japanese, New Zealand, South Korean and United States investors, except foreign government investors.

<sup>1</sup> Sensitive businesses include media; telecommunications; transport; defence and military related industries and activities; encryption and securities technologies and communications systems; and the extraction of uranium or plutonium; or the operation of nuclear facilities.

<sup>2</sup> For investment in the media sector, a holding of at least five per cent requires notification and prior approval regardless of the value of investment.

<sup>3</sup> Once the China-Australia Free Trade Agreement enters into force.

<sup>4</sup> Low threshold land includes mines and critical infrastructure (for example, an airport or port).

### 5.3 Chapter 18 Intellectual Property

During 2015 The Australian Government asked the Productivity Commission to undertake a 12 month public inquiry into Australia's intellectual property system. This inquiry is now complete, but the final report has not been released at the time of writing.

The Productivity Commission is tasked with *recommending changes to the current system to improve the overall wellbeing of Australian society the Commission was to have regard to:*



- *incentives for innovation and investment, including freedom to build on existing innovation*
- *Australia's international trade obligations*
- *the relative contribution of intellectual property to the Australian economy*
- *the economy-wide and distributional consequences of recommendations, including their impacts on trade and competition*
- *ensuring the intellectual property system will be efficient and robust through time, in light of economic changes*
- *how proposed changes fit with, or may require changes to, other existing regulation or forms of assistance*
- *the relevant findings and recommendations of recently completed reviews.*

Intellectual property policy can contribute to a more competitive economy, benefiting both businesses and consumers by promoting innovation, productivity and access to markets. Strong intellectual property policy provides an incentive to innovate and prevents others from free-riding without contributing to the costs. However, overly strong intellectual property rules can stifle innovation and prevent valuable ideas from being fully exploited.

The Australian Chamber believes that Australia's intellectual property regime balances its conflicting objectives relatively well, but there is still scope for further reform. Our ideas on this are contained in our submission to the Productivity Commissions inquiry.<sup>10</sup>

In particular, Australia's intellectual property system presents challenges for small and medium enterprises (SMEs) that often lack the resources to apply for, enforce, or defend their property rights. As a result, SMEs use the intellectual property system far less than larger firms.

The Australian Chamber's initial submission made recommendations relating to:

- Compensation for rights holders impacted by reforms.
- Personal or domestic use of copyrighted material.
- Introduction of fair use exceptions.
- Fixed term exceptions (as an alternative to fair use exceptions).
- Third party use of copyrighted material.
- Parallel imports.
- Complexity.
- Assessment delays.
- Innovation patents.

We welcome the Australian Government's resistance to calls for increased IP terms, particularly on Biologics as negotiated in the agreement, however we are concerned that the US will attempt to renegotiate these provisions within the certification efforts post-ratification.

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<sup>10</sup> [https://13-acci.cdn.aspedia.net/sites/default/files/uploaded-content/field\\_f\\_content\\_file/pc\\_inquiry\\_into\\_ip\\_draft\\_report\\_submission\\_june\\_2016.pdf](https://13-acci.cdn.aspedia.net/sites/default/files/uploaded-content/field_f_content_file/pc_inquiry_into_ip_draft_report_submission_june_2016.pdf)



We are also concerned that the TPP may in fact create “regulatory chill” in Australia and discourage the Government from further liberalising the Australian IP environment, as may be recommended by the Productivity Commission.

**Recommendation 8:**

That the Australian Government resists any calls to increase protections on Intellectual Property as a result of TPP entry into force actions.

## 6 Unilateral Action Opportunities

At present, there are levels of uncertainty about the likely ratification of the TPP across all of the negotiating parties. The Australian Government should consider alternate pathways for trade and investment liberalisation under the potential scenarios of both entry into force or not for the TPP.

In the end Australia has already negotiated to undertake further liberalisation of our own tariffs and investment regimes plus other areas covered by the TPP. Australia is also negotiating a range of other agreements including the Regional Comprehensive Economic Partnership (RCEP) and numerous bilaterals. We imagine that the terms of the TPP will be the basis for “landing zones” for these other negotiations.

The Australian Government can now unilaterally apply these terms even if the TPP never enters into force. There is little point retaining costs and barriers in order to use them as trading points in negotiations, while all the while they continue to add unnecessary costs to our economy, Removing the domestic barriers Australian companies become more competitive.

**Recommendation 9:**

That the Government commit to unilaterally removing existing barriers to trade and investment to enable full benefits to flow to the Australian economy



## 7 Annex 1: Areas where US “certification” could be applied to seek additional “compliance” for Australian entry into force.

The US Trade Representative’s office publishes an annual assessment of areas they regard as barriers to trade in foreign countries. From this we can see the following items which the US Government may seek to address in the “certification” process.

### 7.1 2016 National Trade Estimates Report On Foreign Trade Barriers<sup>11</sup>

#### TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

##### 7.1.1 Sanitary And Phytosanitary Barriers

###### Animal Health

###### ***Beef and Beef Products***

Australia requires completion of a complex approval process before it will permit the importation of bovine products from a country that has reported any indigenous cases of bovine spongiform encephalopathy (BSE). Under Australia’s requirements, Food Standards Australia New Zealand (FSANZ) conducts an individual country risk analysis. In August 2013, an audit team from FSANZ conducted an inspection of U.S. production and processing facilities. In its final report, FSANZ found that the United States has comprehensive and well-established controls to prevent the introduction and amplification of the BSE agent within the cattle population and to prevent contamination of the human food supply with the BSE agent. It reported that beef imports from the United States are safe for human consumption and recommended Category 1 status under Australia’s import requirements, indicating that beef from the United States meets the negligible BSE risk requirements of the World Organization for Animal Health (OIE) and can be imported subject to specific import conditions. U.S. and Australian officials are currently coordinating specific wording for required export certificates for heat-treated, shelf-stable beef products from the United States, after which the export of these products from the United States to Australia will be able to resume.

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<sup>11</sup> <https://ustr.gov/sites/default/files/2016-NTE-Report-FINAL.pdf>



For fresh (chilled or frozen) beef and beef products in December 2015, the Australian government announced the start of a review of its import requirements for three countries that have applied for eligibility to export to Australia: the United States, Japan and the Netherlands. This review will consider fresh (chilled or frozen) beef and beef products such as meat, bone, and offal of cattle, buffalo, and bison. The start of this review is a necessary step in the process of fully re-opening the Australian market to U.S. beef. The United States will continue to urge Australia to open its market fully to U.S. beef and beef products based on science, the OIE guidelines, and the United States' negligible risk status for BSE.

### ***Pork***

Frozen boneless pork is currently the top U.S. agricultural export to Australia, valued at \$136 million in 2015. However, due to concerns about porcine reproductive and respiratory syndrome (PRRS) and weaning multisystemic wasting syndrome (PMWS), the importations of fresh/chilled pork and bone-in products are not currently permitted. The United States has requested that Australia remove all PRRS- and PMWS-related restrictions and has provided scientific evidence to document the safety of U.S. pork products. Australia has requested additional scientific information. Access to the Australian market for fresh/chilled pork, bone-in pork, and pork products continues to be a high priority for the United States.

### ***Poultry***

Australia currently prohibits imports of uncooked poultry meat from all countries except New Zealand.

While cooked poultry meat products may be imported, the current import conditions (as set out in an import risk analysis) require that imported poultry meat products must be cooked to a minimum core temperature of 74°C for 165 minutes or the equivalent. This temperature requirement does not permit importation of cooked product that is suitable for sale in restaurants or delicatessens, thus limiting commercial opportunities.

In 2012, Australia initiated an evaluation of whether it would grant access for U.S. cooked turkey meat to the Australian market under amended import conditions. The Australian government is currently conducting an import risk analysis to assess this issue. The United States has identified resolution of this issue as a high priority and continues to work with Australia to gain meaningful commercial market access for cooked turkey meat.

## **Plant Health**

### ***Stone Fruit***



In July 2013, Australia opened its market to peaches and nectarines which have been fumigated with methyl bromide before being shipped to Australia. In December 2014, Australia also agreed to accept methyl bromide fumigation against spotted wing drosophila (SWD) in plums. The Australian and U.S. plant protection organizations consulted to successfully implement the methyl bromide fumigation program for plums for the 2015 export season. As a result, the Australian market was successfully opened for California plum exports for the 2015 season. The United States is continuing to work with Australia to obtain market access for U.S. apricots and hybrids of apricots and plums.

### **Apples**

Australia currently prohibits the importation of apples from the United States based on concerns about fire blight and other pests. The U.S. Government and U.S. stakeholders have engaged with Australian officials to demonstrate that U.S. mature, symptomless apples pose no risk of transmission of fire blight. In October 2009, Australia published a pest risk analysis for apples from the United States and identified three additional fungal pathogens of concern to Australian regulatory authorities. Australia has indicated that in light of the U.S. Government's provision of additional information to Australia in December 2014, Australia will shortly resume work on a previously commenced import risk analysis for apples from the United States. The United States continues to work to obtain access to Australia's market for apples, which is a priority item for the United States.

## 7.1.2 Government Procurement

Under the AUSFTA, the Australian government opened its market for covered government procurement to U.S. suppliers, eliminating preferences for domestic suppliers and committing to use fair and transparent procurement procedures. In the Trans-Pacific Partnership (TPP), Australia has made similar government procurement commitments to the United States and other TPP partners.

Australia began negotiations to join the World Trade Organization's plurilateral Agreement on Government Procurement (GPA) in June 2015.

## 7.1.3 Intellectual Property Rights Protection

Australia generally provides strong intellectual property rights (IPR) protection and enforcement through legislation that, among other things, criminalizes copyright piracy and trademark counterfeiting. Under the AUSFTA, Australia must provide that a pharmaceutical product patent owner be notified of a request for marketing approval by a third party for a product claimed by



that patent. U.S. and Australian pharmaceutical companies have expressed concerns about delays in this notification process.

Under the TPP Agreement, which sets strong and balanced standards on IPR protection and enforcement, Australia has committed to more robust standards for its IPR regime. The United States continues to work with Australia to address IPR issues through TPP implementation as well as through bilateral engagement.



## 8 About the Australian Chamber

The Australian Chamber of Commerce and Industry speaks on behalf of Australian business at home and abroad.

Our membership comprises all state and territory chambers of commerce and dozens of national industry associations. Individual businesses also get involved through our Business Leaders Council.

We represent more than 300,000 businesses of all sizes, across all industries and all parts of the country, making us Australia's most representative business organisation.

The Australian Chamber strives to make Australia a great place to do business in order to improve everyone's standard of living.

We seek to create an environment in which businesspeople, employees and independent contractors can achieve their potential as part of a dynamic private sector. We encourage entrepreneurship and innovation to achieve prosperity, economic growth and jobs.

We focus on issues that impact on business, including economics, trade, workplace relations, work health and safety, and employment, education and training.

We advocate for Australian business in public debate and to policy decision-makers, including ministers, shadow ministers, other members of parliament, ministerial policy advisors, public servants, regulators and other national agencies. We also represent Australian business in international forums.

We represent the broad interests of the private sector rather than individual clients or a narrow sectional interest.



## Australian Chamber Members

**AUSTRALIAN CHAMBER MEMBERS:** BUSINESS SA CANBERRA BUSINESS CHAMBER CHAMBER OF COMMERCE NORTHERN TERRITORY CHAMBER OF COMMERCE & INDUSTRY QUEENSLAND CHAMBER OF COMMERCE & INDUSTRY WESTERN AUSTRALIA NEW SOUTH WALES BUSINESS CHAMBER TASMANIAN CHAMBER OF COMMERCE & INDUSTRY VICTORIAN' CHAMBER OF COMMERCE & INDUSTRY **MEMBER NATIONAL INDUSTRY ASSOCIATIONS:** ACCORD – HYGIENE, COSMETIC & SPECIALTY PRODUCTS INDUSTRY **AGED AND COMMUNITY SERVICES AUSTRALIA** AIR CONDITIONING & MECHANICAL CONTRACTORS' ASSOCIATION **ASSOCIATION OF FINANCIAL ADVISERS** ASSOCIATION OF INDEPENDENT SCHOOLS OF NSW **AUSTRALIAN SUBSCRIPTION TELEVISION AND RADIO ASSOCIATION** AUSTRALIAN BEVERAGES COUNCIL LIMITED AUSTRALIAN DENTAL ASSOCIATION AUSTRALIAN DENTAL INDUSTRY ASSOCIATION AUSTRALIAN FEDERATION OF EMPLOYERS & INDUSTRIES AUSTRALIAN FEDERATION OF TRAVEL AGENTS **AUSTRALIAN FOOD & GROCERY COUNCIL** AUSTRALIAN HOTELS ASSOCIATION **AUSTRALIAN INTERNATIONAL AIRLINES OPERATIONS GROUP** AUSTRALIAN MADE CAMPAIGN LIMITED **AUSTRALIAN MINES & METALS ASSOCIATION** AUSTRALIAN PAINT MANUFACTURERS' FEDERATION **AUSTRALIAN RECORDING INDUSTRY ASSOCIATION** AUSTRALIAN RETAILERS' ASSOCIATION AUSTRALIAN SELF MEDICATION INDUSTRY AUSTRALIAN STEEL INSTITUTE **AUSTRALIAN TOURISM AWARDS** AUSTRALIAN TOURISM EXPORT COUNCIL **AUSTRALIAN VETERINARY ASSOCIATION** BUS INDUSTRY CONFEDERATION **BUSINESS COUNCIL OF CO-OPERATIVES AND MUTUALS** CARAVAN INDUSTRY ASSOCIATION OF AUSTRALIA **CEMENT CONCRETE AND AGGREGATES AUSTRALIA** CHIROPRACTORS' ASSOCIATION OF AUSTRALIA **CONSULT AUSTRALIA** CUSTOMER OWNED BANKING ASSOCIATION **CRUISE LINES INTERNATIONAL ASSOCIATION** DIRECT SELLING ASSOCIATION OF AUSTRALIA **ECOTOURSIM AUSTRALIA** EXHIBITION AND EVENT ASSOCIATION OF AUSTRALASIA **FITNESS AUSTRALIA** HOUSING INDUSTRY ASSOCIATION **HIRE AND RENTAL INDUSTRY ASSOCIATION LTD** LARGE FORMAT RETAIL ASSOCIATION **LIVE PERFORMANCE AUSTRALIA** MASTER BUILDERS AUSTRALIA **MASTER PLUMBERS' & MECHANICAL SERVICES ASSOCIATION OF AUSTRALIA** MEDICAL TECHNOLOGY ASSOCIATION OF AUSTRALIA **MEDICINES AUSTRALIA** NATIONAL DISABILITY SERVICES **NATIONAL ELECTRICAL & COMMUNICATIONS ASSOCIATION** NATIONAL EMPLOYMENT SERVICES ASSOCIATION **NATIONAL FIRE INDUSTRY ASSOCIATION** NATIONAL RETAIL ASSOCIATION **NATIONAL ROAD AND MOTORISTS' ASSOCIATION** NSW TAXI COUNCIL **NATIONAL ONLINE RETAIL ASSOCIATION** OIL INDUSTRY INDUSTRIAL ASSOCIATION **OUTDOOR MEDIA ASSOCIATION** PHARMACY GUILD OF AUSTRALIA **PHONOGRAPHIC PERFORMANCE COMPANY OF AUSTRALIA** PLASTICS & CHEMICALS INDUSTRIES ASSOCIATION **PRINTING INDUSTRIES ASSOCIATION OF AUSTRALIA** RESTAURANT & CATERING AUSTRALIA **RECRUITMENT & CONSULTING SERVICES ASSOCIATION** SCREEN PRODUCERS AUSTRALIA **THE TAX INSTITUTE** VICTORIAN AUTOMOBILE CHAMBER OF COMMERCE