



**Australian Government**  
**Productivity Commission**

Submission to the  
Joint Standing Committee on Treaties  
Inquiry into Certain Aspects of the  
Treaty-Making Process in Australia

Productivity Commission  
Submission

July 2020

The Productivity Commission is pleased to make this submission to the Joint Standing Committee on Treaties (the Committee) in reference to its inquiry into Certain Aspects of the Treaty-Making Process in Australia.

The Commission is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. We contribute by providing independent advice and information to governments, and on the communication of ideas and analysis to the community more broadly.

The core function of the Commission is to conduct public inquiries at the request of the Australian Government on key policy or regulatory issues bearing on Australia's economic performance and community wellbeing. In addition, we undertake a variety of research at the request of the Government and to support its annual reporting, performance monitoring and other responsibilities.

This submission draws on a range of work undertaken by the Commission on trade agreements, including (but not limited to):

- a commissioned research study into bilateral and regional trade agreements completed in 2010 (PC 2010)
- self-initiated research into rising protectionism in 2017 (PC 2017b)
- an inquiry into Australia's intellectual property arrangements (PC 2016), which examined issues related to intellectual property provisions in international trade agreements
- the Commission's annual *Trade and Assistance Review*, which discusses developments in Australian trade policy and international trade.

This submission focuses on the following terms of reference for the present inquiry:

- the consultation process undertaken by the Department of Foreign Affairs and Trade (DFAT) before and during the negotiation of trade agreements
- the effectiveness of independent analysis to inform negotiation or consideration of trade agreements.

## **The importance of international trade to Australia**

International trade is vitally important to Australia's economy. Australia exported about \$470 billion of goods and services in 2018-19, and imported \$420 billion (DFAT 2020b). Trade has been an important driver of Australia's growth, and many Australian jobs rely on trade. Exporting firms tend to be more successful, and exposure to international competition drives innovation and more efficient resource use (PC 2017b).

Trade has also had a pronounced effect globally, particularly in developing and emerging economies. 'Trade creates employment in export-facing manufacturing and services, which

helps facilitate the movement of people out of often low-productivity agriculture’ (PC 2018, p. 42). The Commission has estimated that, over the past 25 years, more than a billion people have lifted themselves above the poverty line, in many cases due to the effects of global trade (PC 2018).

However, since the global financial crisis, global trade has confronted headwinds sparked by a new wave of populist sentiment for protectionism. These trends are expected to accelerate following the COVID-19 global pandemic, reflecting support for measures that promote economic nationalism. Elevated geopolitical tensions are manifesting as heightened distrust of globalism and the global trade system. As noted in *Rising Protectionism*, ‘the broad support of the community for open markets cannot be taken for granted’ (PC 2017b, p. 67).

Australia has been at the forefront of efforts to liberalise global trade for decades through the World Trade Organisation (WTO) system. Recognising the domestic benefits of low trade barriers, Australia has unilaterally lowered its tariff barriers (PC 2010). The Commission has previously noted that it is important that Australia continues to keep its own borders open for trade (box 1).

Multilateral trade liberalisation can bring greater benefits through stimulating trade globally. However, negotiations through the WTO have stalled, and this is unlikely to change anytime soon (box 1) (PC 2017b). It is important that Australia continues to work with international partners to tackle the issues facing the global trading system. In this respect, preferential trade agreements — agreements limited to a subset of countries — may play a role in fostering increased global trade under certain circumstances.

Australia has entered into a wide range of trade agreements with its major trading partners, including China, the United States, New Zealand and Japan. Recently, Australia entered into the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) agreement with 10 other countries, and agreements with Hong Kong, Peru and Indonesia entered into force this year. Agreements are under negotiation with countries including the European Union, India and the United Kingdom.

The coverage of preferential trade agreements has become broader over time. Early trade agreements focused mostly on tariff reductions for merchandise trade. However, since the 1990s, many of Australia’s trade agreements include a focus on non-tariff barriers, such as restrictions on investment and the movement of people. For example, the CPTPP contains chapters on investment, services, financial services, entry for businesspeople, telecommunications, e-commerce, government procurement, state-owned enterprises, and intellectual property.

---

### Box 1      **Challenges facing the world trading system**

The Commission's 2017-18 *Trade and Assistance Review* outlined the challenges facing the rules-based world trading system — and the potential path forward for Australia. Although there have been some successes, no broad multilateral agreement has been concluded since 1994, and the use of tariffs and other measures is on the rise.

In part, these challenges reflect a change in US trade policy following Donald Trump's electoral victory in 2016. The United States withdrew from several trade agreement negotiations, and imposed tariffs on steel and aluminium imports and on imports from China. This was met with reciprocal tariffs by China.

Beyond this, there are also issues at the core of the world trading system.

- World Trade Organisation (WTO) member states are falling short on their obligations to report on changes to policies affecting trade. Some members consider that monitoring is not covering all the issues it should — such as subsidies through state-owned enterprises.
- Trade negotiations through the WTO have stalled. In part, this reflects the fact that most tariffs have already reached a low level. It also reflects a shift in the membership of the WTO towards developing countries, which has made reaching agreement across a broad agenda difficult.

The Commission also noted that the WTO dispute resolution mechanism was under threat, with the US Government refusing to approve appointments to the appeals body. Since that time, many WTO members have agreed to a multi-party interim appeal arbitration arrangement — although the US is not one of those members.

In the face of these challenges, the most important policy setting for Australia is to keep its own borders open to trade, and there is scope for the Government to continue to reduce barriers to trade. Beyond this, there is also a need for Australia, through the Department of Foreign Affairs and Trade, to continue to work with other countries to resolve the challenges facing the WTO. This could include:

- reinvigorating the WTO negotiation function — Australia should continue to work with like-minded members to negotiate plurilateral and sector specific agreements, which can provide a stepping stone for multilateral liberalisation
- putting forward ideas to improve the rules-based trading system — a lack of commitment to WTO processes and consensus on the rules needed is undermining the authority of the WTO.

Source: PC (2018).

Regional trade agreements can have significant benefits, particularly where they cover a wide range of major trading partners and where members remain open to participation by other countries. Under these conditions, 'a regional approach to cooperation complements and can bring many of the benefits of multilateral arrangements' (PC 2017b, pp. 92–93).

They can also act as a stepping stone to future multilateral liberalisation, and provide flexibility for countries willing to work together (PC 2018). The CPTPP and the Regional Comprehensive Economic Partnership are two examples of such agreements, although, as they are either relatively new or still under negotiation, there is little empirical evidence of their effectiveness as yet.

---

The outcomes of bilateral trade agreements are more mixed. On the one hand, these agreements can increase access to markets where other agreements are unlikely to be reached. They can also provide a stepping stone for future unilateral, regional or multilateral trade reform efforts, particularly where a sequence of bilateral agreements are signed. For example, the Australian and New Zealand Productivity Commissions noted that the closer economic relations arrangements between the two countries:

... appears to have helped change opinions about trade protection for manufacturing and thereby paved the way for unilateral reductions in general tariffs, particularly in New Zealand. In this way, CER bilateral trade arrangements, unlike many other preferential arrangements, may have acted more as a ‘building block’ than ‘stumbling block’ in the pursuit of wider reform and economic integration. (PC and NZPC 2012, p. 5)

On the other hand, the Commission, and others, have raised several concerns about bilateral trade agreements in practice. Narrow agreements can divert trade from other trading partners and reduce incomes, rather than leading to an overall net increase in trade. They can also be complex for businesses to understand — in particular, the Commission has noted the complexity of rules of origin arrangements in bilateral (and regional) agreements (Crook and Gordon 2017).

These issues do not mean that bilateral trade agreements should never be pursued. Rather, it highlights the importance of a good process for assessing them — extensive analysis and proper consultation with affected parties in the community is key. Where these processes are not in place, there is a risk that these agreements will do more harm than good.

## **Consultation undertaken by the Department of Foreign Affairs and Trade**

High-quality consultation is a well-established principle for all aspects of the policy making process. Effective consultation and stakeholder engagement help governments understand the implications of proposed policy actions on different parts of the community that may have competing needs and interests. It also assists in bringing a common understanding of proposed actions to the community and in gaining acceptance of proposed reforms (PC 2017a, p. 307). Effective engagement is representative, informative and responsive (box 2).

### **Box 2      What is effective stakeholder engagement?**

For stakeholder engagement mechanisms to be effective, they should be:

- representative — all relevant stakeholders and communities should have an opportunity to express their views
- informative — all relevant stakeholders and communities should have an opportunity to obtain information that enables them to increase their level of knowledge on issues that are being considered
- responsive — the information and views gathered through the engagement process should be taken seriously by decision makers and used to inform decisions.

Source: PC (2017a).

---

Trade agreements are no different. Trade agreements can affect broad sections of the community with differing needs and interests, and their effects are not always easy to identify. Consultation can allow governments to understand the business and community contexts in which prospective agreements will operate, identify impediments to trade and investment in potential partner countries, and more accurately represent the views and interests of the Australian community. This helps to achieve better outcomes.

Effective consultation also builds trust in the actions of governments. Through consultation, the community can gain insight into the agreement-making process, which can help them understand options, trade-offs and outcomes. Such transparency legitimises the decisions of government.

The need for effective consultation is heightened by the trend towards agreements that cover a much broader range of issues (discussed above). A broader set of issues amplifies the potential costs and benefits of an agreement, underscoring the need for governments to consult effectively to determine the content of an agreement and to understand potential impacts on the community.

## **Issues with current consultation processes**

DFAT's current consultation process for trade agreements involves providing information about prospective trade agreements on its website, seeking submissions from interested parties, and holding consultations with stakeholders such as state and territory governments, peak industry bodies, companies, academics, unions and consumer groups (DFAT 2020a). DFAT submitted to the 2015 Foreign Affairs, Defence and Trade References Committee inquiry into the Commonwealth's treaty-making process that:

The aims of [its] consultation process are to give decision-makers, ultimately Ministers, access to a wide range of information and to provide interested persons and groups with the opportunity to present their views to the government — including during the course of treaty negotiations. (DFAT 2015, p. 7)

However, there appear to be some shortcomings in DFAT's approach. In previous Commission inquiries, many stakeholders stated that the agreement-making process is not transparent (PC 2010, 2016, 2017b). Some stakeholders are excluded from consultations, and it is unclear how or why those who are chosen for consultation are identified. Some stakeholders can also be unaware that their interests are being affected by a proposed agreement (PC 2010, p. 296; SFADTRC 2015, p. 44). Further, the process can be rushed, with limited timeframes for input (PC 2016, p. 493).

Transparency is particularly problematic with respect to trade negotiations. Stakeholders reported that opportunities for consultation become very limited once negotiations begin, precluding ongoing, contextual advice from industry and civil society groups throughout negotiations (PC 2010, p. 296). Negotiators are also reluctant to provide details of the proposed agreement to stakeholders due to concerns about confidentiality and prejudicing negotiations (discussed below). This makes it difficult for stakeholders to meaningfully comment on agreement provisions.

These issues appear to be persistent, and have been raised in other fora, such as:

- the Senate Foreign Affairs, Defence and Trade References Committee's 2015 inquiry into the Commonwealth's treaty-making process (SFADTRC 2015)
- the Joint Standing Committee on Treaties' 2016 review of the Trans-Pacific Partnership Agreement (JSCOT 2016)
- the Senate Foreign Affairs, Defence and Trade References Committee's 2018 inquiry into the then proposed Comprehensive and Progressive Agreement for the Trans-Pacific Partnership (SFADTRC 2018)
- the Joint Standing Committee on Treaties' 2019 review of the Comprehensive Economic Partnership Agreement between the Government of Australia and the Government of Indonesia, the Free Trade Agreement between Australia and Hong Kong, China, and the Investment Agreement between the Government of Australia and the Government of the Hong Kong Special Administrative Region of the People's Republic of China (JSCOT 2019).

### Confidentiality agreements can be used to increase transparency

A key reason why trade negotiations are not transparent is that governments sometimes wish to withhold information from public view in the short term, to ensure that internal discussions on policy proposals can be full and frank, without fear of prejudicial exposure. There are also instances when the other party seeks to place limits on the disclosure of information (PC 2016, p. 523). While these may be legitimate reasons to withhold information in some circumstances, they affect the quality of stakeholder consultation and, ultimately, negotiated outcomes.

The use of confidentiality agreements (or deeds) between government and key stakeholders can go some way to increasing transparency in trade negotiations, by enabling formal consultation on draft treaty text. While not everyone can be in the negotiating room, identifying parties that are capable of offering critical assessments of proposals can help negotiators understand where the benefits of prospective agreements lie, and where costs might be imposed (PC 2017b, p. 95). Further, over time, confidentiality agreements can act as a building block towards greater trust and understanding between DFAT and experienced participants, potentially allowing the department to expand the reach of its consultations to include a broader set of parties (PC 2010, p. 307).

### Widening access to draft treaty text

Once a draft agreement is completed, exposing it to public scrutiny before it is signed into law would also help meet community expectations for a more inclusive consultation approach. It would allow those who are not part of confidentiality agreements to put forward their views, potentially avoiding or mitigating the cost of unintended consequences. Giving interested parties the opportunity to evaluate and comment on an agreement draft would also

---

build a better understanding of the role of trade in the economy, as well as a better appreciation of the choices and their respective pros and cons. This would help to combat perceptions that secrecy during negotiations leads to sub-optimal outcomes for some members of the community, and help build support for open markets (PC 2017b, p. 95).

### Guidance for intellectual property provisions in trade agreements

In its inquiry into intellectual property (IP) arrangements, the Commission considered that concerns about a lack of transparency regarding IP provisions in international treaties could be addressed by best practice guidance. Guidance could take different forms, such as a draft template text that could be used in future negotiations, or a statement of principles outlining Australia's negotiating stance. This could include the identification of best-practice procedures relating to IP negotiations, such as conducting negotiations in an open and transparent manner as much as possible. The inquiry recommended that Australian Government task DFAT and an interdepartmental IP Policy Group (also recommended by the inquiry) with developing this guidance (PC 2016, p. 39).

### **Independent analysis to inform negotiation and consideration of trade agreements**

For most trade agreements, DFAT commissions a feasibility study before negotiations begin, and completes a National Interest Analysis after the agreement has been signed. Feasibility studies use economic modelling to provide 'outer envelope' estimates of potential benefits, while providing an opportunity for public input and background information on existing trade flows. National Interest Analyses typically summarise potential trade opportunities, provide qualitative analysis on the trade agreement's intended effects and relate the agreement to the Government's objectives. National Interest Analyses are also accompanied by a Regulation Impact Statement prepared by DFAT, which details the effect of the agreement on regulatory costs and includes a 'what if' analysis of potential savings from goods markets access.

Estimating the effects of trade agreements involves numerous challenges and practical difficulties. As noted earlier, contemporary trade agreements address areas beyond tariffs and quotas, including competition policy, government procurement rules, intellectual property and other non-tariff barriers. Moreover, there is an inherent difficulty in quantifying impacts of trade barriers to services and investment, partly due to variations in the quality and completeness of data (PC 2015b, p. 82). These challenges should not be used to justify less scrutiny, but as an indication that results from quantitative analyses may not always provide a complete picture.

While acknowledging the difficulties of assessing trade agreements, the Commission sees scope for improvement with the current process. Pre-agreement feasibility studies are often constrained in their assessment of the costs and benefits of agreements because they consider scenarios that quickly become irrelevant as provisions change during negotiations. And while



---

National Interest Analyses do consider the final agreement, they are unable to inform Cabinet’s decisions about whether agreements should be signed, since they are conducted after signing.

In addition, the assumptions underpinning feasibility analyses tend to overstate the expected net benefits of agreements (PC 2010, p. 292). For example, modelling in feasibility studies usually assume that tariffs are reduced to zero (without considering carve outs or phase-in periods) and that potential rules of origin have no impact on industry costs or production technology. Despite these assumptions being optimistic, results from these models have been used without qualification in public statements promoting trade agreements. This both limits the usefulness of feasibility studies in informing decision makers about whether a trade agreement is worth pursuing, and creates unrealistic expectations that, when unmet, may cause businesses and other affected parties to lose confidence in preferential trade agreements (PC 2010, pp. 290–295).

Feasibility studies are also not always undertaken, or have created concerns that they are used to legitimise a particular course of action due to a perception that they are not completed with sufficient independence (PC 2010, p. 306). In some instances, a lack of publicly released analysis means it is not clear if feasibility studies have been undertaken (box 3). Although feasibility studies have been conducted for some trade agreements by prospective partner nations or international institutions, these generally do not fully consider Australian interests, and are not a substitute for independent Australian analysis.

---

**Box 3      Have feasibility studies been conducted?**

The Commission has been unable to find publicly released feasibility studies for several recent trade agreements, reflecting a lack of transparency in the agreement-making process. These agreements include the:

- Peru–Australia FTA (in force since 11 February 2020)
- Pacific Agreement on Closer Economic Relations Plus (concluded on 14 June 2017 but not yet in force)
- Pacific Alliance FTA (under negotiation since 30 June 2017).

Some trade agreements have had feasibility studies conducted by foreign governments or international institutions but no publicly released Australian feasibility studies. These include the:

- Australia–European Union FTA (under negotiation since 18 June 2018). The European Commission has released a feasibility study produced in collaboration with an LSE Enterprise-led consortium (EC 2017)
- Australia–United Kingdom FTA (under negotiation since 17 June 2020). The UK Department for International Trade has conducted a feasibility study within their report outlining the United Kingdom’s strategic approach to negotiations (UK DIT 2020)
- Comprehensive and Progressive Agreement for Trans-Pacific Partnership (in force since 30 December 2020). The Australian Government has previously cited projections from modelling undertaken by the World Bank and the Peterson Institute for International Economics as the estimated benefits of the agreement (DFAT 2016; Petri and Plummer 2016; World Bank 2016).

## A two-stage process for robust and independent impact assessment

The Commission has proposed a two-stage process that would improve the assessment of the economic costs and benefits of trade agreements, acknowledging that broader geopolitical or strategic objectives may also be embedded within agreements. The first stage would be a pre-negotiation analysis that provides a scenario analysis of a range of possible outcomes, using assumptions that reflect a mix of potential agreement provisions. A second, final text analysis would then be completed after negotiations are concluded but before signing, and would aim to provide greater clarity about the costs and benefits of the actual agreement. These proposals are discussed in further detail below.

The proposed analyses should be conducted by a body independent of the executive. Analyses conducted by agencies with no decision-making powers are more credible, since they are less likely to face undue influence from vested interests. Independent, transparent analysis is also important in gaining public trust, by making it clear that evidence is gathered in a manner that prioritises the public interest (Banks 2011, p. 2). Transparent analysis also leads to improved models and methods of analysis of trade agreements.

In addition, independence is essential where people are unable to judge the credibility of analyses for themselves. Economic modelling, in particular, is driven by a range of assumptions and methodologies (box 4), and it may not be easy for the average person to judge the validity of these complex and technical models. Where people are unable to assess the credibility of analyses themselves, they often turn to proxies such as who conducted the research and who paid for it (Banks 2009, p. 17).

Independence does not mean that assessments of trade agreements will prove more accurate — independent assessments are still subject to the raft of challenges outlined above, and economic modelling is necessarily stylised and subject to a degree of uncertainty. Nonetheless, independence improves the credibility and validity of analyses by ensuring that they are not perceived as being created to legitimise a pre-determined course of action. It also provides greater transparency and accountability to a process often characterised by vague aspirational claims. And it safeguards against exaggerated trade agreement impact estimates that may influence policy makers to pursue trade policies that favour a narrow group over broader community interests.

The need for independent, transparent analysis of trade agreements is a recurring issue that has been highlighted in many inquiries and reviews (JSCOT 2016, 2018, 2019; JSCOTIG 2015; SFADTRC 2015, 2018). Independent assessments for trade agreements have also been recommended and affirmed in numerous Commission reports covering a wide range of sectors and issues (PC 2010, 2014, 2015b, 2015a, 2016, 2017b, 2018).

---

**Box 4            Modelling assumptions and methodologies should be transparent**

Economic modelling necessarily relies on a range of assumptions to deliver results. For example, assumptions need to be made on how demand will respond to tariff reductions, and different models or model parameters can lead to different final results. This does not mean that economic modelling should not be used — all forms of analysis involve assumptions being made, whether explicitly or not. Rather, what is critical is that assumptions and modelling methods are justifiable and transparent. Properly done, economic modelling demands analytical rigour.

Two examples illustrate the effect that different models and assumptions can have on final results.

- Two models used to assess the costs and benefits of the Australia–United States Free Trade Agreement led to vastly different results. In one model commissioned by DFAT and produced by the Centre for International Economics, results indicated that the agreement would provide significant economic gains. However, similar analysis conducted by ACIL Tasman estimated negligible or negative effects. Upon examining the two models, differences in results were attributed to ACIL Tasman assuming less elastic demand for Australian exports, among other things.
- During the Commission’s joint study with the New Zealand Productivity Commission on the Closer Economic Relations Trade Agreement between Australia and New Zealand, it was shown that different modelled estimates of the impacts of mutual recognition of dividend imputation credits largely reflected different assumptions for parameters such as foreign capital substitutability and the responsiveness of Australian and New Zealand investors to changes in tax arrangements. To test the robustness and probability of these different assumptions the Commission modelled multiple scenarios using different possible combinations of parameter values.

These examples highlight the need for good process when undertaking economic modelling. Beyond transparency, modelling is enhanced by the use of sensitivity analysis to test the robustness of results to changes in assumptions, and by allowing others access to the model so that they can test the assumptions used.

*Sources:* PC (2010, p. 122); PC and NZPC (2012).

*Pre-negotiation analysis*

Pre-negotiation analysis would provide a preliminary assessment of the expected costs and benefits of a trade agreement under different scenarios. It would also be closely informed by trade negotiators, and involve consultation with industry and other interested parties to ascertain barriers, opportunities and concerns that could be addressed with the prospective partner country. As per current practice for feasibility studies, it would include background information on existing trade flows. In addition, where possible it would include a detailed scenario analysis of the possible range of economy-wide effects of the agreement, such as the effects on Australia’s productivity and trade potential, and impacts of alternative reform options (box 5).

---

## Box 5      **What would pre-negotiation analysis include?**

Pre-negotiation analysis would use a range of tools to assess the potential effects of a proposed trade agreement. This could include economic modelling, noting the difficulties in quantifying many of the effects of trade agreements. Modelling may not always be the best tool for the analysis, and the analysis would also use other quantitative and qualitative methods. Where possible, the analysis would:

- **provide a detailed scenario analysis encompassing all areas covered by the agreement.** This would include consideration of realistic scenarios that reflect the impact of probable carve outs, phase ins and rules of origin, based on recurring measures from recent trade negotiations by the prospective partner nation
- **assess, as far as practicable, the impact of the agreement on Australia's productivity and trade potential.** This would examine key opportunities for improvement, accounting for differences in customs tariffs and other trade barriers across countries, in addition to the different nature of merchandise trade, services trade, direct and portfolio investments. It would also assess the impact of potential provisions on intellectual property and investor-state dispute settlement, regarding whether they would effectively address market failures or impose net costs on the community, while noting the preferences of the potential partner nation(s)
- **assess the impact of alternative reform options and potential risks of an agreement.** This would involve comparisons with a spectrum of possible approaches, such as mutual involvement in multilateral or regional agreements, cooperation frameworks, technical exchanges, capacity building initiatives, and where Australia takes unilateral action or no action. The assessment would provide advice on the most effective means to achieve policy objectives, which could be a combination of trade policy actions to be pursued concurrently
- **assess the scope for the agreements to evolve over time** to help Australia accomplish its productivity and trade potential
- **evaluate the scope and appropriateness of the agreement to act as a model or template** for other agreements.

For each chapter of a potential agreement, the analysis would also:

- identify the current institutional settings and changes to these, including phasing arrangements
- list the eligibility requirements (including rules of origin for goods, services and investment) for the receipt of preferences under the agreement
- report on who or what could be potentially directly affected by the agreement, and levels and trends in bilateral trade and investment
- identify the nature of potential direct benefits and costs of full implementation of the text of an agreement and impediments, if any, to the take up of preferences
- quantify, where practicable, the potential benefits and costs and the timescale over which they are likely to occur
- identify and quantify where practicable transition costs compared to 'business as usual', that are likely to be incurred achieving preferences under the agreement
- assess any potentially adverse impacts of an agreement, including regulatory chill
- assess the opportunity cost of an agreement, including holding back domestic reform to maintain negotiating coin.

*Sources:* PC (2010, 2015b, p. 83), Harris (2015).

---

Cabinet would use the analysis to determine if negotiations should be pursued. If the decision is made to proceed, the analysis could provide insights into areas that may be worth prioritising in negotiations. Cabinet would then:

... determine (but not publish) ‘minimum acceptable outcomes’ [for negotiations], as well as exit strategies and/or fallback outcomes that may be achieved should progress with negotiations become frustrated. (PC 2010, p. 307)

The analysis would also be publicly released after Cabinet triggers negotiations.

### *Post-negotiation analysis*

A post-negotiation analysis would examine the final text after negotiations have concluded, but before the agreement is signed. It would contain an assessment of the economic implications of the final text, providing an updated picture of the effects of the trade agreement. The Commission envisions that this assessment would include a high-level qualitative ‘gap’ analysis, in which:

The negotiated provisions would be assessed against the ‘applied benchmark’ provided by the initial assessment of what was reasonably expected to be achieved.

If the negotiated text diverges from this ‘applied benchmark’, the assessment would set out why and any indicative costs imposed. It may still be appropriate to accept such costs in some instances if it’s part of a package that is in Australia’s overall economic interests. The process would provide a better basis for deciding what’s in Australia’s best long-run interests overall. (Harris 2015, p. 31)

Post-negotiation analysis would also act as an information source for pre-ratification Parliamentary review of trade agreements.

## **References**

- Banks, G. 2009, *Evidence-Based Policy-Making: What Is It? How Do We Get It?*, Productivity Commission Chairman’s Speech, Canberra.
- 2011, *Independent Policy Advice and the Productivity Commission*, Productivity Commission Chairman’s Speech, Canberra.
- Crook, W. and Gordon, J. 2017, *Rules of Origin: can the noodle bowl of trade agreements be untangled?*, Productivity Commission Staff Research Note, Canberra.
- DFAT (Department of Foreign Affairs and Trade) 2015, *Senate Standing Committee on Foreign Affairs, Defence and Trade inquiry into the Commonwealth’s treaty-making process: Submission of the Department of Foreign Affairs and Trade (DFAT)*.
- 2020a, *Have your say: public consultations on FTAs*, <https://www.dfat.gov.au/trade/engage/public-submissions/Pages/have-your-say-public-consultations-on-ftas> (accessed 15 July 2020).
- 2020b, *Trade and Investment at a Glance 2020*, Canberra.

- 
- Harris, P. 2015, *Joint Select Committee on Trade and Investment Growth Official Committee Hansard*, 21 July, Canberra, pp. 30–32, [https://parlinfo.aph.gov.au/parlInfo/download/committees/commjnt/fac25401-e9a3-451c-a28e-a1c016fa7b13/toc\\_pdf/Joint%20Select%20Committee%20on%20Trade%20and%20Investment%20Growth\\_2015\\_07\\_21\\_3616\\_Official.pdf;fileType=application%2Fpdf#search=%22committees/commjnt/fac25401-e9a3-451c-a28e-a1c016fa7b13/0000%22](https://parlinfo.aph.gov.au/parlInfo/download/committees/commjnt/fac25401-e9a3-451c-a28e-a1c016fa7b13/toc_pdf/Joint%20Select%20Committee%20on%20Trade%20and%20Investment%20Growth_2015_07_21_3616_Official.pdf;fileType=application%2Fpdf#search=%22committees/commjnt/fac25401-e9a3-451c-a28e-a1c016fa7b13/0000%22) (accessed 10 July 2020).
- JSCOT (Joint Standing Committee on Treaties) 2016, *Trans-Pacific Partnership Agreement*, 165, Parliament of the Commonwealth of Australia, Canberra, [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024012/toc\\_pdf/Report165.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024012/toc_pdf/Report165.pdf;fileType=application%2Fpdf) (accessed 14 July 2020).
- 2018, *Reprocessing Nuclear Fuel-France; PACER Plus Agreement*, 179, Parliament of the Commonwealth of Australia, Canberra, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Treaties/PACERPlus-Agreement/Report\\_179](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/PACERPlus-Agreement/Report_179) (accessed 10 July 2020).
- 2019, *IA-CEPA and A-HKFTA*, 186, Parliament of the Commonwealth of Australia, Canberra, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Treaties/A-HKFTA/Report\\_186](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/A-HKFTA/Report_186) (accessed 10 July 2020).
- JSCOTIG (Joint Select Committee on Trade and Investment Growth) 2015, *Report on the inquiry into Business Utilisation of Australia's Free Trade Agreements*, Parliament of the Commonwealth of Australia, Canberra, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Former\\_Committees/Trade\\_and\\_Investment\\_Growth/Free\\_Trade\\_Agreements/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/Trade_and_Investment_Growth/Free_Trade_Agreements/Report) (accessed 10 July 2020).
- PC (Productivity Commission) 2010, *Bilateral and Regional Trade Agreements*, Research Report, Canberra.
- 2014, *Relative Costs of Doing Business in Australia: Dairy Product Manufacturing*, Research Report, Canberra.
- 2015a, *Barriers to Growth in Service Exports*, Research Report, Canberra.
- 2015b, *Trade and Assistance Review 2013-14*, Annual Report Series, Canberra.
- 2016, *Intellectual Property Arrangements*, Report no. 78, Canberra.
- 2017a, *National Water Reform*, Report no. 87, Canberra.
- 2017b, *Rising Protectionism: Challenges, threats and opportunities for Australia*, Commission Research Paper, Canberra.
- 2018, *Trade and Assistance Review 2016-17*, Annual Report Series, Canberra.
- and NZPC (New Zealand Productivity Commission) 2012, *Strengthening trans-Tasman Economic Relations*, Joint Study, Final Report, November.
- SFADTRC (Senate Foreign Affairs, Defence and Trade References Committee) 2015, *Blind agreement: reforming Australia's treaty-making process*, Canberra, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Foreign\\_Affairs\\_Defence\\_and\\_Trade/Treaty-making\\_process/~/\\_media/Committees/fadt\\_ctte/Treaty-making\\_process/report.pdf](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Treaty-making_process/~/_media/Committees/fadt_ctte/Treaty-making_process/report.pdf) (accessed 14 July 2020).
- 2018, *Proposed Comprehensive and Progressive Agreement for Trans-Pacific Partnership*, Canberra, [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Foreign\\_Affairs\\_Defence\\_and\\_Trade/TPP-11/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/TPP-11/Report) (accessed 10 July 2020).