



Australian Government
Department of Home Affairs



Submission to the Inquiry into the Australian Government's approach to negotiating trade and investment agreements

Joint Standing Committee on Trade and Investment Growth

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Introduction

The Department of Home Affairs (Home Affairs) and the Australian Border Force (ABF) welcome the opportunity to make a submission to the Joint Standing Committee on Trade and Investment Growth's (the Committee's) Inquiry into the Australian Government's approach to negotiating trade and investment agreements.

Role of the Portfolio in FTA negotiations and implementation

The Department of Foreign Affairs and Trade leads on developing negotiating mandates and the negotiations to ensure a whole of government approach to Free Trade Agreements (FTA).

The ABF and Home Affairs are involved at all stages of the negotiation of an FTA from developing an initial mandate through to implementation. In particular, the ABF, and to a certain extent, Home Affairs are required to make legislative changes for each FTA. Given Home Affairs role in areas such as cyber security and critical infrastructure, it is important that effective general and national security exemptions are maintained in FTAs and that Future Governments have the ability to regulate in the national interest.

Understanding the role of Home Affairs in FTA negotiations

Home Affairs has policy responsibility for the Movement of Natural Persons (MNP) aspects of an FTA.

The nature and scope of FTAs has evolved over time. Modern FTAs not only contain substantial goods and services components, but also feature more extensive movement offerings, such as skills exchange, working holiday maker programs, and post study employment options.

The development of a comprehensive MNP and movement of people offering that more strictly aligns with the aims and interests of the Australian Government would enable the highest quality outcomes for Australia.

Understanding the role of the ABF in FTA negotiations

The ABF leads the Department in the negotiation and implementation of FTAs.

The ABF is Australia's customs service and facilitates the movement of people and goods across the border. The ABF has policy responsibility for the movement of goods in FTA negotiations. However, the ABF is not responsible for the level of tariffs or the particular rules of origin (ROO) which are developed between the Department of Industry Science and Resources, Department of Agriculture Forestry and Fisheries and Department of Foreign Affairs and Trade with ABF involvement. That is, it is necessarily a whole of government discussion when it comes to trade in goods in the context of an FTA.

It is through the *Customs Act 1901*, the *Customs Tariff Act 1995* and related regulations that the most tangible and traditional elements of an FTA are implemented; the commitments on trade in goods. This includes Australia's tariff reductions and eliminations as well the agreement specific ROO.

The ABF is one of the few agencies who are required to make legislative changes to implement each and every FTA that the government negotiates in order for the FTA to enter into force. The ABF notes that when an FTA is entering into force, this should be done with consideration to the timeframes needed by implementing agencies to make necessary legislative and administrative actions to give effect to an agreement.

Managing the increasing number of FTAs in force

Australia has 18 in force FTAs, with ongoing negotiations with India and the European Union, amongst others. While industry groups and academia raise the concern that multiple overlapping FTAs may give rise to questions of a 'noodle bowl' or 'spaghetti bowl', the practical experience is that individual traders will determine which FTA works best for their circumstances and therefore any attempt to reduce the number of FTAs to overcome the perceived 'noodle bowl' will come at the expense of specific traders who benefit from aspects of a certain FTA.

The increased number of in force FTAs means that greater resources will need to be focussed on the ongoing implementation and upgrading of those FTAs. This is an opportunity to build on these FTAs and the economic relationships between partners. Currently, almost 17 per cent of the *Customs Act 1901* is dedicated to implementing FTAs.

Further, to support use of FTAs by Australian exporters, the implementation of FTAs needs to include a focus on ensuring they remain current by either transposing ROO to the current tariff nomenclature or amending FTAs to include new ROO that reflect modern production processes. Where ROO have been transposed, these should be implemented expeditiously in order to benefit Australian traders.

When implementing FTAs, the ABF has observed that FTAs that have specified dates for when each tariff reduction or elimination occurs avoids a rush to implement a particular FTA in order to take advantage of 'double tariff cuts'. This is in contrast to FTAs that do not specify the dates in the agreement for when cuts will occur, rather it is set as from the date the FTA enters into force.

The detailed Import Clearances dataset that forms part of the Australian Bureau of Statistics' International Merchandise Trade Statistics shows use of in force FTAs. Increasing availability and use of this data by a broader audience would inform public debate on the benefits of FTAs and how FTAs are actually used.

Parliamentary processes related to FTAs

The ABF supports an FTA negotiation and implementation process that is as open, transparent and simplified as possible.

The more information made available about the progress on an FTA, the better stakeholders and agencies such as the ABF can discuss and consider for particular areas of focus. For example, FTAs such as the Regional Comprehensive Economic Partnership (RCEP) have published documents setting out intention and goals of a particular negotiation.

From the ABF's role in the entire process of FTA negotiation and implementation, we are aware of the challenges involved in ensuring FTAs enter into force. These include ensuring stakeholders are informed, and the Parliamentary processes such as reviews by the Joint Standing Committee on Treaties (JSCOT).

It is not possible to release the negotiating mandate of an FTA. However, during the negotiation of FTAs such as RCEP, documents setting out the intention and goals of a particular negotiation were published. This practice can assist agencies and stakeholders to discuss particular areas of importance and target their submissions.

Similarly, providing updates agreed by the FTA partners following the conclusion of a negotiating round can assist stakeholders in understanding the progress made. Consideration as to whether to include summaries of the text completed, such as Chapters or particular provisions that may be novel or of interest to stakeholders, may be useful to better target outreach.

There is currently not a centrally managed way for the Government to receive feedback from stakeholders, particularly from small and medium enterprises that may not have the resources to draft a substantial submission. Stakeholders would benefit from a simple platform that allowed them to subscribe, keep updated on the status of negotiations and allowed simple methods of making submission to ongoing negotiations.

Given the substantial overlap between the National Interest Analysis (NIA) and Regulatory Impact Analysis, it would be beneficial to reduce duplicated portions to enhance their usefulness. The NIA could also be improved by reviewing whether provisions in an FTA are binding or non-binding and on which FTA partners, and whether they constrain an existing practice or may create new obligations that restrict future policy spaces. Identifying in-built agenda, work programs and committee meetings will also inform Parliament on the benefits of an FTA in Australia's long term trade architecture.

Conclusion

The ABF thanks the Committee for the opportunity to provide a submission and looks forward to their report.