

Introduction

- 1.1 This report considers the proposed Australia – United States Free Trade Agreement, agreed at Washington on 8 February 2004, signed at Washington on 18 May 2004.
- 1.2 Negotiations which resulted in the agreed text commenced with a joint announcement by the Prime Minister of Australia, the Hon John Howard MP, the Australian Minister for Trade, the Hon Mark Vaile MP, and the US Trade Representative, Mr Robert Zoellick, on 14 November 2002.
- 1.3 Consultations regarding the Agreement were conducted by the Department of Foreign Affairs and Trade (DFAT) prior to the Agreement. The process involved in these consultations will be discussed in Chapter 2.
- 1.4 Negotiations between trade representatives from Australia and the United States of America took place in five rounds between March 2003 and February 2004 in Canberra, Honolulu and Washington DC, with the final round extended from 5 December to 8 February 2004.
- 1.5 The Australia – United States Free Trade Agreement (hereafter the AUSFTA, or ‘the Agreement’)¹ was tabled in the Australian Parliament on 8 March 2004.²

1 The Committee was advised that the text which was available at the time of its tabling in Parliament was a draft version, and subject to legal review for accuracy, clarity and consistency. The Committee advertised it as such and conducted all negotiations on this basis. Shortly before this report was adopted, the ‘legal scrubbing’ process was concluded.

2 *House of Representatives Votes and Proceedings*, 4 March 2004, p. 1484.

Role of the Committee

- 1.6 The Joint Standing Committee on Treaties was established in 1996 and since that time has reviewed all treaty actions proposed by the Government, as part of the parliamentary review process. The role of the Treaties Committee is to consider whether proposed treaty actions are in the national interest. It is usual practice for the Committee to receive submissions and evidence relating to the detail or scope of the proposed treaty, as well as the process involved in its negotiation (including consultations). The Committee in the majority of cases has therefore limited its observations and recommendations to the issues surrounding the impact of the proposed treaty.
- 1.7 This inquiry however has attracted unprecedented levels of concern in the community and interest across a wide range of business, industry and community sectors. The Committee is aware of several other areas which are worthy of examination and discussion. Some of these issues were in the public domain well before any negotiations commenced, as a result of media interest, community activism and business influence.
- 1.8 Because of the extent of community involvement and public debate on some of these issues, the Committee has stepped a little beyond its usual role. It will not seek to make firm recommendations in these areas, but the Committee felt that many views should be reflected in its report where those views were sometimes not strictly related to the text of the proposed treaty. Therefore, the Report will include within its consideration of the proposed treaty action a brief review of the debates about the relative merits of bilateral and multilateral trade agreements, and the role and outcome of economic modelling which has been conducted during and after the Agreement's completion.

Conduct of the inquiry

- 1.9 The Committee's inquiry was first advertised in *The Australian* on 17 March 2004.³ Further advertisements were placed on 30 April 2004. Letters inviting submissions were sent to over 140 organisations on 11 March 2004.⁴ Following usual practice, the Chair of the Committee

3 *The Australian*, 17 March 2004, p. 2.

4 A list of organisations consulted is at Appendix C.

invited comment from Premiers and Presiding Officers of all Australian State and Territory Parliaments.

- 1.10 The Committee received an initial briefing on 2 April 2004 from officials of the DFAT and representatives of other government departments which were involved in the negotiation process. The Committee then held public hearings in several locations as follows
- Sydney 19 April 2004
 - Melbourne 20 April 2004
 - Hobart 21 April 2004
 - Adelaide 22 April 2004
 - Perth 23 April 2004
 - Canberra 3 and 4 May 2004
 - Brisbane 5 May 2004
 - Sydney 6 May 2004
 - Canberra 14 May 2004
- 1.11 During the course of the inquiry, the text of the Agreement was available from the DFAT website and the Committee's website.⁵ The size of the Agreement and accompanying documentation meant that its distribution in hard copy to members of the public was not possible.
- 1.12 The Committee is aware that members of the public experienced difficulties accessing the text of the actual Agreement, and therefore ensured that information about its activities was readily available from the secretariat. During the course of the inquiry, the Committee issued regular email alerts and media releases in an attempt to gain more widespread coverage in the electronic and print media. Based on the amount of media coverage received by the Agreement and the inquiry, the Committee was satisfied that interested parties were able to receive relevant information from appropriate sources as required.
- 1.13 At the time of writing, 215 submissions and several exhibits have been received from individuals and organisations. These documents covered almost all of the aspects of the Agreement and were

5 <http://www.apf.gov.au/house/committee/jsct/usafra/index.htm>, and http://www.dfat.gov.au/trade/negotiations/us_fta/final-text/index.html, both viewed on 20 June 2004.

published electronically on the Committee's website.⁶ Transcripts of public hearings were also available from the Committee's website throughout the course of the inquiry. Several form letters were also received. While they were not accepted as individual submissions, the Committee has noted their number and content.

- 1.14 Appendix A of this Report lists submissions received by the Committee and Appendix B provides the names of witnesses who appeared at public hearings for this inquiry.

Scope and structure of the Report

- 1.15 Further to comments at paragraph 1.8, the Report will firstly look at some of the background of the treaty's negotiations, including economic modelling, the consultation process and the timing of the Committee's inquiry, before each chapter of the proposed Agreement is examined, in an order that the Committee thinks appropriate. Based on the size of the chapters in the Agreement, and the extent of evidence received by the Committee, clearly some chapters will be more detailed and of greater length than others. Some Agreement chapters have been combined where there is a complementarity of issues.
- 1.16 Depending on the nature of evidence received and information available, the Committee has comments of a more general nature in certain chapters. For example, in its discussion of possible costs as a result of the changes proposed to the copyright regime in Australia, the Committee has used evidence available to it at the time of the tabling of this report, including evidence supplied in economic modelling.
- 1.17 It should be recognised that the approach of this inquiry has been to view the acceptance or rejection of the Agreement is based on it being 'all up or all down'. Further to paragraph 1.6, the role of the Committee is to assess the proposed treaty action *as a whole document*. At several points throughout its inquiry, and with regard to several sectors of the Agreement, the Committee received requests or demands to remove sections of the Agreement which were felt to have negative effects, high costs, or greater risks for Australians. In

6 <http://www.aph.gov.au/house/committee/jsct/usafta/subs.htm>, viewed on 20 June 2004.

cases cited throughout the examination of the Agreement's chapters, the Committee has accepted the concerns of members of the community but may not have made specific recommendations to address them.

- 1.18 Following the examination of specific chapters of the Agreement, the Committee looked at some further areas where it received evidence on the proposed impact of the Agreement on different groups or in different sectors, specifically, on Indigenous Australians. Some general conclusions are then drawn about the Agreement itself, its impact on the Australian national interest, and its role in the ever-changing global trade environment. The Committee also considered some directions which may be followed as both Parties' parliaments consider related amending legislation.

Clarification of terms used in the Report

- 1.19 As stated on page 1, when the Committee commenced its consideration of the Agreement, it was in draft form, subject to a process known as 'legal scrubbing.' The final version of the Agreement was received by the Committee on 11 June 2004. The Committee has received evidence from DFAT that no changes were made to the rights and obligations of the Parties to the Agreement during the legal scrub.⁷
- 1.20 Under the 'implementation' heading in Chapter 3, the Report includes advice provided by DFAT on changes to legislation which are required to enable Australia to comply with the terms of the Agreement. Throughout this Report, several references are made to the relevant changes to different laws.
- 1.21 At the time of this Report's writing, legislation which would serve to bring Australia into line with the Agreement had not been introduced to the Parliament. Therefore, consideration of proposed legislation which took place during the course of the inquiry, both in evidence received and in the Committee's deliberations, was based on the Committee's understanding of the parts of legislation required to bring the Agreement into force. In the Committee's treatment of those discussions for the purposes of this Report, the definitive language

7 DFAT, *Submission 211.2*.

used should not be taken to infer that the subsequent introduction or passage of relevant legislation is assumed or guaranteed.

- 1.22 Further to the first paragraph of this Chapter, the proposed Agreement will be referred to as ‘the Agreement’ or ‘the AUSFTA’. Where any other Agreements are referred to, they will be mentioned by their entire title. As stated in the above paragraph, this should not be interpreted as an assumption by the Committee that the Agreement is anything other than a proposed treaty action, similar to any of the others reviewed by the Committee before action is taken to bind the Parties to the treaty’s terms.
- 1.23 Where spellings differ between the Australian and American (e.g. World Trade Organization), the Australian spelling has been used. Where not specified, monetary amounts refer to Australian dollars.

Other inquiries into the AUSFTA

- 1.24 Together with the consideration by this Committee, there have been two other parliamentary committees which have examined or are examining the proposed AUSFTA. The Senate Foreign Affairs and Trade References Committee commenced its inquiry into the General Agreement on Trade in Services and an Australia – United States Free Trade Agreement in December 2002 and tabled its report in November 2003.⁸
- 1.25 While the Senate Committee report concluded before the text of the AUSFTA was finalised, it has provided a useful foundation for the Treaties Committee’s inquiry. The Committee also considers that it was of assistance in increasing public awareness of the international trade environment in general and the proposed AUSFTA as its negotiations proceeded.
- 1.26 The Committee notes with interest that concerns raised within the Senate inquiry process last year have continued to be raised throughout this inquiry process. These issues include the ramifications for inter-country investment flows as a result of the increased integration of the Australian and US economies, the difficulties with negotiating access to agricultural markets, quarantine

8 Senate Foreign Affairs and Trade References Committee, *Voting on Trade – The General Agreement on Trade in Services and an Australia-US Free Trade Agreement*, tabled 27 November 2003.

matters being regarded as a disguised trade barrier, and the protectionist effects of tariffs, quotas and trade subsidies.

- 1.27 Both committees have received evidence demonstrating Australians' concerns about the regulatory impact of a free trade agreement with the US on controls over the environment and investment, to the detriment of domestic interests.
- 1.28 The Treaties Committee notes the recommendations of the Senate Committee with regard to the extent of parliamentary involvement in the treaty-making process and while it does not propose to consider the recommendations of that Committee in detail within this report, it considers the review of the role of Parliament in those processes timely, given the increasing numbers of trade treaties currently under negotiation. As stated throughout this Report, the Treaties Committee also supports transparency; the consideration of the Senate Committee of transparency in the negotiation process of treaties is noted.⁹
- 1.29 The Senate Select Committee on the Free Trade Agreement between Australia and the United States of America was established on 10 February 2004.¹⁰ According to its second term of reference, that Committee shall
- examine the Agreement
 - provide a democratic and transparent process to review the Agreement in its totality to ensure it is in Australia's national interest
 - examine impacts of the agreement on Australia's economic, trade, investment and social and environment policies, including, but not limited to, agriculture, health, education and the media.

9 Report of the Senate Foreign Affairs and Trade References Committee, *Voting on Trade – The General Agreement on Trade in Services and an Australia-US Free Trade Agreement*, tabled 27 November 2003, Preface, p. xii.

10 *Senate Journal*, 11 February 2004, pp. 2997-9.