

Government Procurement

Introduction

- 15.1 Australia becomes a 'designated' country in US law, allowing Australian companies to bid on federal government contracts. The six percent penalty imposed under the Buy America Act for Australian products, above agreed thresholds, will be waived, according to DFAT.¹ This removes the discrimination that had applied until now.
- 15.2 The factsheet states:
- much procurement in the US is conducted off Federal Supply Schedules, and Australian companies will now have the opportunity to be listed on those Schedules
 - both sides have agreed to work with their respective States/Territories to improve their offers with a final decision to be made before the Agreement is signed
 - Australian companies will now be able to compete in the \$200 billion US Federal procurement market with firms from over 80 countries already designated under US law, such as the EU, Japan, Korea, Canada and Mexico.²

1 DFAT, Factsheet, viewed on 9 February 2004, at www.dfat.gov.au/trade/negotiations/us_fta/outcomes/07_government_procurement.html

2 DFAT, Factsheet, viewed on 9 February 2004, at www.dfat.gov.au/trade/negotiations/us_fta/outcomes/07_government_procurement.html

- 15.3 Strategic defence procurement is not covered by the Chapter, and the Australian Industry Involvement program for Australian Defence procurement will be retained.³
- 15.4 The Chapter sets out obligations in respect of the specific procedures and rules that will apply to conduct of procurement related activities. Government entities may use three procurement methods
- open tendering in which all interested suppliers may submit a tender
 - selective tendering in which the procurement entity selects the suppliers eligible to tender, and
 - limited tendering which is a more restricted form of selective tendering to which may of the Chapter's procedures do not apply.⁴
- 15.5 The Chapter creates a presumption of open tendering, which may lead to more tenders being subject to open tendering procedures in Australia. The other forms of tendering are only allowed in specific circumstances.⁵
- 15.6 As of 2 April 2004, 27 of the 37 US states traditionally covered under the government procurement arrangements have signed on to the AUSFTA. Ongoing discussions are continuing in the US to bring more States on board. All Australian State and Territory Governments have provided in principle support.⁶

Recommendation 15

That DFAT uses its US mission to encourage remaining States to sign on to the AUSFTA.

- 15.7 There are exceptions for small and medium sized enterprises, as well as for economic and social programs for Indigenous people.⁷

3 DFAT, Factsheet, viewed on 9 February 2004, at www.dfat.gov.au/trade/negotiations/us_fta/outcomes/07_government_procurement.html

4 DFAT, *Guide to the Agreement*, p. 85.

5 DFAT, *Guide to the Agreement*, p. 88.

6 Mr Stephen Deady, *Committee Briefing*, 2 April 2004, p. 78.

7 DFAT, *Guide to the Agreement*, p. 85.

New opportunities

15.8 The majority of evidence provided to the Committee was supportive of the Government Procurement Chapter, although in each case it was noted that it would be dependent ‘on how effectively Australian businesses respond to these new challenges.’⁸

15.9 Similar comments were provided to the Committee by industry.

The agreement provides the Australian industry with access to the US federal government market and a number of state government markets, which exceed in value a total of \$52 billion, a significant win for our members, we believe. Importantly, the agreement allows us to preserve the arrangements we have for SMEs in our government markets. Of course, the FTA will not of itself deliver export outcomes. We will need to have a proactive strategy involving government and industry to realise the promise of the FTA on government procurement⁹

and

it will be very important that Australian business works closely with government and other consultants to work out the best ways of taking advantage of these new opportunities¹⁰

and

it is not to say that there is not potential, but it is the capacity of business to take up that kind of potential.¹¹

15.10 In evidence provided to the Committee by Mr Stephen Deady of DFAT, this is

an area where work needs to be done to identify what are still the hurdles, what are the opportunities and how Australian industry can access it. That is a big part of the overall gains over time. It is up to Australian industry to first understand the opportunities that have opened up and how Australian industry can go about achieving them. It is a big prize that is

8 Ms Joanna Hewitt, *Committee Briefing*, 2 April 2004, p. 9.

9 Mr Rob Durie, *Transcript of Evidence*, 19 April 2004, p. 25.

10 Ms Freya Marsden, *Transcript of Evidence*, 20 April 2004, p. 98.

11 Mrs Petrice Judge, *Transcript of Evidence*, 23 April 2004, p. 15.

not there now, and the restriction and discrimination that we face at the moment change with the FTA.¹²

Concerns

- 15.11 The Committee heard a variety of concerns about the government procurement chapter. These concerns related to ‘catching the US bug for litigation’,¹³ and that Australia should retain the right of flexibility to ‘encourage regional development by imposing requirements on foreign operators.’¹⁴
- 15.12 The Australian Services Union were concerned that the inclusion of ‘build own operate’ and similar contracts for the provision of services, most notably in regional Australia (which could include building, building construction works, sewerage treatment works or any infrastructure project etc) where the council / local government authority may wish to give consideration in a favourable way to the value of a local or regional company involved in the construction, employment or on-going operation, and the return benefit to the community of local employment, purchasing etc. Under the draft Trade Agreement the local community might not be able to encourage these local investments or undertakings.¹⁵
- 15.13 Similar concerns were raised by the Australian Fair Trade and Investment Network, Ms Dee Margetts MLC, WTO Watch Queensland, and Federation of Australian Scientific and Technological Societies.¹⁶

Disappointments

- 15.14 The Textiles, Clothing and Footwear Union of Australia were disappointed that the AUSFTA did not manage to negotiate access to the defence procurement market noting that it was ‘a missed opportunity’.¹⁷

12 Mr Stephen Deady, *Committee Briefing*, 2 April 2004, p. 81.

13 Mr Rob Durie, *Transcript of Evidence*, 19 April 2004, p. 26, and *Submission 39*.

14 Ms Theodora Templeton, *Transcript of Evidence*, 5 May 2004, p. 35.

15 Australian Services Union, *Submission 43*.

16 Australian Fair Trade and Investment Network, *Submission 68*; Ms Dee Margetts MLC, *Submission 74*; WTO Watch Queensland, *Submission 112*; Federation of Australian Scientific and Technological Societies, *Submission 190*.

17 Textile, Clothing and Footwear Union of Australia, *Submission 8*.

15.15 Similar concerns were raised by the South Australian Government.

It is with disappointment that the [South Australian] Government notes that existing strategic defence procurement measures and the majority of the so-called 'Jones Act' legislation remains in place.¹⁸

Concluding observations

15.16 The Committee understands that the Government Procurement Chapter is an important step forward in ensuring that Australian businesses received non-discriminatory access. However, the Committee notes that this will dependant largely on how well Government and business work in partnership to realise these goals, and the potential economic benefit.

18 South Australian Government, *Submission 198*.