

# List of Recommendations

## Recommendation 1

**5.8** The committee recommends that the Australia Government initiate discussions with Korea to omit or, in the absence of agreement, narrow the scope of the investor state dispute settlement provisions within the treaty, to be formalised by a subsequent side letter. Discussions on narrowing the provisions should include consideration of:

- a narrower definition of 'expropriation';
- a non-exhaustive list of public policy areas covered by the term 'legitimate public welfare objective'; 50
- limitations as suggested by French CJ, or as subsequently formally recommended by the Council of Chief Justices; and
- that the parties promptly establish a bilateral appealant mechanism as envisaged in Annex 11-E of the agreement.

## Recommendation 2

**5.15** The committee recommends that the Australian Government should not agree to include investor state dispute settlement mechanisms in future trade agreements.

## Recommendation 3

**5.23** The committee recommends that the Australian Government:

- provide clarity on proposed changes to copyright and assurance that any proposed changes as a result of the Korea-Australia Free Trade Agreement will not create adverse impacts for intellectual property owners or users;
- retain harmony in future trade agreements by limiting intellectual property provisions to Australia's obligations under specific intellectual property related multilateral agreements only and retain policy space to make changes to Australia's domestic intellectual property laws in the future; and
- ensures that the potential impact of intellectual property provisions in trade agreements is properly assessed and, in particular, give consideration to the recommendations of the Productivity Commission.

## Recommendation 4

**5.26** The committee recommends the Australian Government:

- seeks to renegotiate with Korea to preserve the right to labour market testing, noting that Korea retains this right;

- put in place measures to more accurately track visa entrants based on free trade agreement provisions, including to monitor and record the levels of contractual service providers granted 457 visas without labour market testing;
- reserves policy space in future free trade agreements to regulate labour market entry and better promote labour standards;
- actively monitors Korea's adherence to the general principles and labour standards outlined in Chapter 17 of the KAFTA, particularly with reference to goods exported from the special processing zones on the Korean Peninsula pursuant to Annex 3-B of Chapter 3; and actively upholds these standards in various committees and consultation with Korea under the agreement.

#### **Recommendation 5**

**5.28** The committee recommends that the Australian Government addresses business concerns regarding complex rule of origin processes in KAFTA, and the lack of harmonisation with other preferential trade agreements.

#### **Recommendation 6**

**5.30** The committee recommends that the Australian Government provide additional resources to Austrade and peak export organisations to monitor and improve the awareness within the Australian export industry of the opportunities provided under trade agreements, as well as assistance to new exporters on how to efficiently navigate Australia's complex network of free trade agreements.

#### **Recommendation 7**

**5.32** The committee recommends that the Australian Government makes an interpretive declaration along the following lines in order to clarify its practice under article 21.4(4) and elsewhere in KAFTA:

This declaration is made to clarify Australia's interpretation that Committee reports will be made public under article 21.4(4). This is made also as an undertaking to the Australian public of Australia's interpretation of KAFTA as an open agreement. As a general approach at points of ambiguity in the text or where the text is silent on the matter, as in article 21.4(4), Australia will favour an interpretation that supports open and public provision of information.

#### **Recommendation 8**

**5.35** The committee recommends that the Australian Government examine reforms to increase stakeholder consultation in the preparation of National Interest Analysis documents and that the viability of National Interest Analysis

**documents, or parts of these documents, being prepared by an independent body.**

**Recommendation 9**

**5.40** The committee recommends that prompt binding treaty action be taken in relation to the *Free Trade Agreement between the Government of Australia and the Government of the Republic of Korea*.

**Senator Alex Gallacher**

**Chair**