Chapter 3

Trade outcomes, implementation and treaty making

Introduction

3.1 This chapter will consider issues raised concerning Australia's trade relationships, the trade outcomes achieved by KAFTA, implementation issues, and the treaty making process.

Australia's trade relationships

3.2 KAFTA was frequently assessed by submitters in the broader context of Australia's other trade relationships and those of Australia's competitors. For example, the Australian Chamber of Commerce in Korea stated that 'KAFTA will put Australian exporters to Korea back on a level playing field with exporters from other countries that have already secured free trade agreements with Korea (such as the US, EU and Chile) or who are likely to secure an FTA in the near future (eg Canada, China and New Zealand)'.[1]

3.3 The Minerals Council of Australia described KAFTA as 'the right agreement at the right time'. It stated that KAFTA would provide Australia with 'more certainty that our position in the Korean market will not be eroded over time by preferential arrangements already entered into by Korea with the United States, the European Union, ASEAN and others'. Further, it highlighted the absence of alternatives:

> The Doha Round of Multilateral Trade Negotiations are in limbo (again). Regional Comprehensive Economic Partnership (RCEP) negotiations are still at an early stage and their ambition is yet to be determined. And Korea is not a party to Trans Pacific Partnership (TPP) negotiations, although it is interested in joining them at some stage.[2]

3.4 Similarly, the Export Council of Australia noted that while it would 'prefer international liberalisation of trade to advance on a multilateral basis, in the absence of any foreseeable completion of the WTO's Doha Round of negotiations, advances in liberalisation of international trade must occur, by default, pursuant to regional, bilateral and other Free Trade Agreements (FTAs) or similar agreements'.[3] It noted:

> Without KAFTA being legally adopted, Australian exporters will remain disadvantaged as strong agricultural exporters such as Chile and the United

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1 *Submission 42*, p. 1.

2 *Submission 61*, p. 1.

3 *Submission 55*, p. 2.

> States continue to benefit from preferential access, having both secured FTAs with Korea.[4]

3.5 While the National Farmers' Federation (NFF) indicated that it had 'long advocated for trade agreements to be all-inclusive, factoring in all of our important agricultural commodities' and noted that 'protectionist sentiment around agricultural goods is rife in many overseas countries':

> The NFF recognises that trade agreements are a negotiation and it is difficult to reach agreement on all issues particularly across the entire agriculture sector. Notwithstanding this, the agreement represents a strong step towards securing Australia's important trading future with Korea and in improving international market access for Australian agricultural goods.[5]

3.6 Dr Chris Baumann stated that the 'FTA with Korea has to be viewed in context of the Asian Century where a substantial amount of economic power has shifted to the (East) Asian markets'. He considered that KAFTA was of 'greater importance to Australia than for Korea' but considered both sides were likely to benefit from the agreement':

> Given the context (Asian Century, Regionalisation of trade in East Asia), an intensified level of competition for Australia appears unavoidable, and equally so, a need to enhance/regain global competitiveness. The FTA is a fine opportunity for Australia to adapt some of the practices from the highly competitive Korean business and education sectors, an opportunity that should not be missed in light of other FTA with China and Japan that will further intensify the level of competitive pressures in the near future.[6]

3.7 In contrast, other submissions were critical of Australia's approach to trade agreements and policy. For example, the AMWU described Australia's trade policy as 'driven by an unflinching adherence to the doctrine of free trade'. It argued that 'trade policy in Australia continues to be based on a doctrine that fails to consider how trade actually operates in the real world, fails to reflect the real economic costs and benefits of trade agreements and other policies and as a result policies fail to generate the benefits that they promise'.[7] It highlighted that, in 2010, the Productivity Commission had found 'little evidence from business to indicate that bilateral agreements to date have provided substantial commercial benefits' and that the 'increase in national income from preferential agreements is likely to be modest'.[8]

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4 *Submission 55*, p. 3.

5 *Submission 29*, p. 3.

6 *Submission 41*, p. 5.

7 *Submission 63*, p. 2.

8 *Submission 63*, p. 6.

Value of trade outcomes

3.8 Tariff reductions for Australian products (particularly agribusiness products) exported to Korea were highlighted as key outcomes of KAFTA during the inquiry. Currently 68 per cent of Australia's exports (by value) enter Korea duty free.[9] Following the entry into force of KAFTA, 84 per cent of Australia's exports to Korea will enter duty free, rising to 99.8 per cent on full implementation. The Department of Foreign Affairs and Trade (DFAT) *Outcomes At A Glance* document states:

> For agriculture, Korea will eliminate tariffs immediately on entry into force for raw sugar, wheat, wine, and some horticulture. Tariffs of up to 550 per cent on most other agricultural products will be eliminated within short time frames. Other key outcomes on agriculture include:
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> - beef: Korea will eliminate its 40 per cent tariff on beef progressively over 15 years, which will help to level the playing field for Australian beef exporters.
> - dairy: duty free quotas for cheese, butter and infant formula and high tariffs will be eliminated on many dairy products between three and 20 years.[10]

3.9 Further, 88 per cent of Australia's manufactures, resources and energy exports will enter Korea duty free on entry into force of KAFTA, with all remaining tariffs phased out within ten years.[11] For the Australian services sector 'KAFTA will provide Australian services exporters with the best treatment Korea has agreed with any trading partner'. This includes:

> - Australian law firms will be able to: establish representative offices in Korea and advise on Australian and public international law; within two years, enter into cooperative agreements with local firms; and, within five years, establish joint ventures and hire local lawyers.
> - Australian accountants will be able to: establish offices in Korea to provide consultancy services on international and Australian accounting laws; and within five years will be able to work in, and invest in, Korean accounting firms.
> - Telecommunications providers, within two years, will be able to own up to 100 per cent of the voting shares of a facilities-based telecommunications service supplier in Korea.
> - Australian financial services providers will be able to supply specified financial services on a "cross-border" basis, including investment advice

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9 Ms Jan Adams, DFAT, *Committee Hansard*, 9 September 2014, p. 67.

10 Department of Foreign Affairs and Trade, 'Outcomes At A Glance', available at: http://www.dfat.gov.au/fta/kafta/downloads/outcomes-at-a-glance.pdf.

11 Department of Foreign Affairs and Trade, 'Outcomes At A Glance', available at: http://www.dfat.gov.au/fta/kafta/downloads/outcomes-at-a-glance.pdf.

and portfolio management services for investment funds, as well as a range of insurance and insurance-related services.

- Education, Engineering and Other Professional Services will benefit from Korea's commitments to guarantee existing market access for Australian providers and work towards improving mutual recognition of qualifications.[12]

3.10 Australia will also remove its remaining tariffs on Korean goods on entry into force or over several years. DFAT's *Key Outcomes* document for KAFTA acknowledges that some sectors of the Australian economy 'may face increased competition from imports of Korean products and services, such as motor vehicles, automotive parts, steel products and textiles, clothing and footwear'. It characterises these outcomes as 'in line with the progressive liberalisation already underway in the Australian economy'.[13]

3.11 The Regulation Impact Statement (RIS) for KAFTA includes the results of independent economic modelling undertaken by the Centre for International Economics (CIE) which predicted that liberalisation of the bilateral goods trade would have benefits for the Australian economy. In particular, the CIE modelling predicted that:

> KAFTA goods liberalisation would contribute $226 million in additional GDP in the first year of its implementation. After 15 years of operation, Australian GDP would be $653 million higher than would be the case without KAFTA…
>
> KAFTA goods liberalisation is estimated to lead to the creation of 1,719 new jobs in its first year and 1,062 new jobs after 15 years.
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> KAFTA will have significant benefits to trade. Economic modelling predicts that Australian exports to Korea would be 25 per cent higher after 15 years of KAFTA's entry into force than a scenario in which Australia does not enter a FTA with Korea.[14]

3.12 During the inquiry, a number of submissions were received from businesses and commercial organisations which would be affected by the trade outcomes of KAFTA. For example, the National Farmers' Federation strongly supported the agreement. Its view was that 'the agreement will provide millions of dollars in export value to Australian farmers, including those in the red meat, grains, dairy, sugar, pork and horticulture sectors'.[15] Similarly, the Winemaker's Federation of Australia noted

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12 Department of Foreign Affairs and Trade, 'Outcomes At A Glance', available at: http://www.dfat.gov.au/fta/kafta/downloads/outcomes-at-a-glance.pdf.

13 Department of Foreign Affairs and Trade, 'Korea-Australia Free Trade Agreement - Key Outcomes' available at: http://dfat.gov.au/fta/kafta/fact-sheet-key-outcomes.pdf.

14 RIS, p. 10.

15 *Submission 29*, p. 3.

that the fall in the retail price of wine due to the elimination of tariffs was expected to stimulate stronger demand for Australian wine in Korea.[16]

3.13 However, it was also noted that tariff reductions under KAFTA would not affect the substantial government subsidies to Korean farmers which also make Korea a difficult market for Australian agri-food exporters.[17] Other products were not included in the agreement. For example, Apple & Pear Australia stated that both 'apples and pears were specifically excluded from [KAFTA]'. It stated the tariff rates on imported pome fruit from Australia to Korea will remain at the base rate of 45 per cent. Watermelons and strawberries were also excluded from the agreement, along with a number of fresh vegetables.[18]

3.14 The Australian Food and Grocery Council (AFGC) stated that for processed and packaged food KAFTA would eliminate a wide range of tariffs of up to 63 per cent over different timeframes. It observed:

> The outcome will benefit a wide range of processed and packaged food products and enable Australian exporters to more effectively compete with other major exporters including the United States, the European Union and Canada. While the long timeframes for tariff elimination on particular products and the exclusions from liberalisation are disappointing, taken in context, KAFTA will create a framework for Australian exporters to develop in the Korean market to 2050.[19]

3.15 Blackmores also indicated its support for the agreement, stating that successful implementation would 'help improve [its] competitive position as an Australian Vitamins and Dietary Supplement exporter'. It noted that 'Australian Vitamins and Dietary Supplements products exported to Korea are currently subject to tariff rates of around 8 [per cent] whereas products from the United States and the E.U. are enjoying preferential access due to more competitive trading terms'.[20] Mr Peter Osborne from Blackmores told the committee that the tariff reductions in KAFTA would help the company increase 'sales by at least 10 and maybe 20 per cent a year', potentially creating additional employment opportunities in Sydney and Melbourne.[21]

3.16 The Minerals Council of Australia stated that 'big ticket items – iron ore and coal' enter Korea largely duty free, but noted that there were a number of Australian mineral ores and related products which are affected by nuisance tariffs. By removing

16 *Submission 11*, p. 6.

17 For example, ACCI, *Submission 65*, p.2

18 *Submission 39*, p. 1,.

19 *Submission 30*, p. 5.

20 *Submission 13*, p. 1.

21 Mr Peter Osborne, Blackmores, *Committee Hansard*, 8 September 2014, p. 35.

these tariffs, the Council considered that KAFTA would also make 'a modest, but valuable contribution to Australia's minerals and energy exports'.[22]

3.17 However, others questioned the value of the trade outcomes achieved by KAFTA. The Australian Fair Trade & Investment Network (AFTINET) considered that KAFTA was not in Australia's national interest. It argued that the 'National Interest Assessment does not weigh the estimated very small gain of 0.04% in GDP after 15 years against any of the losses which will be experienced as a result of the agreement, either in employment losses or in other losses'. In particular, it pointed to a reduction in public revenue through the collection of tariffs and the impact on employment in Australia.

3.18 AFTINET also criticised the economic modelling undertaken by CIE, noting that it uses 'general equilibrium models which are based on assumptions which the Productivity Commission has concluded generally overestimate the economic gains from trade liberalisation and underestimate the losses, including unemployment'. It charactered the overall predicted increase in GDP ($650 million or 0.04 per cent in 2030) as 'extremely small'.[23]

3.19 The modelling of the economic benefits of KAFTA undertaken by the CIE was also questioned by the Australian Council of Trade Unions (ACTU):

> It would be incorrect to rely on the original modelling. First, such modelling adopts assumptions of full liberalisation rather than the negotiated outcome. This assumes outer-envelope liberalisation which does not reflect the final agreement. Second, this type of modelling adopts analysis which fails to incorporate real world assumptions into the model. If the assumptions are inaccurate, the outcomes of the analysis will be inaccurate. Third, the modelling does not capture the impact of non-tariff commitments in the concluded agreement.[24]

3.20 The Australian Manufacturing Workers Union (AMWU) viewed KAFTA 'as an agreement that favours natural resource endowment sources of comparative advantage at the expense of more sophisticated, advanced and value adding industries'.[25] It argued that the dismantling of tariffs through trade agreements at the same time support for industries such as car manufacturing is in decline 'represents a double blow for the diversity, sophistication, complexity and therefore long term growth prospects of the economy'. The AWMU considered that it 'creates the real risk that Australia's future prosperity will solely rely on agricultural and mining industries,

22 *Submission 61*, p. 2.

23 *Submission 50*, p. 5.

24 *Submission 9*, p. 2.

25 *Submission 63*, pp 1-2.

which are neither value added intensive, labour intensive nor high technology intensive'.[26]

Implementation issues

Timing of ratification

3.21 The text of the agreement provides that phased tariff reductions will be implemented from entry into force of the agreement and on 1 January of every year that follows. DFAT stated:

> The Korean and Australian Governments share the goal of entry into force of KAFTA before the end of 2014. This is subject to the completion of domestic processes in both countries including the passage of implementing legislation through both Parliaments…
>
> Entry into force in 2014 will provide for two tariff cuts in quick succession (i.e. on entry into force and again on 1 January 2015); entry into force in 2015 would mean that the second tariff cut would not occur until 1 January 2016. This would impact negatively on the competitive position of Australian merchandise exports in Korea against exports from countries that are already enjoying the benefits of phased tariff reductions in the Korean market.[27]

3.22 The importance of swift implementation of KAFTA was stressed in a number of industry submissions. For example, the NFF stated:

> [T]o ensure Australian agriculture does not fall behind our competitors in the Korean market, it is vital that the agreement is implemented before the end of 2014. If implementation occurs this year (even if late in 2014) Australian agriculture in particular dairy and red meat sectors will begin to take advantage of the tariff reduction timeline, and will move to 2nd year reductions as from the 1st of January 2015. If, however, implementation does not occur until 2015, Australia will fall another year behind in terms of commercial disadvantage to competitor countries such as the European Union and the United States.[28]

3.23 This urgency was reflected in the evidence of Teys Australia, a large beef exporter to Korea which emphasised the importance of Australia's trade agreements for the company to access high-value markets. Mr Tom McGuire from Teys Australia told the committee:

> Most importantly, from our perspective, is that it is concluded this year. [I]f we do that this calendar year then we get the first tariff cut and we then enjoy a second tariff cut in January of next year. That is important for

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26 *Submission 63*, p. 6.

27 DFAT, response to written questions on notice – implementation progress in Korea, p. 2.

28 *Submission 29*, p. 4.

> relativity with the United States. It keeps us 5.3 per cent back…rather than 8 per cent.[29]

3.24 While the AFGC acknowledged that implementation of KAFTA in 2014 would require tight timeframes, it considered this objective was possible with a 'concerned effort of the Australian and Korean Governments':

> At a time when all Australian exporters are under pressure from a high cost economy and finding it difficult to compete in overseas markets, immediate tariff reductions will provide greater scope for products to compete. Immediate tariff reductions will benefit all companies but will have a particular benefit for SME exporters who don't have the scale and financial resources of larger companies to maintain export markets under duress.[30]

3.25 However, the AMWU submitted that the implementation of KAFTA could contribute to the early closure of the car manufacturing industry in Australia. It stated:

> The announced closure of Ford, Holden and Toyota manufacturing in 2016-17 does not guarantee any company will continue operating till 2016-17. The timing of closure will largely depend on volumes up to 2016-17, with a significant drop off in volumes potentially causing an early departure of one or all three manufacturing operations…
>
> [T]he implementation of the Korean [bilateral trade agreement] and the possible concluding of [bilateral trade agreements] with Japan and China will certainly impact on the competitiveness of Australian made cars prior to 2016-17 and will contribute to a decrease in volumes that may result in an early closure of the industry.[31]

3.26 Dr Tom Skladzien from the AMWU indicated that while the tariff reductions on cars entering Australia were relatively small, the AMWU was concerned about the marginal effect:

> As soon as it enters into force, the tariff goes to three point something…and then it goes down to 1.7, I believe, and then down to zero. So it is rather a steep tariff…We do not know how close the firms are to that decision to leave early. Any additional pressure that makes it more likely to leave early we are very concerned about.[32]

3.27 However, at the hearing, DFAT rejected the suggestion that KAFTA could contribute to the early closure of the Australian car industry:

> [T]he decisions the domestic manufacturers took to cease production in Australia at certain points in the future had, according to their own statements, very many reasons. It is true that in some statements

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29 Mr Tom McGuire, Teys Australia, *Committee Hansard*, 8 September 2014, p. 15.

30 *Submission 30*, p. 7.

31 *Submission 63*, p. 8.

32 Dr Tom Skladzien, AMWU, *Committee Hansard*, 8 September 2014, p. 51.

> competitive pressure from tariff reductions was mentioned amongst many others—certainly not at the forefront but mentioned as factors contributing to a competitive environment which made manufacturing unviable in the future.[33]

Reform following ratification

3.28 Several submitters and witnesses raised issues following the expected ratification of KAFTA. For example, the Financial Services Council (FSC) saw significant potential benefits arising from KAFTA provided complimentary reforms were undertaken in Australia. It noted that 'KAFTA promotes open markets in that it makes services and investment more contestable between the parties, covers both services and investment activities and adopts an approach that supports market opening'. However, FSC considered that other barriers to access would continue to exist:

> The KAFTA formally allows access for Australian fund managers to provide services in Korea without having to establish there (ie: deliver on a cross border basis), but access is qualified. It doesn't provide relief for Australian collective investment business entities intending to sell foreign collective investment securities within Korea from registration or qualification requirements (and likewise in Australia). Korea can continue to require registration/ authorisation of financial service suppliers…[34]

3.29 The FSC noted there was a commitment in KAFTA to make administrative decisions, such as those on licensing applications, within a specified time period, which may ease registration requirements. However, it highlighted that members of the FSC have reported that licensing and regulatory approval processes have been long and difficult. The FSC argued 'arrangements should be scrutinized in the review procedures built into the agreement to ensure they are as streamlined as possible and adhering to the principle of non-discrimination'.[35]

3.30 In particular, the FSC argued there was a need to implement reforms proposed by the Australian Financial Centre Forum's report on *Australia as a Financial Centre* (the Johnson Report). Mr James Bond, Chief Economist at the FSC stated:

> [I]is great that we have got the Korea free trade agreement; what we are saying is that we need to get domestic regulation and tax right if we are going to take advantage of the free trade agreement. What we are saying is: you need both aspects working. You need the free trade agreement and you need domestic policy working, and there needs to be some coordination…[36]

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33 Ms Jan Adams, DFAT, *Committee Hansard*, 9 September 2014, p. 50.

34 *Submission 67*, p. 8.

35 *Submission 67*, p. 9.

36 Mr James Bond, Financial Services Council, *Committee Hansard*, 8 September 2014, p. 4.

Awareness, utilisation and support of FTAs

3.31 Several witnesses and submitters referred to a recent survey conducted by the Economist Intelligence Unit on business views of trade agreements in Asia.[37] This survey report found that usage rates are low, particularly in Australia. While the average usage rate of 50 FTAs signed by the eight countries surveyed was 26 per cent, in Australia it was 19 per cent.[38] While there appeared to be better understanding of FTAs in Australia than in other countries in the region, a large portion of survey respondents ranked more support from government in terms of education and advice on existing FTAs as important.[39]

3.32 For example, ACCI recommended that the Australian Government should 'publish information about the utilisation rate for each of Australia's PTAs on an annual basis and or in other regular trade performance reporting to ensure that the nation is maximising the opportunities available through each agreement'. Mr Bryan Clark from ACCI also highlighted the need for further government support for exporters to take advantage of trade agreements:

> Every time you do an agreement, there needs to be a support package. There needs to be an office set up, either a dedicated office for each agreement or a general office that can support the agreement so that, firstly, companies understand what is available to them. As you would appreciate, they may not be doing that trade this year, but next year or in three years time…That support network has broken down and we need to rebuild it. One of the things which we have suggested in our budget submissions is that Australia needs to be ramping up its support for exporters and to be outwardly focused in its trade. It is a package which is needed and it is not there at the moment.[40]

3.33 At the public hearing, Mr Hudson from Export Council of Australia pointed the committee to the outcomes of the recent B20 Australia meetings on trade which highlighted the low utilisation rates of bilateral free trade agreements. The B20 recommended that governments 'ensure preferential trade agreements (PTAs) realise better business outcomes by consulting with business, improving transparency and consistency and addressing emerging trade issues' and included an action item for G20 countries to 'survey domestic exporting and importing businesses to identify drivers of PTAs utilisation and impact; make results publicly available'.[41]

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37 For example, Mr Bryan Clark, ACCI, *Committee Hansard*, 8 September 2014, p. 10.

38 The Economist Intelligence Unit, 'FTAs: fantastic, fine or futile: Business views on trade agreements in Asia', 2014, p. 4.

39 The Economist Intelligence Unit, 'FTAs: fantastic, fine or futile: Business views on trade agreements in Asia', 2014, pp 8-9.

40 Mr Bryan Clark, ACCI, *Committee Hansard*, 8 September 2014, p. 12.

41 *B20 Trade Taskforce Policy Summary*, July 2014, p. 15.

3.34 In relation to awareness of KAFTA, Ms Adams from DFAT commented that while few people would read the full treaty text, those 'people who are actually doing the trade at the paperwork level, at the trade level and at the customs broker level know what tariff line they are working under'.[42] She stated:

> [T]here is a body of work to be done by government as well as peak bodies, industry associations and the whole industry—that consists of freight forwarders, Customs, brokers, the people who do the trade facilitation and the actual trading work—to get more information out about the preferences that are available under some of our agreements. From my experience of the last five years or so on the North Asia FTAs, we know that there are many industries, not just the agriculture industries, that are acutely aware of the tariffs they currently pay and the opportunities that they are going to have when this agreement comes into force. Once it is in force, we are very confident that a lot of our exporters will be ready to utilise those as soon as they are available…We do have more outreach and education and tools that we are going to develop and make available for people to use when the agreements are in force.[43]

3.35 In a response to a question on notice, DFAT noted that 'Austrade plays a significant role in assisting businesses to enter overseas markets and use the opportunities made available by Australia's FTAs'. It indicated that Austrade and DFAT were working closely 'on a program of activities to encourage utilisation of KAFTA by businesses once the agreement has entered into force'. Further:

> Businesses and their representative organisations also have a role in ensuring that they are aware of the opportunities offered by FTAs and are able to take advantage of them in a way that best suits their particular operations, or the operations of their members, in the relevant foreign market.[44]

3.36 In relation to monitoring of utilisation of trade agreements, DFAT noted that it 'regularly publishes detailed trade statistics and investment flows for each of our trading partners, including those where an FTA is in place'. It also highlighted a number of the challenges in collecting accurate data on this subject. These reasons included that 'the availability of this data across FTA trading partners varies'. It did not intend to publish information about the utilisation rate for each of Australia’s FTAs on an annual basis as it would be 'a complex and resource-intensive exercise of limited practical value'.[45]

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42 Ms Jan Adams, DFAT, *Committee Hansard*, 9 September 2014, p. 38.

43 Ms Jan Adams, DFAT, *Committee Hansard*, 9 September 2014, p. 39.

44 DFAT, response to questions on notice, p. 13.

45 DFAT, response to questions on notice, pp 11-12.

Joint treaty committees

3.37 Chapter 21 of KAFTA outlines institutional provisions of the agreement and establishes a system of joint committees to oversee implementation and operation of agreement. At the hearing, DFAT commented:

> [T]here will be a period of time where both sides seek to give effect to the agreement. They see whether it is operating as effectively as possible. There will be what we call a joint committee meeting sometime probably in the first year. In preparation for that DFAT plus all of the different areas of the FTA will look at where improvements could be made, whether the existing provisions are working as both sides had expected, and will begin this process of seeking to build on the good outcomes that we have already secured to go further where possible. In doing so, of course, we will look at both what the market is telling us, key stakeholders like FSC.[46]

3.38 Some witnesses and submitters had views of the operation of these joint committees. For example, Dr Rebecca LaForgia considered that the agreement should be interpreted by Australia to promote openness and access to information regarding the proceedings of these joint committee. In particular, she argued that the reports of the joint committees established by the agreement should be made public and urged Australia to make an interpretive declaration in order to clarify its practice in this respect. She considered that such an interpretative declaration was urgently required 'because presently it appears that there is an intention of not allowing the committee reports to automatically be open to the public'.[47] At the public hearing, Dr La Forgia highlighted the importance of having these committee reports released in order to promote transparency and public understanding of the policy developments made under the trade agreement.

3.39 Article 4.12 establishes a committee of officials from Australia and Korea to consider and resolve any matter arising in relation to rules of origin and origin procedures. The ACCI recommended that this committee should also include industry representation. Mr Bryan Clark from ACCI explained that the committees established under trade agreements can operate slowly to resolve issues:

> The problem with the committee at the present time is that it is done at the discretion of the parties, so they do not meet on any frequency basis necessarily. They meet on an annual basis or on an as-needs basis, if we refer to other agreements of how this works.[48]

3.40 At the hearing, DFAT noted that committees established by treaties operate 'in the normal government to government way' but stated that, in general, the Australian government was 'very open to having a high degree of transparency on the

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46 Mr Simon Farbenbloom, DFAT, *Committee Hansard*, 9 September 2014, p. 53.

47 *Submission 66*, p. 2.

48 Mr Bryan Clark, ACCI, *Committee Hansard*, 8 September 2014, p. 13.

implementation going forward'.[49] However, in relation to ACCI's proposal, it commented:

> KAFTA is an international agreement between governments. As such, the implementation of the Agreement is the responsibility of the Australian and Korean governments through the committee structure established under KAFTA. The Australian Government will continue to consult with interested stakeholders, including business representative groups, to ensure the Agreement delivers as intended.[50]

Negotiation, assessment and approval of trade agreements

3.41 KAFTA was seen by some to illustrate problems with the current processes to negotiate, assess and approve trade agreements in Australia. For example, Dr Matthew Rimmer considered that KAFTA 'highlights long-standing problems in respect of treaty-making in Australia – particularly in respect of the secrecy of the negotiations; the lack of independent analysis of the agreement; the limited role afforded to the Australian Parliament; and the lack of public consultation and participation in the negotiations'.[51]

3.42 The AMWU argued there was a disconnection between Australia's trade and industry policy which it considered was a result of a flawed process for approving trade agreements. It noted it was not consulted as stakeholder through the process of negotiating KAFTA.[52] It stated:

> In short, this process involves secretive negotiations between governments on the treaty text, which is followed by a parliamentary rubber stamp process in which parliament can either approve the draft treaty in its entirety or reject it in its entirety. Unlike the USA and other countries, our parliament has no option to amend the text of the treaty prior to approval. This process dilutes community and stakeholder engagement in consultation processes such as the current inquiry, as the agreement is presented as a fait accompli and no possibility of adjustment is possible. In addition, it robs both MPs and the Senate of their rightful role in approving and where necessary amending legislation.[53]

3.43 Mr Bryan Clark from the ACCI noted that the Productivity Commission undertook an investigation of Australia's performance in bilateral and regional trade agreements in 2010:

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49 Ms Jan Adams, DFAT, *Committee Hansard*, 9 September 2014, p. 54.

50 DFAT, response to question on notice, p. 10.

51 *Submission 60*, p. 6.

52 Dr Tom Skladzien, AMWU, *Committee Hansard*, 8 September 2014, p. 48

53 *Submission 63*, p. 12.

> They were relatively scathing at the time and made a number of recommendations that they thought would improve negotiated outcomes. Largely, they have been ignored.[54]

3.44 The ACCI argued that the trade agreements made by Australia 'must be subjected to independent assessment' before ratification and after implementation 'in order to allow for appropriate economic assessment to occur to ensure maximum economic benefit is being achieved'.[55] Further, the ACCI recommended:

> Australian stakeholders to trade agreements should be consulted in the development of National Interest Analysis (NIA) (including for KAFTA). The analysis in the NIA should be conducted by an independent body such as the Productivity Commission, rather than by DFAT. When consulted, Australian stakeholders should be also given a fair opportunity to examine substantive aspects of the treaty text affecting their role in the pending treaty, well before an NIA is published. In this way, future NIA on trade treaties will be independent from negotiations, well-researched and relevant to tangible business activities on the ground, and contain empirical information in the national interest, rather than being developed behind closed doors resulting in inaccuracies and omissions.[56]

3.45 In response to this proposal, DFAT stated:

> The National Interest Analysis (NIA) tabled in Parliament with its accompanying agreement, is an official Government document advising the Parliament among other things of the essential elements of the agreement, any costs and impacts, and why the Government believes it is in Australia's national interests for binding treaty action to be taken. For trade agreements the NIA is drafted by DFAT on a whole-of-government basis in consultation with other agencies that have taken part in the negotiations. Given the in-depth detailed knowledge required of various negotiating positions and options, it would not be appropriate for the NIA to be drafted by entities outside Government.
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> Through existing review processes JSCOT and other Parliamentary committees have the opportunity to consider and test the statements made in the NIA, as do external stakeholders in submissions and testimony to JSCOT and other committees.[57]

3.46 Another of the ACCI's recommendations was that Australia should develop a model Preferential Trade Agreement (PTA) based on international standards. This would be transparent to Australian industry and to international Governments 'so that all stakeholders are aware of what Australia sees as the ideal outcome from a PTA'. The ACCI considered a 'model' agreement would 'drive a level of consistency and

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54 Mr Bryan Clark, ACCI, *Committee Hansard*, 8 September 2014, p. 14.

55 *Submission 65*, p. 37.

56 *Submission 65*, p. 6.

57 DFAT, response to questions on notice from hearing, p. 12.

improved confidence as to what is included in the negotiations'.[58] However, DFAT also disagreed with this proposal:

> A one-size-fits-all approach does not work in trade negotiations, and therefore it would not be possible or useful to develop a 'model' preferential trade agreement template.
>
> A negotiating strategy is developed specifically for each trade partner or partners involved in preferential trade agreement negotiations. Each strategy takes a range of factors into account and involves reaching a different balance between respective interests, including market access interests and trading conditions which can vary considerably between markets. The strategy is revised regularly as negotiations progress.[59]

58 *Submission 65*, p. 13.

59 DFAT, responses to questions on notice from hearing, p. 3.