

Chapter 5

Committee view and recommendations

Introduction

5.1 The TPP was an ambitious attempt to create a regional trade agreement for the Asia-Pacific. If it had been successfully completed, it would have linked 12 countries, 819 million people and almost 26 per cent of global trade. The TPP would have included significant trade and investment outcomes which would potentially have assisted Australian industry, business and consumers. However, there were also a number of troubling aspects to the final agreement. These included:

- the lack of independent economic modelling which indicated Australia would benefit from the TPP;
- the high risks associated with the ISDS provisions in the TPP;
- provisions undermining labour market testing requirements;
- the lack of enforceable commitments to labour and environmental standards;
- ambiguity regarding data protection for biologic products; and
- provisions which would 'lock-in' Australia's intellectual property regime.

5.2 However, the committee's inquiry into the proposed TPP has been overtaken by events. With the recent withdrawal of the United States, the committee's expectation is that the TPP will now not enter into force in its current form.

5.3 Despite the change of position by the United States, there still appears to be support amongst the remaining TPP participating countries for a regional trade agreement and key officials have indicated that alternative trade arrangements may be pursued. For example, Chile's Minister of Foreign Affairs, Mr Heraldo Muñoz was reported as stating that '[w]hether it be with the United States or without the United States, there's a willingness among the countries that make up the TPP to move forward'.¹

5.4 A revived trade deal may be arranged between the remaining participating countries. Should this occur, a new inquiry will be required. However, in this environment of uncertainty, it would not be useful to extend the committee's inquiry into proposed TPP. The committee will mainly comment on the TPP's ratification by Australia and the treaty-making processes.

Deferral

5.5 Given the clear position of the Trump administration, it is apparent the TPP will not enter into force in its current form. Gaining access to the substantial market of

1 Antonio De la Jara, 'Chile's foreign minister: TPP not dead, despite Trump comments', *Reuters*, 22 November 2016, available at <http://www.reuters.com/article/us-chile-china-trade-idUSKBN13H23B> (accessed 16 January 2017).

the United States (nearly 62 per cent of the GDP of participating countries) was a key component and justification for the negotiation and agreement of the TPP. Japanese Prime Minister Shinzo Abe has previously described the TPP without the United States as 'meaningless'.²

5.6 The Minister for Trade, Tourism and Investment, the Hon Steven Ciobo MP, has indicated that he has 'been speaking at length' with his TPP counterparts on ways 'to lock in the benefits from the TPP, without the United States if need be'.³ The prospects for such a future trade agreement appear reasonable. The process of negotiating the TPP would have enabled participating countries to obtain a better understanding of each other's priorities. This will be an important foundation for future trade agreements.

5.7 However, the Australian Government has indicated that it still may attempt to ratify the TPP through introducing implementing legislation into the Parliament. If the Australian Government has stated it is actively seeking alternative trade arrangements with the remaining countries who participated in the TPP, it is not clear to the committee why ratification should be a legislative priority. A new regional trade agreement could contain significantly different arrangements and commitments.

5.8 Legislation intended to implement Australia's trade agreements usually provides that the relevant provisions will not commence until the treaty enters into force for Australia. Given the present situation, it would be unproductive for the Australian Government to commit resources to passing implementing legislation which will not commence if the TPP does not enter into force. The committee's view is the Australian Government should defer any binding treaty action in relation to the TPP and focus on engaging with its trading partners to negotiate multilateral, regional or bilateral trade agreements which are in Australia's interests and can be agreed and implemented in a timely manner.

Recommendation 1

5.9 The committee recommends that the Australian Government should defer undertaking binding treaty action until the future of the Trans-Pacific Partnership Agreement is clarified through further negotiations with Australia's major trading partners.

Reform to the treaty-making process

5.10 The committee welcomes and supports the recommendations of the JSCOT majority report on the TPP which relate to broader treaty-making processes. These include that the Australian Government:

- consider changing its approach to free trade agreement negotiations to permit security cleared representatives from business and civil society to see the

2 Kiyoshi Takenaka, 'Japan PM says TPP trade pact meaningless without U.S.', *Reuters*, 21 November 2016.

3 Minister for Trade, Tourism and Investment, the Hon Steven Ciobo MP, 'Trans-Pacific Partnership', *Media release*, 22 January 2017.

Australian Government positions being put as part of those negotiations (Recommendation 1); and

- consider implementing a process through which independent modelling and analysis of a proposed trade agreement is undertaken by the Productivity Commission, or equivalent organisation, and provided to the committee alongside the National Interest Assessment (NIA) to improve assessment of the agreement (Recommendation 2).

5.11 The JSCOT recommendations reflect a growing consensus regarding the need for reform of the treaty-making process which was also evident in the submissions received for the committee's current inquiry. The TPP was perceived by some to be emblematic of problems in this area. A broad range of submitters highlighted issues with the transparency of treaty negotiations, the one-sided nature of consultations with stakeholders, the lack of adequate and independent assessment of trade agreements and the challenges the current treaty-making process presents to Australia's democratic values.

5.12 These recommendations also align with the committee's recommendations for reform made in *Blind Agreement: reforming Australia's treaty-making process* in 2015. At that time, the committee's recommendations were not accepted by the Australian Government. The committee considers these proposals for reform should be reassessed.

5.13 The committee notes that the JSCOT report highlighted a concern 'that Australia's long-term commitment to free trade, from which Australia benefits immensely, is currently at risk from a resurgence of nationalism and isolationism internationally'. However, in submissions to the current inquiry there was wide acceptance of Australia's approach to trade as a vehicle for economic growth, job creation and rising living standards. Broad support was expressed for the development of fair trading relationships with all countries and the need to regulate trade through the agreement of international rules.

5.14 Both in Australia and overseas, a key aspect of community opposition to recent trade agreements has evolved from a lack of transparency and consultation in treaty-making processes, the extension of trade agreements into broader policy areas beyond tariffs and customs arrangements and a perceived 'democratic deficit' in the treaty-making process. The committee recommends the Australian Government should prioritise action to respond to the growing bipartisan and community support for reform of the treaty-making process. A reformed treaty-making process will be an important measure to assure continued public support for Australia's future trade agreements.

Recommendation 2

5.15 The committee recommends that the Australian Government expedite widely supported reforms to the treaty-making process in order to assist the completion of future trade agreements.

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Chair