

Chapter 3

Key issues

3.1 As noted in chapter 1, the committee received seven submissions. All submissions to the inquiry were generally supportive of the Bills and advocated for their expeditious passage through the Parliament.¹ This chapter will address the most common issue raised in submissions—the necessity for the Bills to be enacted in time for KAFTA to enter into force before the end of 2014—before turning to some issues raised in two of the submissions that go to the actual text of the Bills.

Swift passage

3.2 Five of the seven submissions stressed the need for KAFTA to enter into force before the end of 2014.² This is because the Korean tariffs on a number of Australian originating goods would drop immediately upon entry into force of KAFTA and thereafter on 1 January each year. If KAFTA enters into force before the end of 2014, the tariffs would drop on entry into force and again on 1 January 2015. If KAFTA does not enter into force until 2015, the tariff reductions would effectively be delayed by a year for the life of the tariff reduction period. This could have significant impacts on Australian industry, as described by the Australian Red Meat Industry Korea FTA Taskforce:

Of acute importance, however, is the need to ensure that KAFTA enters into force (EIF) in calendar year 2014. This timeframe will bring the current 8% beef tariff differential (Australian vs US beef) back to a more commercially viable 5.3% - and subsequently guarantee that this tariff differential is not greater than 5.4% for the remainder of the 15 year KAFTA tariff elimination period.

If EIF is not secured in calendar 2014, the current 8% competitive disadvantage vs US beef under [the Korea-United States Free Trade Agreement] will be evident for each of the next 15 years – with ongoing detrimental impacts on Australian beef's market share in Korea. The current tariff differential has already seen Australia lose 2% of its share of the imported chilled beef segment in Korea so far this calendar year.³

1 Teys Australia Pty Ltd, *Submission 1*; Australian Red Meat Industry Korea FTA Taskforce, *Submission 2*; Australia-Korea Business Council, *Submission 3*; Customs Brokers and Forwarders Council of Australia Inc, *Submission 4*; Australian Sugar Industry Alliance Limited, *Submission 5*; Export Council of Australia, *Submission 6*; CANEGROWERS, *Submission 7*.

2 *Submission 1*, p. 2; *Submission 2*, p. 1; *Submission 3*, attachment 1; *Submission 4*, p. 2; *Submission 6*, p. 2.

3 *Submission 2*, p. 1.

3.3 Article 23.2 of KAFTA provides that:

This Agreement shall enter into force 30 days after the date the Parties exchange written notifications certifying that they have completed their respective applicable legal requirements and procedures or on such other date as the parties may agree.

3.4 This means that, unless the parties otherwise agree, Australia and Korea must complete the relevant 'legal requirements and procedures' and notify each other of that fact in writing by 1 December 2014 in order for KAFTA to enter into force before the end of 2014.

Committee comment

3.5 The committee strongly agrees that it is in national interest that KAFTA come into force before the end of 2014. To delay would serve only to expose key industries of the Australian economy—and, importantly, the communities that rely on those industries—to disadvantages brought about by the fact that their major overseas competitors have preferential access to the Korean market.

3.6 The committee therefore endorses calls for the Bills to be passed at the earliest possible opportunity so that KAFTA can enter into force before the end of 2014.

Recommendation 1

3.7 The committee recommends that the Bills be passed at the earliest possible opportunity.

Textual issues

3.8 Some submitters raised a number of issues in relation to the text of the Bills. For example, the Customs Brokers and Forwarders Council of Australia (CBFCA) and the Export Council of Australia (ECA) were concerned that 'the Bills may not specifically address many of the actual provisions of the KAFTA'.⁴

3.9 The CBFCA and ECA identified, '[b]y way of example', seven instances in which, they claim, the Bills fail to give full effect to Chapter 3 of KAFTA.⁵ These instances are of three types, namely where:

- there is no proposed section that corresponds with an identified article in Chapter 3 that would appear to require legislative implementation (the submissions identify articles 3.18 and 3.20);
- proposed sections incompletely or incorrectly give effect to some articles (the submissions identify articles 3.23(2) and 3.24); and

4 *Submission 4*, p. 3; *Submission 6*, p. 3.

5 *Submission 4*, pp. 3-4; *Submission 6*, pp. 3-4.

- existing provisions of the *Customs Act* would appear to create a legal situation that differs from the one contemplated in KAFTA (the submissions identify articles 3.17(2), 3.21(3) and 3.25).

3.10 The CBFCA and ECA also observed that many of the provisions of KAFTA are to be given domestic effect through regulations that are not before the present inquiry, so it is difficult to know at this stage whether those regulations will give full effect to the relevant articles of KAFTA.⁶

3.11 The CBFCA and ECA recommended that:

the Committee request Customs to provide a table which refers to each of the specific provisions of Chapters 3 and 4 of the KAFTA and which also identifies where those provisions have been adopted or are proposed to be adopted whether by the Bills, otherwise in the Act or the Regulations or by procedure to ensure that the Committee is satisfied that the provisions of the KAFTA have been properly accommodated in Australian law and practice. This should explain any inconsistencies between the KAFTA and the Bills as set out above.⁷

3.12 The submissions also recommended that the regulations should be 'subject to review prior to introduction'.⁸

3.13 A number of other issues were raised by the CBFCA and ECA that lie outside the scope of the present inquiry. These concerned issues such as:

- the need to communicate the terms of KAFTA and the implementing legislation to the 'trading community';⁹
- the need to administer KAFTA and the implementing legislation in a manner that is 'sympathetic to its complexities especially in relation to the compliance with the complex rules of origin';¹⁰
- the operational mechanisms that will be used to implement a number of legislative and non-legislative provisions of KAFTA, and the adequacy of the resources available to implement them;¹¹ and
- possible KAFTA-specific amendments to the 'Guide to the Infringement Notices Scheme' (which is contained in existing Division 5 of Part XIII of the *Customs Act*).¹²

6 *Submission 4*, p. 3; *Submission 6*, p. 3.

7 *Submission 4*, p. 4; *Submission 6*, p. 4.

8 *Submission 4*, p. 3; *Submission 6*, p. 3.

9 *Submission 4*, p. 2; *Submission 6*, p. 2.

10 *Submission 4*, pp. 2, 5; *Submission 6*, pp. 2, 5.

11 *Submission 4*, pp. 4-5; *Submission 6*, pp. 4-5.

12 *Submission 4*, pp. 5-6; *Submission 6*, pp. 5-6.

Committee comment

3.14 The committee acknowledges the issues raised by the CBFCA and ECA in relation to the text of the Bills. The committee suggests that the Commonwealth government consider their concerns and ensure that the current Bills implement Chapter 3 and Annex 2-A of KAFTA to the extent intended. Noting that other legislation beyond the Customs Bill and Tariff Bill may be required to implement other aspects of KAFTA, the government should similarly ensure that all relevant legislation and / or regulations fully implement Australia's obligations under the agreement.

3.15 To this end, the committee recommends that Customs makes publicly available a table as suggested by CBFCA and ECA, referred to in paragraph 3.11 above.

Recommendation 2

3.16 The committee recommends that:

- **as suggested by CBFCA and ECA, the Australian Customs and Border Protection Service makes publicly available a table which refers to each of the specific provisions of Chapters 3 and 4 of KAFTA and which also identifies where those provisions have been adopted or are proposed to be adopted whether in the Bills, otherwise in legislation or regulations or by procedure; and**
- **more generally, the Commonwealth government ensure that the provisions of KAFTA have been properly accommodated in Australian law and practice.**

**Senator the Hon Ian Macdonald
Chair**