

Background and overview

Trade agreements

- 2.1 The General Agreement on Tariffs and Trade (GATT) was developed and implemented to aid economic recovery after the Second World War. The objective was to break down trade barriers and liberalise world trade. GATT was formed in 1947 and came into effect on 1 January 1948, establishing a set of rules and principles for participating countries to follow. However, the accompanying proposed institutional arrangements for the establishment of an International Trading Organisation (ITO) did not eventuate. GATT remained a negotiating forum for tariff reductions and dispute resolution.
- 2.2 GATT transitioned to the World Trade Organisation (WTO) in 1995 after members adopted the Marrakesh Declaration in April 1994.¹ GATT had provided a multilateral trading agreement for merchandise trade. Under the WTO the General Agreement on Trade in Services (GATS) and the Trade-Related Aspects of Intellectual Property Rights (TRIPS) extended the multilateral trading agreements to services and intellectual property rights respectively.²
- 2.3 As negotiations on the WTO multilateral trade agreements slowed during the 1990s, bilateral, plurilateral and regional trade agreements increased.³ These agreements are often referred to as 'free trade agreements' (FTAs)

1 World Trade Organization (WTO), 'Marrakesh Declaration of 15 April 1994', http://www.wto.org/english/docs_e/legal_e/marrakesh_decl_e.htm, accessed 24 July 2014.

2 For more detail on the history of General Agreement on Tariffs and Trade (GATT) and the WTO see: <http://www.wto.org/index.htm>.

3 As at June 2014 the WTO had been notified of 585 regional trade agreements. WTO, 'Regional trade agreements', <http://www.wto.org/english/tratop_e/region_e/region_e.htm>, accessed 25 July 2014.

but are more correctly termed 'preferential trade agreements'. Such agreements are signed between two or more countries providing them with favourable market access conditions by reducing tariff and non-tariff barriers.

- 2.4 As at July 2014, Australia has seven FTAs in place, eight under negotiation and two signed but not yet in force.⁴

Benefits of free trade agreements

- 2.5 Advocates for FTAs suggest that FTAs have provided a way forward since the WTO process stalled during the 1990s, encouraging trade liberalisation, opening up market access and strengthening bilateral relationships. The WTO gives conditional support for free trade agreements, allowing for them under GATT's Article 24, providing they meet WTO rules. The WTO indicates that such agreements can go beyond what may be available in a multilateral agreement at a given time.⁵ It is often quicker and easier to achieve an outcome for an FTA where negotiations are taking place between a limited number of parties.⁶
- 2.6 As well as tariff reduction or elimination, FTAs often cover a range of non-tariff barriers and increasingly cover such matters as investment protection, intellectual property rights, trade facilitation, government procurement, and labour and environment standards. Many of these impediments to free trade are 'not within the scope in the WTO setting' and FTAs open up an avenue to pursue such matters.⁷ The outcome in these non-tariff areas frequently lays the foundation for rules and issues that are subsequently incorporated into multilateral agreements.⁸

Criticism of free trade agreements

- 2.7 The contribution of free trade agreements to world trade liberalisation and economic growth has been questioned. The WTO cautions that, although

4 Department of Foreign Affairs and Trade (DFAT), 'Australia's Free Trade Agreements', <<http://www.dfat.gov.au/fta/>>, accessed 25 July 2014.

5 World Trade Organization, 'Understanding the WTO', p. 64, <http://www.wto.org/english/thewto_e/whatis_e/tif_e/understanding_e.pdf>, accessed 25 August 2014.

6 The Australian APEC Study Centre, Monash University, *An Australian-USA Free Trade Agreement: Issues and Implications*, Department of Foreign Affairs, August 2001, p. 19, <http://www.dfat.gov.au/publications/aus_us_fta_mon/aus_us_fta_mon.pdf>, accessed 25 August 2014.

7 Productivity Commission, *Bilateral and Regional Trade Agreements*, November 2010, p. xxi.

8 World Trade Organization, 'Understanding the WTO' p. 64, <http://www.wto.org/english/thewto_e/whatis_e/tif_e/understanding_e.pdf>, accessed 25 August 2014.

such agreements can complement the multilateral trading system, there are a number of concerns:

- net economic impact will depend on the architecture of the individual agreement and its internal parameters;
- they are discriminatory and advantage the signatory countries;
- distortions in resource allocation, and trade and investment diversion may minimise benefits; and
- the proliferation of agreements and consequent overlapping trade rules can hamper trade by imposing extra costs on potential participants.⁹

2.8 In its 2010 report on Bilateral and Regional Trade Agreements (BRTAs), the Productivity Commission called for a more realistic, transparent process, including a post-negotiation analysis to identify possible adverse impacts.¹⁰

Japan-Australia Economic Partnership Agreement

2.9 The following summary of the *Agreement between Australia and Japan for an Economic Partnership* (JAPEA) and its claimed benefits is taken from the National Interest Analysis (NIA) and the Regulation Impact Statement (RIS).

Overview and national interest summary

2.10 According to the NIA, JAPEA will substantially liberalise Australia's trade with Japan, Australia's second-largest export market and second-largest overall trading partner. JAPEA will give Australian exporters significantly improved market access in goods and services, eliminating or significantly reducing tariffs on a wide range of Australian goods exports, including beef, natural cheese, wine, horticulture and energy and resource products. It will guarantee market access equivalent to or better than Japan has provided any other trading partners in key areas of commercial interest to Australian service providers, including education, financial, legal, telecommunications, engineering and other professional services. Australian consumers will enjoy cheaper Japanese imports, notably cars and household and electronic consumer goods. Tariffs on some of

9 WTO, 'Regional Trade Agreements: Scope of RTAs', http://www.wto.org/english/tratop_e/region_e/scope_rta_e.htm, accessed 25 July 2014.

10 Productivity Commission, *Bilateral and Regional Trade Agreements*, p. xxxiii.

Australia's most sensitive products, notably in the manufacturing sector, will be phased out over 3 to 8 years to give industry time to adjust.¹¹

- 2.11 Australia is the first major agricultural exporter to conclude an Economic Partnership Agreement (EPA) with Japan. The competitive advantage for Australian exporters will be further enhanced by the 'first-mover advantage', entering the market and establishing relationships ahead of competitors. Increased bilateral trade under JAEPA will benefit the Australian economy. Improved market access for Australian exports and lower import prices will support Australia's terms of trade, increase capital accumulation, and improve productivity and utilisation of resources. Broad most-favoured-nation (MFN) provisions ensure that in most service sectors liberalisation provided to competitors in future agreements will automatically flow to Australian service providers.¹²
- 2.12 The NIA maintains that JAEPA will deliver market access gains and cuts to tariffs quicker than multilateral and plurilateral negotiations currently underway such as the WTO Doha Round, the Regional Comprehensive Economic Partnership (RCEP) and the Trans-Pacific Partnership Agreement (TPP). Further, JAEPA will likely provide momentum in the Japanese system for further liberalisation within the context of the TPP negotiations, while safeguarding Australia's position through renegotiation clauses should Japan provide better access to competitors.¹³
- 2.13 Consistent with Australia's other Economic Partnership Agreements (EPAs), Australia will remove its remaining tariffs on Japanese goods. Tariffs on 82.7 per cent of Australia's merchandise imports from Japan will be eliminated on entry into force of JAEPA, with the remaining tariffs on Australia's sensitive products phased out within eight years. An important exception exists for used motor vehicle imports from Japan, for which the specific duty of \$12 000 per vehicle will be retained.¹⁴

11 National Interest Analysis, [2014] ATNIA 7 with attachments *Agreement between Australia and Japan for an Economic Partnership, done at Canberra, 8 July 2014*, [2014] ATNIF 14, (hereafter referred to as 'NIA'), para 3.

12 NIA, para 4. 'Most-favoured-nation' tariff levels are the tariff levels Japan applies to WTO Member countries with which it does not have a preferential trade agreement.

13 NIA, para 5.

14 Regulation Impact Statement, Japan-Australia Economic Partnership Agreement, 12 May 2014 (hereafter referred to as 'RIS'), para 36. For details of Japanese market access outcomes see Table 4 and Table 5 of the RIS.

Reasons for Australia to take the proposed treaty action

- 2.14 The NIA suggests that a broad economic partnership with Japan will further enhance the bilateral relationship between the two countries, promoting closer economic integration and highlighting the strategic importance of the relationship. JAEPA will support an already significant, complementary and lucrative bilateral economic relationship. Australia's trade surplus with Japan, at \$28.3 billion in 2013, is second only to China. JAEPA will benefit Australian exporters, importers and consumers by opening markets and freeing trade and investment between Australia and Japan. The NIA states that, with one in five Australian jobs linked to trade, JAEPA will provide an important boost to the Australian economy.¹⁵
- 2.15 Despite the strong and mutually beneficial trade and investment relationship between Australia and Japan over a sustained period, the RIS claims that the absence of a bilateral trade agreement:
- constrains Australian producers' and exporters' ability to further build trade in the context of high tariffs;
 - maintains inefficient barriers to Australia's trade which limits profitability;
 - does not provide protection for Australian exporters against preferential agreements Japan has concluded, or is negotiating, with key competitors;
 - maintains higher costs for Australian consumers and businesses for key Japanese imports; and
 - maintains barriers to investment in trade and services.¹⁶
- 2.16 JAEPA will set the legal framework for bilateral trade and investment for the future. Through JAEPA, Japan will bind its regulatory regime in a wider range of service sectors, and liberalise more broadly within sectors, than it has done in the WTO. This is expected to provide greater certainty of treatment for Australian service providers and investors. JAEPA also provides a framework to support industry initiatives to advance mutual recognition of professional qualifications.¹⁷
- 2.17 The NIA notes that JAEPA will create immediate market access opportunities for many sectors of the Australian economy. On entry into force, 92.8 per cent of Australia's trade to Japan will have tariffs set at zero and on the full implementation of the Agreement, 97.5 per cent of trade will receive preferential access or enter duty-free.¹⁸

15 NIA, para 6.

16 RIS, para 3.

17 NIA, para 7.

18 NIA, para 8. For full details of tariff reductions see RIS Table 1, Table 2 and Table 3.

- 2.18 Currently exporters face high tariffs into Japan, with customs duties levied on 6.5 per cent of Australian goods exported to Japan. While the average tariff applied by Japan to goods and services from countries with MFN status in 2012 was 4.6 per cent, the RIS states that this figure does not convey the extremely high tariff peaks applied to products of export interest to Australia.¹⁹
- 2.19 The RIS identifies the main affected stakeholders in Australia as:
- producers and exporters, particularly in agriculture, whose products will become more competitive in the Japanese market as import restrictions are reduced or eliminated;
 - consumers, who will have access to cheaper imports and broader choice of Japanese-made products under JAEPA;
 - importers, who will have improved access to cheaper inputs from Japan and will be able to source and offer an increased choice of goods;
 - manufacturers, who will face increased competition from Japanese-made goods;
 - service providers, who will gain more certain access to the significant and well-developed Japanese market in key areas of commercial interest including financial, education, telecommunications and legal services; and
 - the business community, which will benefit from attracting greater Japanese investment for projects and ventures in Australia.²⁰
- 2.20 The RIS argues that the absence of a new trade arrangement would leave Australia with, at best, the status quo, but more likely losing competitiveness in the Japanese market. With no action, high tariffs would continue to constrain Australian exporters from fully capitalising on one or the world's most valuable markets. Further, the RIS states that taking no action would deny Australian exporters a competitive advantage over suppliers from Japan's other trading partners. Moreover, some of Australia's competitors in agriculture, including Canada and the European Union, are also negotiating bilateral preferential EPAs with Japan. The RIS concludes that failure to enter a bilateral preferential EPA ahead of these countries would place Australian producers at a disadvantage.²¹
- 2.21 The RIS also indicates that taking no action would maintain any applicable Australian tariffs on imports from Japan (which were dominated by

19 RIS, para 5.

20 RIS, para 160.

21 RIS, para 23.

passenger motor vehicles, refined petroleum and goods vehicles), depriving Australian consumers and businesses of cheaper imports.²²

Agriculture

2.22 Japan is Australia's second-largest agricultural market, with an estimated total value of \$4 billion (or 10 per cent of Australia's agricultural exports) in 2013. However Japan's current tariff barriers are particularly high in agriculture. Under JAEPA, agriculture tariffs of up to 219 per cent will be eliminated or significantly reduced on many Australian agricultural exports.

Beef

2.23 Tariffs will be reduced for beef from 38.5 per cent to 19.5 per cent for frozen beef and 23.5 per cent for fresh and chilled beef over 18 and 15 years respectively, with the cuts heavily front-loaded to provide greater early benefit. A discretionary safeguard²³ will be set above current trade levels, but Australia will be permanently exempt from Japan's global 'snapback' safeguard (whereby Japan has the right to increase the tariffs to 50 per cent should beef imports from all sources exceed a volume limit). There is also improved access for offal, preserved meat and live cattle.²⁴

Pork

2.24 Australia will gain preferential access for a large volume of product (more than ten times current trade and around 40 per cent of Australia's total pork exports to all countries) via an Australia-only quota covering pork meat (frozen, fresh and chilled), offal and prepared and preserved pork meat products. Within the quota, the ad-valorem tariff rate will be halved immediately on entry into force, and Australian product will also be exempt from Japan's global 'gate price safeguard'.²⁵

2.25 The RIS claims that the JAEPA outcome is more comprehensive, applying to a greater range of products than any of Japan's bilateral EPAs and has the potential to create a major new market, particularly for premium Australian pork.²⁶

2.26 The pork industry, while acknowledging the significant quota for Australian pork, has highlighted Japan's continuing high surcharges.²⁷

22 RIS, para 24.

23 For details see RIS, para 46.

24 For further details see RIS, paragraphs 40–54.

25 RIS, para 98.

26 RIS, para 98.

27 RIS, para 98.

Dairy

- 2.27 Japan's dairy industry is heavily regulated, with a complex network of WTO commitments and domestic laws and quotas controlling all aspects of production, from industry inputs to end use requirements. Outside of very limited concessions on specialty cheeses (Switzerland) and ice cream (from Philippines and Thailand), Japan has effectively excluded all dairy products from its existing EPAs.²⁸
- 2.28 Australia will receive tariff elimination on casein, lactose, albumen and milk-based proteins on entry into force, and duty-free quotas for some cheeses and improved access for ice cream and frozen yoghurt.
- 2.29 Despite the additional access secured under JAEPA, including on cheese, Australia's major dairy export to Japan, the Australian dairy industry has expressed disappointment with the outcome. Japan's complicated regulatory structure on dairy limited opportunities for broader liberalisation, and Australia instead focussed on improving access for cheese and gains in growing markets such as lactose, casein and milk protein concentrates.²⁹

Grains/oils

- 2.30 JAEPA will provide a large duty-free quota for unroasted malt and tariff elimination on barley and wheat for feed on entry into force, removing the need for Australia's exports to access Japan's complicated quota system. There are also streamlined tendering processes for wheat varieties. Tariffs will be eliminated on wheat gluten and key vegetable oils.³⁰

Sugar

- 2.31 Australia will receive tariff elimination and a reduced levy for international standard raw sugar. Japan imposes a range of tariffs and levies on high polarity raw sugar, making imports prohibitively costly. This effectively pushes exporters to sell lower quality (low polarity)³¹ raw sugar in Japan, requiring sugar to be processed specifically for the Japanese market, at a higher production cost.³²

28 RIS, para 55.

29 RIS, para 64. For further details see RIS paragraphs 55–64.

30 For further details see RIS paragraphs 69–75 and 95.

31 'Polarity' refers to the purity of the sugar based on the quality of refining it has undergone.

32 RIS, para 65.

- 2.32 The Australian sugar industry has expressed disappointment that low polarity raw sugar was excluded from JAEPA. The sugar industry had pushed for improvements in access for high polarity raw sugar.³³

Seafood

- 2.33 Australia will receive tariff elimination on entry into force for crustaceans, shellfish and some fish, and phased tariff elimination on Australia's largest seafood export, Southern Bluefin Tuna. At Japan's request some tariff eliminations in JAEPA, including for Southern Bluefin Tuna, start a few years after entry into force to assist adjustment for its domestic fisheries industry following the 2011 earthquake and tsunami.³⁴

Wine and beer

- 2.34 Australia will receive tariff elimination on entry into force for bulk wine (containers over 150 litres), with a tariff phase-out over seven years for bottled and sparkling wine and wine in containers between two and 150 litres. Tariffs on beer will be bound at zero.
- 2.35 Currently Chile has a tariff advantage through its EPA with Japan. Since the Japan-Chile EPA entered into force Japan's import of Chilean wines have more than doubled to \$178 million in 2013, while imports from Australia have decreased slightly, to \$46 million. JAEPA is expected to help level the playing field.³⁵
- 2.36 The wine industry has strongly welcomed the outcomes.³⁶

Horticulture

- 2.37 Australia receives rapid tariff elimination on the vast majority of Australian horticulture exports (fruit, vegetables, nuts and juice) to Japan.³⁷ The horticulture industry has strongly supported the JAEPA outcomes particularly the Australian Nut Industry Council, the Australian Macadamia Society, AUSVEG, Citrus Australia and the Australian Asparagus Council.³⁸
- 2.38 The Nut Industry, a particularly export focused industry, sees significant opportunities opening up with the elimination of Japanese tariffs on all Australian nut exports.³⁹ Japan is an important and growing market for

33 RIS, para 67. For further details see RIS, paragraphs 65–67.

34 RIS, para 93. For further details see RIS, paragraphs 92–94.

35 RIS, para 14.

36 RIS, para 79. For further details see RIS, paragraphs 76–79.

37 NIA, para 8.

38 RIS, para 82. For further details see RIS, paragraphs 80–91.

39 Australian Nut Industry Council (ANIC), *Submission 13*, p. [1].

nuts and is already the second largest market for Australian shelled macadamia nuts.⁴⁰ The Australian nut industry is expanding with substantial increase in new plantings and exports expected to reach \$1 billion annually by 2025.⁴¹ The Japanese market is anticipated to play an important role in this increase.

Exclusions

2.39 There are a limited number of exclusions for Japanese sensitive products, amounting to 2.5 per cent of Japan's 2013 imports from Australia. Japan has excluded all of these sensitive products from their previous EPAs, meaning Australian exporters will not be disadvantaged in relation to their competitors by the exclusion of these products from JAEPA.⁴² Products excluded include:

- rice;
- milk powder;
- butter;
- shiitake mushrooms;
- sake;
- 'low polarity' raw sugar; and
- certain fur skin products.⁴³

Energy, minerals and manufacturing

2.40 Australia's mineral and fuel resources exports to Japan were worth over \$42 billion in 2013, accounting for over 80 per cent of total merchandise exports. Under JAEPA, all tariffs on Australia's energy and mineral exports will be eliminated within ten years, most on entry into force. Japan will also provide certainty to traders by binding tariffs at zero for certain petroleum oil products which are currently 'unbound' in the WTO, meaning there is no ceiling to the possible MFN tariff levels Japan could apply. All of Australia's manufacturing exports will benefit from duty-free entry on full implementation of JAEPA.⁴⁴

2.41 The RIS notes that the implications of JAEPA on domestic manufacturing will be mixed. Australian manufacturing businesses that use goods and materials produced in Japan will enjoy lower input costs as tariffs are

40 ANIC, *Submission 13*, p. [1].

41 ANIC, *Submission 13*, p. [1].

42 RIS, para 35.

43 NIA, para 8.

44 NIA, para 8. For further details see RIS, paragraphs 103-114.

eliminated or phased down, while industries that compete with products produced in Japan will face additional pressure.⁴⁵

Services

- 2.42 JAEPA guarantees access for Australian service providers and investors equivalent to, or better than, the highest levels of market access Japan had provided to any other trading partner. It guarantees, with only limited exceptions, that if Japan gives more favourable commitments to other trade partners in the future, it will also extend them to Australia.⁴⁶
- 2.43 JAEPA includes commitments with respect to:
- *Legal services*: Japan has bound its existing regime, including a commitment to allow Australian law firms to form legal professional corporations (which goes beyond its WTO GATS⁴⁷ commitments) and confirmed expedited registration procedures will be available for Australian lawyers under JAEPA.⁴⁸
 - *Education services*: Japan has agreed that Japanese students seeking to study at higher education providers listed on the Australian National Register of Higher Education Providers by Australia's Tertiary Education Quality and Standards Agency will be eligible for scholarship programs administered by the Japan Student Services Organization (JASSO), established under Japan's Ministry of Education, Culture, Sports, Science and Technology.⁴⁹
 - *Telecommunications*: Japan has bound outcomes beyond its WTO obligations on access to key services (facilities, interconnection, submarine cable systems, leased circuit services, resale services, number portability and dialling parity) necessary to connect to existing Japanese infrastructure and operate effectively in Japan.⁵⁰
 - *Financial services*: Japan has bound current regulatory arrangements, locking in existing access for Australian service providers and ensuring that barriers cannot be put in place which would impede future opportunities. Japan has, for the first time, locked in cross-border access for Australian fund managers to supply portfolio management and

45 RIS, para 115. For further details see RIS, paragraphs 115–118.

46 NIA, para 8. For further details see RIS, paragraphs 123–124.

47 The *General Agreement on Trade in Services* (GATS) is annexed to the *Marrakesh Agreement Establishing the World Trade Organization*, [1995] ATS 8.

48 NIA, para 8. For further details see RIS, para 125.

49 NIA, para 8. For further details see RIS, para 126.

50 NIA, para 8. For further details see RIS, para 127.

advisory services to the Japanese institutional market from their Australian-based operations.⁵¹

Investment

- 2.44 JAEPA provides improved access and protection for Australian investors and investments in Japan as well as for Japanese investors in Australia, which the NIA says will promote investor confidence and certainty in both countries. Japanese investment in Australia was valued at \$131 billion at the end of 2013. Australian investors, subject to limited exceptions, are to be treated no less favourably than Japanese investors in the establishment, expansion, acquisition, operation and sale of their investments in Japan. Japanese private investors in non-sensitive sectors will be subject to a foreign investment screening threshold equivalent to that currently provided to investors from New Zealand and the United States, as well as the Republic of Korea (and Chile by virtue of MFN provisions in the Australia-Chile FTA) once the Korea-Australia Free Trade Agreement enters into force, thereby facilitating an increase in the flow of Japanese investment into Australia.⁵²
- 2.45 Under JAEPA, the Australian Government retains the ability to screen at lower levels for sensitive sectors, including media, telecommunications and defence related industries, and has reserved policy space on screening proposals for foreign investment in agricultural land and agribusinesses at lower levels. JAEPA does not include an investor-state dispute settlement (ISDS) mechanism but does include a review clause which provides for future consideration of an ISDS mechanism.⁵³

Other

- 2.46 JAEPA also includes commitments on:
- *Intellectual property*: Australia and Japan have confirmed their shared commitment to providing an environment that supports innovators and the creative industries.⁵⁴
 - *Government procurement*: For Australia, this will provide, subject to agreed exceptions, national treatment for Australian goods, services and suppliers in the Japanese market for government procurements above agreed value thresholds.⁵⁵

51 NIA, para 8. For further details see RIS, paragraphs 128–130.

52 NIA, para 8.

53 NIA, para 8. For further details see RIS, paragraphs 131–137.

54 For further details see RIS, paragraphs 141–143.

55 For further details see RIS, paragraphs 139–140.

- *Electronic commerce*: JAEPA contains provisions that safeguard electronic commerce, prevent the imposition of customs duties on electronic transmissions and maintain best practice regulation in this field.⁵⁶

Key market access outcomes for Japan

- 2.47 Consistent with Australia's other bilateral trade agreements, Australia will remove its remaining tariffs on Japanese goods. Tariffs on 82.7 per cent of Australia's merchandise imports from Japan will be eliminated on entry into force of JAEPA, with the remaining tariffs on Australia's sensitive products phased out within eight years. As these outcomes will make Japanese goods more competitive than goods from countries that do not have free trade agreements with Australia, the NIA assumes it can be reasonably expected that Japanese exports to Australia will increase.⁵⁷
- 2.48 This may benefit both Australian consumers and Australian businesses that rely on Japanese imports. The NIA advises that the potential reduction in price from tariff elimination will be particularly relevant in the two largest product import categories from Japan: motor vehicles and automotive parts. Consumers may also benefit through cheaper electrical and white goods.⁵⁸

Obligations

- 2.49 JAEPA consists of 20 chapters, with associated annexes and schedules, and an Implementing Agreement. It is a broad agreement that, according to the NIA, is expected to liberalise and facilitate trade and investment between Australia and Japan. Upon entry into force, or over time, each Party will eliminate or reduce specified tariffs on imports of goods from the other Party (**Chapter 2**) that meet the agreed rules of origin⁵⁹ criteria (**Chapter 3**).
- 2.50 The Parties' schedules of tariff commitments are set out at **Annex 1** as well as country specific tariff rate quotas⁶⁰ (TRQs) for certain Australian

56 For further details see RIS, paragraphs 145–146.

57 NIA, para 9.

58 NIA, para 9.

59 'Rules of origin' (ROO) establish the criteria for determining whether goods will qualify for preferential tariff treatment under JAEPA (that is, whether a good 'originates' in Australia or Japan).

60 Under JAEPA, a 'tariff rate quota' (TRQ) represents the maximum quantity of a product permitted to enter Japan on a preferential basis in a particular year.

agricultural exports to Japan. A review clause (**Chapter 2**) stipulates a requirement to review market access treatment for certain priority agriculture products such as wheat, sugar, dairy and beef in the fifth year of JAEPA and also ensures that, should Japan provide better treatment for such goods to another party, a review will be automatically triggered with a view to providing equivalent treatment to Australian products.⁶¹

- 2.51 Each Party will grant market access and non-discriminatory treatment (known as national treatment⁶² and MFN treatment) to services and investments from the other Party under the Trade in Services and Investment chapters (**Chapter 9** and **14** respectively), except where specific measures or individual sectors are specifically reserved in the non-conforming measures annexures to JAEPA (**Annexes 6** and **7**). The Parties also commit to additional sector-specific disciplines affecting financial service providers and investors from each Party (**Chapter 11**), in addition to those above in the Trade in Services and Investment chapters.⁶³
- 2.52 **Chapter 7** (Food Supply) and **8** (Energy and Mineral Resources) seek to strengthen the relationship between Australia and Japan in these sectors and provide for consultation between them in the event of a severe and sustained disruption to the supply of specified food items (**Annex 4**) or energy and mineral resources (**Annex 5**).⁶⁴
- 2.53 JAEPA also contains commitments and disciplines on customs procedures (**Chapter 4**), sanitary and phytosanitary (SPS) measures⁶⁵ (**Chapter 5**), technical regulations, standards and conformity assessment procedures (**Chapter 6**), telecommunications (**Chapter 10**), the temporary entry of skilled persons (**Chapter 12**), electronic commerce (**Chapter 13**), competition policy (**Chapter 15**), intellectual property rights (**Chapter 16**) and government procurement (**Chapter 17**).⁶⁶
- 2.54 There is a binding State-to-State dispute settlement mechanism modelled on previous free trade agreements and the WTO system (**Chapter 19**). Most substantive obligations in JAEPA will be subject to this mechanism, except those found in chapters on Technical Regulations, Standards and

61 NIA, para 11.

62 'National treatment' means Australia must treat Japanese investors and goods and services providers no less favourably than it treats Australian investors and goods and services providers in like circumstances, and vice versa.

63 NIA, para 12.

64 NIA, para 13.

65 'Sanitary and phytosanitary' (SPS) measures are measures, such as quarantine, to protect human, animal or plant life or health from pests and diseases.

66 NIA, para 14.

- Conformity Assessment Procedures, SPS Measures, Competition Policy and some aspects of the Movement of National Persons chapter.⁶⁷
- 2.55 **Chapter 1** (General Provisions) sets out several WTO-style general and security exceptions which apply to a number of chapters of JAEPA (**Articles 1.9** and **1.10**). Such exceptions ensure FTA obligations do not unreasonably restrict government action in key policy areas, including action to protect essential security interests, the environment and health. **Chapter 1** also carves out application of JAEPA to a Party's taxation measures except in certain circumstances (**Article 1.8**), and provides for the protection of confidential information (**Article 1.7**). **Chapter 1** also established a Joint Committee to oversee JAEPA's implementation (**Article 1.13**).⁶⁸
- 2.56 **Article 20.3** provides that the Parties may agree in writing to amend JAEPA. Any amendment would be subject to Australia's domestic treaty process and enter into force thereafter on a date agreed between the Parties.⁶⁹
- 2.57 The Implementing Agreement sets forth details and procedures for implementing JAEPA, notably with respect to rules of origin and customs procedures.⁷⁰ JAEPA is consistent with Australia's international obligations, including those under the *Marrakesh Agreement Establishing the World Trade Organization*.⁷¹

Implementation

- 2.58 To implement JAEPA in Australia, amendments need to be made to the *Customs Act 1901*, the *Customs Tariff Act 1995* and relevant customs regulations such as the *Customs Regulations 1926*. New customs regulations need to be enacted for the product specific rules of origin set out in **Annex 2** of JAEPA. The *Foreign Acquisition and Takeovers Regulations 1989* will also require amendment to incorporate the new threshold for screening investment proposals by Japanese investors at \$1 078 million (subject to lower thresholds for sensitive sectors). The *Life Insurance Regulations 1995* will require amendment in order to implement the agreement reached in

67 NIA, para 14.

68 NIA, para 15.

69 NIA, para 22.

70 NIA, para 16.

71 NIA, para 17.

respect of life insurance, whereby Japanese life insurers will be able to operate in Australia through branches rather than subsidiaries.⁷²

- 2.59 The remainder of Australia's obligations under JAEPA do not require any legislative or regulatory amendments.⁷³

Review

- 2.60 The provisions of JAEPA set a range of reviews, including on specific market access issues. These reviews occur at set time frames (for example after five years for the treatment of beef, sugar, wheat and dairy, and after ten years for beef safeguard levels) and have additional triggers, such as if another country receives better treatment than Australia. The Investment Chapter in JAEPA includes a review clause which provides for future consideration of an ISDS mechanism. There is also a general review of JAEPA set for the sixth year after entry into force. JAEPA provides mechanisms for unilateral termination by either Party and review through the joint EPA institutional provisions.⁷⁴

Costs

- 2.61 The NIA states that the estimated loss of tariff revenue resulting from JAEPA is approximately \$110 million in 2014–15 and \$1.59 billion over the forward estimates period. This estimate assumes that JAEPA will enter into force in early 2015. The costing does not include any second-round impacts arising from increased bilateral trade. Accordingly, the estimates do not take into account additional lost tariff revenue if imports from Japan displace imports from other countries.⁷⁵
- 2.62 On the other hand, the estimates do not take into account the potential domestic economic growth that JAEPA could generate and any additional taxation revenue resulting from this growth. Overall, given the scale of the bilateral trade and investment relationship, Japan's high tariffs on Australia's main agricultural exports to Japan and the strong support for JAEPA from the business community, the NIA assesses that JAEPA represents a net gain to the Australian economy.⁷⁶

72 NIA, para 18.

73 NIA, para 19.

74 RIS, para 177.

75 NIA, para 20.

76 NIA, para 20.