
The Parliament of the Commonwealth of Australia
Joint Standing Committee on Treaties

Report 144

Treaty tabled on 14 July 2014

Agreement between Australia and Japan for an Economic Partnership

October 2014
Canberra

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Resolution of Appointment

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report on:

- a) matters arising from treaties and related National Interest Analyses and proposed treaty actions and related Explanatory Statements presented or deemed to be presented to the Parliament;
- b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
 - (i) either House of the Parliament, or
 - (ii) a Minister; and
- c) such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.



List of abbreviations

ACCI	Australian Chamber of Commerce and Industry
AFGC	Australian Food and Grocery Council
AJBCC	Australia Japan Business Co-operation Committee
ANIC	Australian Nut Industry Council
BRTAs	Bilateral and Regional Trade Agreements
CMEWA	Chamber of Minerals and Energy of Western Australia
DFAT	Department of Foreign Affairs and Trade
EPA	Economic Partnership Agreement
FTA	free trade agreement
FSC	Financial Services Council
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
ITO	International Trading Organisation
ISDS	investor-state dispute settlement
JAEPA	<i>Agreement between Australia and Japan for an Economic Partnership</i>
JASSO	Japan Student Services Organization
KAFTA	Korea-Australia Free Trade Agreement
MCA	Minerals Council of Australia

MFN	most-favoured-nation
NIA	National Interest Analysis
RCEP	Regional Comprehensive Economic Partnership
RIS	Regulation Impact Statement
SPS	sanitary and phytosanitary
TRQs	tariff rate quotas
TPP	Trans-Pacific Partnership Agreement
TRIPS	Trade-Related Aspects of Intellectual Property Rights
WTO	World Trade Organisation



List of recommendations

Recommendation 1

The Committee supports the *Agreement between Australia and Japan for an Economic Partnership* and recommends that binding treaty action be taken.

Introduction

Purpose of the report

- 1.1 This report contains the Joint Standing Committee on Treaties' review of the *Agreement between Australia and Japan for an Economic Partnership* (Canberra, 8 July 2014), which was tabled in Parliament on 14 July 2014.
- 1.2 The Committee's resolution of appointment empowers it to inquire into any treaty to which Australia has become signatory, on the treaty being tabled in Parliament.
- 1.3 The treaties, and matters arising from them, are evaluated to ensure that ratification is in the national interest, and that unintended or negative effects on Australians will not arise.
- 1.4 Prior to tabling, major treaty actions are subject to a *National Interest Analysis* (NIA), prepared by Government. This document considers arguments for and against the treaty, outlines the treaty obligations and any regulatory or financial implications, and reports the results of consultations undertaken with State and Territory Governments, Federal and State and Territory agencies, and with industry or non-government organisations.
- 1.5 A *Regulation Impact Statement* (RIS) may accompany the NIA. The RIS provides an account of the regulatory impact of the treaty action where adoption of the treaty will involve a change in the regulatory environment for Australian business. The Treaty examined in this report required a RIS.
- 1.6 The Committee takes account of these documents in its examination of the Treaty text, in addition to other evidence taken during the inquiry program.

1.7 Copies of each treaty and its associated documentation may be obtained from the Committee Secretariat or accessed through the Committee's website at:

- http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/15_July_2014/Terms_of_Reference.

Conduct of the Committee's review

1.8 The Treaty action reviewed in this report was advertised on the Committee's website from the date of tabling. Submissions for the Treaty were requested by 15 August 2014.

1.9 The Committee invited all State Premiers, Territory Chief Ministers and the Presiding Officers of each Parliament to lodge submissions. The Committee also invited submissions from individuals and organisations with an interest in the Treaty under review.

1.10 The Committee held public hearings into the Treaty in Canberra on Monday 25 August 2014 and Perth on Tuesday 16 September 2014.

1.11 The transcripts of evidence from the public hearings may be obtained from the Committee Secretariat or accessed through the Committee's website (see paragraph 1.7 above).

1.12 A list of submissions received and their authors is at Appendix A.

1.13 A list of witnesses who appeared at the public hearings is at Appendix B.

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.

Analysis

Introduction

- 3.1 Australia and Japan enjoy a strong, long-standing bilateral relationship based on common values: democracy, human rights, the rule of law. During his visit to Australia in July 2014, the Prime Minister of Japan, Mr Shinzo Abe, referred to the evolving nature of the 'special relationship' between the two countries as it expanded to take in closer security bonds and broader trade ties.¹
- 3.2 The relationship has been reinforced by a steadily developing complementary bilateral economic relationship. Although beginning earlier, the economic relationship accelerated in 1957 with the signing of the *Australia-Japan Commerce Treaty* and was further enhanced by the 1977 *Basic Treaty of Friendship and Cooperation*. Australia's resources have supported Japan's prosperity and Japan's manufactured goods have contributed to Australians' modern, affluent standard of living.
- 3.3 The complementary nature of this two-way trade between the two countries was emphasised throughout the inquiry.² In 2013, it stood at \$70.8 billion, worth more than 10 per cent of Australia's total trade. The Australia Japan Business Co-operation Committee drew attention to the importance of the sustained, long term relationships that have developed through this trade:

The mutual trust that has evolved amongst the bilateral commercial sectors via these solid relationships is not as well recognised as a 'hallmark' as is the oft-remarked 'complementary

1 His Excellency Mr Shinzo Abe, Prime Minister of Japan, *Hansard*, Tuesday 8 July 2014, pp. 7649-7650.

2 Australia Japan Business Co-operation Committee (AJBCC), *Submission 9*, p. [1].

nature' of the two-way trade – Australia as a reliable supplier of consistent quality energy, resources, and agribusiness product and importer of automobiles, consumer electronics and construction equipment.³

Japan-Australia Economic Partnership Agreement

- 3.4 The Japan-Australia Economic Partnership Agreement (JAPEA) is the first such agreement that Japan has signed with a major agricultural exporting economy. It has been welcomed by many as the 'most liberalising trade agreement Japan has ever concluded'⁴ and is expected to deliver significant commercial outcomes.⁵ In particular, JAPEA is seen as providing Australia with a preferential trading advantage over competitors.⁶
- 3.5 Despite wide recognition of the importance of JAPEA, there is also acknowledgement of the agreement's limitations. Japan has been reluctant to consider liberalising its traditionally highly-protected agricultural market. The beef industry told the Committee that JAPEA fell short of delivering the industry's objective of tariff elimination in Japan.⁷ The pork industry was likewise concerned, as was the dairy industry.⁸ Nonetheless, it was acknowledged that the review mechanisms included in JAPEA provide potential for further liberalisation as do a number of regional and multilateral agreements to which Japan is a negotiating party.⁹
- 3.6 The Australia Japan Business Co-operative Committee cautioned that the perceived shortcomings of the agreement should not detract from what has been achieved:

The conclusion of the agreement with Australia represents a seismic shift in Japan's traditional protections of many of its sectors and the recognition that in Japan's national interest, there is a need for the sectors to be globally competitive, not protected. An early date of entry into force would signal Australia's

3 AJBCC, *Submission 9*, p. [1].

4 Business Council of Australia (BCA), *Submission 4*, p. 1.

5 Export Council of Australia, *Submission 18*, p. [2]; Minerals Council of Australia (MCA), *Submission 17*, p. 3.

6 AgForce Queensland Industrial Union of Employers, *Submission 7*.

7 Cattle Council of Australia (CCA), *Submission 6*; AgForce Queensland Industrial Union of Employers, *Submission 7*; Meat & Livestock Australia Limited, *Submission 10*.

8 Australian Pork, *Submission 2*; Australian Dairy Industry, *Submission 22*.

9 CCA, *Submission 6*; AgForce Queensland Industrial Union of Employers, *Submission 7*; Canegrowers, *Submission 26*; Australian Sugar Industry Alliance Limited, *Submission 25*.

welcoming of the policy shift and the long term structural reforms being initiated.¹⁰

- 3.7 A number of witnesses also drew attention to the importance of JAEPA in raising awareness of the Australia-Japan relationship in both countries. Mr Tim Lester, an international lawyer with many years' experience in Japan, warned that there was a degree of complacency toward Australia's relationship with Japan that was inhibiting recognition of future opportunities and JAEPA could rectify this:

I am excited by entering into an agreement of this nature because it refocuses people's attention on the importance of the relationship and it deals with those critical aspects of the relationship around tariff reduction, movement of people, visas, recognition of professional qualifications, which are all essential elements to oiling the wheels of trade and commerce between the two countries.¹¹

Benefits

Multilateral v bilateral trade agreements

- 3.8 There is an overall preference for the trade liberalisation agenda to be promoted through multilateral trade agreements but an increasingly pragmatic acknowledgment that bilateral, regional and plurilateral agreements are necessary in the current climate.¹² Department of Foreign Affairs and Trade warned that Australia risks 'being shut out of our major markets at the moment' as competitors are negotiating bilateral trade agreements with those markets.¹³ Specifically with regard to JAEPA, the Minerals Council of Australia told the Committee that '[N]o other option' is open to Australia and that it would be 'pointless' to wait for the possible conclusion of other negotiations to maintain its competitive position in the Japanese market.¹⁴
- 3.9 Additionally, the bilateral agreement with Japan provided advantages over a multilateral agreement:

10 AJBCC, *Submission 9*, p. 2.

11 Mr Timothy David Baird Lester, Partner and Sector Leader, Japan, Allens, Lawyers, and AJBCC, *Committee Hansard*, Perth, 16 September 2014, pp 12-13.

12 Australian Industry Group (Ai Group), *Submission 31*, p. [1]; Export Council of Australia, *Submission 18*, p. [2].

13 Ms Frances Lisson, Assistant Secretary, North Asia Goods Branch, Department of Foreign Affairs and Trade (DFAT), *Committee Hansard*, 25 August 2014, p. 14.

14 Minerals Council of Australia (MCA), *Submission 17*, p. 2.

In terms of the cooperation and security that it provides to the Japanese and Australia on energy and security, you cannot get that in a multilateral agreement. So that bit that locks in, hopefully, that 60 per cent market share in iron ore and coal is not something that we could negotiate multilaterally or outside this sort of FTA.¹⁵

- 3.10 The Financial Services Council (FSC) told the Committee that the role bilateral agreements played in promoting awareness of Australia in the reciprocal country should not be underestimated:

While lower technical barriers to trade are important, the signalling effect of a bilateral FTA is important as it raises Australia's profile in the partner country and provides further impetus for Australian firms to export.¹⁶

- 3.11 Bilateral agreements are also seen as providing a useful tool for improving and enhancing multilateral negotiations. The Export Council of Australia pointed out that bilateral outcomes can be used to clarify the types of outcomes that are desirable from multilateral negotiations, citing the Trade in Services and Government Procurement chapter in JAEPA as an example.¹⁷

- 3.12 In particular, JAEPA is seen as a first step in improving the outcome of ongoing negotiations for regional agreements such as the Trans-Pacific Partnership Agreement (TPP) and the Regional Comprehensive Economic Partnership Agreement (RCEP). The sugar industry, for example, told the Committee that while JAEPA 'makes no material improvements in the terms of Australia's access to Japan for raw sugar' it was 'worthwhile because it improves the baseline for TPP negotiations with Japan'.¹⁸

Competitive advantage

- 3.13 Although Japan is already a major market for many Australian export products, evidence to the Committee stressed the importance of JAEPA in providing a competitive advantage for Australian business and industry. Evidence suggested that the Japanese market is highly sought after and that Australia's competitors are 'aggressively chasing market share'.¹⁹ JAEPA is seen as providing a preferential trading advantage and there is

15 Mr Brendan Pearson, Chief Executive, Minerals Council of Australia (MCA), *Committee Hansard*, Canberra 25 August, 2014, p. 4.

16 Financial Services Council (FSC), *Submission 30*, p. 2.

17 Export Council of Australia, *Submission 18*, p. [3].

18 Canegrowers, *Submission 26*; Australian Sugar Industry Alliance Limited, *Submission 25*.

19 Mr Gary William Dawson, Chief Executive Officer, Australian Food and Grocery Council (AFGC), *Committee Hansard*, 25 August 2014, p. 6.

concern that, without it, 'Australia would gradually lose competitiveness in important sectors of the' market.²⁰

- 3.14 While JAEPA is the first free trade agreement that Japan has negotiated with a major agricultural economy, the Committee was told that Japan has concluded 13 trade agreements and is negotiating a further 10.²¹ Several of Australia's competitors in the Japanese market have free trade agreements or economic partnerships with Japan, including ASEAN, Chile, India, Mexico and Peru.²² The European Union (EU), Canada, and the US are in the process of negotiating agreements that will impact on Australia's agricultural competitiveness.²³
- 3.15 Even industries that were disappointed with the outcome of JAEPA recognised the importance of the agreement in furthering Australia's competitive edge. For example, despite considering that JAEPA falls short of the industry's expectations, the beef industry identified the agreement as 'critical' to its future prospects in the Japanese market:

The Australian red meat and livestock industry is supportive of the JAEPA which upon entry into force will deliver preferential trading advantages. This agreement is critical to the long term positioning of Australian red meat in Japan, with a more liberalised import regime providing a welcome boost in an environment characterised by increasing competitive pressure.²⁴

First-mover advantage

- 3.16 Of particular significance is the 'first-mover advantage' provided to many Australian industries by JAEPA. Having signed a free trade agreement ahead of many of its competitors, Australia has established a benchmark that others will have to match and created a platform from which to secure further gains:²⁵

It allows us to compete more effectively ... It allows us to enter the market ahead of some of our competitors, create a foothold and build on that foothold in a way that, absent the agreement, we would not have had the capacity to do in competition with some

20 MCA, *Submission 17*, p. 1.

21 Mr Michael Rogers, Manager, Agribusiness Forum, AFGC, *Committee Hansard*, 25 August 2014, p. 8.

22 MCA, *Submission 17*, p. 7.

23 Mr Dawson, AFGC, *Committee Hansard*, 25 August 2014, p. 6.

24 Meat & Livestock Australia Limited, *Submission 10*, p. [1]. See also Cattle Council of Australia, *Submission 6* and AgForce Queensland Industrial Union of Employers, *Submission 7*.

25 Mr Dawson, AFGC, *Committee Hansard*, 25 August 2014, p. 6.

of the other countries that are vying for an economic presence in Japan.²⁶

- 3.17 DFAT told the Committee that ‘first-mover advantage’ goes beyond the obvious initial advantage of tariff reductions, instituting the basis for a broader and deeper association with the market:

... being a first mover is more that you are the first one with a preference in the market. You are able to develop a whole lot of relationships and have a presence with the consumers before your competitors do.²⁷

Maintaining market share

- 3.18 The need to maintain market share was also emphasised by witnesses. Although several of Australia’s resources already enter Japan tariff free, increasing competition is threatening that market. JAEPA will provide substantial benefits to these industries, offering Japan assurance regarding the long term viability and sustainability of Australian supply:

... this agreement will ... provide Japan with additional confidence that Australia will continue to be a reliable and steady supplier of these [coal and iron ore] and other commodities. In doing so, it will help reduce pressure for diversification of supply, which occasionally emerges in Japan.²⁸

- 3.19 On the other hand, Japan is one of the most important markets for Australia’s agri-food industry but it has lost market share in recent years; down from 13 per cent in 2006 to approximately 7 per cent in 2012.²⁹ The industry is looking to JAEPA to regain some of that market share.³⁰
- 3.20 The Export Council of Australia also identified the danger posed by increasing competition from international competitors to existing market share for many Australian industries and stressed the importance of JAEPA to retaining existing market share.³¹

Investment

- 3.21 The expected benefits of the investment provisions in JAEPA were singled out for particular attention by witnesses to the Committee. Raising the

26 Mr Lester, Allens, Lawyers, and Committee Member, AJBCC, *Committee Hansard*, 16 September 2014, p.13.

27 Ms Lisson, DFAT, *Committee Hansard*, 25 August 2014, p. 13.

28 Mr Pearson, MCA, *Committee Hansard*, 25 August, 2014, p. 1.

29 Australian Food and Grocery Council (AFGC), *Submission 16*, p. 4.

30 Mr Dawson, AFGC, *Committee Hansard*, 25 August 2014, p. 6.

31 Export Council of Australia, *Submission 18*, p. [3].

non-screening investment level to \$1 078 million was widely welcomed. Mitsui & Co. told the Committee that it would 'simplify the approval process' and 'sends a clear message to us that further investment is welcomed and encouraged by the Australian government'.³²

- 3.22 The Minerals Council of Australia indicated that the increase will benefit smaller Australian projects seeking funding.³³ The Council also told the Committee that the more secure but less restrictive investment environment would make Australia a more attractive option for many Japanese investors:

The combination of that resource nationalism elsewhere and firmer, stronger arrangements here through this agreement are a real net gain for prospects of increased Japanese investment in this country.³⁴

- 3.23 Asked whether Australian investors in Japan would receive equivalent benefits from JAEPA, DFAT reiterated that Australia does not seek to harmonise investment regimes between Australia and other countries, or negotiate strictly reciprocal conditions. However, under JAEPA, Australian investors and investments will not be treated 'less favourably, in like circumstances, than other investors with respect to the establishment, acquisition, operation and sale of investments in Japan.'³⁵

Review mechanisms

- 3.24 The review mechanisms in JAEPA are seen as providing a range of benefits. The opportunity for a review of existing conditions after five years for a number of industries has alleviated some of the concerns over the failure to achieve more favourable initial outcomes. For example, the beef industry acknowledges the potential for further liberalisation of the market provided by the mechanism.³⁶
- 3.25 The Australian Food and Grocery Council (AFGC) welcomed the inclusion of a wide range of committees in JAEPA and urged the Australian Government to take full advantage of these provisions:

AFGC encourages the use of these committees as part of broader efforts to liberalise trade with Japan, and to support continued

32 Mr Keizo Sakurai, General Manager, Perth Office, Mitsui & Co. (Australia) Ltd., *Committee Hansard*, 16 September 2014, p. 5.

33 Mr Pearson, MCA, *Committee Hansard*, 25 August 2014, p. 3.

34 Mr Pearson, MCA, *Committee Hansard*, 25 August 2014, p. 4. 'Resource nationalism' refers to the tendency of national governments to retain control over natural resources.

35 Department of Foreign Affairs and Trade (DFAT), *Submission 32*, p. 1.

36 Cattle Council of Australia (CCA), *Submission 6*; AgForce Queensland Industrial Union of Employers, *Submission 7*; Meat & Livestock Australia Limited, *Submission 10*.

domestic reform in Japan. The trade in goods committee includes specific reference to non-tariff measures which is a key area requiring ongoing attention. The AFGC supports active engagement in these committees by the Australian Government going forward.³⁷

Issues

Non-tariff barriers

- 3.26 While the significance of the tariff eliminations and reductions are generally acknowledged, there remains considerable concern over ongoing non-tariff barriers inhibiting access to the Japanese market. The market was described variously as ‘complicated’³⁸ and ‘difficult’³⁹ with unique trading arrangements.⁴⁰
- 3.27 The Export Council of Australia told the Committee that Japan’s ‘relatively complex and multi-layered regulatory framework’ proved a deterrent to Australian businesses attempting to operate in the Japanese market. A recent survey carried out for the Council in collaboration with Austrade, Efic and the University of Sydney found that the key barriers to doing business in Japan were: licences and standards (33 per cent), information about local culture (56 per cent) and regulations (44 per cent).⁴¹
- 3.28 The FSC supports JAEPFA and sees significant potential in the Asian market for Australian financial services.⁴² However, the FSC identifies a range of impediments to taking full advantage of the opportunities including the lack of a licensing mutual recognition arrangement.⁴³ Additionally, its members identified a number of concerns regarding the regulatory decision making process for accessing the Japanese market, including:
- opaque regulation applicable to offering investment products;
 - wide discretion in decision making processes;
 - a lack of transparency of applicable criteria; and

37 AFGC, *Submission 16*, p. 9.

38 Ms Lisson, DFAT, *Committee Hansard*, 25 August 2014, p. 10.

39 Mr Dawson, AFGC, *Committee Hansard*, 25 August 2014, p. 7.

40 AFGC, *Submission 16*, p. 6.

41 Export Council of Australia, *Submission 18*, p. [4]. The survey was *Australia’s International Business Survey* (AIBS 2014).

42 FSC, *Submission 30*, p. 2.

43 FSC, *Submission 30*, p. 12.

- no set time limits for when decisions are to be made.⁴⁴
- 3.29 Phytosanitary restrictions remain a major concern for many Australian exporters. Apple & Pear Australia Ltd put it succinctly:
- Free Trade Agreements are worth little if market access is denied or compromised and if phytosanitary measures are uncommercial.⁴⁵
- 3.30 Apple & Pear Australia is particularly concerned that pears grown anywhere in Australia are prohibited from export to Japan and apples grown on the Australian mainland are also prohibited, making tariff reductions meaningless for many growers.⁴⁶ Apples from Tasmania, representing only 9 per cent of the Australian crop, are the only produce able to be exported to Japan. This proves a disincentive for Japanese importers:
- This in itself raises problems because scale is important to importers and Japanese retailers who seek commitments of steady sizeable volumes which may be beyond the capacity of individual growers in a small production region.⁴⁷
- 3.31 The Department of Agriculture stressed that negotiations on phytosanitary protocols are conducted separately to those for trade negotiations.⁴⁸ The Department explained that priorities for negotiations are identified by an industry-driven process managed by the Office of Horticulture Market Access.⁴⁹ According to the Department, currently apples and pears have not been identified as a priority by the horticulture industry and are not on the agenda.⁵⁰
- 3.32 Barriers also exist within the Australian system that discourage exporters from taking full advantage of the opportunities provided in JAEPa. The Committee questioned the high compliance costs imposed on some exporters. The Department of Agriculture explained that the costs cover inspection, audit and certification services.⁵¹ The Department asserted that the fees are cost-recovery for the services it provides but told the

44 FSC, *Submission 30*, p. 7.

45 Apple & Pear Australia Ltd., *Submission 3*, p. [1].

46 Apple & Pear Australia Ltd., *Submission 3*, p. [1].

47 Apple & Pear Australia Ltd., *Submission 3*, p. [2].

48 Mr Simon Murnane, Trade and Market Access Division, Bilateral Engagement and Regional Trade Negotiations Branch, Department of Agriculture, *Committee Hansard*, 25 August 2014, p. 13.

49 Department of Agriculture, *Submission 34*, p. [2].

50 Department of Agriculture, *Submission 34*, p. [2].

51 Department of Agriculture, *Submission 34*, p. [3].

Committee that a review of cost recovery policies and settings is currently being conducted.⁵²

- 3.33 FSC informed the Committee that Australia has a 'large, highly developed and highly skilled' funds management industry poised to take advantage of the Asian market with its growing middle class, rapidly ageing population and underdeveloped financial services.⁵³ However, the FSC indicated that there is a need for reforms to Australia's domestic tax policy and regulation, if the industry is to take full advantage of the enormous potential presented by this market:

In particular the tax treatment of funds managed on behalf of foreigners needs to be reduced and streamlined to ensure Australia is competitive against other financial services hubs in the region. Without these changes the benefits of free trade agreements are limited.⁵⁴

Demand for Australian resources

- 3.34 Minerals and energy resources make up the bulk of Australia's export trade with Japan, worth over \$24 billion and accounting for over 80 per cent of total merchandise exports in 2013.⁵⁵ Two areas of interest emerged from the inquiry: increasing pressure from competitors and changes in demand following the Fukushima Daiichi incident in 2011.
- 3.35 The Minerals Council of Australia (MCA) identified a range of major suppliers who are becoming significant competitors for Australia's minerals and resources sector, including Chile, Peru, Brazil and the Philippines.⁵⁶ However, the Council indicated that JAEPA will provide Japan with reassurance concerning energy and resource security, thus contributing to Australia's competitive edge.⁵⁷
- 3.36 With regard to demand for energy resources due to changing Japanese energy policy initiatives following the Fukushima Daiichi incident, the Council saw little cause for concern as Australia supplies all three energy resources to the Japanese market: gas, thermal coal and uranium.⁵⁸ The nuclear power plants are expected to come back into operation slowly and

52 Mr Murnane, Department of Agriculture, *Committee Hansard*, 25 August, 2014, p. 14.

53 FSC, *Submission 30*, pp. 2-3.

54 FSC, *Submission 30*, p. 2.

55 Regulation Impact Statement, Japan-Australia Economic Partnership Agreement, 12 May 2014 (hereafter referred to as 'RIS'), para 103.

56 MCA, *Submission 17*, p. 7.

57 MCA, *Submission 17*, pp. 2 and 7.

58 MCA, *Submission 17*, p. 5.

in the meantime imports of thermal coal from Australia have increased by 12 per cent.⁵⁹

Regulatory complexity

3.37 Concern was again raised over the regulatory complexity that is developing for Australian business and industry with the proliferation of bilateral trade agreements. The Australian Chamber of Commerce and Industry reiterated its call for harmonisation of requirements across trade agreements, pointing out that the growth of global supply chains is further complicating the issue for many Australian exporters.⁶⁰ ACCI cautioned that the looming conclusion of the Trans-Pacific Partnership (TPP) and the Regional Comprehensive Economic Partnership (RCEP) combined with existing trade agreement requirements will add to the administrative burden faced by exporters:

For example, there are current[ly] three border crossing protocols into Malaysia. With TPP and RCEP this will increase to 5 in Malaysia. In the USA it will be three; Thailand four; Japan three.⁶¹

3.38 AFGC also singled out the issue for attention, saying that each agreement 'invariably produces a new set of arrangements' adding to the existing requirements under the World Trade Organisation and bilateral and regional agreements already in place.⁶² The Council told the Committee that feedback from their members confirmed growing concern over the multiplicity of regulatory requirements:

A number of exporters have highlighted the time consumed in meeting the different and specific requirement of individual trade agreements in order to receive the preferential treatment under particular agreements. JAEPA will add to this task and while food and beverage exporters will welcome the implementation of JAEPA, there is growing concern about the administrative burden across agreements.⁶³

59 Mr Sakurai, Mitsui & Co. (Australia) Ltd., *Committee Hansard*, 16 September 2014, p. 6; Mr Pearson, MCA, *Committee Hansard*, 25 August, 2014, p. 2.

60 ACCI, *Submission 15*, p. 6.

61 ACCI, *Submission 15*, p. 14.

62 AFGC, *Submission 16*, p. 8.

63 AFGC, *Submission 16*, p. 8.

Conclusion

- 4.1 The strong, long standing Japan-Australia bilateral relationship is reinforced by complementary economic ties. Japan is Australia's second-largest trading partner with two-way trade, in 2013, standing at \$70.8 billion with a surplus for Australia of \$28.3 billion. Japan was Australia's second-largest goods export destination (15.5 per cent of total exports) and third-largest source of imports (6.5 per cent) in 2013. Japanese investment in Australia was valued at \$131 billion at the end of 2013, and Australian investment in Japan reached \$50.2 billion.¹
- 4.2 On entry into force of the *Agreement between Australia and Japan for an Economic Partnership (JAEP)*, Japan's tariffs will be set at zero on 92.8 per cent of its current imports (by value) from Australia. On full implementation, 97.5 per cent of the value of Japanese imports from Australia are expected to benefit from preferential tariff treatment.²
- 4.3 The Committee found that there was support for the Agreement, even from those industries that had not achieved completely favourable outcomes.

Committee comment

- 4.4 JAEP 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

1 Regulation Impact Statement, Japan-Australia Economic Partnership Agreement, 12 May 2014 (hereafter referred to as 'RIS'), para 2.

2 RIS, para 31.

any other trading partners in key areas of commercial interest to Australian service providers, including education, financial, legal, telecommunications, engineering and other professional services. Australia is the first major agricultural exporter to conclude an Economic Partnership Agreement (EPA) with Japan, giving Australian exporters a real competitive advantage.

- 4.5 The Committee recognises the important competitive advantage provided by JAEPA for Australian business and industry. Despite the debate over the comparative value of bilateral versus multilateral trade agreements, the Committee understands the need for a pragmatic approach if Australia is not to fall behind its competitors in the growing Asian market. Australia has gained a significant 'first-mover' advantage with JAEPA which should open up opportunities for a range of Australian exporters.
- 4.6 The Committee is aware that a number of Australian industries have failed to obtain the most favourable results from JAEPA. The Committee would urge all stakeholders and the Australian Government to take full advantage of the review mechanisms incorporated into JAEPA to address areas of concern to them.
- 4.7 In this regard, the Committee reiterates its calls for the collection of relevant data and the ongoing, systematic, structured monitoring and evaluation of free trade agreements (FTAs).³
- 4.8 The Committee is aware of the complex range of non-tariff barriers that continue to deter many Australian businesses and industries from entering the Japanese market. The Committee urges continued action to remove or mitigate these barriers wherever possible. The Committee also encourages the Australian Government to monitor domestic non-tariff barriers that may be inhibiting Australian exporters.
- 4.9 The Committee is satisfied that JAEPA has the potential to provide Australian business and industry with a range of profitable opportunities. The Committee believes JAEPA will provide a net benefit to the economy and is in the National interest and recommends that the Treaty should be ratified and binding treaty action be taken.

3 See for example, Joint Standing Committee on Treaties, *Report 142: Treaty tabled on 13 May 2014: Free Trade Agreement between the Government of Australia and the Government of the Republic of Korea (Seoul, 8 April 2014)*, September 2014, p. 47.

Recommendation 1

- 4.10 **The Committee supports the *Agreement between Australia and Japan for an Economic Partnership* and recommends that binding treaty action be taken.**

Mr Wyatt Roy MP
Chair



Appendix A – Submissions

Treaty tabled on 14 July 2014

- 1 Winemakers Federation of Australia
- 2 Australian Pork Limited
- 3 Apple & Pear Australia Limited
- 4 Business Council of Australia
- 5 Almond Board of Australia
- 6 Cattle Council of Australia
- 7 AgForce Cattle
- 8 Confidential
- 9 Australia Japan Business Co-operation Committee
- 10 Australian Red Meat and Livestock Industry
- 11 JBS Australia Pty Limited
- 12 Office of Horticultural Market Access
- 13 Australian Nut Industry Council
- 14 The Australian and New Zealand Chamber of Commerce in Japan
- 15 Australian Chamber of Commerce and Industry
- 16 Australian Food and Grocery Council
- 17 Minerals Council of Australia
- 18 Export Council of Australia
- 19 National Farmers' Federation
- 20 Woodside Energy Ltd
- 21 Chamber of Minerals and Energy of Western Australia
- 22 Australian Dairy Industry Council

- 23 ANZ Banking Group Limited
- 24 Toyota Australia
- 25 Australian Sugar Industry Alliance
- 26 Canegrowers
- 27 National Australia Bank
- 28 Mitsui & Co. (Australia) Ltd
- 29 Associate Professor Kimberlee Weatherall
- 30 Financial Services Council
- 31 Australian Industry Group
- 32 Department of Foreign Affairs and Trade
- 33 Confidential
- 34 Department of Agriculture



Appendix B – Witnesses

Monday, 25 August 2014 – Canberra

Minerals Council of Australia

Mr Peter Morris, Senior Adviser - Coal

Mr Brendan Pearce, Chief Executive

Australian Food and Grocery Council

Mr Gary William Dawson, Chief Executive Officer

Mr Michael Rogers, Manager, Agribusiness Forum

Department of Foreign Affairs and Trade

Mr Simon Farbenbloom, Assistant Secretary, North Asia Investment and Services Branch

Ms Frances Lisson, Assistant Secretary, North Asia Goods Branch

Mr Peter Roberts, Assistant Secretary, Director, North Asia Goods Branch

Mr Dene Yeaman, Director, North Asia Investment and Services Branch

Department of Agriculture

Mr Simon Murnane, Trade and Market Access Division, Bilateral Engagement and Regional Trade Negotiations Branch

Department of Industry

Mr Paul David Trotman, Trade and International, Portfolio Strategic Policy

Tuesday, 16 September 2014 – Perth

Chamber of Minerals and Energy of Western Australia

Mrs Shannon Burdeu, Manager, Economics and Tax

Mr Bruce Campbell-Fraser, Manager, Public Affairs

Allens Lawyers and Australia Japan Business Co-operation Committee

Mr Timothy Lester, Partner and Sector Leader, Japan

Mitsui & Co. (Australia) Ltd

Mr Keizo Sakurai, General Manager, Perth Office