

Senate Economics References Committee
ANSWERS TO QUESTIONS ON NOTICE
Department of Industry, Science, Energy and Resources
Inquiry into the Australian manufacturing industry
06 December 2021

AGENCY/DEPARTMENT: DEPARTMENT OF INDUSTRY, SCIENCE, ENERGY AND RESOURCES

TOPIC: QoN 1: Local content mandates

REFERENCE: Question on Notice (Hansard, 06 December 2021, Page 55)

QUESTION No.: 1

Senator WALSH: We're a party to various free trade agreements. Is that where this is located? There are some provisions of those agreements that allow exemptions for countries to have some specific local content mandates—rather than processes of encouragement and so on, they're mandates—on the basis of strategic importance, national security issues and opportunities for small and medium enterprises. That's correct?

Ms Looney: I would need to take that question on notice and consult with my colleagues. What you're talking about there is whether there are specific provisions for mandating local content. I think that that is outside of my understanding of the agreements that we have in place, therefore I would need to take that on notice. We would need to double-check exactly and confirm with you the scope of those arrangements.

...

Senator WALSH: Has government asked the department to provide advice about finding those ways within agreements to potentially mandate local content?

Ms Looney: I can say that we've done quite a lot of work in the previous budget, which you may have seen, around opportunities to focus on SMEs and manufacturers having opportunities through Commonwealth procurement. We've done a lot of work on that around where we can work in with our international obligations. Our Commonwealth Procurement Rules are the other set of rules we work with. Really, it's been around building capability, looking at where we can put in place dynamic panel arrangements so that people can bid into those things and other measures along that line.

Senator WALSH: I will leave it there, on the basis that I think you've undertaken to take it on notice and consult with DFAT about the places in our free trade infrastructure that potentially allow for actually mandating local content. We've referred to a few possibilities that we're not entirely sure of yet until you're able to provide that information by liaising with DFAT. I think the committee will really appreciate that advice. Thank you very much, Ms Looney.

ANSWER

Australia is a party to the World Trade Organisation (WTO) Agreement on Government Procurement, and has government procurement commitments under a number of its bilateral and regional free trade agreements (FTAs).

These agreements give Australian suppliers of all sizes, including small and medium enterprises (SMEs), the legal right to tender, according to fair and transparent conditions of competition in significant government procurement markets all around the world, including in the European Union, United Kingdom, United States, Canada, Japan, and New Zealand.

The Commonwealth, as well as state and territory governments, have agreed in return to provide access to our markets to the suppliers of our trading partners on a non-discriminatory basis. There are some limited exceptions to these government procurement obligations for Australia, which have been negotiated in consultation with all Australian jurisdictions.

Mandating Australian content in projects or procurements in manner that is inconsistent with these limited assumptions could contravene Australia's international government procurement obligations, in particular the national treatment obligation which prohibits discrimination between Australian suppliers and foreign suppliers.

There is some variation between the application of the obligations to the Commonwealth and the states and territories. Under Australia's international obligations, states and territories have a few additional flexibilities, including a higher monetary threshold at which point the obligations apply.

The Commonwealth, states and territory governments can and do support Australian businesses (including SMEs) and Australian jobs while complying with Australia's international obligations.

Australia has negotiated limited exemptions to support local procurement under its trade agreements – for example, to support SMEs and Indigenous procurement. The Commonwealth and states and territories can develop and implement targeted policies to provide opportunities for domestic industry in these categories.

The Australian Government supports an open market economy as the best way to generate investment and employment, and is committed to fostering an environment where Australian businesses have full, fair and reasonable opportunity to compete for work on eligible major Australian public and private projects through the requirements of Australian Industry Participation (AIP) plans under the Australian Jobs Act 2013 and Commonwealth AIP policy.

Australian Industry Participation requires procuring entities to communicate supply opportunities publicly, such as via public websites and industry briefings, and provide information on how potential suppliers and subcontractors can respond to tenders. Australian suppliers and subcontractors are given equal opportunity to participate and unsuccessful bidders are also offered feedback to improve future performance and capability.