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Productivity Commission response to Question on Notice

Joint Standing Committee on Trade and Investment Growth

Inquiry into supporting Australia's exports and attracting investment

24 September 2019

The Committee requested that the Commission provide material over the past five years relevant to export performance and foreign investment, whether these are through direct or indirect avenues.

At the outset, it is worthwhile emphasising that the kinds of measures that are relevant now are quite different from those that apparent 20 or more years ago. At that time, there were several big triggers available for government. Large policy shifts — most notably the introduction of a floating exchange and the (often unilateral) dismantling of tariff and quota protection of manufacturing — eliminated many of the structural barriers to exporters. Now the two well-justified policy avenues that give businesses greater options to expand their sales through exporting take a different form.

A central one is that a successful export sector relies mostly on the quality of the ‘fundamentals’ that drive productivity and efficiency in an economy – allocative, technical and dynamic. These fundamentals encompass effective (*not* no) regulation, competition policy, a high-quality skills system, infrastructure investment in areas that have the highest economic and social returns, competitive and innovative financial services, a well-developed innovation system and a stable macroeconomic environment. While often not seen that way, these fundamentals are the major elements for efficient export ‘facilitation’, while being generally simultaneously good for productivity and prosperity.

Second, policies (in all likelihood, many hundreds of them) that remedy the impact of a myriad of generally small irritants to efficiency in businesses and labour markets — either manifest as badly designed or policed regulations, poor regulatory culture, or inadequate government service delivery — can help. There are few big enough that they would be reliably apparent in observed trends national income or GDP, but the sum of abundant changes can be large. These reforms are the province of all levels of government — local, State and Territory, and Commonwealth.

The Commission’s inquiries and studies in recent years relate to both of these avenues for export growth — and their relevant findings and recommendations are set out below. However, the Commission has not undertaken a holistic assessment of policy obstacles to exports or of initiatives or institutions whose goals is to stimulate them (such as the EMDG program or Austrade).¹

In large part, we confine our comments to factors influencing exports. In general, creating an efficient and well-regulated economy also facilitates direct foreign investments (and, more broadly, the capacity to access foreign capital). Nonetheless, we have not undertaken much detailed analysis of FDI issues in recent years, with the exception that the Commission made two recommendations in relation to FDI in its 2016 inquiry into *Regulation of Agriculture*, namely that:

¹ The Commission examined the Export Finance and Insurance Corporation in its 2012 report, *Australia’s Export Credit Arrangements* (Report No. 58), but 7 years has elapsed since that review.

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- The Australian Government should increase the screening thresholds for examination of foreign investment in agricultural land and agribusinesses by the Foreign Investment Review Board to their previous level of \$252 million (indexed annually and not cumulative).*[rec. 13.1]*
 - The Australian Government should request that the Productivity Commission, in its annual Trade and Assistance Review, analyse and report on the trends, drivers and effects of foreign investment. *[rec 13.2]*

The Australian Government's response in 2019 accepted recommendation 13.2 (but not 13.1). In light of this, the Commission is including an analysis of FDI in our upcoming Trade and Assistance Review 2018-19, which will be published in the first half of 2020.

Growing the Digital Economy 2019

Our most recent work of direct relevance to the issues confronting the Committee's inquiry was a study undertaken jointly with the NZ Productivity Commission at the request of both Governments.² Overall, the study proposed a wide suite of changes to law and to the deployment of technology by governments to assist businesses and consumers (table 1).

The focus of that study was on growing the digital economy in Australia and New Zealand, particularly through creating greater opportunities for SMEs. While that focus may seem relatively narrow, it has much broader relevance to policy about digital trade with other countries, and to the efficiency of, and innovation in, government services that affect exports to all destinations.

The study found a variety of obstacles to the use of digital technologies. One of the biggest concerns was that excessive risk aversion by regulators, regulatory capture, privacy rules that are unclear or unbalanced, and inappropriate standards can prevent the entry of new, innovative goods and services or make their diffusion unnecessarily slow and costly. This is particularly problematic as digital technology is a growth market globally and domestically.

Not all regulators suffer from this inertia. As noted in the Commission's testimony to the Committee, ASIC's regulatory sandbox provides an experimental basis for testing new products without risk of significant consumer harm.

² Australian Productivity Commission and New Zealand Productivity Commission 2019, *Growing the digital economy in Australia and New Zealand, Maximising opportunities for SMEs*. A broader research project on digital disruption may also be of interest (PC 2016 *Digital Disruption: What do governments need to do?*, Commission Research Paper, Canberra).

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Table 1 Policies for increasing digital trade

<i>Issue</i>	<i>Action required</i>	<i>Expected benefits</i>
Data sharing		
Trans-Tasman sharing of credit information	Minor changes and clarification to privacy legislation	Improved access to finance for individuals and SMEs operating trans-Tasman
New Zealand researchers to be considered trusted users in Australia's new data sharing and release framework	The upcoming Australian Data Sharing and Release Act would include specific mechanisms to enable New Zealand researchers to become trusted users	More trans-Tasman sharing of data and collaboration in research
Digital financial services		
Joint open banking standards	Including New Zealand representatives in the open banking working groups in Australia	Improved trans-Tasman banking services; growth in the fintech sector
Currency conversion	New Zealand Government action to mirror the Australian Competition and Consumer Commission inquiry into foreign currency conversion costs	Lower costs of trans-Tasman payments and funds transfers
Digital trade		
Digitalising trade compliance processes	Completing trials for mutual recognition of supply chain security and a secure trade lane, and moving to full implementation. Aligning standards for the data collected from importers and exporters, such that data is collected once and shared across borders	More efficient trans-Tasman trade; less paperwork; lower compliance costs for SMEs
Trans-Tasman recognition of digital identity services	Agreement between the Australian and New Zealand Governments to recognise digital identity services	Streamlined online trans-Tasman interactions between individuals, firms and governments
Cross-border consumer protection	Develop a consumer protection framework that encompasses cross-border transactions	More trans-Tasman digital transactions; more effective consumer redress for unsatisfactory transactions
Addressing barriers to digital trade, such as shortcomings in intellectual property legislation (particularly 'fair use')	Updating intellectual property legislation in both countries	Enable more innovation and trade as well as greater adoption of digital technology
Improving global digital trade rules	Collaboration between the Australian and New Zealand Governments in international forums	Reducing, eliminating or avoiding non-tariff barriers to international digital trade

Source: Australian PC and New Zealand PC 2019, Growing the digital Economy, p. 5.

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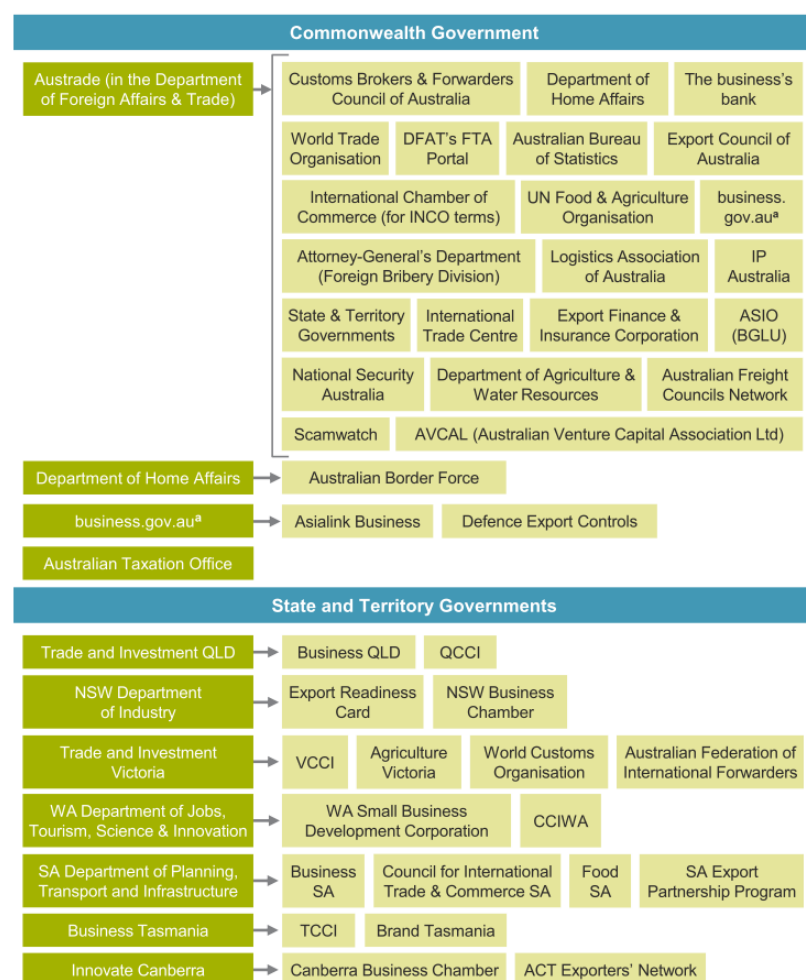
The regulatory sandbox is open to services such as listed or quoted Australian securities; simple managed investment schemes, deposit products; debentures, stocks or bonds issued or proposed to be issued by the Australian Government; deposit and payment products, some kinds of general insurance products; and payment products issued by ADIs. Eligible firms wishing to test their products and services in the sandbox must notify ASIC of their intent.

They need no further approvals.³ The sandbox has been adjusted and expanded in response to a formal evaluation.

A further obstacle to efficient transactions between business and government, is that government information provision to customers is often piecemeal and delivered by multiple agencies (as exemplified by the many places a business may need to go when exporting — figure 1), a problem that can be resolved through digital technologies.

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Figure 1 Exporting information overload
The many destinations users are directed to when seeking government information on exporting from Australia



Source: Australian PC and New Zealand PC 2019, Growing the digital Economy, p. 73.

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³ Several customer protections are in place. There are limits on the total number of retail clients and the value of exposure. Firms or persons who have been banned from providing financial services, who already hold an Australian financial service license, or who are related to or representatives of a license-holder are not permitted to participate in the sandbox.

There have been some improvements in governments' interactions with exporters, as in measures to address the major inefficiencies in trade compliance. For example, the Department of Home Affairs has committed to the development of a single digital trade window (SDTW) for export and import compliance.

In other instances, regulation is stifling new products and services. Narrow 'fair use' provisions in copyright law exemplify archaic provisions that risk affecting new domestic and export markets (a point also emphasised in the Commission's 5 year productivity review, *Shifting the Dial* and its inquiry into intellectual property.⁴ Moving from the current legislated mechanisms that only enable use of copyright material in tightly defined situations ('fair dealing' exceptions) to a principles-based system, which considers whether use of copyright material would harm the right holder's interests ('fair use'), would allow Australia's copyright arrangements to adapt to new circumstances, technologies and uses over time. For example, Australia's overly-restrictive 'fair use' provisions limit the ability of local higher education providers to deliver massive online open courses (MOOCs) and compete in the cross-border delivery of education.

The 5 Year Productivity Review: Shifting the Dial

Much of this report was concerned with improving the non-market sector — particularly Australia's healthcare and education systems — given their importance for people's wellbeing, labour force participation and earnings (chapters 2 and 3). A high quality skill formation system is also important for Australia's export sector — as these are often the most innovative and skills-dependent of industries (as in Australia's resources sector).

The review recognised that Australian cities were growing in relative importance as a source of economic activity, but that there were major frictions that reduced their efficiency (chapter 4). These inefficiencies have adverse impacts on any productive activities, including those that are inputs to, or outputs of, exporters. The policy problems included arcane and archaic zoning and planning restrictions, road funding mechanisms that would be soon rendered redundant by the trend towards electric vehicles, poor infrastructure decision-making, and taxes that reduced labour mobility — all of which can be remedied.

More generally, the Commission recommended taking out the 'microeconomic garbage' — the collection of motley impediments to efficiency and innovation that have yet gone unresolved (chapter 5 and particularly appendix B, but also supporting paper 11 on energy; supporting paper 12 on innovation policy, and supporting paper 13 on regulation in the digital age). Table 2 concentrates on reforms that would lower the costs and increase the capacities of exporters.

⁴ PC, 2016, *Intellectual Property Arrangements*, Inquiry Report No. 78, Canberra.

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Table 2 Some key microeconomic reforms

Problem	Solution
International liner shipping is exempt from competition law, with risks for cargo pricing collusion	Remove exemption
Restrictions on cabotage and entry of foreign shipping increase freight rates	Remove restrictions
Restrictive air service agreements	Remove
Bans on genetically-modified crops raise costs	Remove regulations unless scientific evidence suggests harm
Caps, curfews and other restrictions on how infrastructure is operated decreases productivity and raises costs	Only apply such restrictions where there is a sufficient offsetting public benefit
Government procurement decisions can waste valuable resources and public funds	Better procurement processes aimed at public value
Regulatory impact assessment is present in theory, but not in culture or practice	Institutional change to embed RIA as a regulatory development tool
Mandatory product standards that stifle competition	Adopt suitable international standards where these meet the objectives of the standards
Excessive professional and occupational licensing raises business and consumer costs	Review on a case by case basis with preservation of any desirable goals of the regulation
Non-harmonised variations in licenses add to costs	Take an opportunistic approach to mutual recognition for occupations, recognising that harmonisation is costly in its own right
Environmental assessment processes can be inconsistent	Matter will be covered in the Commission's study into the resources sector
Lack of clarity over future emission costs	Pricing mechanisms and well-understood stable governance arrangements across all levels of government
Ancillary frequency service charges not fully met by generators	Such services should be part of generation costs
Blanket moratoria on gas exploration and development	Remove restrictions where they apply, but ensure proper safety and environmental regulation
Insufficient use of demand management of energy use	Introduce price incentives and complementary technologies for managing peak demand
IP system has systemic faults	Raise the inventiveness test, reform extensions of term, restructure renewal fees, change copyright law from fair dealing to fair use, and reform plant breeders rights
Barriers to collection and use of public data lose innovative products and public value	Linked data available to users, and where sensitive, subject to secure privacy protections

Source: PC 2017, *Shifting the Dial*, Appendix B.

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The Trade and Assistance Review 2017-18

The Commission is required in its Act to examine trade and assistance annually. As in past reports, the 2017-18 review identified some positive and negative aspects to Australia's trading environment, as well as presenting facts about Australia's assistance to industries and sectors, including the export sector.

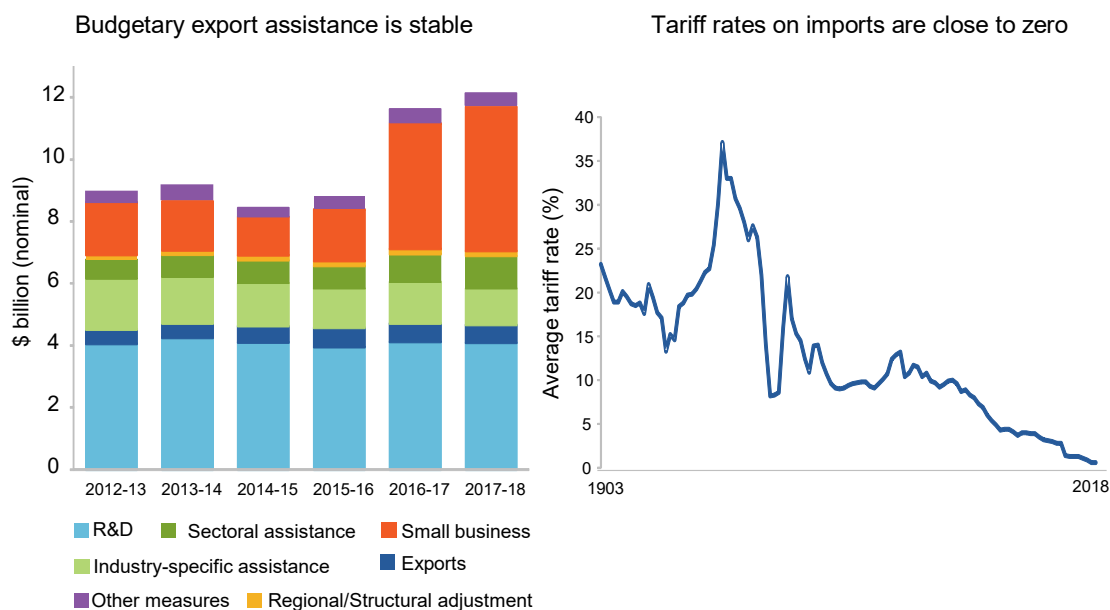
The matters most relevant to Australian exports are:

- tariff assistance to Australian industry are now close to zero, reflecting decades of both unilateral lowering of barriers to trade and the results of negotiations in various trade agreements (figure 2). This is important for export industries because import restrictions raise the costs of inputs for Australia's major exporting industries.
- that assistance to exports — primarily through the Export Marketing Development Grants Program and Austrade — have remained relatively constant from 2012-13 to 2017-18 (figure 2). There are also several relatively small assistance arrangements in place that directly or indirectly support specific exports — such as the Export and Regional Wine Support Package
- agricultural export subsidies (which were always narrowly applied) have been abolished
- customs processes are being re-designed to facilitate trade.
- that disruption to the world trading environment represents the biggest risk to Australia's export sector. As the Commission notes 'The world trading system is under greater strain than at any time since the 1930s'. The trade tensions between the US and China and in turn between the EU, US and China have led to the imposition of tariffs and counter-tariffs. This has global effects on GDP, which affects demand for Australian exports, and we may too be caught up in the imposition of measures that protect other countries import-competing industries. So far we have largely escaped this contagion risk. Another, dynamic concern is that for businesses making long-lasting investments, there is considerable uncertainty about where the trading system will go given policy volatility.

In respect of the latter point, the Commission's view is that Australia should keep its own borders open to trade and investment and to continue working towards freer markets, including through trade agreements where we can find willing partners.

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Figure 2 Budgetary and tariff assistance



Source: PC 2019, *Trade and Assistance Review 2017-18*, p. 29 and 41.

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In an accommodating trade environment, broad multilateral trade agreements best suit Australia's (and other countries') needs. In contrast to broad agreements, regional and bilateral agreements run the risk of trade diversion, costly rules of origin, may preserve distorting tariff peaks and have sometimes not been seen in Australia's interest. (In the latter respect, greater community consultation and transparency of such draft trade agreements would help to achieve better outcomes from our trade and investment agreements.)

However, while multilateral agreements are in principle the best approach, the current trade environment is inimical to broad deals, and more generally, the Commission notes that the WTO has failed to keep pace with the changing nature of trade, including the rise of sophisticated global supply chains and digital trade.

Accordingly, many countries are negotiating on a bilateral basis to make progress where they are able. Australia has been a player in this trend, and now has a significant number of preferential trade agreements in force or agreed. (Since our 2016-17 TAR, Australia has concluded bilateral trade agreements with Hong Kong and Indonesia.) The more recent ones have provisions covering areas like regulatory co-operation, standards and government procurement. More broadly, Australia has played a role in progressing regional trade agreements (such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership) which over time may positively influence the shape of future WTO negotiations.

The Commission emphasised that Australia should also continue to work with other countries to build consensus on how to resolve long-standing and escalating challenges

facing the WTO. There is a need to reinvigorate the negotiation function of the WTO, including plurilateral, sectoral and regional agreements that allow, or work towards 'most favoured nation' treatment and resolving the deadlock on 'special and differential treatment'. There is also a need to strengthen compliance with notification procedures and review and refresh the rules to handle issues relating, inter alia, to state owned enterprises, regulatory cooperation, digital trade and intellectual property.

A report on Rising Protectionism 2017

This is a complement to the 2017-18 TAR. It also examined the growing global trend to protectionism over the last decade. It found that, since October 2008, G20 countries have been adopting new trade restrictive measures more quickly than they have been removing old ones.

The report uses advanced quantitative modelling to indicate the scale of global effects on growth of various scenarios in growing protectionism. The Commission developed a multi-region computable general equilibrium model designed to analyse global trade policy.⁵

The most bleak outcome is that were the world to adopt trade policies akin to those applied in the 1930s, the consequent economic dislocation would have the capacity to cause a global recession, and to have enduring adverse impacts. Australia would not escape unscathed. Over one per cent of GDP every year and close to 100 000 jobs would be lost, and up to 5 per cent of our capital stock could be mothballed. Living standards would fall across the income distribution. A household with the median weekly income would be worse off by nearly \$1500 a year.

This report provides solid evidence about the repercussions to a small open economy like Australia's to instability in the global trading environment — which poses the biggest single risk to Australia's export industries.

Regulation of Agriculture inquiry 2017

The focus of this inquiry were on regulations that generally impeded the efficiency of the industry or whose objectives were not being effectively met. These are of general relevance to trade because agriculture is one of Australia's major exporting industries, and faces a global market where demand is highly responsive to price variations. Small reductions in costs therefore have the potential to substantially increase long-run exports.

Apart from that general consideration of regulation in this sector, some matters related specifically to exports.

⁵ The main report is accompanied by a technical paper describing the model in detail and the results of all of the scenarios (PC 2017, *Modelling Protectionist Trade Policies*).

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- Problems relating to market access issues associated with so-called ‘technical’ barriers to trade (biosecurity, food safety, environmental protection). It is possible to address technical issues in ways that reduce their impact on trade – usually progressed through trade negotiations (a successful example is exports of goat meat to India). Negotiation can also address duplication in regulation between exporting and importing countries (eg through mutual recognition)
 - While accepted as a necessity, producers thought certification arrangements were unwieldy and sometimes too slow. At the time, export certification was often required in paper form, which the Commission considered out of date. Since the report, the Department of Agriculture has implemented an Export Documentation system (EXDOC), which allows electronic certification for most products.
 - Australian standards may be higher than needed to meet importing country requirements.

Marine Fisheries and Aquaculture inquiry 2017

Seafood exports are a relatively small share of total primary exports, valued at around \$1.3 billion in 2014-15 and lower than its volume and value at the start of the new millennium. It has not changed much since (DAWR 2018). Nevertheless, regulatory impediments to the industry affect costs and therefore, to some degree, export prospects. The most relevant regulatory issues are:

- controls over fishing methods (an input control) is an inefficient approach to limiting overall catch. Tradeable quotas are preferred. As noted in the report, a study of the Tasmanian southern rock lobster fishery found that after the introduction of individual tradeable quotas, fishing effort moved to areas where the catch had attributes that were more highly valued by the export market — in particular, moving to shallower waters where the colour of lobsters caught is more likely to attract a price premium on international markets
- regulations were often not the most efficient way of achieving their objectives, with regular reviews needed to ensure regulatory efficiency, not the abandonment of regulations per se
- the need for greater certainty on access and permitted intensity of fishing
- streamlining some environmental approvals, delegating more operational decisions to fishery managers and limiting cost recovery to cover only efficient costs (noting there are significant differences in charges for licenses and accreditation across jurisdictions that do not reflect regulators’ costs)
- better (cooperative) management of cross-jurisdictional fisheries (reflecting that fish move across the fisheries under control of each jurisdiction).

Workplace Relations 2015

The workplace relations system affects the efficiency of the use of labour and capital throughout the economy. It is also intended to achieve certain social outcomes, such as avoiding unfair dismissal and bullying, and ensuring that there is an acceptable balance of bargaining power between employees and employers. Notwithstanding some impressions at the time, the Commission did not find the system ‘dysfunctional’. That said, the workplace relations system affects labour markets throughout Australia and can affect production costs and productivity, with implications for Australia’s export capability.

The Commission identified a host of (often modest) improvements in the system. The ones with the greatest implications for exports relate to the efficiency of enterprise bargaining.⁶ This is important to export industries as holdups in the infrastructure construction phase of a large new capital-intensive project due to slow negotiations for a greenfields enterprise agreement can impose large costs on the resource industry.

The main concerns are that large capital-intensive projects require some certainty about the start date of the project to secure finance, to plan the project, and to more generally manage risk. Unions’ capacity to hold out in their negotiations provides them with potentially excessive bargaining power, and risks stripping some of the needed returns from inherently risky projects. Unlike other enterprise bargaining processes, the usual disciplines for speedy bargaining — the absence of pay increases for an existing workforce — are not present for greenfields developments.

Similarly, since resource projects often have enterprise agreements that lapse before completion of the extraction phase, this can also give disproportionate bargaining power to unions because the businesses have already undertaken large upfront and now sunk investments. The Commission made two recommendations to address these problems:

- The Australian Government should amend the Fair Work Act 2009 (Cth) so that if an employer and union have not reached a negotiated outcome for a greenfields agreement after three months, the employer may: (a) continue negotiating with the union (b) request that the Fair Work Commission undertake ‘last offer’ arbitration by choosing between the last offers made by the employer and the union (c) submit the employer’s proposed greenfields arrangement for approval with a 12 month nominal expiry date.
- The FWA should give an employer the capacity to form an agreement whose duration matches the life of the construction project.

⁶ Some of the report’s recommendations related to addressing inadequate power for some workers (as in sham contracting and the unlawful employment of foreigners), but these have little bearing on the export issues that are the primary focus of the Committee.

Trade and Assistance Review 2016-17

Much of this review covers older material subsequently addressed in the more recent review. However, a unique aspect of the report was its treatment of the possible impacts of security measures on trade. Two issues were prominent:

The first concerns data localisation regulations, which require data centres to be in the home country. While Australian regulations are currently relatively narrowly applied, the international trend is towards tougher and broader regimes. These restrictions limit the global transfer of digital information. They can undermine the global use of new platforms, and force businesses to use costly local data centres when lower cost alternatives exist elsewhere. Data centres can cost tens of millions of dollars to duplicate, while domestic data storage is not necessarily more secure than storage overseas. However, the worst impacts from data localisation stem from the effects on data flows and the services that use them. For instance, it has been estimated that liberalisation of even the existing data localisation measures in the European Union would directly increase the gross domestic product of most member states by around between 0.01 and 1.1 per cent depending on the country. The problems associated with measures that affect data portability or the charges for its storage and transmission is that the costs percolate throughout economies given the increasing use of data in all sectors. The PC's *Growing the Digital Economy* report (above) recognised this issue for digital services and data transfer between Australia and New Zealand.

The lesson for Australia is to avoid data nationalism and to help craft higher confidence via international agreements and cooperation that address security and concerns, while making full use of data.

A second issue is airport security. Regulations and government outlays that help promote aviation security are critical — not just because of their human safety benefits but because of the damaging consequences to commerce from any major incident. However, such measures raise the costs of passenger travel and accordingly have their own adverse effects on trade in services (such as tourism), and impose inconvenience — impacts that governments should consider when introducing security measures. The concern is to ensure that the process for determining new security regulations and associated budgetary measures is evidence-based, reflects consultation with the parties most directly affected (airports and airlines — both of which have very strong commercial and reputational grounds to avoid security problems), and achieves good outcomes at least cost. At the time of its examination of the issues, this was not always the case.

Services Exports 2015

Many of the key messages from this report echo those above, but the central one is that the priority should be 'domestic policy reform that promotes competition and provides incentives for firms to innovate and lift their productivity'.

The report raised several specific issues not already discussed above:

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- liberalising air services arrangements (noting that the Department of Infrastructure, Regional Development and Cities has worked with several countries to introduce or modify agreements — DIRDC 2018, p. 85)
 - simplifying Australia's regime of withholding taxes through greater uniformity in the rate applied to different types of investment and reducing the range of exemptions
 - implementing consistent screening thresholds for Foreign Investment Review Board examination of foreign investment proposals across investors from different countries (an issue that may be relevant to the Commission's consideration of FDI in the 2018-19 Trade and Assistance Review)
 - visa arrangements for foreign students wishing to study in Australia, which had some perverse consequences at the time of the report.⁷ The Australian Government has since introduced significant changes through the 'Simplified Student Visa Framework'
 - the importance of information to guide international students to high quality courses that match their aptitude and preferences, and more generally, the need to ensure that this significant source of export revenue is underpinned by a quality service. The Australian Government has spent additional resources since this report to improve the Quality Indicators for Learning and Teaching (QILT) and its dissemination. It has also undertaken a review of the Australian Qualification Framework, due for release in September 2019
 - while some government export assistance programs had a compelling rationale, the case has not been strongly demonstrated for all programs (pp. 116–130)
 - the importance of reducing services trade restrictiveness, noting that while Australia imposes relatively limited restrictions, this was not true *at the time* for a variety of other countries and particularly China, India, Indonesia and Turkey.

⁷ The Commission has also looked at international education services in PC 2015, *International Education Services*, Commission Research Paper, Canberra, but as noted below, policy initiatives addressing some of the concerns have been implemented since that report.

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