Chapter 5

Agenda setting and post-implementation issues

5.1 This chapter examines the evidence around issues relating to Australia's approach to agenda setting and post-implementation of trade agreements. These include the lack of a strategic framework at the start of negotiations, shortcomings with national interest analyses (NIAs) and associated documents, a lack of analysis of treaties in force, and inconsistency between trade agreements.

Lack of a trade strategy

5.2 An issue of concern raised in evidence was the lack of a coherent strategy surrounding trade negotiations due to the 'agreement-by-agreement' approach taken by Australia. The lack of an overarching trade strategy has been the subject of previous reviews. For example, in its 2010 report into bilateral and regional trade agreements, the Productivity Commission expressed concern that:

> While substantial information on the progress of agreements is currently publicly available for each agreement through agreement home pages on DFAT's website, their 'agreement-by-agreement' nature inherently lacks an overall strategic perspective.[1]

5.3 Associate Professor Weatherall agreed with the Productivity Commission's criticism. Her submission argued that 'Australia needs a more strategic, and less reactive approach to the negotiation of international obligations, and one that is informed by Australia's national interest'.[2]

5.4 Submitters brought to the committee's attention several concerns relating to Australia's failure to approach trade agreements strategically, which are explored below.

Explanation of entry into negotiations

5.5 By the time parliament plays a role in scrutinising an agreement after it has been tabled, it is too late for it to be renegotiated, even though technically Australia is not yet bound by the treaty. Picking up on this issue, a number of submitters argued that information about Australia's strategic approach to the negotiations needs to be tabled in parliament—and thus made public—when negotiations commence.

5.6 Associate Professor Weatherall was strongly in favour of introducing measures for parliamentary engagement before the signing of agreements, to improve the process:

> In short, while the introduction of processes for tabling and Parliamentary scrutiny of treaties *ex post* has been helpful, it is time to develop better processes for the

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1 Productivity Commission Research Report, *Bilateral and Regional Trade Agreements*, November 2010, p. 302.

2 *Submission 79*, p. 4.

> *ex ante* setting of negotiating mandates and frameworks and for stakeholder and Parliamentary engagement *during* negotiations. Better *ex ante* processes in particular could improve democratic accountability *and* better serve Australia's national interest by facilitating a more strategic and less reactive approach to treaty actions.[3]

5.7 The committee received a number of proposals that would see information tabled in parliament earlier in the treaty-making process. The Australian Fair Trade and Investment Network (AFTINET) submission, picking up on a previous JSCOT recommendation, proposed that:

> Prior to commencing negotiations for bilateral or regional trade agreements, the Government should table in Parliament a document setting out its priorities and objectives. The document should include independent assessments of the projected costs and benefits of the agreement. Such assessments should consider the economic, regional, social, cultural, regulatory and environmental impacts which are expected to arise.[4]

5.8 The Australian Digital Alliance (ADA) and Australian Library and Information Association (ALCC) submission went further and argued that the negotiating mandate and conditions of negotiation should be approved by JSCOT prior to negotiations commencing: 'Following JSCOT approval of the negotiation mandate, the priorities, objectives and anticipated costs and/benefits of the treaty should be tabled in Parliament'.[5] The submission reasoned as follows:

> Tabling the priorities, objectives and anticipated costs and benefits of the treaty in parliament would give DFAT clarity over their mandate, and ensure that they are working from the same base assumptions as the parliament and the population. It would also assist stakeholders in knowing what may be of benefit or concern to their interests.[6]

5.9 In evidence before the committee, a representative from the ADA stated that a negotiating mandate was particularly important for complex and sensitive issues such as intellectual property to establish the benefits to Australia from including them in free trade agreements (FTAs):

> The decision to enter into a negotiation should be made only after identifying Australia's strategic goals and risks. We would like to draw the committee's attention to the recent recommendation in the competition policy review, also known as the Harper review, for an independent review to assess the processes for establishing negotiating mandates to incorporate intellectual property provisions in international trade agreements.

5.10 In a similar vein, the National Tertiary Education Union (NTEU) called for tabling of an 'initial "public interest" document…explaining the objectives, rationale

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3 *Submission 79*, p. 2.

4 *Submission 52*, p. 8.

5 *Submission 78*, p. 2.

6 *Submission 78*, p. 7.

and priorities of the intended agreement. This document should outline an initial position about the economic, social and regulatory impacts'.[7]

Prospective cost-benefit analysis

5.11 Another issue of concern to submitters was that cost-benefit analyses are not mandatory at the commencement of negotiations. Witnesses argued that to carry out an analysis after an agreement has been negotiated is to put the cart before the horse. Instead, an analysis should be carried out and made public up front in order to inform better negotiating outcomes.

5.12 That a cost-benefit analysis should be done early enough to inform the negotiations was supported by CHOICE. Mr Kirkland told the committee:

> We think there is value in cost-benefit analysis being done in a very public kind of way during the negotiation process. In our discussions with DFAT they have told us that that is something they would only do after the negotiations have concluded. That seems like an unusual way to approach that questioning because it is hard to know how Australia, in the negotiation process, can assess what is an appropriate landing point for Australia without having done any cost-benefit analysis.[8]

5.13 The Australian Council of Trade Unions (ACTU) submission drew attention to a 2008 study by the National Institute of Economic and Industry Research which found that FTAs had resulted in net production losses by Australian manufacturing industries between $2.6 and $2.9 billion:

> Based on these experiences, the ACTU strongly supports more balanced studies of the likely employment, social and environmental impacts of trade agreements before governments make the decision to enter into negotiation. We also support the publication of comprehensive studies of the employment, social and environmental impacts of the text of the agreement at the end of the negotiations before the agreement is signed.[9]

Inconsistency between agreements

5.14 Evidence before the committee gave the strong impression that there is a lack of consistency between agreements, as they are negotiated by different teams within DFAT. As Ms Hepworth explained to the committee:

> One of the other issues that we are particularly worried about is the way that the different chapters of, say, trade agreements interlock and relate to each other. We talk to DFAT quite a lot about our concerns and our member interests in relation to copyright…However, each of the chapters is negotiated separately by different negotiating people, with one person overseeing them. But the relationships are so complex that, to be honest—with the absolutely greatest respect to the foreign affairs negotiating team—I am not sure that you would be able to catch all of the

7 *Submission 51*, p. 2.

8 Mr Kirkland, *Committee Hansard*, 5 May 2015, p. 34.

9 *Submission 36*, p. 4.

> interrelations and the consistency issues between those different, incredibly complex chapters.[10]

5.15 The fact that agreements are negotiated independently creates problems for stakeholders attempting to identify a relevant point of contact (as noted by the ACT Government submission in chapter 4). The lack of consistency is also problematic for businesses attempting to make use of trade agreements. As Mr Clark from the Australian Chamber of Commerce and Industry (ACCI) explained:

> It also seems that Australia's trade treaties are negotiated independently from one another and so are built up vertically, with very little horizontal cohesion. As a result, our trade survey shows time and time again that businesses have difficulty understanding regulatory divergence between the multiple Australian trade agreements.
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> For example, an Australian wine exporter exporting wine produced in Australia using bottles from outside Australia might qualify for a tariff concession under the Korean agreement by using a certain mathematical formula, but the same wine needs to undergo a totally different formula when going through the [AANZFTA] Agreement.[11]

5.16 Mr Willcocks further expanded on this point:

> What we increasingly find is that, unfortunately, our negotiators allow for a multitude of procedures in a unique agreement, which then results in a multitude of ways that you can access the agreement, which then results in business confusion.[12]

5.17 The lack of cohesion between agreements is also a missed opportunity for using lessons learned in past agreements to negotiate better outcomes. Associate Professor Weatherall's submission explained:

> In theory, Parliamentary scrutiny, whether by JSCOT or by a Senate Committee… could inform future treaty actions…Thus the Parliamentary scrutiny of AUSFTA, and the numerous criticisms and concerns raised by the Senate Standing Committee…or JSCOT relating to AUSFTA's IP chapter should have informed Australia's negotiating stance in subsequent bilaterals.
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> This however has not happened… DFAT appears to have subsequently adopted the same approach…in its future trade negotiations, despite this Parliamentary criticism and subsequent criticism by the Productivity Commission…[13]

5.18 This apparent lack of consistency between agreements contributes to the impression of stakeholders that trade negotiations are not subject to a coherent strategy.

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10 Ms Hepworth, *Committee Hansard*, 4 May 2015, p. 3.

11 Mr Clark, *Committee Hansard*, 5 May 2015, p. 45.

12 Mr Willcocks, *Committee Hansard*, 5 May 2015, p. 52.

13 *Submission 79*, p. 3.

Model investment treaty

5.19 One proposal put to the committee that seeks to address inconsistency between agreements, while at the same time facilitating public and stakeholder consultation, was that Australia develop a model investment treaty or model treaty text.

5.20 In a submission to the committee's 2014 inquiry into the Trade and Foreign Investment (Protecting the Public Interest) Bill 2014, Professor Luke Nottage proposed that Australia develop a 'model investment treaty' to address the public's concern over the inclusion of investor-state dispute settlement (ISDS) clauses in treaties.[14] The committee's report to that inquiry noted that such an approach could be a valuable way of managing the controversial issue of ISDS.[15]

5.21 In the hearing for this inquiry, Professor Nottage restated his support for a model investment treaty:

> Australia should consider developing a model investment treaty or particular provisions on matters of public interest for the parliament and Australian citizens and, indeed, other parts of trade and investment agreements that are also of broader public interest—so, for example, intellectual property chapters or separate IP treaties.[16]

5.22 Professor Nottage told the committee that it was unusual that Australia does not have draft text in relation to investment:

> In relation to investment, nowadays it is quite unusual, in the sense that dozens of economies, including all the major ones, both developed and developing, have a template that they start with, and which they elaborate, and sometimes update quite regularly, based on public consultation.[17]

5.23 According to Professor Nottage, putting in place a procedure for developing model text on controversial treaty provisions 'could be a useful compromise mechanism to enhance public understanding and input into subsequent treaty negotiations'.[18]

5.24 The proposal that Australia develop model text on controversial areas such as ISDS and intellectual property (IP) was also supported by Associate Professor Weatherall. Along similar lines, the ADA proposed that an 'overarching framework'

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14 *Submission 21* to Foreign Affairs Defence and Trade Legislation Committee, *Trade and Foreign Investment (Protecting the Public Interest) Bill 2014*, pp 1-2.

15 Foreign Affairs, Defence and Trade Legislation Committee, *Trade and Foreign Investment (Protecting the Public Interest) Bill 2014*, August 2014, p. 17.

16 Professor Nottage, *Committee Hansard*, 5 May 2015, p. 64.

17 Professor Nottage, *Committee Hansard*, 5 May 2015, p. 64.

18 *Submission 44*, p. 2.

be developed in the area of IP.[19] ACCI, due to concerns that every agreement 'starts with a blank sheet of paper',[20] favoured developing a model trade agreement:

> …based on international standards that is fully transparent to Australian Industry and to international Governments, so that all stakeholders are aware of what Australia sees as the ideal procedural outcome from a trade treaty…this template would be used as a basis for all future negotiations, and will drive a level of consistency and improved confidence as to what is included in the negotiations.[21]

5.25 Witnesses agreed that, although actual agreements would be expected to depart from the model treaty text, having a template as a starting point could be useful for both consistency between agreements and transparency.

Committee view

5.26 The committee strongly supports the principle that the parliament should have greater access to information about proposed treaties at the commencement of negotiations, throughout the negotiation process and after treaties have entered into force. Although the proposals summarised above are worded differently, there was significant convergence on this topic between submissions and from stakeholders.

5.27 The committee agrees that a statement setting out the government's objectives and priorities in entering negotiations would be a useful tool to facilitate a more strategic approach to negotiations and strengthen parliamentary oversight. It would also be consistent with recommendations made by JSCOT in 2008 and 2012.[22] The committee believes this document should be prepared by DFAT on behalf of the Minister for Trade and Investment.

Recommendation 7

5.28 The committee recommends that the government, prior to commencing negotiations for trade agreements, tables in parliament a detailed explanatory statement setting out the priorities, objectives and reasons for entering negotiations. The statement should consider the economic, regional, social, cultural, regulatory and environmental impacts which are expected to arise.

5.29 Like CHOICE, the committee is perplexed that a thorough cost-benefit analysis of proposed treaty action is only undertaken when treaty negotiations have concluded. The committee is of the view that an independent cost-benefit analysis of proposed FTAs carried out by an independent body such as the Productivity Commission around the time of the commencement of negotiations would have benefits not just for transparency, but for informing the negotiations themselves. Where negotiations span a number of years, as in the case of the Trans-Pacific

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19 *Submission 78*, p. 7.

20 Mr Clark, *Committee Hansard*, 5 May 2015, p. 46.

21 *Submission 71*, p. 5.

22 Joint Standing Committee on Treaties, Report 95, *Australia-Chile Free Trade Agreement*, October 2008, p. 35; Joint Standing Committee on Treaties, Report 128, *Inquiry into the Treaties Ratification Bill 2012*, August 2012, p. 15.

Partnership (TPP) and the China-Australia Free Trade Agreement (ChAFTA), the cost-benefit analysis may need to be periodically updated to ensure it remains relevant.

5.30 As discussed earlier, the committee accepts the argument that the ability of JSCOT to provide meaningful scrutiny of treaty action and to influence treaty text is severely constrained because under current practice it has access to the National Interest Analysis (NIA) and associated documents only after an agreement has been signed by the executive and tabled in parliament. It would be far more meaningful and useful for JSCOT to conduct a public inquiry into both the government's negotiating mandate statement and an independent cost-benefit analysis at the commencement of negotiations. This would greatly enhance parliamentary oversight of proposed treaty action and instil public confidence in the treaty-making process. The committee believes that this new process is consistent with a principled and strategic approach to negotiating agreements.

Recommendation 8

5.31 The committee recommends that a cost-benefit analysis of trade agreements be undertaken by an independent body, such as the Productivity Commission, and tabled in parliament prior to the commencement of negotiations or as soon as is practicable afterwards. The cost-benefit analysis should inform the government's approach to negotiations.

5.32 The committee further recommends that:

- **treaties negotiated over many years be the subject of a supplementary cost-benefit analysis towards the end of negotiations; and**
- **statements of priorities and objectives and cost-benefit analyses stand automatically referred to Joint Standing Committee on Treaties for inquiry and report upon their presentation to parliament.**

5.33 The committee was also surprised to learn that, despite the number of trade agreements entered into in recent years, negotiations still start with a blank sheet of paper. Examples shared with the committee by stakeholders about inconsistencies between agreements demonstrated a need to take a more consistent approach to negotiations.

5.34 The committee considers that the proposal to develop a model or template agreement, at the very least covering controversial issues such as ISDS, IP, and labour and environmental standards, should be considered a priority. Developing a model agreement will also engage stakeholders and the public, and have a positive impact on treaty transparency.

Recommendation 9

5.35 The committee recommends that the government develop a model trade agreement that is to be used as a template for future negotiations. The model agreement should cover controversial topics such as investor state dispute settlement, intellectual property, copyright, and labour and environmental standards and be developed through extensive public and stakeholder consultation.

National Interest Analyses and other tabled documents

5.36 The 1996 reform package brought in a requirement that an NIA be tabled in parliament with each proposed treaty. The following documents are tabled in parliament with the draft treaty text:

- NIA, which is drafted by DFAT in consultation with other departments, sets out why it is in Australia's national interest for binding treaty action to be taken. It includes discussion of:
    - reasons for Australia to take the proposed treaty action;
    - foreseeable economic, environmental, social and cultural effects of the treaty;
    - obligations imposed by the treaty;
    - the treaty's direct financial cost to Australia;
    - how the treaty will be implemented domestically;
    - procedures for amendment of and withdrawal from the treaty; and
    - what consultation has occurred in relation to the treaty;
- for bilateral treaties, a list of countries with which Australia has similar treaties and a list of Australia's other treaties with the country in question;
- for multilateral treaties, a current status list (setting out details of which states are party to or signatory to the treaty in question); and
- where applicable, a Regulation Impact Statement (required for treaties involving domestic regulation affecting business, community organisations or individuals).[23]

5.37 The committee heard concerns from submitters about the independence, quality and comprehensiveness of NIAs and associated documents. Some witnesses took issue with the quality of NIAs, arguing that they were not sufficiently comprehensive. Ms Hepworth from the ADA and ALCC told the committee about her experiences with the KAFTA NIA:

23 *Submission 74*, p. 5.

> In the area of copyright, the national interest analysis and regulatory impact statements did not give any economic impact statement as to what they thought the value of the IP chapter was. They gave no indication of the economic impact of changes to either our domestic or our international commitments. They gave no detailed assessment of cultural or innovative impact or any impact on freedom of access to information or freedom of speech. None of that was included in those statements. They also put in there that we would have to change our domestic legislation and in that statement gave no indication as to costs or benefits of what that change is—and, in fact, gave no actual detail as to how we were going to have to change our legislation. So our experience on recent NIAs and RISs is that, even though they say they will give an economic, cultural and everything else overview, in reality the details of those are very sketchy and not at all adequate.[24]

5.38 A number of witnesses did not consider the NIA process to be independent on the basis that documents are produced by DFAT, which in most cases also negotiates the agreements. As Ms Kearney from the ACTU told the committee, 'The national interest analysis is prepared by DFAT, who, quite frankly, are not likely to criticise their own document.'[25]

5.39 A number of witnesses suggested that the NIA and associated documents should be produced by the Productivity Commission. ACCI, for example, argued that:

> Rather than it falling to the Department of Foreign Affairs and Trade (DFAT) to conduct the National Interest Analysis and the Regulatory Impact statement for a given treaty on the basis of optimal assumptions, this task should instead be given to an independent government body at arms-length to the negotiations, such as the Productivity Commission, on the basis of expected optimal, likely and minimum outcomes.[26]

5.40 Dr Rimmer agreed that DFAT was not the right organisation to prepare the NIA, and told the committee:

> At the moment DFAT is in the peculiar position of both engaging in the negotiations and then engaging in the assessment of those negotiations. There is really a need for an independent evaluation and assessment of the costs and benefits of international agreements by some other body, such as the Productivity Commission, the Department of Finance or Treasury.[27]

5.41 Dr Ranald from AFTINET also argued that DFAT's lack of independence was problematic:

> I think the NIA process is inadequate because it is not independent. What we are recommending, as the Productivity Commission recommended and as a number of other parliamentary committees and so on have recommended, is that, at the end of

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24 Ms Hepworth, *Committee Hansard*, 4 May 2015, p. 5.

25 Ms Kearney, *Committee Hansard*, 5 May 2015, p. 2.

26 *Submission 71*, p. 3.

27 Dr Rimmer, *Committee Hansard*, 5 May 2015, p. 57.

> the trade agreement, there be an assessment by an independent body of the text of the trade agreement, and we are arguing it should be released publically.[28]

5.42 A number of witnesses called for additional information to be included in the NIA. The ACTU argued that: 'balanced studies of the likely employment, social and environmental impacts of trade agreements before government make the decision to enter into negotiations are necessary'.[29]

5.43 The Australian Human Rights Commission submission went further in arguing that the human rights implications of FTAs should also be considered before ratification because trade agreements can have significant human rights implications. However, there is generally no consideration of human rights implications prior to a treaty being ratified. The Commission concluded that a human rights analysis, analogous to statements of compatibility, should be included in the NIA:

> The human rights analysis within the NIA would be completed by [DFAT] when drafting the NIA. If guidance on the compatibility of the treaty with human rights obligations is required, this could be obtained from various sources, for example, the Attorney-General's Department. Subject to resources, guidance could also be obtained from the Parliamentary Joint Committee on Human Rights…or the Australian Human Rights Commission.[30]

5.44 The Australian Network of Environmental Defenders Offices called for inclusion of Environmental Impact Statements in the NIA process. Their submission stated:

> Broadly the NIA is to set out the reasons why Australia should enter into the treaty, including advantages and disadvantages, and 'the foreseeable economic, environmental, social and cultural effects of a treaty action'. We could not find a more specific explanation or guidance as to how environmental impacts are considered. Our brief review of several NIAs indicates that environmental information is minimal and general. At times this contrasts with extensive trade and industry analysis and consultation outlined in NIAs. This suggests a need for a more specific and consistent procedures to assess environmental impacts, compatibility with existing treaty obligations, and ways to best achieve multiple objectives.[31]

5.45 The Public Health Association of Australia proposed that health impact assessments be carried out 'during negotiation, after release of the final agreement and after implementation'. Although not specified in their submission, this idea is consistent with a health impact assessment being undertaken as part of the NIA process.[32]

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28 Dr Ranald, *Committee Hansard*, 4 May 2015, p. 16.

29 Ms Kearney, *Committee Hansard*, 5 May 2015, p. 1.

30 *Submission 94*, p. 6.

31 *Submission 58*, p. 2.

32 *Submission 50*, p. 10.

Post-implementation analysis and review

5.46 Witnesses also expressed concern that, once in force, treaties are not subject to monitoring or analysis to determine whether they are having the intended economic impact.

5.47 DFAT's submission stated that 'many mechanisms exist for the review of specific treaties after their entry into force', including JSCOT scrutiny, scrutiny by other parliamentary committees, agency reporting to parliament, regular activity by lead agencies, and required reporting under domestic implementing legislation, among others.[33]

5.48 A number of submitters, however, did not consider existing mechanisms to be sufficient. According to ACCI:

> …it is crucial for trade treaties to be monitored continuously during their operation to ensure their key economic and social objectives continue to be met…
>
> Taking into account the high expectations surrounding trade treaties on the basis of DFAT's promises made to JSCOT and the Government, it is a natural expectation of the business community that the economic benefits of these treaties should be monitored on an ongoing basis by an independent body such as the Productivity Commission.[34]

5.49 Associate Professor Weatherall drew the committee's attention to the Australia-US Free Trade Agreement (AUSFTA) to argue that a cost-benefit analysis should be conducted on a *post facto* basis when the effects of an agreement over time become clearer. She told the committee:

> I do think…that the ex-post analysis is important. We are now 10 years on from the Australia-US Free Trade Agreement. You can do a cost-benefit analysis. There was some cost-benefit analysis done by the Productivity Commission in the context of its consideration of bilateral agreements, and some of those analyses did not come out all that well. They suggested that a lot of the benefits of some of those agreements were far less that had been touted. I think that sort of analysis and feeding that into future positions is really important, because if we do not learn from our mistakes then we are going to keep repeating them.[35]

5.50 The ADA submission was also in favour of review of treaties already in force for this reason, stating:

> Periodic parliamentary reviews into the effects of AUSFTA and other major treaties may help identify areas that could be adjusted to achieve maximum benefit to Australia. The analysis and evidence collected in such a review could then feed back into the negotiating mandates and cost/benefit analyses for future agreements.[36]

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33 *Submission 74*, p. 8.

34 *Submission 71*, p. 17.

35 Associate Professor Weatherall, *Committee Hansard*, 4 May 2015, p. 10.

36 *Submission 78*, p. 18.

5.51 Some submitters were also concerned that no analysis is regularly undertaken to identify treaties that are no longer in use. Mr Clark told the committee:

> Clearly we do not have a system of removal of treaties once they become obsolete or overrun in some ways by newer agreements as they are agreed to. We would like to see some sort of process of analysis of those agreements which are still relevant, and perhaps in the vein that we are dealing with some other parts of legislation in Australia removing parts of it. One in, one out is a useful sort of approach, perhaps.[37]

5.52 The ADA submission supported the argument that review of treaties already in force would be useful for greater harmonisation of treaties, stating:

> The review process is also an opportunity to review Australia's international commitments and consider renegotiation of existing agreements that either overlap or come into conflict with the new agreements. As we continue to increase our number of international agreements, the necessity of consolidating our commitments will increase.[38]

Committee view

5.53 The committee's view in relation to the NIA has not changed since concluding its inquiry into the Korea-Australia Free Trade Agreement (KAFTA) in October 2014. In its report the committee referred in passing to evidence from expert academics, unions and ACCI which used KAFTA to illustrate a continuing level of dissatisfaction with the current process to negotiate, assess and approve trade agreements in Australia.[39] Drawing upon evidence from ACCI and recommendations included in a 2010 Productivity Commission report, the committee recommended that the Australian Government examine reforms to increase stakeholder consultation in the preparation of NIA documents and consider having NIA documents (or parts thereof) prepared by an independent body.[40]

5.54 Given that NIAs are produced by the same department that negotiates the majority of treaties, it is hardly surprising that they paint an overly positive picture of completed agreements. The committee still considers it sensible to have an independent body prepare the NIAs and associated documents in future. As suggested by witnesses, the Productivity Commission may be best-placed to carry out this function.

5.55 The committee is also concerned that NIAs, as currently produced, are not sufficiently detailed and comprehensive to be of use to stakeholders. For major treaties with significant implications, it is entirely appropriate for detailed analysis of health, environment and human rights implications be included. However, as outlined

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37 Mr Clark, *Committee Hansard*, 5 May 2015, p. 46.

38 *Submission 78*, p. 18.

39 Foreign Affairs, Defence and Trade References Committee, *Korea–Australia Free Trade Agreement*, October 2004.

40 Foreign Affairs, Defence and Trade References Committee, *Korea–Australia Free Trade Agreement*, October 2004, p. 56.

above, NIAs are already supposed to include analysis of 'economic, environmental, social and cultural effects of the treaty'—but the evidence before the committee suggests that this is not done in sufficient detail to be useful.

5.56 The committee considers that detailed analysis of environmental, health and human rights issues are already within the scope of NIAs. Its intention is that, by recommending that NIAs be produced by an independent body, these areas will be addressed in a more comprehensive manner in the future.

Recommendation 10

5.57 The committee recommends that National Interest Analyses (NIAs) be prepared by an independent body such as the Productivity Commission and, wherever possible, presented to the government before an agreement is authorised by cabinet for signature. NIAs should be comprehensive and address specifically the foreseeable environmental, health and human rights effects of a treaty.

5.58 In respect of post-implementation issues, the committee agrees with the view that more could be done to assess whether agreements are having the desired economic impact, and to ensure that this information is fed into the negotiation of future agreements. The committee notes that a range of perspectives on the appropriate timing and form of post-implementation analysis and review exists. ACCI, for example, proposed a regular analysis of the performance of all treaties, which would be akin to ongoing monitoring. Others, such as Associate Professor Weatherall, envisaged a more detailed periodic analysis. The committee, however, is of the view that involving JSCOT earlier in the treaty-making process, as the committee has recommended, will provide a solid platform for JSCOT to become more actively involved in the post-implementation review of agreements.