

# Chapter 2

## Issues raised by submissions

2.1 The bills would implement Australia's commitment to the TPP, to which it became a signatory on 8 March 2018, as outlined in the previous chapter. The primary purpose of the Customs bill is to give effect to new country-of-origin requirements, in line with Australia's TPP commitments. The Customs Tariff bill, meanwhile, sets out subsequent tariffs for imports for goods originating from fellow TPP nations.

2.2 While the bills simply give effect to Australia's TPP commitments, many submissions to the inquiry were primarily concerned with the broader question of Australia's membership of the TPP. In doing so, these submissions restated positions that had been put in submissions to previous parliamentary inquiries.

2.3 In this regard, the substantive provisions of the current bills—regarding country-of-origin standards and tariff rates—were only touched on tangentially in some submissions, if at all.

2.4 This chapter sets out support for the bills in evidence received by the committee, before briefly considering concerns raised about the TPP more generally. It then sets out the committee's views and recommendations.

### Support for the bill

2.5 The submission made by the Minerals Council of Australia (Minerals Council) supported the proposed tariff framework contained in the Customs Tariff bill, as it would have benefits for Australian consumers:

The Australian tariff cuts introduced by the Bills are estimated by the Government to reduce customs duty collections by \$195 million over the Budget's forward estimates period. That represents a \$195 million tax cut for Australian households and businesses.<sup>1</sup>

2.6 The Minerals Council also noted positive effects for Australian exporters coming from the reduction of tariffs by fellow TPP member states:

In return for these tariff reductions TPP-11 parties have agreed to reduce the tariffs they impose on Australian goods. As the TPP-11 parties include several large and fast-growing countries in the region, and have a combined population of 495 million and a combined GDP of \$14.2 trillion, this will create significant new export market opportunities for Australian businesses which will, in turn, support jobs in Australia.<sup>2</sup>

2.7 The Minerals Council further noted that the bills would give effect to the TPP treaty, which would bring broad benefits to Australia:

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1 *Submission 2*, p. 1.

2 *Submission 2*, p. 1.

Passage of the Bills will not only reduce tariffs for Australian consumers and businesses, it will also contribute to the TPP-11's entry into force. Entry into force of the TPP-11 will see the implementation of its wider range of commitments, which extend well beyond tariff cuts to include liberalisation of services trade and investment, and the introduction of new standards in areas such as environmental protection and labour standards.<sup>3</sup>

### **Concerns raised in evidence**

2.8 A number of submissions voiced broad opposition to Australia's membership of the TPP on a number of grounds.<sup>4</sup> The majority of this evidence did not go to the specific provisions of the bill, and instead raised matters that have been considered at length in other parliamentary inquiries. These concerns are summarised below.

#### ***Negotiation process and lack of independent review***

2.9 In opposing the TPP, some submitters claimed that it had been negotiated in a 'secretive and undemocratic way', and that Australia's entry into the agreement had not been sufficiently considered by an independent review of its effects.<sup>5</sup> For example, the Australian Fair Trade and Investment Network (AFTINET) argued:

The decision to sign agreements is made by Cabinet before they are tabled in Parliament and only then examined by the Joint Standing Committee on Treaties. There is no independent assessment of the economic, environmental, health and other impacts of the agreement.

Parliament has no ability to change the text of the agreement and can only vote on the implementing legislation, which only deals with immediate changes to legislation like the Customs Amendment Bills.<sup>6</sup>

#### ***Investor-State Dispute Settlement Provisions***

2.10 Some submissions raised concerns about the TPP's Investor-State Dispute Settlement (ISDS) provisions, arguing these could impinge on the Commonwealth's

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3 *Submission 2*, p. 1.

4 See: Community and Public Sector Union and the State Public Service Federation (CPSU/SPSF), *Submission 1*, p. 1; Electrical Trades Union (ETU), *Submission 3*, p. 5; ActionAid, *Submission 4*, pp. 7–8; National Tertiary Education Union (NTEU), *Submission 5*, p. 2; Mr Alex McKechnie, *Submission 6*, p. 1; Mr Carlos Andrade, *Submission 7*, p. 1; Ms Linda Link, *Submission 8*, p. [10]; Unions WA, *Submission 9* (Attachment 1), p. 1; Mr Jim Morris, *Submission 10*, p. 1; Australian Fair Trade and Investment Network (AFTINET), *Submission 12*, p. 1; Mr Tom Marwick, *Submission 13*, p. 2; Friends of the Earth, *Submission 14*, p. 2; and the Public Health Association Australia (PHAA), *Submission 15*, pp. 5–8.

5 See: CPSU/SPSF, *Submission 1*, p. 1; ETU, *Submission 3*, p. 5; NTEU, *Submission 5*, p. 1; Mr Carlos Andrade, *Submission 7*, p. 1; Ms Linda Link, *Submission 8*, p. 5; AFTINET, *Submission 12*, p. 2; Friends of the Earth, *Submission 14*, p. 1; and PHAA, *Submission 15*, p. 6.

6 AFTINET, *Submission 12*, p. 2;

lawmaking powers, and risk the financial costs of disputing or settling claims made by foreign corporations.<sup>7</sup> For example, AFTINET submitted:

The TPP-11 still contains ISDS rights for foreign investors to bypass national courts and sue governments for millions of dollars in unfair international tribunals if they can argue that a change in law or policy has reduced the value of their investment. The question from a civil society point of view is still whether these rules that suit global corporations but tie the hands of governments from regulating them are in the interest of most Australians.<sup>8</sup>

2.11 The Public Health Association Australia (PHAA) outlined the nature of ISDS, as well as how such cases have proliferated in recent years:

[ISDS] is a legal mechanism that enables foreign investors to sue governments for monetary compensation over the introduction of policies and laws that they perceive as infringing upon investor rights conferred to them by obligations in an international trade or investment treaty. Policies and laws introduced by Federal, State and Territory or local governments can be subject to disputes. Over the last decade there has been a large increase in investment arbitration cases; from fewer than 10 in 1998 to a total of 568 known cases at the end of 2013.<sup>9</sup>

### *Trade in services*

2.12 Some inquiry participants suggested the TPP-11 would place certain restrictions on regulation of trade-in-essential-services and some state-owned enterprises.<sup>10</sup> A number of sectors were highlighted as potentially at-risk from the TPP-11's trade in services chapter, including: state and local government services; community services like child and age care; the health sector; the environment and challenges of climate change; managing carbon emissions effectively; Commonwealth regulation of water and energy markets; financial services; education; and air transport services.<sup>11</sup>

2.13 AFTINET gave an example, which suggested the trade-in-services chapter of the TPP may prevent governments being able to respond effectively to crises or address new policy challenges:

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7 See: CPSU/SPSF, *Submission 1*, p. 1; ETU, *Submission 3*, p. 5; ActionAid, *Submission 4*, pp. 7–8; NTEU, *Submission 5*, p. 2; Mr Alex McKechnie, *Submission 6*, p. 1; Ms Linda Link, *Submission 8*, p. [10]; Mr Jim Morris, *Submission 10*, p. 1; AFTINET, *Submission 12*, p. 1; Mr Tom Marwick, *Submission 13*, p. 2; Friends of the Earth, *Submission 14*, p. 2; and PHAA, *Submission 15*, pp. 5–8.

8 *Submission 12*, p. 1.

9 *Submission 15*, p. 5.

10 See, for example: ETU, *Submission 3*, p. 6; ActionAid, *Submission 4*, pp. 3–4; and AFTINET, *Submission 12*, p. 2.

11 See, for example, the submissions made by: CPSU/SPSF, *Submission 1*, p. 1; Ms Linda Link, *Submission 8*, pp. 1–2; AFTINET, *Submission 12*, p. 3; and PHAA, *Submission 15*, p. 4.

The TPP-11 trade-in-services chapter remains unchanged from the TPP-12. The structure of the chapter treats regulation of services as if it were a tariff, to be frozen at existing levels or reduced over time, and not to be increased in future, known as the 'ratchet' structure. The negative list structure means that all services are included, unless specifically exempted. Exemptions are intended to be reduced over time. The exemptions do not apply to ISDS, and do not prevent ISDS cases on exempted services.

The negative list and ratchet structure are specifically intended to prevent governments from introducing new forms of regulation, which are seen as potential barriers to trade.<sup>12</sup>

### ***Labour rights and market conditions***

2.14 Some submitters questioned whether the implementation of the TPP would lead to a reduction in labour rights for Australian workers, and the entry into Australia of increased numbers of vulnerable temporary migrant workers.<sup>13</sup> For example, AFTINET submitted that:

Labour law experts have criticised the chapter because much of it is aspirational rather than legally binding. For example, the clause on forced and child labour only commits governments to 'recognise the goal' of eliminating forced and child labour. The enforcement process for those few provisions which are legally binding is more qualified, lengthy and convoluted than in other chapters of the agreement. These processes have not proven effective in other agreements. The labour rights chapter is not specifically exempted from ISDS cases, and there is no reference to labour regulation in the claimed ISDS safeguards. This means that future changes to labour laws could be the subject of ISDS disputes.<sup>14</sup>

2.15 Some evidence also argued that the TPP-11 would diminish labour market testing, which would create fewer opportunities for Australians to find and secure jobs. Unions WA submitted that:

...a matter of critical importance for Australian workers is the ongoing commitment that they will have first access to Australian jobs, through a labour market testing obligation on employers to provide evidence they have made all genuine efforts to find a suitable Australian worker before they employ a temporary overseas worker.<sup>15</sup>

2.16 This was also noted by AFTINET, which noted that workers from overseas would be tied to one employer in Australia, so could potentially be threatened with

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12 AFTINET, *Submission 12*, p. 3.

13 For example, see submissions made by: CPSU/SPSF, *Submission 1*, p. 1; ETU, *Submission 3*, pp. 5–6; NTEU, *Submission 5*, p. 2; and AFTINET, *Submission 12*, p. 2 and p. 10.

14 AFTINET, *Submission 12*, p. 10.

15 Unions WA, *Submission 9*, p. 2; also see AFTINET, *Submission 12*, p. 3.

deportation should they lose their jobs, which could make them vulnerable to being exploited.<sup>16</sup>

### ***Environmental standards***

2.17 Some submitters voiced concerns that the TPP would lead to the eroding of Australian environmental standards.<sup>17</sup> In particular, it was noted that the TPP-11 only weakly enforces commitments to international environment agreements, if at all, and that this is sharply contrasted by the legal rights of corporations to bring ISDS cases, as discussed above.<sup>18</sup>

2.18 Additionally, several submissions noted that the TPP-11 omitted consideration of climate change and, in fact, would actually increase the consumption of fossil fuels through its favourable provisions for export of fossil fuels.<sup>19</sup>

### ***Pharmaceutical products***

2.19 The PHAA commented that the Commonwealth would face some challenges in healthcare funding, should the TPP enter into force, particularly from the higher cost burden of pharmaceutical subsidies:

If the poorly drafted and ambiguous biologics provisions are interpreted in such a way that the Australian Government is not able to bring biosimilars to market in a timely fashion, the [TPP-11] could add substantially to the costs of the Pharmaceutical Benefits Scheme. These costs are likely to be passed on to consumers through higher co-payments, resulting in a financial and health burden for already vulnerable people including those on low incomes, older people, and people with chronic illnesses.<sup>20</sup>

### ***Effects on the education sector***

2.20 The National Tertiary Education Union (NTEU) suggested that the quality of education for Australian students could be threatened by an increase in online services that would be allowed following the enactment of the TPP-11:

A further concern is that education standards will be placed under threat by public providers outsource the provision of educational support services to companies who are able to deliver online services within the education supply chain, at cheaper cost, and with potentially very little regulatory oversight.<sup>21</sup>

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16 AFTINET, *Submission 12*, p. 3.

17 AFTINET, *Submission 12*, p. 2;

18 CPSU/SPSF, *Submission 1*, p. 1; ETU, *Submission 3*, p. 5; Ms Linda Link, *Submission 8*, p. [10]; AFTINET, *Submission 12*, p. 10; Mr Tom Marwick, *Submission 13*, p. 2; Friends of the Earth, *Submission 14*, p. 2; and PHAA, *Submission 15*, p. 13.

19 For example, see: ETU, *Submission 3*, p. 5; Friends of the Earth, *Submission 14*, p. 2; and PHAA, *Submission 15*, p. 5.

20 *Submission 15*, p. 9.

21 NTEU, *Submission 5* (Attachment 1), p. 5.

### **Committee view**

2.21 The committee notes that the bills would implement our national commitment to the TPP-11, which Australia signed on 8 March 2018. The bills would set country-of-origin standards for the movement of foreign and Australian goods under the TPP, and also set out the tariff rates for goods being imported into Australia from other TPP member countries.

2.22 Much of the evidence received in this inquiry raised concerns about the nature and effects of the TPP more broadly, and so did not address the specific provisions of the bill in any detail. The committee also notes that some submissions provided to this inquiry have already been considered by one or more of the four previous parliamentary inquiries into the nature and potential effects of the TPP.

2.23 While the committee has given thought to the broad issues raised in this evidence, it considers that they have been amply explored in previous parliamentary inquiries, as well as in the work that the Commonwealth has undertaken as part of negotiating the terms of the TPP.

2.24 The committee notes that Australia has already signed the TPP. While the question of the merits or otherwise of the TPP is outside the scope of this inquiry, the committee nonetheless emphasises its view that there are clear economic benefits for Australian consumers and businesses in enacting the agreement. Given this, the committee recommends that the bill be passed.

### **Recommendation 1**

**2.25 The committee recommends that the bill be passed.**

**Senator Jim Molan AO, DSC**

**Chair**