



Australian Government

Department of Foreign Affairs and Trade

JOINT STANDING COMMITTEE ON TRADE AND INVESTMENT GROWTH

INQUIRY INTO THE AUSTRALIAN GOVERNMENT'S APPROACH TO NEGOTIATING TRADE AND INVESTMENT AGREEMENTS

SUBMISSION OF THE DEPARTMENT OF FOREIGN AFFAIRS AND TRADE

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1. TERMS OF REFERENCE

On Wednesday 9 August 2023, the Minister for Trade and Tourism, Senator the Hon Don Farrell, asked the Joint Standing Committee on Trade and Investment Growth (JSCTIG) to inquire into and report on the Australian Government's approach to negotiating trade and investment agreements. The Department of Foreign Affairs and Trade (DFAT) welcomes the opportunity to make a submission to the Inquiry. This submission addresses the Inquiry's Terms of Reference:

To inquire into and report on the approach adopted by the Australian government when negotiating trade and investment agreements with trading partners, including:

- (a) How the Australian Government develops a negotiating mandate and framework which factors in whole of government priorities;
- (b) How the priorities for, States and Territory Governments, businesses, workers and other relevant stakeholders are considered and incorporated into a negotiating mandate;
- (c) The consultation process undertaken with interested parties, including representatives of industry and workers throughout the process;
- (d) The steps taken to ensure transparency and parliamentary oversight;
- (e) How the economic, social and environmental impacts of an agreement are considered and acted upon;
- (f) The steps taken to ensure agreements protect and advance Australia's national interests, including the ability to regulate in the public interest;
- (g) The steps taken to ensure agreements protect and advance Australia's cultural interests;
- (h) Whether agreements appropriately ensure First Nations Australians can participate and benefit in trade;
- (i) How the Australian approach compares with other, similar countries; and
- (j) How the process could be appropriately legislated to enshrine this approach in law.

2. EXECUTIVE SUMMARY

Trade makes a significant contribution to Australia's prosperity.

Trade and investment agreements, including the World Trade Organization (WTO) agreements, free trade agreements (FTAs) and bilateral investment treaties (BITs), provide a stable rules-based system and create new opportunities for Australian businesses and investors.

Negotiating, implementing and upgrading Australia's trade and investment agreements is a key part of the Government's trade diversification agenda, diversifying not only who we trade with but what we trade.

DFAT leads most trade and investment negotiations for the Australian Government, working closely with portfolio agencies and other Commonwealth Government Departments.

DFAT is committed to effective consultations with all interested stakeholders throughout the negotiating process. Consultations and stakeholder engagement begin before formal trade negotiations start, continue throughout the negotiations and after a new agreement enters into force.

The consultations and stakeholder engagement process on trade agreements generally includes publishing aims and objectives for a negotiation, inviting submissions, formal stakeholder consultation meetings, involving community groups, non-government organisations (NGOs), trade unions, academics, peak industry bodies and business representatives, and consultations with state and territory governments, including through the Ministerial Council on Trade and Investment.

DFAT provides briefings to the trade sub-committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT) and the Joint Standing Committee on Treaties (JSCOT).

The national interest is considered throughout the negotiating process, including economic, social, environmental and cultural impacts of a negotiation. Various forms of quantitative and qualitative analysis on the feasibility of commencing FTA negotiations are also taken into account.

An initial consideration of the national interest informs the political decision to start formal consideration of commencing a negotiation. Consideration of the national interest also underpins government decisions on the negotiating mandate. In making these assessments, the Government is informed by the extensive consultations and stakeholder engagement processes.

The right to regulate in the public interest is protected in all agreements, more recent agreements include a range of provisions which promote a positive agenda on issues such as the environment and protection and promotion of labour rights.

DFAT continues to review the effectiveness of its consultation mechanisms, developing and implementing new platforms and practices for engagement to align with the Government's trade

policy agenda to ensure a diversity of voices are heard. Recent steps have included assisting the Minister for Trade and Tourism host the inaugural meeting of the Ministerial Council on Trade and Investment in April 2023, establish the Trade 2040 Taskforce, and engaging with stakeholders across business peak bodies, unions, civil society and First Nations business groups on proposed pilot advisory groups to enhance engagement on trade policy and negotiations.

The Government submits all treaty actions, including WTO agreements, FTAs and BITs to Parliamentary scrutiny by the JSCOT prior to ratification and entry into force. The JSCOT considers tabled treaties, inquires into whether the proposed treaty action is in Australia's national interest, and reports to Parliament. JSCOT can also consider any other question relating to a treaty or international instrument that is referred to it by either House of Parliament or by a Minister.

Other parliamentary committees may also consider specific treaty actions.

Instruments of less-than-treaty status, such as the Singapore-Australia Green Economy agreement agreed in 2022, do not go through the treaty making process, but are the subject of the consultations processes outlined above.

Australia's systems reflect our distinct legal and administrative structures and our ongoing efforts to ensure we have the most effective structures in place to secure the best outcomes for Australia. Notwithstanding this, our processes to develop a negotiating mandate and implement effective consultations mechanisms are broadly consistent with comparable countries such as New Zealand, Canada, the United Kingdom and the United States.

3. INTRODUCTION

Openness to international trade has materially increased Australia's economic growth and our living standards. The benefits of trade are shared across the community, including through broad based economic growth and a stronger labour market. Today, trade-related economic activity contributes 27 per cent of Australia's Gross Domestic Product (total economic output) and almost 3 million Australian full-time equivalent jobs, equivalent to 1 in 4 jobs¹.

Trade-related economic activity also contributes to state and Commonwealth government revenue, which helps fund the provision of government services that Australians rely on. Trade also supports higher living standards for Australians by increasing their disposable income and purchasing power (through lower prices for imports) and access to products and services from around the world.

Australia's long history of openness to foreign investment has also contributed to our economic prosperity and higher living standards. It provides more capital to fund investment which builds our economy and creates jobs. For example, overseas funding was crucial to developing Australia's abundant natural resources, particularly minerals, energy and agriculture. Foreign investment also delivers higher productivity through 'capital deepening' (more capital per worker), and 'spill over benefits' such as innovation.

Australia's economy relies on the predictability and stability provided by a strong, open and rules-based global trading system, centred on the World Trade Organization (WTO). The WTO's framework of rules enhances transparency and market access for our exporters and investors, and provides a mechanism for all WTO members, regardless of size or economic weight, to enforce those rules.

In addition, Australia has negotiated 18 bilateral and regional agreements with 30 partner economies, including the ASEAN-Australia-New Zealand FTA (AANZFTA) the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and Regional Comprehensive Economic Partnership (RCEP). Australia's FTAs lift our bilateral trade 12.6 per cent on average². These bilateral and regional agreements rest on the foundation of global trade rules established under the WTO.

Negotiating new trade and investment arrangements, and implementing and upgrading existing ones, are important elements in implementing the Government's trade and investment diversification agenda. This agenda is key to enhancing Australia's economic resilience and security, particularly following the COVID-19 crisis, and the challenging geopolitical environment Australia faces.

¹ Source: DFAT modelling

² Source: DFAT modelling

While early trade agreements focused on reducing or eliminating import tariffs on goods, the benefits of contemporary agreements are much broader and include improved rules across a range of sectors including intellectual property, e-commerce and government procurement. The Australia-Singapore Digital Economy Agreement, for example, builds on the CPTPP to establish new rules and standards for businesses and consumers to take advantage of the digital economy.

Through FTAs and other trade and investment agreements, successive Australian governments have effectively reduced a range of barriers to international trade and investment for the benefit of Australian industry and consumers, including by: harmonising standards, certifications, and regulations; recognising foreign professional accreditations; enabling greater access to other governments' procurement processes; improving access to foreign labour markets; and relaxing restrictions on foreign investment.

Our trade and investment agreements also provide scope for us to protect our national security, environment, public interest and cultural interests through a range of exceptions.

Consistent with the Government's trade policy agenda, DFAT is focused on ensuring that the trade and investment agreements Australia has negotiated deliver for all Australians.

Types of trade and investment agreements

Australia negotiates a range of trade and investment agreements and arrangements at the multilateral, regional, plurilateral and bilateral levels. These include legally binding treaty-level agreements and non-legally binding agreements and arrangements, such as Memorandum of Understandings (MOUs).

Australia negotiates multilateral and plurilateral trade agreements under the auspices of the WTO. A WTO multilateral trade agreement is an agreement to which all WTO Members are a party, such as the General Agreement on Tariffs and Trade (GATT) and the General Agreement on Trade in Services (GATS). Two further WTO multilateral agreements have been negotiated since the inception of the WTO in 1995: the WTO Agreement on Trade Facilitation, which was concluded in 2013 and is in-force, and the WTO Agreement on Fisheries Subsidies, which was concluded in 2022 and will become operational when two-thirds of members have deposited their 'instruments of acceptance' in the WTO. A full list of WTO Agreements can be found at [WTO | official documents and legal texts](https://www.wto.org/english/docs_e/legal_e/legal_e.htm)³.

Australia has also participated in plurilateral negotiations at the WTO, including to upgrade the WTO Information Technology Agreement, and to become the 48th WTO Member to join the WTO Agreement on Government Procurement (May 2019). Australia is also participating in new plurilateral negotiations at the WTO on e-commerce (where we lead as a co-convenor), investment

³ Available at: https://www.wto.org/english/docs_e/legal_e/legal_e.htm

facilitation, and was part of a group that successfully concluded a new WTO plurilateral agreement on services rules in December 2022.

Australia has also negotiated bilateral and regional trade agreements (FTAs) and bilateral investment treaties (BITs) with a wide range of countries.

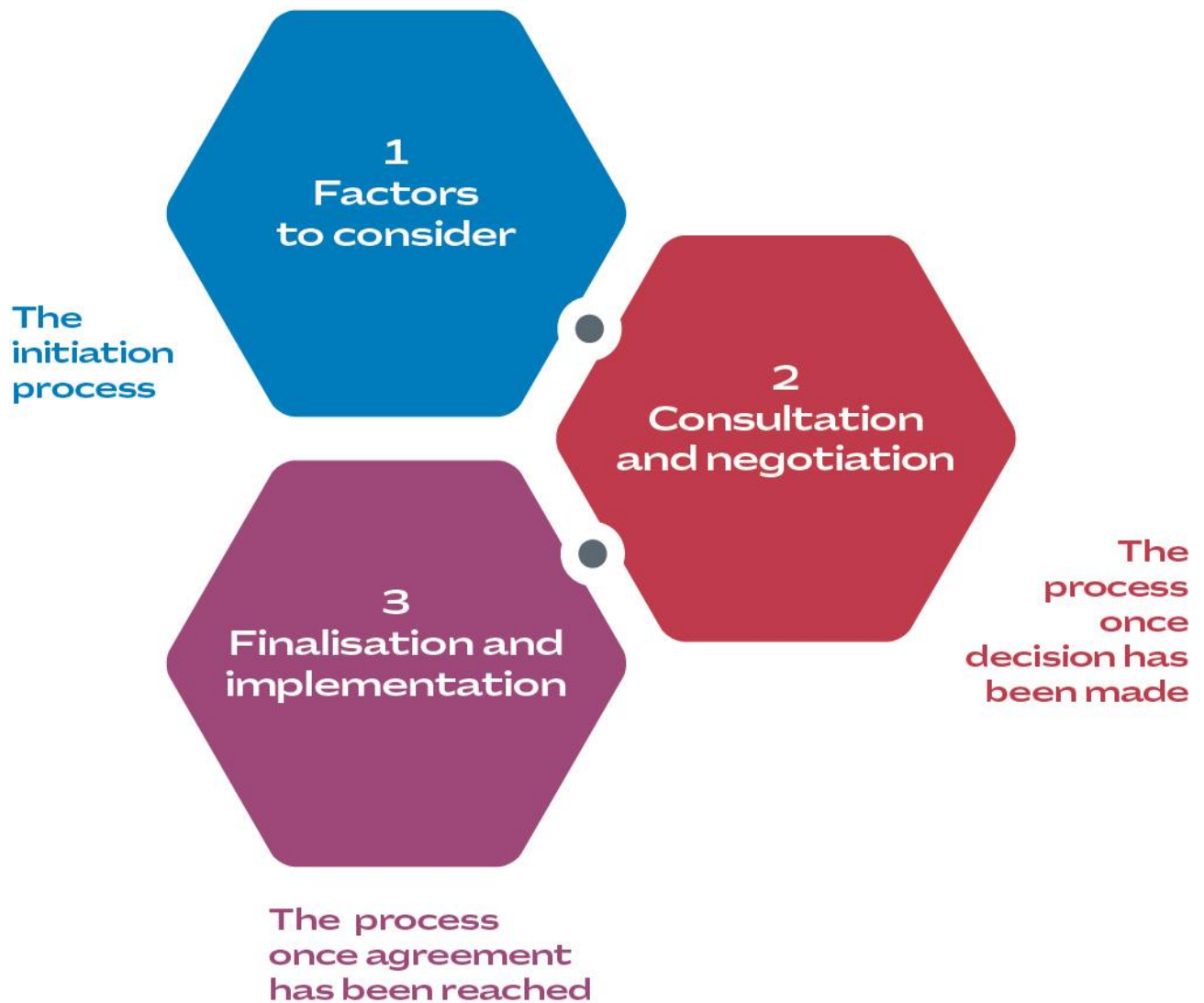
FTAs and other trade-related arrangements, help safeguard and promote Australia's national trade and investment interests in key export markets, building on WTO commitments. FTAs reduce or eliminate barriers to trade in goods, services and investment and enable Australian exporters and investors to benefit from the same or better preferential access than our competitors and their investors enjoy in overseas markets. FTAs also enhance people-to-people links, strengthen bilateral relationships and promote regional economic integration and collaboration.

BITs are treaties between two economies that include rules to promote and protect two-way investment between them. These investment rules provide protections and greater certainty for Australian investors overseas and foreign investors in Australia.

DFAT has worked to upgrade existing BITs where appropriate, including the negotiation of a new Australia-Uruguay BIT signed in 2019, which replaced the older 2002 BIT. Australia also agreed to terminate the Australia-Hong Kong BIT and the Indonesia-Australia BIT, which have been upgraded through the entry into force of the Australia-Hong Kong FTA (A-HKFTA) and the Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA), respectively. A list of Australia's BITs can be found on the DFAT website:

<https://www.dfat.gov.au/trade/investment/Pages/australias-bilateral-investment-treaties>.

Graphic: Framework for negotiating trade and investment agreements





Factors to consider

The initiation process



Nature of the economic relationship including other formal trade arrangements and / or request by potential FTA partner or partners.

Strengthening bilateral and regional architecture through trade and investment liberalisation

Market access opportunities – goods, services, and investment

Interest of stakeholders as identified through consultation

Enhancing development opportunities for partner countries through trade (for example, PACER Plus)

Broader geo-strategic considerations including trade diversification and economic security

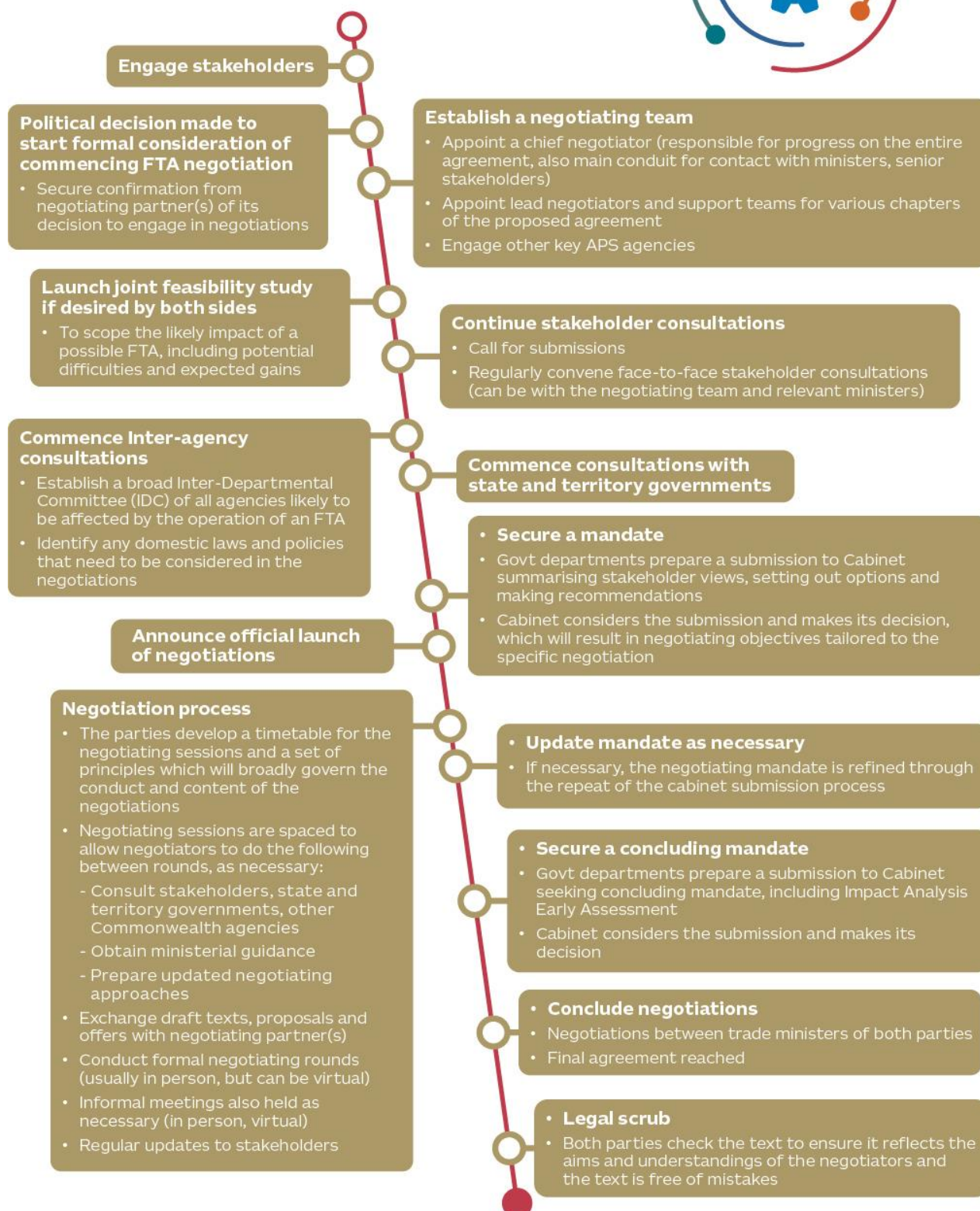
Nature of trading relationships between potential FTA partner and “competitor” economies

Opportunities to set high standards and rules through bilateral and plurilateral agreements to lay the groundwork for potential multilateral outcomes



Consultation and negotiation

The process once decision has been made





Finalisation and Implementation

The process once agreement has been reached



Australia's Trade and Investment Agreements

Trade and Investment Agreements under negotiation

Australia-European Union Free Trade Agreement (A-EUFTA) negotiations were launched in June 2018. Since then, 15 negotiating rounds have been held. Round 15 was held in Brussels on 24-28 April 2023. This was the last formal round of negotiations. Negotiations are now being progressed by Ministers and Senior Officials. Issues remaining include final market access for goods.

Negotiations for an **Australia-India Comprehensive Economic Cooperation Agreement (CECA)** were launched in May 2011. There were nine negotiating rounds before both countries suspended negotiations in 2016, pending the outcome of RCEP negotiations. In September 2021, Australia and India re-launched CECA negotiations with the intention of quickly concluding an **Economic Cooperation and Trade Agreement (ECTA)** to liberalise and deepen bilateral trade in goods and services, and to then use this foundation to resume negotiations on the more ambitious CECA (see "FTAs in force" below for more information on ECTA).

Six CECA negotiating rounds have taken place in 2023, most recently in September. CECA will build on ECTA goods and services market access outcomes and address new issues like digital trade and government procurement.

The **Indo-Pacific Economic Framework (IPEF)** negotiations were launched in September 2022. Australia is one of 14 founding members, alongside Brunei Darussalam, Fiji, India, Indonesia, Japan, Malaysia, New Zealand, the Philippines, Republic of Korea, Singapore, Thailand, the United States and Vietnam. IPEF members have held six negotiation rounds to date, including an Australia-hosted round in Brisbane (December 2022), followed by rounds in New Delhi (February 2023), Bali (March 2023), Singapore (May 2023) and Busan (July 2023). The sixth round of negotiations was held in Bangkok (10-16 September).

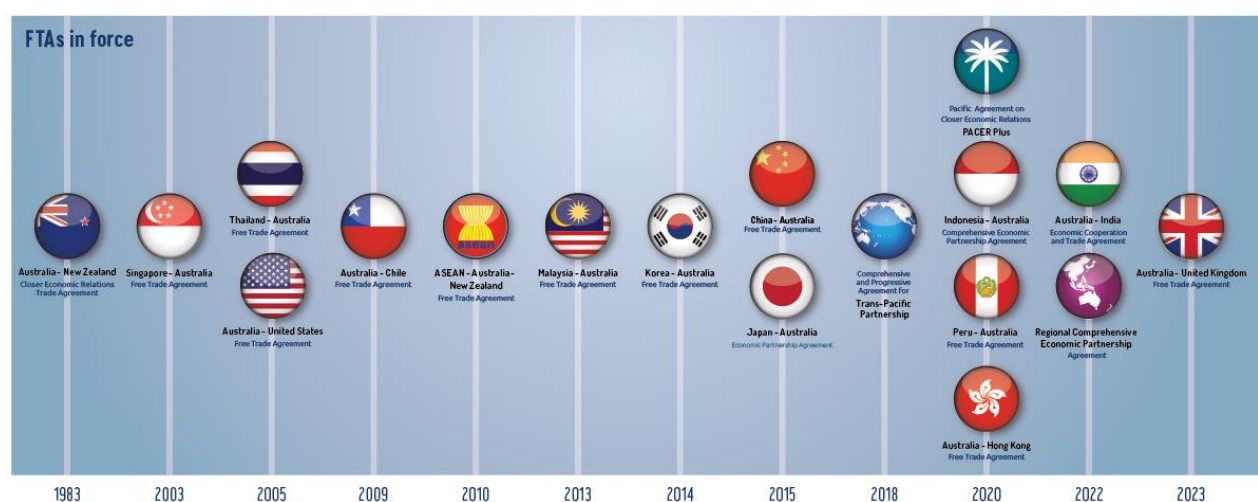
IPEF seeks to strengthen regional economic cooperation and integration to address new and emerging opportunities and challenges in the Indo-Pacific, including in the digital economy, supply chains, the clean energy transition and anti-corruption. IPEF has the potential to secure new opportunities for Australian businesses, workers, and consumers, enhance Australia's economic resilience, and attract more private sector investment to our region. In May 2023 in Detroit, Minister Farrell, together with other IPEF Trade Ministers, announced the substantial conclusion of the IPEF Supply Chain Agreement, one component of the Framework.

FTAs signed but not yet in force

The Second Protocol to upgrade the **ASEAN-Australia-New Zealand FTA (AANZFTA)** was signed on 21 August 2023, with the agreement's ratification and entry into force expected for 2024/25. This upgrade will ensure AANZFTA remains a fit-for-purpose and comprehensive Agreement, retaining its status as ASEAN's highest-quality FTA.

FTAs in force

Graphic: A timeline of Australia's network of FTAs



The **Australia-United Kingdom Free Trade Agreement (A-UKFTA)** was signed on 17 December 2021 and entered into force on 31 May 2023. A-UKFTA is one of Australia's most comprehensive, innovative, and ambitious free trade agreements and strengthens our already close relationship with the UK. The agreement eliminates tariffs on over 99 per cent of Australian goods exports to the UK⁴. Services companies and professionals benefit from commitments that make it easier to operate in the UK market.

The **Australia-India ECTA** was signed on 2 April 2022 and entered into force on 29 December 2022. ECTA helps secure our access to the fast-growing Indian market of over 1.4 billion people and gives Australian businesses new opportunities for trade diversification. ECTA is India's first FTA with a developed economy outside of Asia and gives Australian exporters a significant advantage over many competitors. Officials are now negotiating an ambitious CECA.

The **Regional Comprehensive Economic Partnership (RCEP)** entered into force on 1 January 2022 and is now the world's largest free trade agreement by members' combined GDP. It boosts

⁴ Source: DFAT (2023), Direction of Goods and Services Trade data, DFAT calculations

economic integration and expands Australian commercial interests in a strategic and dynamic region.

The **Indonesia-Australia Comprehensive Economic Partnership Agreement** (IA-CEPA) entered into force on 5 July 2020. IA-CEPA delivers significant new trade and investment opportunities to businesses in both countries.

The **Peru-Australia FTA** (PAFTA) entered into force on 11 February 2020. PAFTA enables Australian businesses to take advantage of this growing market and strengthens our economic relationship with Latin America.

The **Australia-Hong Kong FTA** (A-HKFTA) and associated Investment Agreement (IA) entered into force on 17 January 2020.

The **Comprehensive and Progressive Agreement for the Trans-Pacific Partnership** (CPTPP) entered into force for Australia, Canada, Japan, Mexico, New Zealand and Singapore on 30 December 2018. Since then, the CPTPP has entered into force for Vietnam, Peru, Malaysia, Chile and Brunei Darussalam on 14 January 2019, 19 September 2021, 29 November 2022, 21 February 2023, and 12 July 2023 respectively. The Seventh CPTPP Commission meeting was held on 16 July 2023 in Auckland, New Zealand, and focused on implementation and review of the Agreement. During the Commission meeting, CPTPP Parties and the UK also signed the UK's Accession Protocol to enable it to join the CPTPP.

The **China-Australia Free Trade Agreement** (ChAFTA) entered into force in December 2015. DFAT issued a call for submissions from interested stakeholders for the ChAFTA Post-Implementation Review (PIR) in April 2020. The PIR was completed and published in February 2021 and found that ChAFTA has liberalised economic flows between China and Australia through reductions in barriers to trade; increased Australian exports of travel and other services; and increased Australian goods exports for a majority of products receiving ChAFTA tariff preferences. On 12 May 2023, Trade Minister Farrell and Chinese Commerce Minister Wang agreed to step up dialogue under ChAFTA and other platforms to stabilise the trading relationship, including by convening the China-Australia Free Trade Agreement Joint Commission, which was last held in 2017.

The **Japan-Australia Economic Partnership Agreement** (JAEPA) entered into force in January 2015. JAEPA contains in-built mechanisms which require the review of the Agreement. DFAT continues ongoing stakeholder engagement for the review.

The **Korea-Australia Free Trade Agreement** (KAFTA) entered into force in December 2014. The Fifth Meeting of the KAFTA Joint Committee, convened virtually on 5 April 2022, welcomed increased dialogue and cooperation bilaterally on emerging areas such as digital trade, green economy and supply chains.

The **Malaysia-Australia FTA** (MAFTA) entered into force on 1 January 2013. Australia and Malaysia agreed to prepare for a General Review of MAFTA at the FTA Joint Commission held in May 2021.

Discussions were delayed pending the substantial conclusion of AANZFTA Upgrade negotiations and ratification by Malaysia of the CPTPP. With these activities now complete, officials are progressing work on the review, including issuing a public call for submissions from interested stakeholders.

The **ASEAN-Australia-New Zealand FTA (AANZFTA)** entered into force in January 2010 for Australia and eight other countries; Laos, Cambodia and Indonesia followed in 2011-12. AANZFTA was updated in 2015 to streamline the certification processes for the movement of goods throughout AANZFTA countries. Since September 2020, Australian and AANZFTA Party trade negotiators have worked to further liberalise the agreement's services and investment outcomes. On 21 August 2023, Ministers from Australia, New Zealand, Brunei Darussalam, and Indonesia signed the Second Protocol to upgrade AANZFTA. The Second Protocol to upgrade AANZFTA will enter into force when Australia, New Zealand and at least four ASEAN Member States ratify.

The **Australia-Chile FTA (ACLFTA)** entered into force on 6 March 2009. The FTA covers goods, services and investment.

The **Thailand-Australia FTA (TAFTA)** entered into force on 1 January 2005. It was Thailand's first comprehensive free trade agreement and its first with a developed country.

The **Australia-United States FTA (AUSFTA)** entered into force on 1 January 2005.

The **Singapore-Australia FTA (SAFTA)** entered into force on 28 July 2003. The Agreement has been reviewed three times with the third review entering into force on 1 December 2017. On 8 December 2020, the Australia-Singapore Digital Economy Agreement (DEA) entered into force, updating the digital trade arrangements under SAFTA.

The **Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA)** entered into force on 1 January 1983. It covers substantially all trans-Tasman trade in goods, including agricultural products, and was the first FTA to include free trade in services.

FTAs under consideration

Australia-UAE Comprehensive Economic Partnership Agreement (CEPA)

Negotiations with the UAE on a Comprehensive Economic Partnership Agreement (CEPA) commenced in 2005 before being subsumed into GCC FTA negotiations in 2007. DFAT has maintained an open invitation to stakeholders to make submissions on the potential to re-commence CEPA negotiations.

Australia-Gulf Cooperation Council (GCC) FTA

Trade negotiations with the GCC commenced in July 2007. Four rounds of Australia-GCC FTA negotiations were held, with the last in June 2009. Negotiations with the GCC were subsequently

paused and there have been no further negotiating rounds. At the GCC Leader's Summit in January 2021, the GCC renewed its interest in pursuing an FTA with Australia. DFAT has maintained open invitation for written submissions, on a possible agreement with the GCC.

Foreign investment

Foreign investment plays a crucial role in supporting Australia's growth and prosperity. Foreign investment helps Australia reach its potential by improving Australian businesses' links to global supply chains; providing capital to finance new businesses and enhance existing businesses; financing infrastructure; and encouraging competition and increased innovation by bringing new technologies and know-how to Australia, which boosts productivity and jobs.

In Australia, portfolio investment is the largest proportion of both inward and outward foreign investment, close to double the share of Foreign Direct Investment (FDI). The ability to invest abroad enables Australian investors, whether in superannuation funds or on their own account, to diversify their savings portfolio. For Australian business, outward FDI is a way to grow their markets, acquire new technology, and integrate their businesses into global value chains.

Australia is a party to both bilateral investment treaties (BITs) and FTAs that support foreign investment.

A BIT is a treaty-level agreement between the two economies that covers investment protections. It includes rules to promote and protect two-way investment between those economies. These investment rules provide protections and greater certainty for both Australian investors and foreign investors in Australia, including provisions to ensure non-discrimination, restrictions on expropriation of an investor's property, and fair and equitable treatment for investments.

Australia's FTAs generally have an investment chapter that also include investment protection provisions as well as liberalisations to support investment flows.

FTAs agreed by successive governments include provisions aiming to:

- attract beneficial investment by showcasing Australia as an open and attractive investment destination;
- preserve the operation of Australia's foreign investment framework, particularly the Foreign Investment Review Board (FIRB) which allows screening of investment; and
- facilitate greater access to overseas markets for Australian investors.

Australia, as part of its investment obligations in FTAs promotes productive foreign investment in Australia by liberalising the threshold for screening of foreign investment proposals in non-sensitive sectors. It balances this by including safeguards that protect the operation of our foreign investment framework, such as ensuring the Government can examine significant sensitive foreign investment proposals at a lower threshold.

All of Australia's BITs and a number of our FTAs include investor-State dispute settlement (ISDS). ISDS is a mechanism that provides foreign investors, including Australian investors overseas, with the right to access an international tribunal to resolve investment disputes. The Government's policy is to not include ISDS in any future trade agreements. Also, when opportunities arise, the Government will actively engage in processes to reform existing ISDS mechanisms to further enhance appropriate protections for governments' right to regulate in the public interest, including in relation to the environment and public health. Australia signed the United Nations Convention on Transparency in Treaty-based Investor-State Arbitration on 18 July 2017 and ratified it in September 2020. The Convention provides for greater transparency in investor-state arbitrations and key elements have been implemented in Australia's more recent FTAs.

Bilateral Investment Treaties (BITs) in force with Australia

Country	Date of entry into force
Argentina	11 January 1997
China	11 July 1988
Czech Republic	29 June 1994
Egypt	5 September 2002
Hungary	10 May 1992
Laos	8 April 1995
Lithuania	10 May 2002
Pakistan	14 October 1998
Papua New Guinea	20 October 1991
Philippines	8 December 1995
Poland	27 March 1992
Romania	22 April 1994
Sri Lanka	14 March 2007
Turkey	29 June 2009
Uruguay	23 January 2022

Green economy cooperation

Australia is pursuing specific arrangements focused on progressing our green economy objectives. Signed in October 2022, the Singapore-Australia Green Economy Agreement (GEA) is a first-of-its-kind agreement. It provides a platform to work together to support and accelerate both economies' transition to net-zero emissions. As a less-than-treaty level agreement, it does not include market access obligations or other legally binding commitments, unlike traditional FTAs.

The GEA involves 17 initial joint actions to facilitate trade, foster business opportunities, attract investment, create jobs, and drive the decarbonisation of economic activities. The GEA provides a general framework for international green economy cooperation, rather than a set model to follow.

Development aspects of trade agreements

Australia's regional and multilateral economic cooperation (aid for trade) is an important tool for delivering development assistance in the Indo-Pacific, including to enhance COVID-19 economic recovery, and to encourage resilient and sustainable growth. Australia's aid for trade supports partners to implement their FTA obligations and integrate into the rules-based multilateral trading system, with the WTO at its core. Areas of support include economic infrastructure, trade and investment regulations and standards, trade facilitation, supply chain resilience, and inclusive access to international markets and trade finance. This work also helps to reinforce multilateral and regional economic architecture and stability, and enhances opportunities for Australian business.

Snapshot: Pacific Agreement on Closer Economic Relations Plus (PACER Plus)

The PACER Plus Agreement is a regional, development-centred and comprehensive FTA covering goods, services and investment. Negotiations on PACER Plus commenced in 2009 and concluded in 2017. When fully implemented, Australian exporters will gain tariff free access to PACER Plus markets for 91.5 per cent of tariff lines, covering 88.5 per cent of Australian exports to the region⁵.

For PACER Plus, the following assessments were prepared:

- In June 2008, the Institute for International Trade (at the University of Adelaide) prepared the Research Study on the Benefits, Challenges and Ways Forward for PACER Plus, providing an early assessment of issues for consideration in the negotiations.
- In 2016, the Office of the Chief Trade Adviser (OCTA), an independent advisory body of the Pacific Forum Island, undertook and published its PACER Plus Sustainability Impact Assessment. The assessment was prepared independently by the OCTA, with inputs from consultants. It presents an assessment of the potential economic, social and environmental impacts of trade liberalisation under PACER Plus on Pacific Island countries.

Several of Australia's regional and bilateral FTAs provide for economic cooperation in pursuit of trade and development outcomes. These economic cooperation activities help to reinforce regional and multilateral obligations, standards and economic architecture, while ensuring the benefits from FTAs can be enjoyed by all parties, and their respective businesses and communities. Examples of these programs are below.

⁵ Source: DFAT (2023), Direction of Goods and Services Trade data, DFAT calculations

Snapshot: Regional Trade for Development (RT4D) initiative

Australia is contributing \$46 million to 2028 through the Regional Trade for Development (RT4D) Initiative, an economic cooperation program facilitated through the RCEP and the upgraded AANZFTA. The Initiative provides technical assistance and capacity building – with a particular focus on responding to the needs of lesser development ASEAN members Cambodia, Laos and Vietnam – to support implementation of commitments under these two agreements. RT4D also focuses on crosscutting issues such as gender equality, disability and social inclusion, and digital trade and business engagement.

RT4D builds on over ten years of valued economic cooperation and technical assistance under the AANZFTA Economic Cooperation Support Program (AECSP). Like RT4D, the AECSP assisted ASEAN partners to benefit from AANZFTA by supporting economic research, policy advice and capacity building in sectors such as trade in goods, trade in services, investment, intellectual property, and competition and consumer protection. These activities helped Parties implement their commitments

Snapshot: Katalis economic cooperation program with Indonesia

Australia is contributing \$40 million (2021-2025) to Katalis, an economic cooperation program established under the Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA). The objective of Katalis is to maximise the benefits of IA-CEPA by supporting strong, sustainable, and inclusive trade and investment opportunities between Australia and Indonesia, with a particular focus on fostering business-to-business partnerships. Katalis tracks bilateral trade and investment indicators to understand and demonstrate the social and economic impacts of the program and specific program initiatives.

4. STAKEHOLDER CONSULTATION AND DEVELOPMENT OF NEGOTIATING MANDATE

DFAT is committed to timely, effective and broad-based stakeholder engagement on trade and investment agreements, beginning with the development of a mandate and continuing throughout the negotiations and after entry into force. DFAT seeks to balance the need for confidentiality during the negotiations, the respective roles of the Executive and Parliament, and the interests of the range of stakeholders. DFAT maintains broad engagement and consultation processes with industry, unions, civil society, other Commonwealth agencies and States and Territories, including:

- publishing aims and objectives for future trade agreement negotiations
- issuing open-ended invitations for written submissions from stakeholders and the public before, and for the duration of, negotiations
- holding consultations with stakeholders, including through formal stakeholder consultation meetings, involving peak industry bodies, First Nations representatives, NGOs, trade unions, academics, community groups and business representatives
- organising consultations between negotiators and State and Territory Government officials, including through the Ministerial Council on Trade and Investment (MCTI) established by National Cabinet and the long-standing Senior Officials Trade and Investment Group (SOTIG), and the Commonwealth-State-Territory Standing Committee on Treaties (SCOT)
- briefings of the Trade Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT) and Joint Standing Committee on Treaties (JSCOT)
- Parliamentary review and debate of implementing legislation to enable an FTA to come into force.

Processes for obtaining negotiating mandate

Working with relevant Commonwealth Departments, DFAT leads a rigorous whole-of-government process to develop the Government's negotiating position ahead of seeking a formal negotiating mandate through ministerial approvals. This is informed by the views of stakeholders and States and Territories gleaned through the aforementioned consultation processes.

DFAT encourages stakeholders to lodge written submissions on the commercial, economic, social, regional and other impacts that could be expected to arise from an agreement. Submissions can also focus on specific market access challenges or other issues of importance to doing business with FTA partners, including information on tariff and non-tariff barriers to goods and services trade and barriers to investment. DFAT welcomes all input – from a short email through to comprehensive analytical papers.

All submissions are treated as public and are published on the DFAT website, unless the author requests that the submission, or part thereof, be handled in confidence.

An overview of the engagement process through negotiations is outlined below:

- Prior to formally entering into negotiations with a trading partner or regional partners DFAT will undertake an initial stakeholder consultation process, across industry, civil society and States and Territories. These consultations are used to determine stakeholder priorities for the trade agreements.
- In the case of an FTA, DFAT often commences the approval and stakeholder engagement process through initiation of a feasibility study to determine the potential benefits for Australia of entering into an FTA. A formal feasibility study would not normally be conducted ahead of potential multilateral/plurilateral trade and investment agreement negotiations with a large number of negotiating partners – e.g., in the World Trade Organization. In some cases scoping work on potential objectives, outcomes and benefits might be done in a more iterative way – such as in the case of the Singapore-Australia Green Economy Agreement, where the nature of the eventual instrument was not pre-determined at the outset.
- Based on the recommendations of the feasibility study (where relevant) and informed by the views of stakeholders and States and Territories, DFAT then leads a whole-of-government approach to seek a mandate to commence negotiations through a cabinet submission process or with the approval of the Foreign Minister.
- Where appropriate, and in the interests of transparency, DFAT will publish the negotiating aims and approach for a particular trade agreement.
- At the point of seeking a cabinet mandate DFAT also engages with the Office of Impact Analysis at the Department of the Prime Minister and Cabinet to determine if an Early Assessment or full Impact Analysis is required, and then works closely with the Office of Impact Analysis to prepare this.
- DFAT also works closely with stakeholders at the stage of obtaining a mandate to conclude negotiations. At this stage stakeholders have been consulted throughout and are familiar with where the negotiations are up to. Whole of Australian government stakeholders are also closely consulted in the course of obtaining a concluding mandate through a cabinet submission process.

Stakeholder consultation mechanisms

In addition to continuing consultations with individual stakeholders, there are also mechanisms in place to consult and brief stakeholders collectively.

On 30 September 2022, National Cabinet agreed to include a **Ministerial Council on Trade and Investment** (MCTI) in the new Federal Relations Architecture. MCTI enables effective coordination

on national trade and investment priorities. Members of MCTI include the Minister for Trade and Tourism as Chair, alongside State and Territory Ministerial counterparts in trade and investment. MCTI reports to National Cabinet annually on its workplan. The Council held its first meeting in April 2023, and is due to meet next in October 2023. The Council is taking a “Team Australia” approach to advancing Australia’s trade and investment priorities.

The **Senior Officials Trade and Investment Group** (SOTIG) (co-convened by DFAT and Austrade) supports MCTI and is responsible for taking forward actions agreed by Ministers and implementing its workplan program across jurisdictions and with other government agencies. SOTIG met in April, June 2023 and September 2023.

The **Peak Bodies Consultations on Australia’s Trade Policy and Negotiating Agenda** (last held in March 2023) allow for in-person engagement and networking. Held most recently as a whole day conference, it allows for greater exploration of trade and investment issues, building a cohesive community of highly engaged and informed peak bodies that contribute to a two-way conversation with Government on Australia’s trade and investment agenda including negotiations. The Department continues to seek feedback from stakeholders on its Peak Bodies consultation forums to ensure that both the format and issues covered meet stakeholder needs. Feedback from the 2023 survey on the Peak Bodies Consultations confirmed the usefulness of the one-day in-person format for networking.

The Peak Bodies Consultations are complemented by the **Monthly Peak Bodies Deep Dive Series** delivered online. This forum allows for in-depth discussion on priority trade issues including updates and discussion on trade negotiations and implementation. The online format for the Deep Dives allows for a wide scope of participation from stakeholders across the country, enabling them to interact with Australian Government agencies and our diplomatic network. These collaborative forums are focussed on delivering crucial and highly targeted briefing to stakeholders on a wide range of trade and investment related issues. Stakeholders are invited to represent their sectors’ views on panels alongside senior government officials including Heads of Missions.

DFAT is continuing to review and improve its consultation mechanisms, including through supporting the establishment of the Trade 2040 Taskforce and developing pilot advisory groups.

The Government has committed to establish a **Trade 2040 Taskforce** (the Taskforce) which will bring together government, industry, unions and community representatives and serve as a consultative mechanism on the Government’s trade policy agenda out to 2040. DFAT is assisting the Minister for Trade and Tourism to establish the Taskforce with suitably qualified individuals representing a diverse set of community interests across Australia. The Taskforce membership is being finalised. The Taskforce is expected to meet twice a year.

DFAT is also supporting the Government’s trade and investment agenda to enhance engagement with stakeholders by working to establish four pilot peak bodies advisory groups covering industry, unions, First Nations and civil society. The Government’s trade and investment agenda stresses the

importance of involving the Australian community – and the need for diverse representation – in the trade policy process, to ensure the benefits of trade are shared among the community and are a driver for inclusive economic growth and greater economic wellbeing for all Australians. As part of this stakeholder engagement framework, DFAT seeks to build relationships with stakeholders based on trust, transparency and accountability as fundamental guiding principles underlying the Government's approach to involving the Australian community in the design, implementation and delivery of policy to solve Australia's complex economic challenges.

DFAT is consulting with stakeholders on how the proposed pilot advisory groups will operate and their membership make-up. Members of these groups will likely be required to sign a Deed Poll of Confidentiality to allow for improved engagement in certain areas of trade agreement negotiation.

Examples of stakeholder consultation processes

Snapshot: Regional Comprehensive Economic Partnership (RCEP)

Entered into force on 1 January 2022

RCEP is a regional free trade agreement that delivers substantial new trade and investment opportunities for Australia in the Indo-Pacific region.

DFAT undertook regular stakeholder engagement on RCEP since negotiations commenced in 2012, consulting widely with industry and other stakeholders in formulating our positions. In addition to a call for public submissions, negotiators regularly engaged with the business sector, academia and civil society organisations to seek their views.

At each of the negotiating rounds Australia hosted, we held dedicated stakeholder consultation events in the margins of the meetings. Australian stakeholders also travelled to stakeholder events held during negotiating rounds hosted in other RCEP countries.

Following substantive conclusion of the RCEP negotiations in 2019, DFAT published fact sheets with information about the Agreement on the DFAT website and released the full text of the Agreement following signature.

Refer to the DFAT website for more information:

<https://www.dfat.gov.au/trade/agreements/in-force/rcep>

Snapshot: Australia – European Union Free Trade Agreement (A-EUFTA)

Under negotiation

DFAT has undertaken extensive stakeholder consultation on the A-EUFTA. When the government was exploring commencing negotiating an A-EUFTA, DFAT opened a call for submissions. These submissions were used to inform the Government's negotiating aims and approach. The call for submissions remained open after the negotiations commenced. Since 2018, DFAT has received over 100 submissions. Where agreed by the author, these have been published on the DFAT website.

In addition to written submissions, DFAT has held over 1,000 stakeholder meetings to discuss the A-EUFTA. Consultations have been held with a broad range of stakeholders including large, small and medium enterprises, NGOs, trade unions, consumer groups, academics, industry representatives, and civil society. Meetings have been held in-person and virtually, involving stakeholders from all states and territories.

DFAT regularly consults State and Territory governments on the A-EUFTA negotiations. This includes through the Commonwealth-State-Territory Standing Committee on Treaties, the SOTIG, the Ministerial Council on Trade and Investment, and direct contact between the negotiating team and State and Territory officials, including roundtables in capitals and formal consultation before each negotiating round.

Refer to the DFAT website for more information:

<https://www.dfat.gov.au/trade/agreements/negotiations/aeufta>



Snapshot: Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA)

Snapshot: Consultations and stakeholder engagement on Australia's recently concluded FTAs

1. Indonesia-Australia Comprehensive Economic Partnership Agreement (IA-CEPA)
Entered into force on 5 July 2020

The public consultation and stakeholder engagement process on IA-CEPA commenced with a joint feasibility study between Australia and Indonesia in August 2007. Negotiations were launched in 2010 and reactivated in March 2016. Throughout the negotiations, DFAT, in conjunction with other government agencies, consulted over 140 stakeholders through consultation events, stakeholder meetings and phone calls. DFAT consulted State and Territory governments through the SCOT.

Negotiators also benefited from the participation of the Indonesia-Australia Business Partnership Group (IABPG), a joint business advisory body. Representatives from the Australian Chamber of Commerce and Industry (ACCI), Indonesian Chamber of Commerce (KADIN), Australia-Indonesia Business Council (AIBC) and the Indonesia-Australia Business Council (IABC) established the IABPG. The IABPG produced two reports for consideration by both Australia and Indonesia.

Refer to the DFAT website for more information: <https://www.dfat.gov.au/trade/agreements/in-force/iacepa/indonesia-australia-comprehensive-economic-partnership-agreement>

Snapshot: Australia-Hong Kong FTA (A-HKFTA)

Snapshot: Consultations and stakeholder engagement on Australia's recently concluded FTAs

2. Australia-Hong Kong FTA (A-HKFTA)

Entered into force on 17 January 2020

Stakeholder views were considered throughout negotiations on the A-HKFTA and the Investment Agreement. DFAT commenced stakeholder consultations in 2017 through a call for public submissions. Eleven submissions are published on the DFAT website. Following the launch of negotiations in May 2017, and throughout the negotiations, DFAT received public submissions and correspondence from NGOs, companies, peak industry groups and an individual on a range of issues. DFAT conducted in-person consultations with industry, peak bodies and interested stakeholders across a range of States and Territories during negotiations, as well as with business stakeholders in Hong Kong. State and Territory governments were also consulted.

Refer to the DFAT website for more information: <https://www.dfat.gov.au/trade/agreements/in-force/a-hkfta/Pages/default>

Snapshot: ASEAN-Australia-New Zealand FTA (AANZFTA) upgrade

Snapshot: Consultations and stakeholder engagement on Australia's recently concluded FTAs

3. ASEAN-Australia-New Zealand FTA (AANZFTA) upgrade

Signed but not yet in force

DFAT reached out to industry stakeholders and offered regular engagement opportunities throughout the AANZFTA upgrade negotiations, including engaging directly with representatives of the business sector and civil society on relevant aspects of the upgrade negotiations. DFAT held Biannual Peak Bodies Consultations, allowing Australian businesses, civil society, First Nations groups and unions to engage with the Department's trade agenda. DFAT provided updates on the outcomes of the negotiation rounds through published articles on the DFAT AANZFTA website and stakeholder engagement sessions.

States and Territories were also consulted throughout the AANZFTA upgrade negotiations. Consultations included five State and Territory information seminars. The main interest of States and Territories was changes to market access to government procurement, which was not included in the Government Procurement chapter review.

Throughout the negotiation period DFAT hosted regular interdepartmental meetings to keep whole of Australian Government stakeholders updated. DFAT subject matter negotiators also engaged continuously and directly with Australian Government policy leads throughout the negotiation process.

Refer to the DFAT website for more information:

<https://www.dfat.gov.au/trade/agreements/in-force/aanzfta/asean-australia-new-zealand-free-trade-agreement>

Supporting awareness and understanding of FTAs

DFAT hosts an **FTA Portal website** to assist businesses to understand the benefits and requirements of our FTAs. The FTA Portal is an online tool designed to help importers and exporters obtain the maximum benefit from Australia's FTAs. This free tariff finder provides easy-to-access information to businesses for all of Australia's in-force FTAs, as well as for those FTAs that are signed but not yet in force, to help business prepare for their entry into force. The key users, located in Australia and offshore include potential and existing exporters and importers, customs brokers and freight forwarders, industry peak bodies, business advisors, services exporters, and other trade facilitators. The Portal can be found at: www.ftaportal.dfat.gov.au.

DFAT regularly publishes materials on its website to ensure information on trade negotiations is readily available to the community during negotiations and after entry into force. This includes information on Australia's existing FTAs and current FTA negotiations, summaries of negotiating rounds, objectives and benefits fact sheets, outcomes documents and chapter summaries. In addition, with Australian business specifically in mind, we publish business user guides for each FTA when it enters into force. Examples include:

- Guide to using ECTA to export and import goods
<https://www.dfat.gov.au/trade/agreements/in-force/australia-india-ecta/using-ecta-do-business-india>
- Guide to using the A-UKFTA to export and import goods
<https://www.dfat.gov.au/trade/agreements/in-force/aukfta/using-ukfta-do-business-united-kingdom>

To boost business awareness and use of Australia's FTAs, we also:

- participate in industry stakeholder events;
- support broad access to the information available on the DFAT website and maintain an active social media presence to raise the profile of our FTAs and other trade and investment information;
- respond to queries from businesses and other stakeholders about our FTAs;
- engage with businesses around the country including through our Trade Diversification Regional Engagement Program, allowing direct feedback to DFAT on trade and investment related matters affecting them; and
- produce a regular magazine "Business Envoy" (available online) which provides DFAT's business audience with news and insights into Australia's trade agenda and opportunities, advocacy work, advances in the negotiation of free trade agreements, and showcases Australian business success including as a result of FTAs.

5. THE TREATY-MAKING PROCESS AND PARLIAMENTARY OVERSIGHT

The power to enter into treaties is an Executive power within Section 61 of the Australian Constitution.

While the Executive alone has the constitutional power to enter into treaties, political practice since 1996 has provided the Commonwealth Parliament, State and Territory Governments, sectoral interest groups and non-government organisations, with a more active role in treaty scrutiny. Apart from those treaties that the Government decides are urgent, where it would be detrimental to the national interest to postpone the treaty entering into force, all treaties are tabled in both Houses of Parliament (generally after they have been signed for Australia, but before binding treaty action is taken) for a period of 15 to 20 joint sitting dates. This level of scrutiny applies to all new Australian treaty actions, including amendments to existing treaties and withdrawals from treaties.

Decisions about the negotiation of international agreements, including determination of objectives, negotiating positions, and the parameters within which the Australian negotiators can operate, are made at Ministerial level, and in some cases, by Cabinet. In the case of most trade and investment agreements these decisions are taken by Cabinet. The final decision as to whether an agreement should be signed and binding treaty action taken is made by the Executive Council (ExCo).

Less-than-treaty status arrangements

Not all instruments signed between states/economies are intended to create legal obligations and be legally enforceable under international law. Instruments of less-than-treaty status, most commonly Memorandums of Understanding (such as the 11 August 2023 Australia and New Zealand ***Sustainable and Inclusive Trade Declaration***), are morally and politically 'binding' but not legally binding.

Instruments of less-than-treaty-status do not need to go through the treaty-making process, however, consideration must be given to the language suitable for instruments of less-than-treaty status to ensure the instrument is not binding at international law.

The role of the Joint Standing Committee on Treaties (JSCOT)

The Government submits all treaty actions, including WTO agreements, FTAs and BITs to Parliamentary scrutiny by the Joint Standing Committee on Treaties (JSCOT) prior to ratification and entry into force. JSCOT was established in 1996 following reforms that sought to create a formal role for the Parliament in overseeing treaties and treaty-making. Historically, parliamentary participation in the scrutiny and approval of treaties had been intermittent, and it was the evolution of Australia's internationalism and its impacts on domestic law that motivated a coordinated effort

to empower Parliament with the ability to consent to obligations imposed on Australian citizens under international law. JSCOT met for the first time on 17 June 1996 and developed the process for considering treaty actions tabled in the parliament and reporting its findings as set out in this chapter.

JSCOT considers tabled treaties, enquires into whether the proposed treaty action is in Australia's national interest, and reports to Parliament. JSCOT can also consider any other question relating to a treaty or international instrument that is referred to it by either House of Parliament or by a Minister.

All major (Category 1 and 2) proposed treaty actions tabled in Parliament must be accompanied by a National Interest Analysis (NIA) which explains the reasons why Australia should take the proposed treaty action. FTAs are Category 1 treaty actions and are tabled in both Houses of Parliament for 20 joint sitting days. BITs are Category 2 treaty actions and are tabled for 15 joint sitting days.

NIAs include a discussion of the foreseeable economic, environmental, social and cultural effects of the treaty action; the obligations imposed by the treaty; its direct financial costs to Australia; how the treaty would be implemented domestically; what consultation has occurred in relation to the treaty action; and whether or not the treaty provides for withdrawal or denunciation.

Where an Impact Analysis (IA) is required, it must be tabled in Parliament together with the treaty text and the NIA.

The NIAs for trade and investment agreements are prepared by DFAT on a whole-of-government basis in consultation with other agencies that have taken part in the negotiations. The NIA also attaches a copy of the IA regarding the treaty action, where one is required. Each NIA tabled in Parliament regarding a proposed treaty action includes an attachment on the consultation process followed by the government in relation to that proposed treaty action (see Section 6 for more information on the NIA process).

Minor (Category 3) treaty actions are not tabled in Parliament but are referred directly to JSCOT for consideration and accompanied by an Explanatory Statement in lieu of an NIA. Examples of trade-related minor treaty actions include minor amendments to the annexes of FTAs.

If the treaty action does not significantly impact the national interest and will have a negligible effect in Australia (such as technical amendments to an existing multilateral treaty), it may be treated as a minor treaty action and subject to a streamlined Parliamentary scrutiny process.

Recent JSCOT reports related to trade agreements include:

- *Certain Aspects of the Treaty-making Process in Australia*
https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/Treaty-makingProcess/Report_193

- *Indonesia-Australia Comprehensive Economic Partnership Agreement*
https://www.apph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/A-HKFTA/Report_186
- *Australia-Hong Kong FTA*
https://www.apph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/A-HKFTA/Report_186
- *Australia-Uruguay BIT*
https://www.apph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/Investments_Uruguay/Report_188
- *UN Convention on Transparency in Treaty-based Investor-State Arbitration*
https://www.apph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/Investments_Uruguay/Report_188

Other Parliamentary engagement

Other Parliamentary committees may also consider specific treaty actions. For example, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) was the subject of separate inquiries by JSCOT⁶, the Senate Foreign Affairs, Defence and Trade References Committee⁷, and the Senate Legal and Constitutional Affairs Legislation Committee⁸.

DFAT also engages Parliamentary Committees while negotiations are underway, for example, the Chief Negotiator, A-EUFTA, briefed the JSCOT in June 2023; the Joint Standing Committee on Trade and Investment Growth (JSCITIG) in September 2022; and the Trade Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade (JSCFADT) in December 2021, May 2021 and June 2020.

DFAT engages closely with Parliamentarians throughout the treaty making process for trade agreements. DFAT briefs shadow Ministers and parliamentarians throughout the negotiation and treaty making process when formal requests have been made. Senior DFAT officials also participate in Senate estimates hearings to address questions relating to FTA negotiations.

⁶ Joint Standing Committee on Treaties, Report 181: Inquiry into the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (22 August 2018). Available at: https://www.apph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/TPP-11/Report_181

⁷ Senate Foreign Affairs, Defence and Trade References Committee, Proposed Comprehensive and Progressive Agreement for Trans-Pacific Partnership (18 September 2018). Available at: https://www.apph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/TPP-11/Report

⁸ Senate Legal and Constitutional Affairs Legislation Committee, Inquiry into the Customs Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Bill 2018 [Provisions], Customs Tariff Amendment (Comprehensive Agreement for Trans-Pacific Implementation) Bill 2018 [Provisions] (10 October 2018). Available at: https://www.apph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/CustomsAmendment/Report

Snapshot: Australia-United Kingdom FTA (A-UKFTA)

Entered into force on 31 May 2023

On 17 December 2021, the A-UKFTA was signed during a virtual ceremony. The A-UKFTA was tabled in both Houses of Australia's Parliament on 8 February 2022. The inquiry into A-UKFTA by JSCOT began but ceased at the dissolution of the House of Representatives on 11 April 2022. This process was completed on 16 November 2022.

A-UKFTA could only enter into force once Australia and the UK notified each other to confirm the completion of their necessary domestic legal and parliamentary processes. Australia confirmed the completion of its domestic processes to the UK on 4 May 2023.

The A-UKFTA entered into force on 31 May 2023 following the UK's confirmation that it has completed its domestic processes on 30 May 2023.

A-UKFTA is Australia's most ambitious free trade agreement with any country, other than New Zealand. This historic deal with the UK has strengthened our diversification and export-led economic growth.

Refer to the DFAT website for more information: <https://www.dfat.gov.au/aukfta>

6. REFLECTING AUSTRALIA'S NATIONAL INTERESTS

Assessing national interest

The national interest is considered throughout the negotiating process. An initial consideration of the national interest informs the political decision to start formal consideration of commencing a negotiation. Consideration of the national interest also underpins government decisions on the negotiating mandate. In making these assessments, the Government is informed by the extensive consultations and stakeholder engagement processes set out in section 4, which allow for a wide range of views to inform Australia's approach before and during negotiations.

An assessment of whether a trade-related agreement is in the national interest is supported by various other mechanisms including Parliamentary review, stakeholder engagement and independent analysis.

The formal vehicle for examining Australia's national interest in relation to new trade and investment agreements is the National Interest Analysis (NIA), which is tabled in Parliament alongside the treaty itself.

The NIA outlines why it is in Australia's national interest to enter into the proposed treaty action and documents what consultation has occurred in relation to the treaty.

The National Interest Analysis examines:

- the nature and timing of the proposed treaty action
- an overview of the agreement and a summary of why it is in the national interest
- the obligations Australia is taking on by entering into the trade agreement
- how the obligations created by the new trade agreement will be implemented, such as through changes to any domestic laws and policies
- foreseeable financial costs to Australia of compliance with the new trade agreement
- the amendment procedures in the treaty that may require future treaty action (such as an upgrade or review article), and
- if the treaty provides for withdrawal or denunciation and, if so, what procedures apply and under what conditions.

The NIA attaches a summary of the public consultation and stakeholder engagement process undertaken in the lead-up to commencement of negotiations and throughout the negotiations.

The NIA also attaches a copy of the IA regarding the treaty action, where one is required. DFAT prepares the NIAs for trade and investment agreements on a whole-of-government basis in consultation with other agencies that have taken part in the negotiations and in close consultation

with the Office of International Law at the Attorney General's Department, with the Office of International Law being required to approve the National Interest Analysis prior to it going to Parliament.

National Interest Analyses for all previous trade agreements (and treaties generally) are publicly available. A recent NIA example – for the A-UKFTA – can be found at:

<https://www.dfat.gov.au/sites/default/files/tabling-uk-fta-agreement-australian-parliament-national-interest-analysis.pdf#page=15>

Considering economic impact

DFAT takes into account various forms of quantitative and qualitative analysis on the feasibility of commencing FTA negotiations. Independent analysis can take the form of feasibility studies and can also be provided in submissions from stakeholders addressing sectoral issues or the impact an agreement might have on the economy and Australian society. This analysis may include economic modelling by independent researchers.

Some FTA feasibility studies are primarily based on detailed economic analysis and modelling, while others are focused on political economy matters. Typically, feasibility studies look at current trade barriers, the potential for market growth in areas of interest to the parties and, to varying levels of detail, a cost-benefit analysis of entering into FTA negotiations.

With regard to approaches to economic modelling, practice varies between economies. The European Commission typically produces modelling in advance of commencing FTA negotiations, while other nations use modelling as a tool on a case-by-case basis.

DFAT also considers independent analysis and modelling to assess the impact an agreement might have on the overall economy and Australian society. Modelling frameworks such as Computable General Equilibrium (CGE) modelling can be useful in understanding the economy-wide impacts of changes to trade policy.

This approach is also regularly undertaken within impact assessments and post-implementation reviews of FTAs. At the conclusion of negotiations, DFAT conducts qualitative and quantitative analyses using relevant trade data, industry reporting and industry consultation to assess the potential impacts of the negotiated outcome of trade and investment agreements. This process can be repeated to assess the real-life impacts of an agreement once it has entered into force.

Where FTAs are assessed as likely to have a substantial and widespread impact on the Australian economy, a Post Implementation Review is to be completed within five years following implementation of the agreement.

There are several limitations of modelling to assessing the full impact of an FTA, which can influence whether modelling is undertaken for specific agreements:

1. The availability and reliability of data, particularly detailed services trade, cross-border investment data and procurement;
2. The challenge of modelling a deal that is still being concluded;
3. The ability to precisely estimate and validate parameters which correspond to the real-world effects of non-tariff barriers, trade facilitation, rules of origin, and increased regulatory certainty;
4. Challenges in quantifying the political, social, and environmental impacts of an agreement; and
5. Outcomes can be sensitive to the methodology, model closures and the assumptions selected.

With this in mind, DFAT approaches modelling to inform the feasibility and impact of an FTA on a case-by-case basis.

Social, labour and environmental issues

Of Australia's 18 FTAs in force, five have environment and labour chapters: the Australia-United States Free Trade Agreement (AUSFTA), the Korea-Australia Free Trade Agreement (KAFTA), the Peru-Australia Free Trade Agreement (PAFTA) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the Australia-UK FTA (A-UKFTA). The A-UKFTA also contains Australia's first 'trade and gender equality' chapter. The upgraded AANZFTA, anticipated to enter into force in 2024, also includes a standalone trade and sustainable development chapter, focusing on environmental protection, labour rights and women's economic empowerment, and enhanced cooperation in these areas. We are working towards an ambitious Trade and Sustainable Development chapter in the Australia – EU FTA that reflects our respective high standards on trade and labour rights, gender equality, climate change, and environmental protection.

The promotion and protection of international labour standards in our FTAs play a key role in supporting economic growth and development in our region. Higher labour standards also help protect Australian workers and ensure trade is both free and fair.

Australia seeks to include robust labour provisions in all new trade agreements where possible. These include commitments to uphold internationally recognised labour rights through the adoption and enforcement of associated laws and standards and consultation on implementation issues. The International Labour Organization's Declaration on Fundamental Principles and Rights at

Work usually forms Australia's benchmark for negotiating labour chapters in our more recent trade agreements.

The IPEF Supply Chain Agreement, the second of IPEF's four pillars substantially concluded in May 2023, includes 'novel' labour rights provisions. The IPEF Supply Chain Agreement includes a mechanism to increase transparency and address breaches of labour rights among IPEF members. This will enable an IPEF member, in instances where that member has a substantiated belief a breach of labour rights has occurred in the territory of another IPEF member, to bring forward an allegation against that member. While the mechanism emphasises cooperation, it includes a public reporting component where parties are unable to resolve labour rights concerns. Negotiations on IPEF's three remaining pillars, which also contain labour provisions, are ongoing.

Australia is working towards ambitious and enforceable outcomes on labour issues and workers' rights in the Australia – EU FTA. The agreement will support cooperation between Australia and the EU on the inter-linkages between trade and employment, labour market adjustment, core labour standards, decent work in global supply chains, social protection and social inclusion, social dialogue, gender equality, and forced or compulsory labour.

All of Australia's trade agreements – except for the Australia-United States FTA, which does not cover temporary entry – include commitments to waive Labour Market Testing (LMT) in a manner consistent with our 1995 WTO commitments. These WTO commitments waive LMT for:

- independent executives (i.e. individuals establishing a new business in Australia);
- highly skilled intra-corporate transferees;
- service sellers (as business visitors) staying for a maximum of 12 months; and
- highly skilled specialists who have been with their employer for at least two years.

In our bilateral agreements with the UK, Chile, China, Korea, Japan, Singapore, and Thailand, and in the CPTPP, Australia has also committed to waive LMT for contractual service suppliers.

The Subclass 482 - Temporary Skill Shortage visa (TSS) visa can only be issued to a skilled worker whose occupation is on the skilled occupations lists (managed by Department of Employment and Workplace Relations).

We specifically state in most of our trade agreements that we retain the right to change our visa sponsorship requirements, including eligible occupations, from time to time.

Australia supports the inclusion of gender equality provisions in trade agreements, where such provisions reinforce the relevance and importance of gender equality to trade, investment and economic prosperity.

Australia's objectives for gender equality provisions in trade agreements include commitments to gender equality (including incorporation of our international commitments) and women's economic empowerment through trade; enhanced cooperation activities with our trading partners to improve

capacities and conditions for women, including for women-led businesses; and establishing a forum for dialogue on trade and gender equality.

While Australia may seek and agree to include labour, gender equality, climate and environment issues in FTAs or be open to proposals on these issues in the WTO, there are substantial differences in FTA practice among our negotiating partners. While some partners may not regard FTAs as an appropriate vehicle to advance these issues or may be reluctant to make binding commitments, Australia has sought to embed high-quality commitments on these issues as a matter of practice. To this end, Australia has sought to demonstrate that maintaining high environmental, gender equality and labour standards need not harm economic competitiveness, but rather support shared economic prosperity. Effective advocacy, capacity building and cooperation activities are crucial to reinforcing and demonstrating such arguments. It can be difficult to overcome perceptions that trading partners that do not sign up to binding commitments on these issues have a competitive edge in regional value chains.

Inclusion of impactful cooperative activities and future work programs, together with high-quality provisions, is likely to represent the best prospect for enhancing uptake of sustainability issues in FTAs.

In parallel, Australia's aid for trade initiatives have sought to promote labour, gender equality, environmental and other standards outside of FTA frameworks. For example, the \$46 million Regional Trade for Development (RT4D) initiative supports the implementation of Australia's ASEAN-centred FTAs, and related development objectives for the region, including the Gender Equality, Disability and Social Inclusion (GEDSI) Strategy. Under the RT4D initiative, Australia is also supporting the 'Trade and Gender Equality Incubator' to (i) investigate, document and demonstrate how gender equality matters for trade policies and programming; and (ii) test new ideas, identify opportunities to advance gender equality within trade, and scale up successful initiatives.

Snapshot: Australia-Singapore Green Economy Agreement (GEA) negotiating mandate and stakeholder consultation process

Implementation commenced from signature on 22 October 2022

The Prime Ministers of Australia and Singapore announced on 10 June 2021 that both countries would explore a GEA. In August 2021, Cabinet provided a mandate to negotiate a GEA, and DFAT together with PM&C convened an inter-departmental committee meeting to galvanise inter-agency policy and technical support to develop the GEA. The 12th Meeting of the Singapore-Australia Joint Ministerial Committee on 27 August 2021 directed officials to formally launch GEA negotiations, which commenced on 22 September 2021.

During negotiations for the GEA, DFAT consulted with over 140 businesses, industry groups and State and Territory Government representatives. Targeted stakeholder and industry consultation

sessions included thematic roundtables on green finance, hydrogen, carbon markets, carbon capture use and storage, and the built environment. During the GEA's implementation phase, targeted industry consultations have focussed on the design of the GEA's Go-Green Co-Innovation grant Program and potential revision of the GEA's Environmental Goods and Services lists.

Refer to the DFAT website for more information:

<https://www.dfat.gov.au/geo/singapore/singapore-australia-green-economy-agreement>

Ability to regulate in the public interest

As part of any FTA negotiation, Australia includes a range of robust and effective safeguards to protect a state's right to implement public policy regulation, including in the areas of health and the environment. This is done in a number of ways including explicit safeguards protecting the Australian Government's right to regulate in the public interest as well as broad policy reservations. For example, the general exceptions provisions of our FTAs provide policy space for core legitimate public policy objectives including: the protection of the environment, human and animal life; protection of national treasures of artistic, historic or archaeological value; public morals, public order and privacy; conservation of exhaustible natural resources and in relation to products of prison labour.

Australia ensures that existing legislation cannot be considered inconsistent with any FTA obligations through its schedules of non-conforming measures for services and investment, and also provides broad policy reservations that explicitly preserve the government's ability to legislate in key areas of policy sensitivity including for social services established or maintained for a public purpose, such as social welfare, social security, public education, health and public utilities. Exceptions for services supplied in the exercise of governmental authority are also included.

We ensure our trade agreements preserve the Australian Government's right to regulate and make domestic policy on labour laws and worker's rights.

Australia's FTAs also contain exceptions for prudential measures, such as in relation to ensuring the integrity and stability of a Party's financial system, as well as policy space to take safeguard measures in a balance of payments crisis. All of our FTAs also include exceptions and reservations to allow Australia to take measures to protect our essential security interests.

Protecting cultural interests

Australia aims to protect and promote its unique cultural heritage, diversity, and expression in trade and investment negotiations. We recognise the economic and social value of cultural industries,

including film, music, literature, visual arts, and other creative sectors. These industries contribute significantly to Australia's GDP, create jobs, and promote innovation and creativity. Australia is committed to the sustainable development of our cultural industries while promoting cultural diversity, fostering a vibrant creative economy, and preserving our unique cultural heritage and expression.

One of the ways Australia protects its cultural interests is through intellectual property (IP) protection. The government promotes agreed international standards on the protection, management, and use of IP rights, which help underpin trade and investment, and enable innovation and creativity. For example, the Australia-United Kingdom Free Trade Agreement (A-UKFTA) includes a commitment that safeguards the commercial viability of Australia's long and rich history of creative and cultural expression. Through a reciprocal Artist Resale Royalty scheme, royalty payments can be provided to visual artists, including First Nations artists, from the commercial sale of eligible works.

Australia also maintains cultural interest protections in its international trade commitments in the World Trade Organization (WTO) and under FTAs. These protections ensure Australia's trade commitments do not affect our ability to protect and promote Australia's cultural interests. For example, Australia maintains broad policy reservations for audio-visual and cultural services in our WTO General Agreement on Trade in Services (GATS) commitments and our FTAs. These reservations preserve Australia's ability to adopt and maintain measures to advance Australia's creative arts, First Nations traditional cultural expressions, and other cultural heritage.

Reflecting First Nations interests

The government is committed to an international trade and investment agenda that drives economic growth for all Australians including First Nations people and communities. This builds on earlier work under **DFAT's Indigenous Diplomacy Agenda** and **Reconciliation Action Plan**.

The Ambassador for First Nations People was appointed on 3 April 2023 and has been consulting across the country to hear directly from First Nations stakeholders on their international trade and investment needs. DFAT is committed to engaging in genuine partnership with Australia's First Nations business sector to take forward this agenda and build stronger networks with our international partners as we pursue opportunities for our First Nations communities. Since his appointment, the Ambassador has travelled to all Australian states and territories for initial consultations and met with hundreds of First Nations stakeholders.

In April 2023 the department also established a First Nations Trade Unit, specifically to complement the Ambassador's work and ensure dedicated support to engage with the First Nations business sector on priority trade and investment opportunities – including trade negotiations. Dedicated effort has been invested to ensure more First Nations stakeholders are aware of opportunities to

participate through the department's mainstream engagement efforts (refer section 4). In addition to this, First Nations specific engagement mechanisms have also been established.

Under National Cabinet, the **Ministerial Council for Trade and Investment** (MCTI – refer section 4) has established First Nations economic uplift as a standing item for its agenda. Government officials from across states and territories are working together to better understand the collective effort currently underway to support First Nations trade and investment opportunities, with a view to identifying options to improve support.

DFAT has established a **First Nations Trade and Investment Reference Group**, made up of First Nations Peak Bodies, First Nations Chambers of Commerce, First Nations business representatives and academia. It has been convened three times to date, as well as being utilised to share information about key opportunities as they arise – including trade and investment agreement consultation and submission processes.

Consideration is being given to piloting a smaller, and more targeted, **First Nations Trade and Investment Advisory Group** (see Section 4 for more on pilot Advisory Groups) to help make sure First Nations interests and voices are heard throughout a trade and investment agreement process.

Examples reflecting First Nations' interests in trade and investment agreements

On recent trade and investment agreements, the Government has prioritised seeking to include First Nations interests and perspectives into trade negotiation strategies, including engaging with First Nations stakeholders in a range of different ways.

In Australia's bilateral free trade agreement with the United Kingdom (**A-UKFTA**), the Government secured a range of commitments that are set to benefit First Nations stakeholders. Commitments include implementing reciprocal arrangements to provide for royalties to be paid to Australian artists where their artworks are resold in the UK. The agreement recognised the importance of genetic resources, traditional knowledge and traditional cultural expression, including a commitment that the UK work with Australia at the World Intellectual Property Organization to progress a multilateral solution to the protection of Indigenous Knowledge. Additionally, there was a commitment to make all reasonable efforts to join the multilateral Hague Agreement on Designs, providing greater facilitated access to design protection for Indigenous fashion, decorative, and industrial designers in international markets where their products enjoy growing demand. The agreement reserved Australia's right to implement policy measures which provide more favourable treatment to First Nations People, such as the Indigenous Procurement Policy. First Nations stakeholders were consulted periodically throughout the course of negotiations, mainly via virtual platforms due to negotiations taking place during the height of the global COVID-19 pandemic.

We are pursuing First Nations interests in current negotiations. Throughout **A-EUFTA** negotiations, we have sought to include First Nations references across the agreement, including in the preamble, government procurement, intellectual property rights, energy and resources, trade and

sustainable development, and sustainable agriculture and food systems chapters. In **Australia-India Comprehensive Economic Cooperation Agreement (CECA)** negotiations, we are exploring options to include cooperation commitments to promote trade in goods and services related to or derived from traditional knowledge and cultural expressions and in relevant international fora. In the **Indo-Pacific Economic Framework (IPEF)** negotiation, Australia is seeking to strengthen cooperation across the membership to improve Indigenous Peoples' access and participation in the opportunities and benefits created by IPEF throughout Pillar I (Trade), Pillar II (Supply Chains), Pillar III (Clean Energy, Decarbonization, and Infrastructure), and Pillar IV (Tax and Anti-Corruption).

First Nations interests in multilateral trade arrangements

First Nations trade and investment benefits are also being pursued through pivotal multilateral agreements – notably, at the **World Intellectual Property Organization (WIPO)**.

Australia (led by IP Australia) is supporting negotiations at WIPO for a multilateral agreement (in the Intergovernmental Committee on intellectual property, genetic resources, traditional knowledge and folklore (IGC)) that would allow IP offices to require disclosure of genetic resources and associated traditional knowledge used in patent applications, providing a potential new revenue stream for First Nations stakeholders. IP rights are consistently raised as a priority by First Nations businesses and entrepreneurs. In response we are increasing advocacy efforts to support concluding an International instrument through the IGC Diplomatic Conference in early 2024 and a Diplomatic Conference on the Design Law Treaty in late 2024. In June 2023, Australia contributed \$50,000 to WIPO's Voluntary Fund to support participation of First Nations Peoples' (globally, not only from Australia) in Indigenous IP discussions, so that they can directly inform and influence decisions that affect them.

Australia continues to advocate for Indigenous interests through **APEC**, and deliver targeted capacity-building activities to support Indigenous economic empowerment across the APEC region. We are a founding participant of the **Indigenous Peoples Economic and Trade Cooperation Arrangement (IPETCA)**, a regional cooperation-based arrangement involving Australia, New Zealand, Canada and Taiwan to expand business networks and trade opportunities for Indigenous businesses. IPETCA offers a unique governance arrangement, with equal representation by government and First Nations participants.

While the First Nations agenda is still emerging within the **WTO**, Australia is working with like-minded countries to advocate the inclusion of Indigenous trade as an area of focus. The Australian Government has also supported First Nations Australian representation in a civil society led panel session on *Indigenous Peoples: Advancing Inclusive and Sustainable Trade* at the WTO Public Forum in September 2023.

7. COMPARISON WITH PROCESSES IN OTHER COUNTRIES

Comparable frameworks

This section provides a general overview based on our understanding of the approaches taken by Canada, New Zealand, the United Kingdom, the European Union and the United States to the negotiation of trade and investment agreements and to the consultation process. Definitive information on each country's legal systems and policies should be sourced from each country or in the case of the European Union the European Commission or individual Member States.

Canada

International agreements in Canada generally begin with exploratory discussions; followed by formal negotiations; a concluded negotiations review; followed by signature and entry into force.

For FTAs and foreign investment promotion and protection agreements (FIPA – equivalent to Australia's Bilateral Investment Treaties, BITs), exploratory discussions are generally undertaken to determine the scope of any proposed agreement. Using economic modelling tools such as feasibility or joint studies, the Canadian Government uses these discussions to determine the appetite and/or advantage of entering into an FTA or FIPA. This work informs whether Canada would progress a proposal to formal negotiations.

While specific legislation is not required, before entering into a treaty negotiation, the initiating department or agency should ensure that it has a policy mandate to begin negotiations. In most cases, the department or agency will submit a Memorandum to Cabinet (MC) to obtain this negotiating mandate. The Government will require the sponsoring department to show that other government departments, provinces and territories, aboriginal groups or NGOs and industry stakeholders have been consulted before granting a negotiating mandate. Negotiation can only commence once a specific mandate is received from Cabinet or authority already exists and approval is granted by the Minister of Foreign Affairs.

In addition to the requirements for a policy mandate, in the case of a new free trade agreement, negotiation can only commence if the requirements for tabling documents are respected. The Minister of Foreign Affairs will table in the House of Commons a Notice of Intent to enter into negotiations towards a new free trade agreement at least ninety days prior to the commencement of such negotiations. At least thirty days prior to commencing negotiations towards a new free trade agreement, the Minister of Foreign Affairs will table a document in the House of Commons that lists the Government's objectives for negotiations. These requirements do not apply to the initiation of exploratory discussions towards a potential free trade agreement.

Negotiations can begin once a negotiating mandate is approved. Canada's negotiating teams are led by a chief negotiator and include experts covering all topics under negotiation. The pace and

duration of negotiations varies according to each initiative. Some agreements begin directly with negotiations and do not have formal exploratory discussions. These include plurilateral agreements, WTO agreements and mutual recognition agreements or arrangements (MRA).

Negotiations conclude once the parties arrive at consensus on all elements of an agreement. The draft text must then be reviewed by lawyers, translated and then progressed through the domestic approval process of each party. Canada's Minister of Foreign Affairs, or a person the Minister designates, can sign the agreement after obtaining policy approval from Cabinet and legal authority through an order in council.

Typically, an agreement will enter into force once parties have completed their internal ratification processes and informed each other that they are ready for the agreement to enter into force. In Canada, the ratification process begins with the agreement being tabled in the House of Commons for 21 days for consideration and debate. Implementing legislation is also normally required and will be reviewed and passed by Parliament in order to receive royal assent. Once the Government of Canada satisfies its legislative requirements and regulatory changes have been made, the agreement can enter into force.

Stakeholder consultation

The Canadian Government places significant emphasis on stakeholder consultation, especially in Canada's municipalities. Stakeholder engagement is important throughout the negotiating process.

There are well-established channels of communication to inform stakeholders about international agreements being pursued by the Canadian government and how to participate in consultation processes. The Government has established various mechanisms, including citizen-outreach processes, to ensure that the views, priorities and interests of citizens, other levels of government, industry, non-governmental organisations and public interest groups are taken into account.

The Canadian Government engages municipalities on various trade negotiations via its partnership with the Federation of Canadian Municipalities (FCM). The Joint Working Group on International Trade, established in 2001 between the FCM and then Global Affairs Canada, provides a direct channel of communication on trade issues implicating municipalities. It serves as an effective two-way consultation mechanism fostering mutual understanding on issues of common interest. The Joint Working Group provides an opportunity to inform municipalities about Canada's ongoing international trade negotiations and ensures that their views on trade matters are taken into account in developing trade policy positions.

Canada has a long-standing practice for federal-provincial-territorial consultations on international trade policy and negotiations. Government officials gather on a quarterly basis, or more frequently as required, at meetings of the Federal/Provincial/Territorial Committee on Trade (known as C-Trade) to review the trade agenda overall and to consult on the formulation of Canada's position and strategies in trade negotiations. This approach promotes information sharing and open dialogue to ensure Canadian positions are informed by provincial and territorial views in areas such

as trade in goods, services, investment, government procurement and intellectual property. Additionally, federal-provincial-territorial ministers, deputy ministers and senior officials also meet regularly to discuss Canada's pro-trade plan, priorities and strategies.

The Government also consults parliamentarians when developing Canada's trade and negotiating agenda. By encouraging public awareness and understanding of international trade, as well as citizen participation in public consultations, parliamentarians are critical to the development of trade policies that reflect the interests of all Canadians. The work of parliamentary committees serves as the key instrument for parliamentarians to contribute to the development and refinement of Canada's trade strategy.

The Canadian Government actively makes information on the progress of negotiations available. While consultation supports preparation for Canada's participation in trade negotiations, there are stages in negotiations when it is not possible to provide detailed reports, particularly if other countries have not made their positions or proposals public. Within these constraints, Canada has committed to an open and collaborative approach to international trade negotiations and is an advocate for openness and transparency in trade negotiations as well as on trade disputes.

First Nations considerations

Canada, as part of its inclusive approach to trade, is actively advancing programs and policies to enhance the ability of Indigenous peoples and Indigenous businesses to benefit from the opportunities created by international trade and investment, including actively seeking provisions in its FTAs to increase the opportunities for Indigenous peoples to benefit from trade and investment.

Canada is applying a two-track approach to advance the interests of Indigenous peoples through free trade agreements by: continuing its longstanding approach of including reservations and exceptions that provides the Government of Canada with the flexibility to maintain or implement measures and programs related to Indigenous peoples and Indigenous businesses; and pursuing innovative provisions designed to increase Indigenous peoples' access to and participation in trade and investment opportunities created by the agreement

Canada's obligations to Indigenous peoples under the Canadian Constitution cannot be superseded or undermined by commitments under a free trade agreement. These legal obligations include those recognized and affirmed by Section 35 of the Constitution Act 1982, and those set out in self-government agreements. Further, Canada retains policy flexibility to create or maintain programs or set-asides that seek to advance the interests of Indigenous peoples and Indigenous-owned businesses, including in the areas of services, investment, environment, government procurement and state-owned enterprises.

Global Affairs Canada established a trade-focused Indigenous Working Group (IWG) in September 2017. Since its inception, officials have actively engaged with the members of the IWG through ongoing dialogue on a wide range of trade and investment issues that the IWG has identified as important for Indigenous peoples in Canada. This, in turn, has informed Canada's negotiating

positions in recent and ongoing international trade negotiations, including CUSMA, Mercosur and Pacific Alliance.

Global Affairs Canada publishes information on

- Canada's trade and investment agreements at: <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/index.aspx?lang=eng>.
- Canada's inclusive approach to trade at: https://www.international.gc.ca/gac-amc/campaign-campagne/inclusive_trade/index.aspx?lang=eng; and
- Trade and Indigenous Peoples at: https://www.international.gc.ca/trade-commerce/indigenous_peoples-peuples_autochtones/index.aspx?lang=eng.

New Zealand

While specific legislation is not required, New Zealand's process for agreeing multilateral agreements and significant bilateral treaties requires a negotiating mandate, usually bestowed by Cabinet, in the first instance. New Zealand Ministry of Foreign Affairs and Trade officials, alongside other relevant agencies, then engage in international negotiations with a view to finalising the draft text of an eventual agreement.

The lead government agency(ies) prepares a Cabinet paper and a National Interest Analysis (NIA), which sets out the advantages and disadvantages for New Zealand of becoming a party to the agreement or deciding to withdraw. A Regulatory Impact Analysis may be required to accompany a submission to Cabinet to seek, renew or update a negotiating mandate. The lead government agency(ies) is responsible for ensuring appropriate consultation is undertaken with other government agencies, Māori and third parties who may have an interest in the treaty.

New Zealand augmented its external consultation process on trade agreements during its 2018 'Trade for All' Agenda, including establishing a Trade for All Advisory Board made up of a range of Māori, civil society, business and industry representatives. For New Zealand's most recent negotiations with the UK and the EU, stakeholders from a range of industry groups, Māori groups, civil society and business were consulted, with some involved in the final negotiations. These participants are required to sign confidentiality agreements. Public consultation is also usually held via in-person and virtual consultations by the Chief Negotiator. New Zealand's year as CPTPP Chair in 2023 is a good example of its expanded domestic consultation processes, as New Zealand invited all economies to participate in virtual consultations with relevant stakeholders during Senior Official Meetings.

Cabinet then approves the final text of the agreement, giving authority for New Zealand to sign the agreement; the presentation of the agreement and NIA to the House of Representatives; and the

necessary measures for entry into force (i.e. ratification/acceptance/accession). At this stage, the treaty is agreed but not yet legally binding.

After Cabinet approval the treaty and its corresponding NIA are presented to the House of Representatives. A select committee considers the treaty and the NIA. The committee has 15 sitting days to report back to the House. If it has recommendations to Government, a Government response to these must be tabled within 60 days of the report.

If the New Zealand Government intends for the treaty to be implemented through a bill, the select committee's report is set down for debate as a Government order of the day (Standing Orders 67(d) and 254(2)(a)). The report is then debated in lieu of a debate during the first reading of the bill that implements the treaty. If the Government does not intend for the treaty to be implemented through a bill the select committee's report is set down as a Members' orders of the day and will only be debated if the Business Committee selects it under Standing Order 254(5).

Ratification is achieved upon the exchange of formal documents with the other countries or organisations involved, bringing the treaty into force in New Zealand. These documents confirm domestic procedures have been completed and that the treaty is now in force.

New Zealand's 'Trade for All' agenda

The Trade for All Agenda supports New Zealand's endeavour to ensure trade policy delivers fairly for all New Zealanders and address regional concerns such as environmental issues and labour standards.

In 2018, New Zealand consulted widely on the country's trade policy to hear views and develop the New Zealand's first Trade for All Agenda. One of the key outcomes from the consultation process was the establishment of a Trade for All Advisory Board made up of a range of Māori, civil society, business and industry representatives. In November 2019 the Board provided Government with an independent report, identifying and discussing key issues, and providing recommendations on trade policy. Cabinet agreed to implement all recommendations within the report and agreed the following key principles:

- An open conversation with the public and key stakeholders around the future direction of New Zealand's trade policy; this will include consultation with Māori, consistent with their role as a Treaty partner
- A focus on creating new and more sustainable economic opportunities for New Zealanders of all incomes and backgrounds
- Support for the international rules-based system and New Zealand's contribution to its modernisation
- Support for multilateral negotiations as a first-best option for New Zealand, followed by open plurilateral negotiations
- Enhancing New Zealand's economic integration with the Asia-Pacific region, and economic connections to other regions, including through regional and bilateral FTAs

- Support for trade policy to contribute to maximising the opportunities and minimising the risks associated with global issues, including:
 - Environmental issues such as climate change
 - Protecting New Zealanders' health and wellbeing
 - Labour rights
 - Gender equity
 - The rights of indigenous peoples
 - SME participation in international markets
 - Inclusive regional economic growth, poverty reduction and sustainable job creation
 - Protecting traditional knowledge
 - Preserving the right of governments to regulate in the public interest, including for national land markets, taxation of multinational businesses and public services
- The development of specific directives for future trade policies and negotiations to operationalise Trade for All.

The New Zealand Ministry of Foreign Affairs and Trade publishes information on New Zealand's free trade agreements at: [Free trade agreements | New Zealand Ministry of Foreign Affairs and Trade \(mfat.govt.nz\)](https://mfat.govt.nz/free-trade-agreements)

The United Kingdom

The UK does not require legislation for a mandate to negotiate trade agreements. The UK Department for Business and Trade drafts a proposed negotiating mandate which is then circulated across all relevant Government agencies (of Cabinet Ministers). Each Secretary of State is required to approve the mandate. Should a Secretary of State request a change be made to the negotiating mandate they will engage with the Secretary of State for Business and Trade and reach an agreement. The mandate will be officially agreed by the Prime Minister before negotiations commence.

The UK does not currently have a statutory trade policy. For each FTA negotiation that is launched the Government publishes a document on GOV.UK outlining its strategic approach to each respective negotiation, which in the case of the Australia-UK FTA, also included publication of the Government's response to public consultation, UK negotiating objectives and an initial economic impact assessment. The objectives for each negotiation are based on the current bilateral trade relationship. However, under the current UK Government there have been two consistent objectives for each trade negotiation:

- 1) Uphold the Government's manifesto commitment that the National Health Service (NHS), its services, and the cost of medicine are not on the table. The Government has said it will not accept any provisions that would increase the cost of medicine for the NHS.

- 2) Ensure high standards and protections for UK consumers and workers and build on existing international obligations. The Government has said it will not compromise on the UK's high environmental and labour protections, public health, animal welfare and food standards.

Before starting a trade negotiation, the UK conducts public consultations, seeking input on which aspects of the current trading arrangements should be amended. This information is used to help inform the approach to specific negotiations.

The former UK Department for International Trade (now Department for Business and Trade) launched a 14-week public consultation seeking views on the FTA with Australia in 2018. Stakeholder input was used to inform negotiations. The Government used this information to gain a better understanding of business needs and what provisions and outcomes would benefit UK industries. The Government's strategic approach to the negotiations included its response to issues raised during public consultations.

The negotiation phase of trade agreements includes stakeholder consultation processes. During the negotiation of the Australia-UK FTA, there were several consultation processes that took place, including joint consultations by Chief Negotiators with stakeholders in both countries, as well as regular consultations with Chambers of Commerce in both countries and direct stakeholder engagement. Further stakeholder consultation is incorporated in the written and oral evidence processes for various statutory bodies and Parliamentary committees that review trade agreements (see below).

Once an agreement is reached, it is signed and then undergoes public scrutiny. Upon signature, which for the Australia-UK FTA occurred simultaneously in London on 16 December 2021 and Adelaide on 17 December 2021, the Government publishes an updated economic impact assessment, as well as a draft Explanatory Memorandum. The FTA is referred by the Secretary of State for Business and Trade to the UK's Trade and Agriculture Commission (TAC). The role of the TAC is to scrutinise new FTAs once they are signed, to inform Parliament's understanding of whether measures under FTAs are consistent with the maintenance of UK levels of statutory protection in relation to UK animal and plant health, animal welfare, and environmental standards. The TAC does not inform or comment on negotiations but does invite written and oral submissions from relevant stakeholders. The TAC's role was approved by the UK Parliament during passage of the Trade Act 2021 and Agriculture Act 2020. The TAC issues a report on its findings in accordance with Section 42 of the Agriculture Act 2020 and provides this advice to the Secretary of State for Business and Trade, which is presented to Parliament. The Government then issues its response via a report pursuant to Section 42 of the Agriculture Act 2020, which is also presented to Parliament.

The agreement is also scrutinised by relevant Select Committees in the House of Commons and the House of Lords. For the Australia-UK FTA, three Select Committees instituted formal inquiries into the agreement and published reports: the former House of Commons International Trade Committee; the House of Commons Environment, Food and Rural Affairs Committee; and the

House of Lords International Agreements Committee. The House of Commons Northern Ireland Affairs Committee held a non-inquiry session on FTA's effect on Northern Ireland, and the House of Commons Public Accounts Committee discussed the FTA as part of its inquiry into "Progress with trade negotiations". All Select Committees' work on the FTA included written and oral evidence processes by relevant stakeholders.

The Government then formally lays the agreement together with an Explanatory Memorandum before Parliament under the Constitutional Reform and Governance (CRAG) Act 2010, which for the Australia-UK FTA occurred on 15 June 2022. This Act provides for a minimum of 21 sitting days, before the UK can ratify the agreement. Following the completion of the CRAG process, the Government must then pass all necessary implementing legislation and bring into effect any subordinate legislation before it can finalise the UK's domestic ratification processes and the agreement can enter into force.

The UK Parliament's interest and involvement in the treaty-making process has, for the most part, been limited. Its scrutiny has primarily been of the legislation required to implement UK treaty obligations. Until 2010 Parliament's involvement in treaties operated under a convention known as the Ponsonby rule, established nearly 100 years ago and subsequently set out in the CRAG. No systematic scrutiny of treaties currently takes place prior to signature.

In the context of Brexit, the UK Select Committee on the Constitution delivered a 2019 report on the Parliamentary Scrutiny of Treaties which stated a "dedicated treaty committee is required to provide effective parliamentary scrutiny of treaties." Many witnesses to that committee identified Australia's Joint Standing Committee on Treaties (JSCOT) as an effective model for treaty scrutiny.

Since its departure from the EU, the UK has sought to be a leader in areas such as human rights and gender equality in free trade. The UK committed to its first gender chapter in the Australia-UK FTA, achieved a similar chapter with New Zealand, and is negotiating 'Trade and Gender Equality' provisions with India in its FTA negotiations launched in January 2022. The International Women and Girls Strategy 2023-2030 speaks to all areas of the UK's foreign policy, from development to multilateralism, diplomacy and trade. These commitments enable the UK to work together with trading partners to support women business owners, entrepreneurs and workers to fully benefit from the opportunities created by new agreements.

The Department for Business and Trade publishes information on the UK's trade agreements at: [The UK's trade agreements - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/collections/uk-trade-agreements)

The European Union

For the European Union (the EU), the European Commission (the Commission) and the Council of the EU (the Council) are the primary bodies involved in trade and investment negotiations. The trade agreement process is governed by the Treaty on the Functioning of the EU, specifically Article

218 which declares “the Council shall authorise the opening of negotiations, adopt negotiating directives, authorise the signing of agreements and conclude them.” The Commission, as the EU’s executive body, negotiates trade agreements on behalf of all EU member states.

By definition, the Commission’s approach to treaty making is focused on the 27 member states, keeping them informed. Member states do their own in-country consultations with stakeholders and civil society, which feed into their positions in Council.

The Council, representing member states, plays a key role in negotiations and must sign off on Commission proposals for trade agreements. The Council consists of member state ministers (not leaders) meeting in portfolio-based groupings. Member states have their own procedures for consulting with their own national stakeholders to inform their positions in Council.

Since May 2018, the Commission’s approach to new FTAs is to cover only areas of exclusive EU competence. This means that EU FTAs generally no longer cover non-direct foreign investment or the regime governing dispute settlement between investors and states (ISDS), which are considered to be a ‘shared competence’ between the EU and its member states. EU investment agreements, where deemed necessary, can be negotiated separately and in parallel to FTAs. This was the approach taken with the Australia and New Zealand FTAs, which cover only areas of exclusive EU competence. Although the possibility of separate investment agreements with Australia or New Zealand was covered in the EU’s initial negotiating mandate, the EU has not in fact proposed launching such an agreement with Australia.

The European Parliament, the only directly elected EU institution, does not have a formal role in the negotiations but its consent (a ‘yes’ from a simple majority of the plenary) is required prior to ratification of an FTA. The Parliament is able to influence the negotiations by signalling concerns or support for particular aspects of the agreement. For example, the Commission responded to the Parliament’s strong push for enforceable Trade and Sustainable Development (TSD) Chapters by introducing a new approach to TSD in 2021, which had implications for the EU’s negotiations with Australia and New Zealand, and all future FTA agreements. The Parliament also uses non-binding resolutions to express its preferences during negotiations and refers back to the resolutions at the end of the negotiations.

The process for EU FTA negotiations includes

1. Commission preparation of an Inception Impact Assessment
2. The Commission recommends the Council authorise the opening of FTA negotiations
3. The Council adopts a decision authorising the opening of negotiations
4. A Sustainability Impact Assessment is produced by an external consultant and the Commission prepares and publicly releases its response once negotiations have commenced.
5. The Commission regularly reports back to the Council through its Trade Policy Committee and the European Parliament on the progress of negotiations

6. The Council can adopt revised or new negotiating directives at any time during negotiations
7. At the end of negotiations, the Council adopts a decision on the signature of the agreement
8. The European Parliament's designated rapporteur for the agreement publishes a draft recommendation to adopt (or reject) the agreement and an accompanying (non-binding) resolution encompassing the institution's views on the deal
9. The Council also adopts the final decision to conclude the agreement
10. The agreement enters into force.

The European Commission publishes information on the EU's trade negotiations and agreements at: [EU Trade agreements \(europa.eu\)](http://europa.eu)

The United States

The U.S. Constitution designates Congress as the primary authority over trade policy. Article 1, Section 8, of the U.S. Constitution expressly grants Congress the power "To lay and collect Taxes, Duties, Imposts and Excises" and "To regulate Commerce with foreign Nations, and among the several States," as well as the general provision "To make all Laws which shall be necessary and proper" to carry out these specific authorities. Congress exercises trade policy authority through the enactment of laws authorising trade programs and measures to address unfair and other trade practices, and the approval and implementation of reciprocal trade agreements. Congress also sometimes delegates – by legislation – authority to the President.

Working closely with Congress, the Office of the U.S. Trade Representative (USTR) is responsible for developing and coordinating U.S. international trade, commodity, and direct investment policy, and overseeing negotiations with other countries. The head of USTR is the U.S. Trade Representative, a Cabinet member who serves as the president's principal trade advisor, negotiator, and spokesperson on trade issues.

USTR is part of the Executive Office of the President. Through an interagency structure, USTR coordinates trade policy, resolves disagreements, and frames issues for presidential decision.

USTR consults with other government agencies on trade policy matters through the Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC). These groups, administered and chaired by USTR and composed of 19 Federal agencies and offices, make up the sub-cabinet level mechanism for developing and coordinating U.S. Government positions on international trade and trade-related investment issues.

The TPSC is the primary operating group, with representation at the senior civil service level. Supporting the TPSC are more than 90 subcommittees responsible for specialized areas and several task forces that work on particular issues. If agreement is not reached in the TPSC, or if significant policy questions are being considered, then issues are taken up by the TPRG (Deputy USTR/Under Secretary level).

The final tier of the interagency trade policy mechanism is the National Economic Council (NEC), chaired by the president. The NEC Deputies' committee considers memoranda from the TPRG, as well as important or controversial trade-related issues.

The U.S. Congress established the private sector advisory committee system in 1974 to ensure that U.S. trade policy and trade negotiation objectives adequately reflect U.S. commercial and economic interests. Congress expanded and enhanced the role of this system in subsequent trade acts, most recently the Trade Act of 2002.

The advisory committees provide information and advice with respect to U.S. negotiating objectives and bargaining positions before entering into trade agreements, on the operation of any trade agreement once entered into, and on other matters arising in connection with the development, implementation, and administration of U.S. trade policy.

The trade policy advisory committee system consists of 26 advisory committees, with a total membership of approximately 700 advisors. Under the Trade Act of 2002, each advisory committee is required to prepare a report on proposed trade agreements for the Administration and Congress. These reports are made public on USTR's website.

The system is arranged in three tiers: the President's Advisory Committee for Trade Policy and Negotiations (ACTPN); 5 policy advisory committees; and 20 technical and sectoral advisory committees.

The President appoints up to 45 ACTPN members for four-year terms. The 1974 Trade Act requires that membership broadly represent key economic sectors affected by trade. The committee considers trade policy issues in the context of the overall national interest. USTR administers the ACTPN.

Under the Bipartisan Congressional Trade Priorities and Accountability Act of 2015, Congress directed USTR to develop written guidelines⁹ for consultation with Congress, the public, and advisory committees for negotiations that are pursued under the trade promotion authority (TPA).

For example, as part of the USTR-led trade advisory committee system, the Department of Commerce and USTR co-administer fifteen Industry Trade Advisory Committees (ITACs), which engage business in developing U.S. trade policy.

Accredited advisors for ITAC are appointed for four years and like other trade advisory committees are cleared up to SECRET to enable them access to classified trade-related information.

⁹ Guidelines as at 2015 are archived on the USTR website [USTR Guidelines for Consultation and Engagement | United States Trade Representative](https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2015/ustr-guidelines-consultation-and). We are not aware they have been updated. Available at: <https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2015/ustr-guidelines-consultation-and>

USTR generally shares all trade negotiating text with accredited advisers, however, there may be instances where not all text proposals are shared. Not all recommendations from advisers are made public.

The Office of the United States Trade Representative publishes information on the U.S.' trade agreements at: [Trade Agreements | United States Trade Representative \(ustr.gov\)](#)

How Australia's approach compares

Australia's approach to engaging the Parliament and stakeholders on trade negotiations seeks to balance the need for confidentiality during the negotiations, the respective roles of the Executive and Parliament, and the interests of the range of stakeholders.

Australia's process – and overall approach to seeking a negotiating mandate – is not substantially different from many comparably sized economies with similar political systems. Inherently, there are differences in how our processes operate; these are principally due to the nature of the legal architectures of our respective systems and the associated histories of how our processes were developed. While details within the processes differ, the overall approach taken by Australia remains broadly consistent with these other jurisdictions, focusing on ensuring:

- the pursuit of a negotiating mandate in the national interest (or in the case of the EU, member states);
- Parliament, sub-national units (i.e. State or provincial governments), industry, First Nations representatives, NGOs, trade unions, academics and the public are given opportunity to express views during the process;
- some balance of transparency and confidentiality is sought, supporting informed decision making as well as maintaining strong negotiating positions; and
- the process is conducted in a consistent, fair and robust way.

By way of comparison to the processes outlined in peer countries, Australia's establishment of the Joint Standing Committee on Treaties (JSCOT) in 1996 created a unique arrangement, establishing a forum where both houses of the Australian Parliament could review, scrutinise and provide recommendations on Australia's intentions for entering into treaties. By comparison, the US Senate Foreign Relations Committee considers, debates and reports on treaty decision making, but also provides consideration on non-treaty processes. The EU's Committee on International Trade (INTA) is responsible for evaluation and scrutiny of the European Commission's work but is also the lead on debates for international trade and rules-based trading, as well as determining the legal frameworks for which trade takes place – a broader role than JSCOT. The UK's Business and Trade Committee (which replaces the former International Trade Committee) follows a similar process to JSCOT, with scrutiny and review responsibilities. However, one consistent major difference with

these committees are their unicameral operation; JSCOT has representative membership from both Houses of the Parliament.

8. PROS AND CONS OF ENSHRINING THE AUSTRALIAN GOVERNMENT'S APPROACH TO NEGOTIATING TRADE AND INVESTMENT AGREEMENTS IN LAW

DFAT notes the Committee's interest in considering legislating elements of a negotiating mandate and/or negotiating process, including consultation and transparency. Legislation can be used for a range of reasons, including to provide authority to take certain action, to change rights or obligations, to authorise expenditure through appropriation etc. Legislation may also be an option used to present a policy or to establish a structure that can only be subsequently changed through legislation. In the case of treaty making, legislation can be used to enhance the role of parliament in the treaty approval process.

In looking to improve the agreement making process for Australia, it is important to carefully consider the problem that is seeking to be resolved. This will help inform the most appropriate vehicle for resolving the defined problem.

A threshold question would therefore be the rationale for any legislation, as well as what would be included in any such legislation and a consideration of the risks and benefits of such legislation to Australia's overall national interests.

The principles set out in the Attorney General's Department's paper *Causes of complex legislation and strategies to address these*, provide useful guidance in this regard.¹⁰

The Attorney General's Department's paper identifies a risk of responding to policy issues with legislative changes even when legislation is not necessary to address them. In general, all implementation options should be considered, only legislate if required. For example, the elements to include in a negotiating mandate could be set out in a policy framework, rather than through a law reform process. Similarly, consultation and transparency mechanisms can be implemented through policy, as is currently the case. It may be that legislation is deemed appropriate for some key elements of either the mandate and/or the negotiating process, with most elements remaining to be set out in policies.

More broadly, in considering changes to the process for negotiating trade agreements it will be important to consider the most effective and appropriate mechanism to implement change. This should take into account the potential impact on trade negotiations, including on issues such as timeframes, the capacity to respond to requests and negotiating positions of trading partners, the

¹⁰ Attorney-General's Department, *Causes of complex legislation and strategies to address these* (16 June 2014). Available at: <https://www.ag.gov.au/legal-system/publications/causes-complex-legislation-and-strategies-address-these>

impact of having predetermined constraints placed on negotiations going forward and the signal such obligations send to trading partners.

This is particularly relevant as the negotiating environment is rapidly changing, with a range of new approaches to trade agreements and trade-related agreements emerging to respond to challenges such as climate change and shifts in the geostrategic landscape. Introducing legislative requirements may imbue the negotiating process with undue inflexibility, which may have negative implications for the Government being able to negotiate these agreements quickly if required. There may be instances where both parties have mandatory processes which cannot be implemented simultaneously, but which have consistent intentions. This could complicate and delay negotiations, particularly when dealing with a wide range of institutional and legal structures across the globe, potentially compromising our capacity to secure negotiation outcomes in Australia's interests.

It may also give rise to issues when entering into new multilateral or plurilateral negotiations in the WTO, for example, where the pre-existing structures and legal obligations have been well understood and accepted for decades and it is unclear how new legislated obligations apply to the pre-existing agreements.

Care would also need to be taken in defining the scope of legislative requirements, both in terms of the type of agreements (trade and trade-related) and the nature of the instruments (legally binding, non-legally binding).

A key element is to have clarity on what is intended to ensure officials implementing legislative or other requirements understand their obligations and where flexibility does, or does not, exist. The risk of legal challenge in the event of uncertainty regarding whether a mandate, consultation obligation or transparency requirement has been properly followed in accordance with the legislation may lead to uncertainty, both within Australia and for trading partners. This could impact implementation of trade agreements as well as the negotiating process. Close consideration of comparable existing provisions, where these exist, may assist to alleviate this problem.

We look forward to considering the most effective way to take forward improved and innovative approaches to trade negotiations for Australia and Australians.

9. ANNEX

Graphic: Connecting Australian Trade to the World, FTA Map

