

## **Submission to the Foreign Affairs Defence and Trade References Committee Enquiry into the Trans-Pacific Partnership (TPP) Agreement.**

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Comments are provided below in accordance with the terms of reference, but first a general comment on the significance of the Agreement is offered.

### **TPP – One of The most important regional trade agreements yet negotiated**

- Only the trade agreement of the European Union is bigger. With UK withdrawal the EU will be less important
- What gives the TPP dynamism is membership of three of the world's major trading economies – the US, Japan and Korea.
- **The TPP extends to services and foreign investment – tomorrow's drivers of growth**
- In developed economies, 70-90 percent of growth is generated by services industries – many are open for global trading
- In developing economies only 40-60 percent of GDP is generated by services
- Tariffs on goods are generally low world wide
- Growth in developing countries needs to be spurred with bigger output in services - opening services markets in the most efficient spur, as is reducing impediments to foreign investment.
- The TPP offers expanding growth over time, not an instant growth injection.
- **TPP is a foundation for a Free Trade Agreement among all 21 members of APEC that would include China, the US and Japan.**

All 21 economies are listed in a footnote<sup>1</sup>. The idea of an APEC-wide free trade economy is under consideration in APEC.

TPP helps realize the cross bench support for building economic growth in Australia in the "Asian Century".

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<sup>1</sup> Australia, Brunei, Canada, Chile, China, Hong Kong, Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, Philippines, Russia, Singapore, Taiwan, Thailand, USA, Vietnam.

### **Australia's economy and trade**

Australia has had one of the longest periods of uninterrupted global growth of most economies. This stems from action to open up the Australian economy (reducing tariffs, opening key services markets and encouraging foreign investment) by the Hawke/Keating governments, and sound tax and debt management by the Howard Governments.

Managing the Global Financial Crisis resulted in increased debt and slowing growth. The high level of debt is yet to be reduced. Demand for resources in Asia and China most recently generated a boom in Australia. A sustained trade surplus was generated for the first time in 50 years. While the boom has cooled, increasing demand for services from other economies (principally from tourism and education) has sustained positive, albeit it lower, economic growth.

To sustain growth and maintain decent living standards, Australia needs to reduce domestic costs and debt and improve competitiveness.

Like the bilateral FTAs which preceded it, the TPP can deliver this.

### **Australia's domestic labour market**

Greater freedom of movement of labor among economies is theoretically another driver of increasing efficiency in economies. For some economies, like the Philippines, "exports" of labor meets labor shortages in recipient economies and generates income for the exporting economy. Philippines is a case in point.

Introduction of some foreign labor became an issue in expanding trade with China. It did not threaten jobs or reduce labor costs. It reflected interest among organized labor in restricting access and keeping labor rates high. One result is that in some sectors, particularly construction, Australian costs have become very high.

There is no reason why the TPP would adversely affect the Australian labor market.

It has been a long standing ambition of organized labor in the US and recently in Australia to see controls on labor rates included in trade agreements. This has been opposed by Governments. There are international standards for labor which are set in the International Labor Organization (ILO). Most trade agreements today recognize the role of the ILO and its basic rules.

### **Australian Investment**

Whereas it was the basic premise in Free Trade Agreements to foster growth by encouraging competition in international trade, it is now recognized that there should also be free competition in foreign investment.

Australia has always depended on foreign investment to build economic growth. It still does. Whereas once Australia was a net recipient of foreign capital, it is now as much on investor offshore and an importer of capital.

This is the result of the development of internationally competitive businesses in Australia and the development of large superannuation funds.

Because tariffs are on average low worldwide, it is now an option for business to trade in a foreign market by building a plant in that economy to service it instead of exporting from a plant in the domestic economy.

Once it was feared this would cause job loss and the 'export' of jobs to other economies. Recent studies by reputable organizations (OECD) and think tanks (the Peterson Institute in Washington DC) show otherwise. When businesses establish successful arms in foreign markets, the business in the home economy expands. There is no 'exports' of jobs as is popularly believed.

Australia is low on the scale among OECD economies for securing the benefits of returns to the parent companies of earnings from subsidiary arms in other economies. One reason is tax. Australian tax imputation rules do not permit create disincentives for Australian owned businesses in foreign markets to return income to Australia.

Australia needs more outward investment and more inward investment to secure the benefits on offer in the global economy. Good FTAs facilitate that.

### **Australia's social, cultural and environmental policies**

There is an inclination among some groups to see advancement of social, cultural and environmental policies achieved through trade agreements.

Trade agreements succeed because they only regulate trade and principally for the purpose of creating competition in domestic and global markets.

The WTO and mainstream FTAs all provide some provision to exempt measures to protect animal and human health and safety.

Because trade agreements are successful there is an inclination among some to attach compliance with policies in non-trade areas, such as protection of the environment or restriction of products which have adverse health effects, as conditions for trading.

The undercuts the economic efficiency of building competitive markets. For some this is a deliberate intention.

For others it is a backdoor route for securing obligatory compliance in an international agreement with non-trade standards. It is not uncommon for this to

occur where there is no global agreement for legally binding laws to comply with a regulatory standard.

### **The effect of Investor-State Dispute Settlement (ISDS)**

Business likes the concept of this dispute settlement model. It depoliticizes disputes over failure to grant freedom to invest by parties to FTAs to investors in partner economies. An aggrieved investor can take the dispute to private arbitration.

A legitimate concern is there are no common rules of arbitration procedures. It can be very costly. On the other hand, in Australia's case, there have been very few resorts to these processes. The EU is examining regulatory models to standardize arbitration.

The opposition to ISDS procedures in Australia seems out of place given limited history of resort to the process. The trade union movement has been the greatest opponent, leading one to wonder what interest is driving this. One surmise is retention of a capacity for Australian regulators to ensure foreign investors meet certain standards. None have been evoked. With low tariffs prevailing, perhaps organized labor regards prevention of a right by foreign investors to invoke international arbitration if they consider the foreign government has restricted their right to invest under an FTA as a remaining protectionist tool.

Otherwise, the interest in opposing this device remains opaque.

### **Rights for copyright holders**

It is traditional for US copyright holders in certain industries to press for copyright protection under Free Trade Agreements.

Pharmaceuticals is one the most active areas of US interest in the negotiation of FTAs. In the TPP Agreement, Australia and five other economies successfully resisted US pressure for extended limits 12 years rather 5 as current on a new category of pharmaceutical product – biological products. This has satisfied Australians pharmaceutical regulators.

There has been opposition to FTAs and TPP from activists in the IT sector, but usually for radical removal of IP protection. The interest represented is very small.

### **Rights for consumers**

It is not clear to this observer what interest is regarded as at stake in the TPP agreement in this context.

There have been contentions that the impact of FTAs should be subject to assessment and review before Australian Governments commit to adopt them.

There have been suggestions the Productivity Commission should independently assess the economic impact and specifically the gains, from FTAs before decisions are taken to adopt them.

The Commission unfortunately has lost the confidence of many in industry and government because of a rather didactic approach to assessment of trade agreements it has employed. This has produced some results regarded as outside the mainstream of analysis.<sup>2</sup>

## **Overview**

The most important features of the TPP agreement are the ones that have received least importance.

The gains from the FTA are long term and focus on the new areas of liberalization which will increase economic output and boost growth – liberalization of services and investment.

The gains from the TPP will arise when the developing country parties to the agreement utilize the new provisions and begin to liberalize their domestic economies.

Economic growth is slowing across the global economy and among Australia's regional Asian trading partners.

Those who have joined the TPP process see it as a platform to guide their domestic policy making to increase out and raise living standards.

There are now a number of other regional economies who now recognize the opportunity the policy mechanisms adopted in the TPP and consider adoption of them as tools which they can use to increase productivity and growth in the Asian Pacific region.

This agreement potentially offers far more to those economies than Australia. But the market expansion which application of the principles evinced in the TPP and development of them into wider ranging applications and reforms will create larger markets in the region from which Australian businesses can benefit.

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<sup>2</sup> The Commission has for example adopted a highly political attitude to free trade agreements and has consistently sought to demonstrate they divert, not expand trade. As a matter of principle it has opposed bilateral or regional free trade agreements. Some even oppose multilateral trade liberalization, taking purist view only unilateral liberalization produces the optimum benefit from free trade. Given the overall lowness of tariffs among industrialized economies, this is regarded as a point of principal which has no application. The rigidity of the Commission on this regard has disappointed most analysts.