



# Submission to the Joint Standing Committee on Trade and Investment Growth

The understanding and utilisation of benefits under Free  
Trade Agreements

**June 2024**





# Introduction

The Australian Industry Group (Ai Group®) is a peak national employer organisation representing traditional, innovative and emerging industry sectors. We have been acting on behalf of businesses across Australia for over 150 years.

Ai Group welcomes the opportunity to provide a submission to the joint standing committee on the understanding and utilisation of benefits under Free Trade Agreements (FTA). Considering the significant investment made by successive Australian governments in implementing FTAs, it is crucial to ensure that the agreements result in a positive outcome for Australian traders.

Ai Group welcomes the Government's commitment to assessing FTA utilisation. Although significant efforts are made to evaluate the potential impacts of FTAs during the negotiation phase, there is often a lack of evaluation regarding how these agreements perform in actual trading conditions after they are implemented. This enquiry presents a timely chance to initiate such an assessment process and tackle the barriers that hinder the advantages of FTAs.

FTAs are an essential component of Australia's economic engagement with the world. They are made with the purpose of lowering or removing barriers to trade and investment, as well as facilitating deeper economic and commercial relations between Australia and its partners in the agreement.

FTA implementation involves significant effort to navigate complex regulations, address potential disruptions to domestic industries, and ensure fair competition. Without careful study and focused initiatives, the potential benefits of FTAs may be untapped. To effectively overcome the barriers, governments must:

1. **Enhance Regulatory Coherence:** Harmonisation of standards and simplification of regulatory procedures are necessary to prevent Non-Tariff Barriers (NTBs) from outweighing free trade.
2. **Simplify Certificate of Origin (CoO) & Rules of Origin (RoO):** It is essential to advocate for the standardisation of RoO and streamlining the process of CoO.
3. **Continue research and education:** Australia's FTA strategy needs to include a well-structured research program on FTA utilisation, impact, and administration. The government should develop a long-term, comprehensive strategy for educating businesses, particularly SMEs about FTAs.
4. **Increase collaboration with industry:** Enhancing engagement between government agencies like Austrade and industry associations is vital, especially when connecting with businesses who have the potential to become exporters.
5. **Increase industry involvement in the FTA negotiation stage:** Industry participation during FTA negotiations has the potential to greatly reduce barriers that may impede the benefits of FTAs. Industry participation is crucial to accurately reflect the needs, concerns, and interests of all sectors of the economy in the FTA.
6. **Continuous improvement of current FTAs:** Regularly seeking initiatives to negotiate improvements with counterparts is critical. These negotiations can lead to resolution of emerging trade issues, adapt to technological advancements, and respond to the ever-changing demands of global trade.



This submission provides Ai Group's responses to the issues for discussion outlined in the Terms of Reference, as well as some additional recommendations to ensure that we have innovative trade agreements that drive our nation's economy.

## **Obstacles in accessing the benefits created by Free Trade Agreements**

Free Trade Agreements have been recognised for their positive impact on economies and their ability to promote international trade. However, sometimes it can be challenging to achieve these benefits. There are various barriers that can impede the use and efficacy of FTAs, which may result in unintended outcomes and unequal benefits for member nations. It is essential to reduce these challenges to fully leverage the benefits and create fair competition for all involved parties.

### **1. Complex Regulatory Frameworks**

The goal of an FTA is to lower or remove certain obstacles to trade in goods and services as well as investment between two or more economies. However, the regulatory frameworks they introduce bring a level of complexity that can be counterproductive. While the numerous regulations and standards are designed to align policies and protect domestic industries, they can unintentionally create a web of red tape for firms to navigate. To properly utilise them, businesses need to understand complex rules and work with multiple government entities - each with its own set of regulations and interpretations. This can lead to inconsistencies and complexities that businesses don't have the resources to navigate and therefore don't employ FTAs as effectively as they could. The complex regulatory and legal requirements can discourage companies from trading globally. In some cases, the perceived benefits of FTAs may be outweighed by the expense of compliance and the risk of non-compliance. Consequently, businesses may not utilise FTAs available to them, impacting margins and reducing profits. This is especially relevant for SMEs who may not have the resources ensure they comply with regulatory criteria.

Free Trade Agreements are signed in a moment of time and regulatory settings. Even when there is a commitment to align regulatory regimes, micro decisions by regulators and agencies can inadvertently create inconsistency and confusion. One potential solution to this problem could be to include FTA compliance in a Regulatory Impact Statement.

### **2. Persistence of Non-Tariff Barriers (NTBs)**

While there are undeniable benefits to reducing tariffs, the journey towards free trade is not without its challenges. NTBs are like hidden obstacles within the trading landscape. They cover a wide range of issues - from protecting domestic industries to ensuring public safety. A product's ability to enter a market can be restricted by quotas, and meeting licensing standards. Technical standards, which are frequently associated with quality and safety, may differ greatly between nations requiring exporters to make expensive adjustments.

Ai Group is supporting the Australian and New Zealand Governments in reviewing and rebuilding the TTMRA (Trans-Tasman Mutual Recognition Act 1997) particularly as it pertains to movement of goods between both nations. Ai Group has developed a series of case studies illustrating NTBs that are not consistent with the TTMRA/CER (Closer Economic Relations) principles and that create additional costs and burden to



business. This includes: additional layers of regulation (e.g. waste-water systems exported from Australia have to be approved by 78 councils in NZ), different standards (e.g. toilet pans for the disabled have different sizes requirements), absence of joint standards (e.g. pallets in Australia differ to the size of pallets in NZ), different certification systems (e.g. gas appliance certification systems differentiate products between sold in Aus, sold in Aus/NZ and sold in NZ), same standard but different requirements (e.g. AS/NZS 5000 requires for different conductor configuration for building cable in Australia and New Zealand) and inconsistent laws (e.g. Companies selling electrical product into New Zealand must have a New Zealand domiciled director).

Businesses need to spend money on legal counsel, administrative procedures, and research to comply with a variety of sometimes confusing guidelines. Redesigning, reengineering, and retesting are frequently required to convert products to suit foreign technical requirements. These processes can be excessively costly, particularly for SMEs. Time is another important consideration; delays in receiving certifications or licenses can often lead to missed opportunities.

### **3. Lack of Awareness**

Although there has been progress in increasing public knowledge of FTAs, there is a lack of resources and skills necessary to assist SMEs in effectively utilising these agreements. A significant proportion of SMEs have a limited understanding of how to assess their products in accordance with the Rules of Origin, how to navigate the procedures for entering service markets, and how to utilise other trade-related provisions available in FTAs, including long-term certificates of origin, advance rulings, and methods for resolving disputes.

SME exporters may not be aware that their goods can receive preferential FTA tariffs, where in some cases, the responsibility for paperwork is handled by their service providers or the importers. It is essential for Australian exporters to have a clear understanding of the benefits of a tariff advantage, even if they are not directly involved in the documentation process. This understanding gives them an advantage in discussions with importers and could potentially lead to them securing a portion of the additional profits that arise from preferential tariffs.

Dispute resolution provisions in FTAs are often overlooked, despite their importance in providing businesses with a sense of security in international trade. These provisions guarantee that trade activities are not affected by political shifts or regulatory changes. However, for these provisions to be effective, it is crucial for businesses to have a clear understanding of their rights, and the necessary steps to enforce them. Unfortunately, there is a significant lack of knowledge in this area among many businesses.

To combat this

### **4. Layers of Complexity in certification**

International trade is often complicated, with many rules and regulations governing cross-border freight. Within this context, RoOs and CoOs hold significant importance in

assessing the qualification of goods for preferential tariffs under FTAs, unfortunately their complexity can be too difficult for businesses interacting with multiple FTAs.

RoOs are used to determine the origin of a product, which refers to its economic nationality. These tests evaluate if enough value has been generated in the FTA partner markets to qualify a product for preferential tariffs under an FTA. The main objective of RoOs is to address the issue of trade deflection, which occurs when products from countries outside an agreement are routed through an FTA partner in order to bypass tariffs.

RoOs can be challenging because many FTAs use different criteria and approaches. To comply with the terms, the product's value must be generated entirely or in part within the FTA territory. These criteria can cause uncertainty and misinterpretation, increasing risk, which makes it less appealing and more difficult for businesses to reap the full benefits from FTAs.

CoOs are documentation that verify a product's origin. They are normally issued by an authority in the exporting country and are used by customs officials to determine whether a product qualifies for preferential treatment under an FTA. CoOs act as a 'passport' for commodities, allowing them to cross borders and reach customers in other marketplaces.

Businesses that operate in multiple markets and under multiple FTAs may face further challenges by the interaction of RoOs and CoOs with FTAs. A product that is eligible for one FTA, may not be eligible in another territory due the unique criteria and standards of each agreement. The crossover in certification adds complexity that businesses can find difficult to navigate.

## **5. Administrative Hurdles and Cost Implications**

Australian importers have expressed concerns regarding delays and administrative costs associated with obtaining Certificates of Origin or Origin Declarations. These obstacles are far from minor; they play a significant role in the choice to forgo FTA preferences, which result in increased expenses for products brought in from FTA partners, weakening the basic intent of these agreements.

The RoO plays a crucial role in determining whether a product is eligible for FTA benefits, and assessing compliance can be challenging. Understanding these rules can be difficult and often requires seeking guidance from customs authorities. This can be a lengthy process that may cause delays in business operations. Tracing the entire supply chain becomes necessary when products are made up of components from different sources, which adds to the complexity.

As well, Australian exporters miss opportunities when buyers or importers do not request a CoO or Origin Declaration. These missed opportunities can cost potential savings that could have been passed on to customers, lowering the competitiveness of Australian products on the international market.

## **6. Overlapping FTAs**

Although FTAs are intended to address different business requirements, there may occasionally be confusion due to their overlapping nature.



For example, both Australia and Malaysia are participants to the Regional Comprehensive Economic Partnership (RCEP) Agreement, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA), and the Malaysia-Australia Free Trade Agreement (MAFTA).

While the DFAT FTA Portal provides some explanation, it does not sufficiently clarify how these agreements connect. A relevant issue for companies could be: Is the value added in Malaysia considered for the AANZFTA rules of origin if an Australian company imports goods from Malaysia under MAFTA, then exports to Thailand under AANZFTA?

Determining eligibility for preferential treatment under FTAs depends on rules of origin. They specify the required regional value content or transformation inside the FTA members. Businesses, particularly SMEs, find it challenging to interpret and utilise these guidelines when multiple FTAs are involved. This scenario illustrates business needs for clear, thorough direction and assistance to manage the complexities of multiple FTAs.

## Recommendations

Ai Group recommends:

### 1. Enhance Regulatory Coherence

Although FTAs have the potential to stimulate economic development and trade, the intricacies of regulatory frameworks present substantial obstacles for businesses. In order to ensure that the advantages of FTAs are well understood, it is imperative to simplify these frameworks, improve regulatory coherence, and offer assistance to businesses navigating the bureaucratic landscape.

A concerted effort to unify standards and requirements has the potential to facilitate a smoother integration of global marketplaces. Similarly, simplifying regulatory procedures can greatly minimise the bureaucratic red tape which impedes trade efficiency. Alignment of standards and simplification of regulatory procedures are key to ensuring NTBs do not outweigh the advantages of free trade. Trade policies should strike a balance between regulation and liberalisation while keeping in mind future implications. It is essential that trade agreements and regulatory policies are aligned in a way that enables international commerce, rather than hinders it, as the global economy continues to develop.

### 2. Simplify Certificates of Origin & Rules of Origin



Standardisation of RoO across trade agreements will streamline compliance and avoid confusion by aligning criteria across trade agreements. Businesses operating in different marketplaces will benefit from clear and consistent rules. RoO information for each trade deal should be clear and accessible. This can be achieved by developing online tutorials, FAQs, and resources to assist firms understand the criteria. Paperwork and processing time can be cut by simpler CoO application processes for low-risk or low-value shipments. Increasing CoO processing automation would lead to efficiencies for businesses and governments. Governments should collaborate with trade associations to create user-friendly CoO and RoO resources and training.

### **3. Continue research and education**

The Australian Government has made a significant investment in the development of the DFAT FTA portal, which offers businesses the ability to search for trade agreements and tariffs based on keywords and Harmonised System codes. This initiative has been designed to inform and educate businesses about the FTAs.

However, ongoing research on the utilisation of FTAs is necessary, particularly in connection to rules of origin (RoOs) and the monitoring of the consequences of services and investments resulting from Australia's FTAs. It is crucial for Australia's FTA policy to include a well-organised research program that examines the utilisation, impact, and administration of FTAs.

Additional investigation into the wider implementation of self-certification and other potential reforms (facilitated by technology) within FTAs could possibly offer a greater understanding of the advantages and disadvantages of the FTA process for businesses.

The Australian government should increase resources to help SMEs understand and deal with the complicated world of FTAs. This could make it easier to understand RoOs and better understand blanket CoOs, which cover multiple shipments over a long period of time. This could help companies increase efficiencies and save costs.

The Australian government has made efforts to raise SMEs' awareness of FTAs as they are implemented. However, the more technical advantages of FTAs are largely unknown. It is critical to recognise that the significance of an FTA to a business may emerge years after the agreement is signed. As a result, the government must develop a long-term, effective plan for educating SMEs about the contents of FTAs and how to use them.

### **4. Increase collaboration with industry**

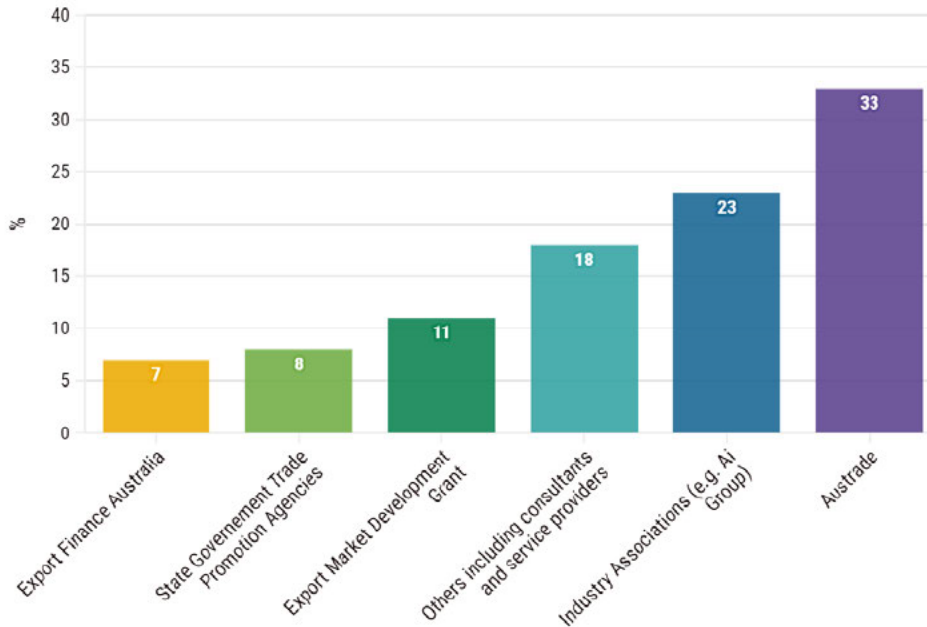
The collaboration between industry associations and the Australian Government, is crucial in assisting businesses understand and utilise Australia's FTAs. Trade intermediaries, including customs brokers and freight forwarders, are also significant in enabling businesses for the successful delivery of FTA deals.

According to a recent survey "Australia-Vietnam Business Engagement Plan 2024" conducted by the Ai Group (funded by the DFAT), 33% of respondents reported being aware of or utilising services provided by Austrade. Additionally, 23% of respondents expressed their preference for industry associations. Given these findings, it is crucial to enhance engagement between government agency like Austrade and industry associations, particularly when reaching out to traders, especially potential exporters.

Of particular importance is ensuring that all Austrade and State Government are aware of the provisions in the FTA, beyond tariff concessions, so that they can advise exporters and investors on added benefits captured within the FTAs.

### International trade support initiatives

Businesses have heard of or utilised to support their business growth



Source: Australia-Vietnam Business Engagement Plan 2024 Survey

### 5. Increase industry involvement in Free Trade Agreements at the negotiation stage

It is understandable that there are limits to public consultation during FTA negotiations as they include complicated economic, political, and regulatory negotiations, necessitating sensitive trade-offs and compromises that need to be negotiated under conditions of confidentiality. However, industry participation during FTA negotiations could significantly reduce the barriers that can hinder the benefits of FTAs. Industry participation ensures the FTA accurately reflects the needs, concerns, and interests of all sectors of the economy. It also ensures that 'on the ground' trade practices – which are visible to commercial actors but may be opaque to government negotiators – are thoroughly addressed in the resulting agreements. Industry consultants with domain expertise, practical insights, and current knowledge help negotiators make more informed decisions that meet sector difficulties. There is a need to strike a balance between appropriate confidentiality and close industry collaboration during FTA negotiations.

### 6. Continuous monitoring of current Free Trade Agreements





The continuous monitoring of FTAs is essential. It guarantees that these agreements are relevant and advantageous to all parties involved, and that they are able to adjust to evolving economic environments. Additionally, it is necessary to consistently pursue initiatives to negotiate improvements with counterparts. These negotiations have the potential to address emerging trade issues, adapt to technological advancements, and respond to the dynamic requirements of the global trade.

This monitoring must also include adherence to ongoing regulatory compliance.

## About the Australian Industry Group

The Australian Industry Group (Ai Group) is a peak employer organisation representing traditional, innovative and emerging industry sectors. We are a truly national organisation and have been supporting Australian businesses for more than 150 years.

Our vision is for thriving industries and a prosperous community. We offer our membership strong advocacy and an effective voice at all levels of government underpinned by our respected position of policy leadership and political non-partisanship.

With more than 250 staff and networks of relationships that extend beyond borders, we have the resources and the expertise to meet the changing needs of our membership. We provide the practical information, advice and assistance members need to run their businesses.



Our deep experience of industrial relations and workplace law, positions Ai Group as Australia's leading industrial advocate.

We listen and we support our members in facing their challenges by remaining at the cutting edge of policy debate and legislative change. We provide solution-driven advice to address business opportunities and risks.

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