



Australian Government
Department of Home Affairs



Department of Home Affairs submission to the Inquiry into the understanding and utilisation of benefits under Free Trade Agreements

Joint Standing Committee on Trade and Investment
Growth

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Overview

Introduction

The Department of Home Affairs (Department), including the Australian Border Force (ABF), welcome the opportunity to provide a submission to the Inquiry into the understanding and utilisation of benefits under Free Trade Agreements (FTAs) by the Joint Standing Committee on Trade and Investment Growth (committee). Our submission focusses on implementing Australia's obligations under FTAs, particularly addressing Terms of Reference (e) and (f).

The Department and the ABF work together with the trust of our partners and community to keep Australia safe and secure, and support a cohesive and united Australia open for global engagement.

The ABF is Australia's frontline border law enforcement agency and customs service, and facilitates the movement of people and goods across the border and delivers operational activities across the border continuum. As Australia's customs service, the ABF works to enhance economic growth through streamlined trade and traveller processes, while undertaking targeted trade enforcement activities to protect government revenue and ensuring compliance with Australia's customs laws.

Role of the Department in FTA negotiations and implementation

The Department and ABF are involved at all stages of a FTA, from developing an initial mandate through to implementation.

DFAT leads most trade and investment negotiations for the Government, working closely with portfolio agencies and other Commonwealth government departments. The ABF actively participates in the negotiation process including implementation of FTAs. It is one of the few agencies required to make legislative changes to implement FTAs that the Government concludes.

The Department has policy responsibility for aspects of Movement of Natural Persons (MNP) under a FTA. As the nature and scope of FTAs has evolved over time, modern FTAs not only contain substantial goods and services components, but also feature more extensive movement offerings, such as skills exchange, and working holiday maker programs.

The ABF has policy responsibility for the movement of goods in FTA negotiations. The ABF is not responsible for the level of tariffs or the particular Rules of Origin which are developed between the Department of Industry, Science and Resources, the Department of Agriculture, Forestry and Fisheries and Department of Foreign Affairs and Trade (DFAT). However, the ABF is involved in negotiations.

Australia's FTA landscape

Australia has 18 in force FTAs¹, with ongoing negotiations with the European Union, India and the United Arab Emirates. For Australian businesses engaged in international trade, there can be substantial advantages where they are able to make use of these FTAs.

Demonstrating the increasing coverage of Australia's network of FTAs, in 2021, following the entry into force of Australia's FTA with the United Kingdom, around 75 per cent of Australia's two-way trade was expected to be covered by FTAs.²

¹ A full list can be found at: <https://www.dfat.gov.au/trade/agreements/in-force>

² <https://www.trademinister.gov.au/minister/dan-tehan/media-release/new-era-free-trade-uk>

More recently, the Government announced that the rate of customs duty of 457 tariff lines would be set to 'Free' from 1 July 2024. Annually, these tariffs lines represent \$8.5 billion worth of imports³ and yet are expected to result in a reduction of revenue collected in the order of \$10 million dollars per annum⁴. Current utilisation of preferential rates of customs duty, alongside other tariff concessions, has meant that these lines have an effective rate of customs duty of just 0.1 per cent, instead of the general rate of up to 5 per cent that is legislated for each line.

Beyond negotiating new FTAs, the Government is exploring opportunities to improve existing FTAs. Two agreements that will result in such improvements are being considered or have been considered by the Joint Standing Committee on Treaties (JSCOT). They are:

- The Protocol on the Accession of the United Kingdom of Great Britain and Northern Ireland to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP UK Accession)⁵
- The Second Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA 2nd Protocol)⁶. JSCOT reported on the AANZFTA 2nd Protocol in May 2024⁷.

The changes in these agreements build on and enhance existing FTAs by expanding the benefits those FTAs provide. For example, the ASEAN-Australia-New Zealand Free Trade Area 2nd Protocol will improve requirements such as the Rules of Origin to support more businesses in utilising the Agreement establishing the AANZFTA.

Trade in goods

Overview

The ABF supports Australian importers in meeting the necessary obligations to claim preferential rates of customs duty. For example, detailed information on the ABF FTA website⁸ explains those obligations. Guidance for each FTA can include:

- Associated guides by the ABF and the Department of Foreign Affairs and Trade (DFAT);
- How to claim preferential rates in the Integrated Cargo System;
- Documentation requirements;
- Circumstances under which a refund of customs duty may be claimed; and
- Links to relevant and implementing legislation.

The ABF also has a tool on the ABF website that assists businesses to identify any FTAs and other preferential arrangements that are applicable to goods of a particular country or place.⁹ Businesses may have up to six FTAs or preferential arrangements that can be used for a particular country or place. It is the choice of the businesses involved in the transaction as to which agreement is utilised.

³ <https://ministers.treasury.gov.au/ministers/jim-chalmers-2022/media-releases/tariff-reform-cut-costs-businesses-and-boost>

⁴ <https://budget.gov.au/content/bp2/index.htm>

⁵ https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/AccessionCPTPP

⁶ https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/AANZFTASecondProtocol

⁷ https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/AANZFTASecondProtocol/Report

⁸ <https://www.abf.gov.au/importing-exporting-and-manufacturing/fta/free-trade-agreements>

⁹ <https://www.abf.gov.au/importing-exporting-and-manufacturing/fta/overview/free-trade-agreements-by-location>

The ABF website also provides guidance on seeking an Origin Advice¹⁰. An Origin Advice enables traders with a prospective importation into Australia to seek a binding ruling as to whether their goods meet the Rules of Origin of an agreement. The ABF does not charge for this service. Alongside Valuation Advices and Tariff Advices¹¹ the ABF endeavours to provide these rulings within 30 days of receiving a correctly completed application.

Guides on using Free Trade Agreements

The ABF prepares detailed guides for Australian importers to assist them in utilising a FTA upon entry into force of that agreement. The most recent examples are the guides for the FTAs with India¹² and the United Kingdom¹³. DFAT also published guidance for the FTAs with India¹⁴ and the United Kingdom¹⁵ which included information targeted at exporters.

As FTAs are a negotiated outcome, each FTA has different requirements, such as the forms of documentation required to claim originating status. The guides provide detailed information to address potential questions posed by traders utilising a FTA.

Industry stakeholders are engaged in the development of these guides to ensure they address specific concerns that arise from each FTA.

Ensuring that FTAs remain up-to-date

Beyond amendments to existing agreements, such as the CPTPP UK Accession and AANZFTA 2nd Protocol, the ABF supports DFAT and other agencies in ensuring that FTAs remain relevant to traders.

Product Specific Rules of Origin (PSR) set out the requirements that goods manufactured using non-originating materials must meet. These PSR are set out in detailed schedules which are organised using the version of the Harmonized Commodity Description and Coding System (HS)¹⁶ applicable at the time of FTA negotiation. World Customs Organization (WCO) members, including Australia review, the HS nomenclature generally every five years, and it is important that PSRs in FTAs are reviewed to reflect current nomenclature. The process of updating the PSR to the latest nomenclature is called a 'transposition'.

Where this does not occur, businesses receive Certificates of Origin (CoOs) and Declarations of Origin (DoOs) using the outdated version of the nomenclature for that FTA while all their other trade documents will be in the current nomenclature. Attachment A of Australian Customs Notice 2021/51¹⁷ sets out, that as of December 2021, a number of FTAs were using versions of the HS nomenclature that had been otherwise superseded in international trade documentation.

The ABF supports the work done by JSCOT in reviewing as a minor treaty action the *Implementing changes to the Product-Specific Rules Annex of the Regional Comprehensive Economic Partnership Agreement*.¹⁸ Given a transposition is a technical exercise in which Parties seek to represent the original commitments in a different structure, having the diverse 15 Parties to the Regional Comprehensive Economic Partnership Agreement achieve consensus is commendable and assists Australian traders to make use of this agreement, particularly as tariff reduction meet or exceed commitments found in bilateral FTAs or AANZFTA.

¹⁰ <https://www.abf.gov.au/fta/Pages/origin-advice.aspx>

¹¹ <https://www.abf.gov.au/imports/Pages/How-to-import/advance-rulings.aspx>

¹² <https://www.abf.gov.au/free-trade-agreements/files/ECTA-rules-of-origin.pdf>

¹³ <https://www.abf.gov.au/free-trade-agreements/files/a-ukfta-rules-of-origin.pdf>

¹⁴ <https://www.dfat.gov.au/trade/agreements/in-force/australia-india-ecta>

¹⁵ <https://www.dfat.gov.au/sites/default/files/a-ukfta-business-guide.pdf>

¹⁶ <https://www.wcoomd.org/en/topics/nomenclature/overview/what-is-the-harmonized-system.aspx>

¹⁷ <https://www.abf.gov.au/help-and-support-subsite/CustomsNotices/2021-51.pdf>

¹⁸ <https://www.aph.gov.au/->

[/media/02_Parliamentary_Business/24_Committees/244_Joint_Committees/JSCT/2024/Minor_Treaty_Actions/ES_and_Text_-_RCEP.pdf](#)

Australian Trusted Trader benefits

The Australian Trusted Trader program¹⁹ (ATT) is a government partnership with accredited Australian businesses to streamline legitimate trade. ATT reduces red tape at the border for Trusted Traders, improves certainty in export markets, and expedites the flow of cargo in and out of Australia—which means faster access to market.

Under the ATT, there are two distinct benefits related to utilising FTAs. The first is the Origin Waiver Benefit²⁰ and the second is the Origin Advance Ruling²¹ for the China-Australia Free Trade Agreement (ChAFTA).

ATT accredited importers have demonstrated a strong compliance record and robust supply chain security. The Origin Waiver Benefit removes the requirements to obtain or present a CoO or DoO under 13 FTAs²². This provides ATT importers a simpler mechanism for claiming preferential rates of customs duty. Under the AANZFTA 2nd Protocol, the Origin Waiver Benefit would be able to be extended to that agreement.

There is no scope within the text to allow for the above waiver for ChAFTA. Instead, the Origin Advance Ruling benefit allows ATT importers to request a single, special advance ruling that refers to goods classified under multiple tariff classifications and consignments that comply with ChAFTA requirements. This removes the requirement for a ChAFTA CoO and replaces the need for multiple conventional advance rulings and is valid for five years.

Guidance on minor errors and discrepancies

The ABF has developed additional guidance to ensure Australian importers and their Licensed Customs Brokers (LCBs) are not disadvantaged where third-party issued CoO reflect different information than the importer or their LCB expects. This may result from different practices, approaches or other actions of the issuing body or authority in an exporting party.

ACN 2023/43 HS Codes, Origin Criteria and Other Information on Certificates of Origin under Australia's FTAs²³ was issued to assist traders to be compliant with their obligations, including obligations under the *Customs Act 1901*²⁴. This allows Australian businesses to move past systemic challenges related to CoO under a FTA. Where a FTA provides for a DoO, these can usually be reissued by one of the businesses in the transaction, meaning such errors and discrepancies can be rectified.

Digital verification platform

The Digital Verification Platform is an ABF initiative under the cross border trade and paperless trade program of work. The system being developed on new and emerging technology is designed to enable trade through high integrity verifiable digital documents between international parties who may not have an existing trust relationship.

As part of this concept the ABF is exploring and trialling converting a FTA CoO into Verifiable Credentials. This supports authenticating CoOs, enabling officials to ensure that preferential tariff rates available under FTAs are appropriately applied.

Initial proof of concept trials conducted in December 2020 were successful. As part of these trials, the ABF collaborated with Singapore Customs and the Infocomm Media Development Authority under the Australia-Singapore Digital Economy Agreement and a number of Industry partners.

¹⁹ <https://www.abf.gov.au/att/files/att-benefits-booklet.pdf>

²⁰ <https://www.abf.gov.au/about-us/what-we-do/trustedtrader/benefits/origin-waiver-benefit>

²¹ <https://www.abf.gov.au/about-us/what-we-do/trustedtrader/benefits/origin-advance-ruling>

²² ChAFTA and AANZFTA do not contain provisions to allow for a waiver. ANZCERTA, AUSFTA and AUKFTA operate in such a way, that an origin waiver is not required.

²³ <https://www.abf.gov.au/help-and-support-subsite/CustomsNotices/2023-43.pdf>

²⁴ <https://www.legislation.gov.au/C1901A00006/latest/text>

Movement of Natural Persons

Overview

The Migration Strategy²⁵ released on 11 December 2023 outlines a new vision for Australia's migration system, with a policy roadmap containing eight key actions and over 25 new policy commitments and areas for future reform. Typically, under FTAs, commitments on MNP can include:

- Labour market testing (LMT) waivers and occupation lists; and
- Access to Australia's Working Holiday Maker (WHM) Program²⁶.

Labour market testing waivers and occupation lists

LMT waivers have featured in a range of FTAs.

The Migration Strategy outlines changes relating to LMT. Since the release of the Strategy, the Government has streamlined LMT by removing the requirement to advertise positions through Workforce Australia. The Government will also increase the validity period for LMT from four to six months and consider removing the requirement once Jobs and Skills Australia's role further matures. Future FTA will need to ensure alignment with the Migration Strategy.

The Migration Strategy also outlines a commitment to developing a simpler and better targeted Skills in Demand visa (SID), which will replace the complex single employer sponsored Temporary Skill Shortage visa. The Core Skills pathway of the new SID will include a Core Skills Occupations List (CSOL), and the SID will continue to fulfil Australia's obligations under international trade agreements.

Working Holiday Maker program

Alongside FTAs, Australia also considers access to the WHM program. The WHM program promotes cultural exchange and boosts people-to-people connections between young adults from Australia and partner countries. These arrangements are agreed via a Memorandum of Understanding with the exception of Belgium, which is via a treaty. As at 30 April 2024, Australia has WHM program arrangements with 49 partner countries. This includes 19 uncapped Working Holiday (subclass 417) arrangements, which is now closed to new arrangements, and 30 Work and Holiday (subclass 462) arrangements, with annual caps (except for the USA). These are reciprocal arrangements (except with China and Switzerland) and these arrangements do not necessarily form an integral part of an agreement. The arrangement between Australia and China was signed in the context of ChAFTA.

Some Work and Holiday Makers (subclass 462) caps are over-prescribed²⁷. Following recent passage of the *Migration Amendment (Australia's Engagement in the Pacific and Other Measures) Act 2023*²⁸ the Government announced in the 2024-25 Budget that a visa pre-application (ballot) process for the capped Work and Holiday (subclass 462) visa program for China, Vietnam and India would be introduced. Note that India will join the WHM program at the end of 2024 under a non-reciprocal arrangement part of the Australia-India Economic Cooperation and Trade Agreement. The ballot process will help manage program demand and application processing times for these high demand countries.

Conclusion

The Department thanks the committee for the opportunity to provide a submission and looks forward to their report. Departmental representatives are available should the committee wish to discuss this further.

²⁵ <https://immi.homeaffairs.gov.au/what-we-do/migration-strategy>

²⁶ <https://www.homeaffairs.gov.au/research-and-stats/files/working-holiday-report-dec-23.pdf>

²⁷ <https://immi.homeaffairs.gov.au/what-we-do/whm-program/status-of-country-caps>

²⁸ <https://www.legislation.gov.au/C2023A00086/asmade/text>