



Australian Government

Australian Government response to the
Joint Standing Committee on Treaties report 186:

*Inquiry into the Comprehensive Economic Partnership
Agreement between the Government of Australia and the
Government of Indonesia and the Free Trade Agreement
between Australia and Hong Kong, China and the Investment
Agreement between the Government of Australia and the
Government of the Hong Kong Special Administrative Region
of the People's Republic of China*

January 2020

**Australian Government response to the Joint Standing Committee on Treaties
Report 186**

Inquiry into the Comprehensive Economic Partnership Agreement between the Government of Australia and the Government of Indonesia and the Free Trade Agreement between Australia and Hong Kong, China and the Investment Agreement between the Government of Australia and the Government of the Hong Kong Special Administrative Region of the People's Republic of China

The Government thanks the Committee for its time and consideration of the Comprehensive Economic Partnership Agreement between the Government of Australia and the Government of Indonesia, the Free Trade Agreement between Australia and Hong Kong, China, and the Investment Agreement between the Government of Australia and the Government of the Hong Kong Special Administrative Region of the People's Republic of China.

The Government provides the following response to the Committee's recommendations.

Response to the recommendations

Recommendation 1

The Committee supports the *Comprehensive Economic Partnership Agreement between the Government of Australia and the Government of Indonesia* and recommends that binding treaty action be taken as soon as possible.

Response:

The Government accepts and has implemented the recommendation.

The Government recognises that many industries made submissions and provided evidence to JSCOT that the *Comprehensive Economic Partnership Agreement between the Government of Australia and the Government of Indonesia* (IA-CEPA) would benefit their industry. The Government has achieved passage of the necessary legislation to implement IA-CEPA through the Australian Parliament. On 17 December the Government notified Indonesia it had completed its necessary internal requirements for entry into force of IA-CEPA. The Government has therefore implemented this JSCOT recommendation by undertaking binding treaty action as soon as possible after the recommendation was made. In accordance with Article 21.4 of IA-CEPA the Agreement will enter into force 60 days after the date of notification to Australia by the Republic of Indonesia advising Australia that Indonesia's necessary internal requirements have been completed.

Recommendation 2

The Committee supports the *Free Trade Agreement between Australia and Hong Kong, China* and recommends that binding treaty action be taken as soon as possible.

Response:

The Government accepts the recommendation.

The Government recognises that many industries made submissions and provided evidence to JSCOT that the *Free Trade Agreement between Australia and Hong Kong, China* (A-HKFTA) will benefit their industry. The Government has achieved passage of the necessary legislation to implement the A-HKFTA through the Australian Parliament. On 18 December 2019 the Australian Government notified the Government of Hong Kong, China it had completed its necessary internal requirements for entry into force of A-HKFTA. The Government has therefore implemented this JSCOT recommendation by undertaking binding treaty action as soon as possible after the recommendation was made. The A-HKFTA came into force on 17 January 2020.

Recommendation 3

The Committee supports the *Investment Agreement between the Government of Australia and the Government of the Hong Kong Special Administrative Region of the People's Republic of China* and recommends that binding treaty action be taken as soon as possible.

Response:

The Government accepts the recommendation.

The Government recognises, as did many stakeholders and submitters to JSCOT, that the *Investment Agreement between the Government of Australia and the Government of the Hong Kong Special Administrative Region of the People's Republic of China* (A-HK Investment Agreement) will update and terminate the *Agreement between the Government of Australia and the Government of Hong Kong for the Promotion and Protection of Investments*. The Government has achieved passage of the necessary legislation to implement the A-HK Investment Agreement through the Australian Parliament. On 18 December 2019 the Australian Government notified the Government of Hong Kong, China it had completed its necessary internal requirements for entry into force of A-HK Investment Agreement. The Government has therefore implemented this JSCOT recommendation by undertaking binding treaty action as soon as possible after the recommendation was made. The A-HK Investment Agreement came into force on 17 January 2020.

Recommendation 4

The Committee recommends that the Australian Government pursue the termination of the *Agreement between the Government of Australia and the Government of the Republic of Indonesia concerning the Promotion and Protection of Investments*, and seeks to terminate the 'survival clause' in this agreement.

Response:

The Government accepts the recommendation. The Government is undertaking the necessary steps to implement this recommendation.

Recommendation 5

The Committee recommends the Australian Government gives due consideration to implementing a process through which independent modelling and analysis of a proposed trade agreement is undertaken in the future by the Productivity Commission, or equivalent organisation, and provided to the Committee alongside the National Interest Analysis (NIA) to improve assessment of the agreement.

Response:

The Government notes this recommendation.

Economic modelling of trade agreements is only one tool to assess whether an agreement is in the national interest. The Department of Foreign Affairs and Trade (DFAT) commissions economic modelling of trade agreements on a case-by-case basis. Statistical and methodological limitations mean that current models are unable to estimate the total impact of an FTA on the economy. For example, it is difficult to model accurately the impact of changes to non-tariff barriers, trade facilitation, increased regulatory certainty and other aspects of an FTA such as rules. Moreover, statistics on international trade in services and investment flows are incomplete.

Additional Comments – Australian Labor Party

Recommendation 1

The Committee recommends that the future resolution of an agreement with Indonesia on the movement of natural persons, as referenced in Chapter 12 of IA-CEPA, only occur on the basis that any temporary foreign labour arrangements include the application of labour market testing and actual skills testing in relevant areas like electrical trades, and notes that this should in any case be a treaty-level agreement.

Response:

The Government notes the recommendation.

The Government has committed not to use the provisions of article 12.9 or any other provisions of IA-CEPA to propose, create or extend any additional labour market testing waivers for Indonesian contractual services suppliers.

Further, should there be a review under article 12.9 that recommends any other changes, the Government would require such recommendations to be considered by JSCOT prior to giving effect to them.

Any commitment on the movement of natural persons would need to comply with Australia's 1995 World Trade Organization commitments.

The Government notes that IA-CEPA does not require Australia to remove skills assessments or licensing procedures for the temporary entry of skilled professionals, including for electrical trades.

Dissenting Report – The Australian Greens

Recommendation 1

The Australian Greens recommend that no binding treaty action be taken for either IA-CEPA or A-HKFTA.

Response:

The Government does not accept the recommendation.

The Government notes that it is in Australia's national interest to be a Party to the IA-CEPA and the A-HKFTA.

Recommendation 2

The Australian Greens recommend that the current process for negotiating trade agreements be amended to increase transparency around the negotiations and final text of agreements, that independent national interest assessments be made, that ISDS provisions be excluded from all trade agreements, and that human rights, labour, and environmental protection provisions are included in all trade agreements.

Response:

The Government does not accept the recommendation.

The Government has broad and well established consultative processes with stakeholders on trade agreements, including with business, civil society, and State and Territory Governments. There is a high-level of public scrutiny of the impact of all free trade agreements (FTAs), including consideration by the Joint Standing Committee on Treaties (JSCOT) itself and by both Houses of Parliament in considering enabling legislation, before binding treaty action is taken. To further promote transparency about FTA negotiations the Government has proposed a pilot of regular briefings of the Trade Subcommittee, beginning with the Australia-European Union Free Trade Agreement. This will complement existing requirements that all FTAs be considered by JSCOT and Parliament.

The Government decides on the inclusion of ISDS clauses in FTAs on a case-by-case basis in light of the national interest. At JSCOT hearings on this matter multiple stakeholders and industry sectors noted that the inclusion of ISDS was important to them.

The Government also decides on the inclusion and content of labour and environment chapters on a case-by-case basis, however, typically the Government only includes trade related matters in FTAs. These, and other issues negotiated under our FTAs, are informed by our broader relationship with FTA partners, and through public consultations including with civil society and industry. Through these consultations, the Government hears directly from interested parties on many matters, including labour, environmental protections, and human rights.

