



Submission to the Joint Standing Committee on Trade and Investment Growth

The Australian Government's approach to negotiating trade
and investment agreements

September 2023





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 150 years.

Ai Group welcomes the opportunity to provide a submission to the joint standing committee on the Australian Government's approach to negotiating trade and investment agreements. Given the substantial investment that successive Australian governments has committed to negotiating and implementation FTAs, it is critical to ensuring current and future agreements provide a net benefit to Australian trade-engaged businesses.

Ai Group welcomes the Government's commitment to evaluating our FTA strategy. While considerable resources are invested in assessing potential impacts during the negotiation phase, there is rarely ex post facto evaluation of how FTAs perform in real world trading conditions post implementation. This inquiry provides a timely opportunity to begin such an evaluation process, and derived lessons which can guide the next phase of Australia's trade negotiations.

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 trade partners that take part in the agreement. Bilateral investment treaties (BITs) play a supporting role in promoting and protect investment. BITs include requirements to ensure non-discrimination, prohibitions on the expropriation of Australian investors' property, and fair and equal treatment for investments.

Negotiating FTAs and BITs involves complex and strategic considerations of various economic, political, and social factors. To successfully balance these considerations, governments must:

1. **Develop a negotiating mandate and framework:** The need for the government to formulate its negotiation strategy and approach when entering trade and investment agreements.
2. **Incorporate stakeholder priorities:** Consultations should also consider state and territory government, business, employee, and stakeholder priorities. Meetings, submissions, and involvement with industry, labour, and community groups comprise these consultations.
3. **Transparency and parliamentary oversight:** As the Australian government seeks trade negotiating transparency, the public and relevant parliamentary committees should receive regular briefings. This allows elected officials to monitor negotiations.
4. **Comparison with other countries:** Australia has unique trade interests, and naturally pursues different objectives from FTAs than our trade partners. However, the strategies and approaches of our peers offer important lessons for crafting more effective Australian trade negotiations. The utilisation of comparative analysis is a valuable tool in identifying best practises and potential areas for improvement.
5. **Protecting and advancing national interests:** Trade agreements should be crafted to defend Australia's capacity to regulate nation's interest such as public health, safety, environmental protection, and cyber security.



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

1. Prioritise FTA objectives that support Australia's future trade opportunities

While the pursuit of improved market access has historically been at the forefront of Australia's FTA strategy, the changing dynamics of its trade relationships require a shift in priorities. With FTAs established with its major trade partners and as negotiations with the European Union near completion, the returns from the market access objectives are approaching a plateau. Consequently, Australia must redirect its focus toward building an open global trade system and establishing rules for emerging trade issues.

Australia should leverage FTAs to accomplish three objectives that advance both Australia's trade interests and the resilience of the global trade system:

- 1. Targeted negotiation for market access via bilateral agreements.** Australia uses bilateral FTAs as a precision instrument to open market access in key markets. These agreements empower Australian exporters to tap into previously untapped markets, stimulating economic growth and diversification. With bilateral FTAs now in place with nearly all major trading partners, future market access negotiations will need to focus on 'hard-to-liberalise' products where Australia has significant opportunity for export development. They should also pivot towards services market access, where complex technical barriers are more important than conventional tariff and quota measures.
- 2. Promote the development of a globally interconnected and inclusive trade framework through regional accords such as RCEP and the CPTPP.** Australia contributes to an open and interconnected global trade system by participating in high-standard regional trade agreements. These multifaceted pacts link economies spanning diverse geographical regions, cultivating an environment of shared trade norms, regulations, and standards. These 'WTO Plus' agreements provide an opportunity for more ambitious liberalisation with likeminded partners. They also act as test beds in which in which new approaches to trade liberalisation – particularly for services – can be experimented.
- 3. Establish regulations for emerging trade frontiers.** Trade is rapidly shifting from physical goods to knowledge-intensive products like services and intellectual property. Historically, these areas have been under-addressed in international trade rules. By setting the rules of engagement in areas like digital trade, clean energy, and modern slavery, Australia helps shape global trade practices that prioritise environmental sustainability, human rights, and technological advancement.

2. Engage trade-active businesses with Australia's suite of FTAs

Many businesses, particularly SMEs, possess limited knowledge regarding the complexity and benefits associated FTAs. The successful utilisation of our FTAs requires an increased level of awareness and capability in trade-engaged businesses, across all levels of the business ecosystems.



Smaller businesses might lack the resources and expertise needed to navigate the complexities of utilising FTAs. They may not have dedicated personnel or the technology to manage the necessary documentation and compliance procedures.

Businesses exhibit a propensity to engage in trade with nations they possess a greater level of familiarity with, even in instances where said nations lack FTAs. The preference may arise as a consequence of preexisting economic ties, linguistic factors, cultural affinities, or historical trade dynamics.

Government bodies like DFAT and Austrade play pivotal roles in promoting economic growth and international trade for Australia. To further enhance the benefits of existing and new FTAs, it is imperative that these organizations collaborate closely with relevant regulators and industry bodies. By doing so, they can establish a comprehensive strategy to boost FTA-related outreach and training specifically tailored, utilizing a diverse range of communication channels including both traditional in-person methods and modern digital platforms.

To effectively implement this strategy, the following approaches should be considered:

- 1. Stakeholder engagement and collaboration:** The success of any initiative relies on collaboration. DFAT and Austrade should establish partnerships with regulatory bodies, industry associations, and relevant institutions. This collaboration would facilitate the identification of sector-specific needs, concerns, and opportunities, enabling a more targeted and effective outreach and training program.
- 2. Involve businesses in designing simple-to-use FTAs:** During FTA negotiations, there is scope to craft regulatory and market access provisions in a manner which reduces complexity for businesses. Many of these opportunities arise from the practical experience of traders, may be unique to particular markets and products, and not readily known to negotiating teams. Consulting with trade-active businesses on text design will help deliver simple-to-use agreements that maximise subsequent utilisation.
- 3. Customised training programs:** The government should collaborate with industry experts to develop tailored training programs that address the unique challenges and requirements of each sector. These programs could cover topics such as regulatory compliance, market access, cultural sensitivity, and export-import procedures.
- 4. In-person workshops and seminars:** In-person interactions provide a valuable platform for direct engagement and knowledge transfer. Agencies should organise workshops, seminars, and networking events across different regions. These events would offer a forum for industry representatives, government officials, and experts to exchange insights, experiences, and best practices related to FTAs and international trade in the services sector.
- 5. Digital learning platforms:** In today's digital age, online platforms offer a flexible and scalable means of reaching a wider audience. The government should develop interactive online courses, webinars, and virtual conferences that enable participants to learn at their own pace and convenience. These digital resources could cover a range of topics, from understanding the benefits of specific FTAs to navigating complex regulatory landscapes.
- 6. Engaging communication campaigns:** Effective communication is key to garnering interest and participation. Engaging communication campaigns that highlight the importance of FTAs for the services sector and emphasise the potential advantages of



international trade should be designed. These campaigns could include success stories, testimonials, and interactive content that resonate with businesses.

- 7. Measuring and adapting:** Regular assessment of outreach and training impact is essential. The government should establish mechanisms to collect feedback, track participation rates, and measure the outcomes achieved through these programs. Based on the feedback received, the approaches should be refined to ensure continuous advocacy to fully harness the opportunities presented by FTAs and international trade. This collaborative effort will contribute not only to the growth of individual businesses but also to the overall economic prosperity of Australia.

3. Deeper engagement of industry in the negotiation of new FTAs

By necessity, there are limits to public consultation during FTA negotiations. They include complicated economic, political, and regulatory negotiations, necessitating sensitive trade-offs and compromises that need to be negotiated under conditions of confidentiality.

Nonetheless, industry participation during FTA negotiations significantly augments their quality. 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.

The US's 'Cleared Advisor' scheme in the Industry Trade Advisory Centre provides an example on how this balance can be effectively struck.¹ This scheme allowed approximately 700 American industry representatives to review the Trans-Pacific Partnership draft text before signing. In the bilateral context, the Indonesia-Australia Business Partnership Group (IA-BPG) established during negotiations for the IA-CEPA played a similar role in helping negotiators from both sides craft text that could maximise practical opportunities for implementation.

The followings are several compelling reasons for considering of inclusive negotiation processes.

Expertise and insights: Industry experts contribute essential knowledge and insights to negotiations. Negotiators can gain real-world context and potential implications of proposed trade measures from their knowledge of industry trends, regulatory issues, and technology.

Relevance and practicality: Trade agreements should boost industry growth and competitiveness. Industry consultants can help negotiate terms that match their sector's operational realities and challenges. This alignment may make trade provisions more feasible.

Transparency and accountability: Negotiations are more transparent with industry advisors. This can improve public trust by showing that negotiations engage stakeholders, making the deal more accountable.

¹ [Advisory Committees | United States Trade Representative \(ustr.gov\)](https://ustr.gov/about-us/disa/advisory-committees)

Reducing unintended consequences: Unexpected outcomes from trade deals can affect specific businesses. Negotiators can foresee and prevent unfavourable repercussions with industry experts' help, resulting in a more balanced and equitable deal.

Innovation and future-readiness: Technological advances and market changes are transforming several sectors. Industry advisers can advise on how the agreement can promote innovation, handle new issues, and boost industry growth.

To achieve these objectives, the consultation process for Australia's FTA negotiations must:

1. **Identify key industry representatives:** Identify and engage reputable representatives from various industries to act as advisors during the FTA negotiation process.
2. **Establish consultative mechanisms:** Develop a structured mechanism for regular consultation and information sharing between negotiators and industry advisors throughout the negotiation lifecycle.
3. **Promote open dialogue:** Encourage open dialogue and knowledge exchange between negotiators, advisors, and relevant stakeholders to foster a collaborative approach to trade agreement development.
4. **Maintain confidentiality:** Implement necessary measures to ensure that sensitive negotiation details are protected while allowing advisors to contribute meaningfully.

4. Centre digital trade in Australia's trade negotiations

"Digital trade" is more than just trade in data. It comprises all forms of trade affected by digitalisation, including:

- **Goods:** Where goods are sold over the internet such as via e-commerce platforms; and electronic facilitation such as paperless trading and digital certificates.
- **Services:** Where services are digitally delivered such as legal, financial, educational and consultancy; or where the service is a digital product including software, music, films, and apps.
- **Data:** Where data is transmitted across borders, either as a commercial activity in its own right, and/or to support other activities. Includes business-to-business and machine-to-machine data flows.

The Export Council of Australia projected that by 2030, digital trade would be worth \$192 billion, up from an estimated \$43 billion in 2018.²

A well-structured digital trade framework protects firms and consumers from cyberattacks, fraud, and data breaches. Stronger cybersecurity and data protection legislation can build trust between trading partners and customers, assuring digital commerce integrity.

As digital trade grows, data analytics, digital marketing, cybersecurity, and logistics professionals are needed. Digital trade encourages government to invest in education and skill development for the digital economy. Traditional industry dependence makes economies

²From *Resource Boom to Digital Boom: Capturing Australia's Digital Trade Opportunity at Home and Abroad* (2018), <https://export.org.au/wp-content/uploads/2021/08/Fromresourceboomtodigitalboom.pdf>



vulnerable to unforeseen events like Covid-19 pandemic. Digital commerce diversification can protect against economic downturns and offer new revenue streams that are less geographically limited.

Digitalisation will affect all of Australia's trade transactions, and therefore should be centred in Australia's future trade negotiating agenda. This can be achieved by:

- 1. Incorporate digital trade provisions:** The inclusion of explicit provisions in FTAs that specifically support and endorse digital trade. This includes cross-border data transfers, electronic commerce, digital service providing, and digital product and service intellectual property rights. The provisions should remove barriers and discrimination that hinder digital trade.
- 2. Digital infrastructure:** Invest in strong digital infrastructure, like fast broadband networks and safe payment systems, to help digital commerce grow. Of particular importance is cross-border digital infrastructure – in the case of digital payments systems, those which allow easier transactions between Australia and abroad.
- 3. E-commerce regulations:** Standardise regulations for internet business that will encourage growth and development. This involves making sure that digital goods are treated equally, as well as protecting consumers' privacy and security while using digital signatures, online authentication, electronic payments, and online purchases.
- 4. Cross-border data flows:** Encourage the elimination of unnecessary data localisation and transfer limitations. Promote worldwide data protection and privacy standards to build trust and interoperability.
- 5. Custom and tariffs:** Streamline customs procedures for digital products, and digitise the customs procedures for physical products, to reduce trade frictions.
- 6. Cybersecurity and data privacy:** Participate in a joint effort to develop standard operating procedures and guidelines for cybersecurity. Harmonise data protection laws to ensure personal data is treated responsibly and securely throughout digital transactions.



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 in 2023 we celebrate our 150th year supporting Australian businesses.

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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