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Dr Narelle McGlusky
Inquiry Secretary
Joint Standing Committee on Treaties (JSCOT)
Australian Parliament House
CANBERRA ACT 2600

JSCOT inquiries on trade agreements with Indonesia and Hong Kong

Dear Dr McGlusky

The Business Council of Australia supports the proposed Indonesia-Australia Comprehensive Economic Partnership Agreement (IACEPA) and the Hong Kong-Australia Free Trade Agreement (HKAFTA).

IACEPA

The proposed agreement with Indonesia will help address an economic relationship that has much unrealised potential.

Indonesia is one of the world's largest countries, with a population exceeding one-quarter of a billion people, and also one of Australia's closest neighbours. Yet despite these facts, Indonesia accounts for only around two percent of Australia's exports. In both economic and people-to-people terms, there is considerable scope to deepen the relationship.

The proposed IACEPA will play an important role in helping to address the deficiency in the economic ties between the two countries, in the same way, for example, that the 1957 Commerce Agreement played a significant and far-sighted role in deepening economic ties between Australia and Japan. In doing so, Australia can also contribute to Indonesia's economic development and to improved living standards in both countries.

The proposed IACEPA includes solid outcomes in the fundamental areas to be expected of a free trade agreement (FTA), including duty-free tariff outcomes covering around 99 percent of Australia's merchandise exports to Indonesia. Moreover, the agreement provides improved outcomes for a broad range of Australian agricultural products.

Just as importantly, IACEPA also helps provide pathways for expanding services exports and investment ties with Indonesia. We welcome the agreement outcomes that lock in place higher equity participation limits for Australian investors in many sectors of the Indonesian economy, such as mining and energy-related services; aged care services; telecommunications; tourism; construction; waste-water management and transportation.

A particularly interesting and commendable outcome is the arrangement permitting Australian vocational education and training (VET) providers to establish ventures in Indonesia with up to 67 per cent Australian ownership. This outcome has the potential to both assist Indonesia meet its own workforce skilling and wider economic development needs, as well as deepening broader ties between the two countries. This in turn can help to drive other mutually-beneficial economic opportunities.

The Business Council likewise welcomes the outcomes contained in side letters and arrangements to the proposed IACEPA, such as the 'Skills Exchange Memorandum of Understanding (MOU)'; the 'Workplace-based Training MOU'; the 'Technical and VET Side Letter'; and the 'Indonesia Working Holiday Visa Letter'. Expanding opportunities for Australians to work in Indonesia is a very positive and welcome outcome. Moreover, allowing more young Indonesians to gain skills and practical experience in Australia, through the expanded exchanges and working holidays covered in the side arrangements, will help Australia deepen people-to-people links and could, in the longer term, create new investment, trade and business opportunities following from such links.

HKAFTA

Hong Kong, as a separate customs jurisdiction from mainland China, has long maintained a substantially free trade environment for merchandise goods. It does not have tariffs on goods imports. However, Hong Kong has, until now, retained the right to impose tariffs in the future, including on Australian goods. Under the proposed HKAFTA, Hong Kong will 'bind' its tariffs at zero, thus permanently relinquishing this right. This will provide certainty for Australian exporters.

However, the significance of the Hong Kong agreement also lies in the fact that it will help encourage trade with Hong Kong in new areas of services and digital trade. The proposed agreement contains new commitments that will expand opportunities for Australian companies to provide services in Hong Kong, including guaranteeing the ability of legal service providers to practice both Australian and international law in Hong Kong; assisting Australian banks to incorporate in Hong Kong; and providing new outcomes for a range of other professional service providers.

The agreement may also facilitate Hong Kong investment in Australia, by lifting foreign investment screening thresholds to the level applicable in Australia's FTAs with other countries (\$1.154 billion; while a threshold of \$58 million will continue to apply for agricultural investment). We support efforts to equalise investment screening thresholds across source countries.

The proposed HKAFTA contains commitments to protecting consumer privacy in e-commerce; preventing the imposition of tariffs on electronic transmissions; and ensuring that Australian businesses will not be forced to build local data storage centres as a condition of operating in Hong Kong. These outcomes will assist Australian companies in Hong Kong's growing online services and e-commerce market. In addition, by providing an important international precedent, these outcomes will also assist Australia's efforts to secure global agreement for similar benchmarks on digital trade in the World Trade Organization.

Labour market testing and Investor-State Dispute Settlement (ISDS)

We also wish to address two issues that have often been a focus for groups critical of FTAs during previous ratification processes before JSCOT, namely (1) waivers of labour market testing under FTA chapters on movement of natural persons; and (2) ISDS.

We understand that IACEPA and HKAFTA do not extend new waivers of labour market testing not already included in other international commitments by Australia. The inbound visitor categories covered in IACEPA and HKAFTA (such as business executives and inter-corporate transferees) are already included in Australia's commitments in the World Trade Organization, and in the ASEAN-Australia-New Zealand FTA (AANZFTA).

It is worth noting, in addition, that the proposed agreements contain important outcomes for Australian business visitors, for example extending work rights for their spouses and dependents in Hong Kong, an outcome that will be welcomed by Australian expatriates based in Hong Kong.

Regarding ISDS, the Business Council considers that this mechanism is important for addressing sovereign risk issues that could otherwise discourage Australian investment in overseas markets.

While it may be observed that Australia has a well-developed and transparent legal environment that can meet the needs of foreign investors here, the same observation does not always apply to the legal environments of other countries in which Australian companies might seek to invest. ISDS provides an additional and useful mechanism for remediating problems in these overseas environments when or if

issues arise. The existence of ISDS as a possible fallback mechanism can help assuage potential investors, and help encourage more Australian business activity overseas.

ISDS is a particularly important element to retain in IACEPA if Australia is to deepen investment ties with our strategic near neighbour.

New procedural safeguards and provisions on transparency for ISDS will ensure that Australia will not see a repeat, under the proposed agreements, of the recent ISDS case related to plain tobacco packaging. The proposed HKAFTA will repeal the existing Investment Promotion and Protection Agreement between Hong Kong and Australia, which was the basis for the ISDS action on plain tobacco packaging, and replace its provisions with the new, tighter ISDS measures.

In summary, the Business Council recommends that JSCOT take a broad and strategic view of the proposed agreements. HKAFTA will encourage new services trade and establish benchmarks that will help Australia champion important protections for data and digital trade in the World Trade Organization. IACEPA, for its part, will deepen ties with our near neighbour Indonesia – one of the world's largest countries; a fellow member of the G20; and a country that is destined to be one of world's largest economies over time.

These national interest considerations are far more important for Australia than opposition to the proposed agreements based on objections to ISDS or waivers of labour market testing (which, in the latter case, we understand do not go beyond Australia's existing commitments in other trade agreements). We therefore encourage JSCOT to support the ratification of these proposed agreements.

Yours sincerely

Adam Boyton
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