

## Australia - Chile Free Trade Agreement

### Background

- 3.1 The Australia - Chile Free Trade Agreement (the Agreement) is an agreement between the governments of Australia and Chile that will remove most barriers to Australia's exports of goods, and provide economic integration for markets through commitments in a range of areas including trade in services, investment, government procurement, intellectual property, electronic commerce, and competition policy.<sup>1</sup>
- 3.2 According to the NIA, the Agreement will also enhance Australia's economic and trade interest and reinforce Australia's commitment to global trade reform and liberalisation.<sup>2</sup>
- 3.3 Bilateral trade with Chile is modest, involving \$856m in 2007. However Australia is the fourth largest source of foreign investment in Chile, with investments amounting to US\$3b in 2007.<sup>3</sup>
- 3.4 Significant Australian private sector investors include BHP Billiton (mining), AGL (gas distribution), and Pacific Hydro (power generation).
- 3.5 According to the Department of Foreign Affairs and Trade (the Department) the Agreement has been negotiated to underpin a
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1 NIA, paragraph 3.

2 NIA, paragraph 3.

3 NIA, paragraph 5.

number of aspects of Australia's relationship with Chile, and with South America in general. In particular the Agreement underpins:

- the fact that the Chilean economy is relatively open, transparent and stable in comparison to other South American economies;
- the common commitment of Australia and Chile to liberalising trade; and
- the common value to Australia and Chile in having a free trade agreement with a stable and open economy close to growing markets (Asia in Chile's case and South America in Australia's).<sup>4</sup>

3.6 The Department described the Agreement as a high quality agreement likely to be used as a model for other free trade agreements with APEC economies.<sup>5</sup>

## Obligations

3.7 The Agreement will liberalise and facilitate trade and investment between Australia and Chile. Upon entry, each party will eliminate tariffs on the imports of most goods from the other party.

3.8 In addition, each party to the Agreement will grant market access, national treatment and most-favoured nation treatment to services and investment from the other party.

3.9 The Agreement also contains commitments in the areas of:

- government procurement;
- intellectual property rights;
- telecommunications;
- customs procedures;
- electronic commerce;
- competition policy;
- temporary entry for business persons;
- standards and technical regulations;

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4 Ms Virginia Grenville, *Transcript of Evidence*, 25 August 2008, p. 13.

5 Ms Virginia Grenville, *Transcript of Evidence*, 25 August 2008, p. 13.

- sanitary and phytosanitary measures cooperation; and
- dispute settlement.<sup>6</sup>

## Reasons for Australia to take treaty action

- 3.10 The NIA states that some of the benefits of the agreement are:
- the elimination of Chile's tariffs on 91.9% of lines covering 96.9% of trade;
  - a harmonised and simplified system of customs procedures;
  - a commitment by Chile to maintain an open and non-discriminatory market for Australian service suppliers including in education, professional services, mining, and telecommunication services;
  - non-discriminatory access to Chile's government procurement market;
  - the right of Australian investors to protect their investments through investor – state dispute settling procedures;
  - temporary access rights for business visitors to Chile; and
  - a framework for mutual recognition of professional qualifications.<sup>7</sup>
- 3.11 The NIA makes a particular point of the fact that the Agreement will enhance Australia's broader economic and trade interests in the region.<sup>8</sup>
- 3.12 Representatives of the Department advised that the Australian tariff lines that will not immediately be tariff free under the Agreement relate to the textile and clothing industry, and to table grapes.
- 3.13 In Chile's case the tariff lines that will not immediately be tariff free included textiles and clothing, and some manufactured products.
- 3.14 The tariff lines that will not immediately be covered by the Agreement amount to slightly more than 3% of bilateral trade between Australia and Chile.

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6 NIA, paragraph 10.

7 NIA, paragraph 6.

8 NIA, paragraph 7.

- 3.15 All the tariff lines not immediately tariff free are projected to be tariff free in six years' time.<sup>9</sup>

## Costs

- 3.16 The Treasury has estimated that the loss of tariff revenue to the Australian Government resulting from the Agreement will be approximately \$1.9m in 2008/09 and between \$4m and \$4.5m a year up to 2012. The estimates do not take account of:
- the additional loss of tariffs that might arise from trade from Chile displacing imports from other countries; and
  - the potential economic growth that the agreement could generate.<sup>10</sup>

## Consultation

- 3.17 As this Agreement will have an impact on the States and Territories, they were comprehensively consulted prior to and during the negotiations.<sup>11</sup>
- 3.18 In addition, the Department of Foreign Affairs and Trade called for public submissions prior to the commencement of negotiations, and eighteen submissions were received.<sup>12</sup>

## Submissions relating to the Australia – Chile Free Trade Agreement

- 3.19 The Committee received a number of submissions detailing a series of issues with the Agreement. The most significant issues for the Committee are: the potential effect of the Agreement on Australia's horticulture industries; the treatment of 457 visas; and compliance

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9 Ms Virginia Grenville, *Transcript of Evidence*, 25 August 2008, p. 16.

10 NIA, paragraph 14.

11 NIA consultation attachment, paragraph 8.

12 NIA consultation attachment, paragraph 14.

with international human rights, labour and environmental standards.

## Horticulture industries

- 3.20 Horticulture Australia made a submission to the inquiry outlining a series of concerns with Chapter Six of the Agreement, which deals with sanitary and phytosanitary measures.
- 3.21 Phytosanitary measures protect plant life in the territory of each party to a free trade agreement. Phytosanitary measures are usually considered in conjunction with sanitary (that is, animal related) measures.
- 3.22 Sanitary and phytosanitary measures are more commonly known as quarantine measures.
- 3.23 The objective of Chapter Six of the Agreement is to:
- facilitate bilateral trade in food, plants and animals while protecting the human, animal or plant life of each country;
  - deepen mutual understanding of the sanitary and phytosanitary measures adopted by each country; and
  - strengthen cooperation between the governments of Australia and Chile over sanitary and phytosanitary matters.<sup>13</sup>
- 3.24 The measures contained in Chapter Six are limited to improving cooperation and communication between Australia and Chile over sanitary and phytosanitary measures within the framework of the *Agreement on the Application of Sanitary and Phytosanitary Measures*, which is part of the WTO Agreement.<sup>14</sup>
- 3.25 In real terms, this means that the Agreement does not override Australia's quarantine barriers that prevent the spread of pests or diseases, whether in existence at the time the Agreement is made, or imposed during the life of the agreement.
- 3.26 Two matters are of particular concern to Horticulture Australia:
- consultation; and
  - the effect of the Agreement on the horticulture industry.

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13 Australia – Chile Free Trade Agreement, p. 51.

14 Australia – Chile Free Trade Agreement, p. 51.

## Consultation

- 3.27 Horticulture Australia is concerned about the lack of consultation during negotiation of the Agreement. Its representatives claim that free trade agreement negotiations are usually preceded by consultation between government and industry, but that in the case of this Agreement, consultation took place after the intention to negotiate an agreement had been announced.
- 3.28 Furthermore, Horticulture Australia claims that the negotiations moved quickly, implying that not enough time was devoted to consultation with business.<sup>15</sup>
- 3.29 The intention to negotiate a free trade agreement was announced in December 2006, and Agreement was reached in May 2008.
- 3.30 In response to these concerns, Department representatives advised that there is no set procedure for consultation for a free trade agreement.
- 3.31 In the case of the Australia - Chile Free Trade Agreement, while consultation in Australia commenced after the announcement of the intention to negotiate a free trade agreement, the degree and type of consultation was comparable to that undertaken for other free trade agreements.<sup>16</sup>
- 3.32 In relation to the timeframe for negotiating the Agreement, Department representatives noted that there is no set time frame for the negotiation of free trade agreements - the negotiations take as long as is necessary to reach an agreement.<sup>17</sup>

## The effect of the Agreement on the horticulture industry

- 3.33 Horticulture Australia's submission points out that because Chile and Australia are both in the southern hemisphere, they share common seasons. This means that Chilean horticultural products can be imported to Australia at the same time as Australian horticultural products are on the market.
- 3.34 Horticulture Australia anticipates that the price of the Chilean products will be less than the Australian products because of the cheaper labour costs in Chile. Mr Peter McPherson, from the Australian Blueberry Growers' Association, advised the Committee
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15 Horticulture Australia, Submission, p. 1.

16 Ms Virginia Grenville, *Transcript of Evidence*, 13 October 2008, p 36.

17 Ms Virginia Grenville, *Transcript of Evidence*, 13 October 2008, pp 39-40.

that in the case of blueberries, Chilean labour costs are 40% of Australia's.<sup>18</sup>

- 3.35 Representatives of Horticulture Australia conceded that, table grapes aside,<sup>19</sup> most horticultural products do not attract tariffs, and that consequently, the Agreement will not have a direct effect on the horticulture industry.
- 3.36 However, representatives of the Horticulture Industry argued that highlighting phytosanitary measures in the Agreement will encourage Chilean producers to seek access to the Australian market, and that the existence of the Agreement will mean that requests for access to Australian markets will be prioritised by Biosecurity Australia.<sup>20</sup>
- 3.37 Representatives of the Department conceded that the inclusion of a chapter on sanitary and phytosanitary measures in the Agreement may have occurred at the insistence of the Chilean negotiators.<sup>21</sup>
- 3.38 Nevertheless, the Department's representatives assured the Committee that the existence of the Agreement will have no impact on the priority accorded requests by Chilean producers to access the Australian market.<sup>22</sup>
- 3.39 The Committee was interested in whether the Department had conducted any modelling of the economic and social effects on the horticulture industry of the Agreement.
- 3.40 Representatives of the Department advised the Committee that no modelling had taken place because it was the view of the Department that the Agreement would have no impact on the horticulture industry.<sup>23</sup>

## 457 Visas

- 3.41 457 Visas are visas that permit short term entry to Australia of workers employed by a particular employer.

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18 Mr Peter McPherson, *Transcript of Evidence*, 13 October 2008, p 23.

19 Table grapes attract a tariff of 5%. The tariff will remain in place for six years following binding treaty action. See Ms Virginia Grenville, *Transcript of Evidence*, 13 October 2008, p 37.

20 Mr Robert Duthie, *Transcript of Evidence*, 13 October 2008, p 30.

21 Ms Virginia Grenville, *Transcript of Evidence*, 13 October 2008, p 40.

22 Ms Virginia Grenville, *Transcript of Evidence*, 13 October 2008, p 41.

23 Ms Virginia Grenville, *Transcript of Evidence*, 13 October 2008, p 41

- 3.42 The Committee received evidence from a number of organisations concerned that the Agreement may increase the number of people entering Australia on 457 visas.
- 3.43 John Sutton, National Secretary of the Construction Forestry and Mining Union, argued that the movement of temporary workers should not be included in free trade agreements for two reasons.
- 3.44 The first is the apparent lack of clarity as to whether domestic law or the trade agreements have precedence in relation to the treatment of workers in Australia on 457 visas.<sup>24</sup>
- 3.45 Mr Sutton's second concern is that if the Agreement increased the number of 457 visa holders, it would expose more workers to the poor treatment he believed was associated with these visas. Mr Sutton described the following issues he had experienced when dealing with 457 visa holders:
- underpayment;
  - loss of income as a result of fees paid to employment brokers;
  - substandard accommodation charged at high rates of rent;
  - poor safety conditions when workers who do not speak English are placed in dangerous situations; and
  - long working hours.<sup>25</sup>
- 3.46 Representatives of the Department noted that the Agreement doesn't contain a reference to 457 visas, and that it will not widen access to 457 visas.
- 3.47 Because the Agreement does not address 457 visas, representatives of the Department argued that Chilean nationals seeking 457 visas will have to meet the requirements that apply to all other applicants.
- 3.48 In addition, the Agreement will not limit Australia's scope to change or abolish 457 visas.<sup>26</sup>

### Compliance with human rights, labour and environmental standards

- 3.49 The Committee questioned Department representatives on a number of occasions about why ILO and UN labour standards were included

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24 Mr John Sutton, *Transcript of Evidence*, 13 October 2008, p 12.

25 Mr John Sutton, *Transcript of Evidence*, 13 October 2008, p 14.

26 Ms Trudy Witbreuk, *Transcript of Evidence*, 13 October 2008, p 35.



in the Australia – United States Free Trade Agreement, but were not included in the Australia – Chile Free Trade Agreement.<sup>27</sup>

3.50 Department representatives advised that ILO and UN labour standards were included in the Australia – United States Free Trade Agreement because of a requirement to do so by the United States, and that the inclusion of these standards in other free trade agreements negotiated by Australia is contrary to Government policy.<sup>28</sup>

3.51 The issue of the inclusion of ILO and UN labour standards in free trade agreements was also raised in the AFTINET submission. That submission advised that:

Before signing any agreement there should be an analysis of the current state of compliance by both Australia and Chile with human rights, labour and environment standards, including the International Labour Organisation’s Declaration on Fundamental Principles and Rights at Work...<sup>29</sup>

### **Other matters raised in submissions**

3.52 Other submissions to the inquiry examined a number of other issues.<sup>30</sup> These issues are as follows:

- trade negotiations should be undertaken through an open and transparent process to allow effective public consultation – in particular, the submitters proposed the adoption of the consultation process recommended by the Senate Foreign Affairs, Defence and Trade Committee in its 2003 report *Voting on Trade*;<sup>31</sup>
- free trade agreements should include social, environmental and cultural impact statements, and these assessments should be independently conducted;<sup>32</sup>
- commitments in services and investments should not restrict the ability of governments to regulate in the public interest;<sup>33</sup>

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27 Chair, *Transcript of Evidence*, 13 October 2008, p 34.

28 Ms Virginia Grenville, *Transcript of Evidence*, 13 October 2008, p 34.

29 AFTINET, Submission No 2, pp 5-6.

30 AFTINET, Submission No 2; Mr John C Massam, Submission No 5; The Stop MAI (WA) Coalition, Submission No 6; Ms Rosie Wagstaff, Submission No 8; and Construction Forestry, Mining and Energy Union (CFMEU), Submission No 9.

31 AFTINET, Submission No 2, p2.

32 CFMEU, Submission No 9.

33 CFMEU, Submission No 9.

- free trade agreements should clearly and unambiguously exempt public services from the scope of the agreement – submitters are of the view that the current definition of public service in free trade agreements is ambiguous in relation to public services in the health, education and utilities sectors;<sup>34</sup> and
  - the Agreement should not contain an investor – state dispute settling process on the grounds that such processes provide an opportunity for private corporations to overturn government regulation aimed at protecting health and the environment.<sup>35</sup>
- 3.53 The Committee also received a comprehensive submission from Dr Matthew Rimmer concerning intellectual property and development.
- 3.54 Dr Rimmer’s principal argument is that the Agreement should not lock in the current standards of intellectual property protection for patents trademarks, geographical indications and copyright. The Agreement should instead take advantage of the flexibilities allowed under international intellectual property law.<sup>36</sup>
- 3.55 In particular, the Agreement should adopt a flexible open ended defence of fair use in respect of well-known and famous trade marks.
- 3.56 Fair use permits the use of material for purposes such as: criticism; comment; news reporting; teaching (including multiple copies for classroom use); scholarship; or research, without infringing copyright.<sup>37</sup>
- 3.57 Dr Rimmer is also concerned about the treatment of pharmaceutical drugs in the Agreement.
- 3.58 Because the Agreement adopts a similar approach to intellectual property as the Australia – United States Free Trade Agreement, Dr Rimmer argues that the agreement will limit the ability of either country to export generic-branded pharmaceutical drugs to each other.<sup>38</sup> Generic pharmaceutical drugs provide a significant health benefit by making such drugs more affordable for the community.
- 3.59 Finally, Dr Rimmer argues that the Australian Government should accelerate the protection of genetic resources, traditional knowledge
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34 AFTINET, Submission No 2, p7.

35 Ms Rosie Wagstaff, Submission No 8.

36 Dr Matthew Rimmer, Submission No 11 p5.

37 Dr Matthew Rimmer, Submission No 11 p22.

38 Dr Matthew Rimmer, Submission No 11 p5.

and folklore as embodied in the *Declaration on the Rights of Indigenous Peoples 2007*.<sup>39</sup>

### Committee comment

- 3.60 The Committee notes the criticisms of the Agreement made in submissions to the inquiry.
- 3.61 The Committee notes evidence that the Australia-United States Free Trade Agreement contains chapters that refer to ILO and UN standards on labour rights and the environment, whereas this Agreement does not, and that environmental and labour standards in the Australia-United States Free Trade Agreement were inserted at the insistence of the United States.<sup>40</sup>
- 3.62 While the Committee would need to hear more evidence and conduct a broader inquiry in order to be in a position to make a specific recommendation, the Committee believes the Government needs to address these concerns in the context of negotiating any future Free Trade Agreements.

### Recommendation 3

**The Committee recommends that, prior to commencing negotiations for bilateral or regional trade agreements, the Government table in Parliament a document setting out its priorities and objectives. The document should include independent assessments of the costs and benefits. Such assessments should consider the economic regional, social, cultural, regulatory and environmental impacts which are expected to arise.**

- 3.63 The Committee believes that such an arrangement would improve transparency in trade agreement negotiations, and address a number of concerns which were expressed by witnesses to this inquiry.

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39 Dr Matthew Rimmer, Submission No 11 p. 6.

40 Ms Virginia Grenville, *Transcript of Evidence*, 25 August 2008, p. 15.

**Recommendation 4**

The Committee recommends that the Department of Foreign Affairs and Trade undertake and publish a review of the operation of the Australia - Chile Free Trade Agreement no later than two years after its commencement in order to assess the ongoing relevance of concerns expressed about the Agreement, such as the maintenance of sanitary and phytosanitary measures, impact on the horticulture industries, intellectual property, 457 visas, and labour and environmental standards.

**Conclusion and recommendation**

- 3.64 The Committee supports binding treaty action on the Australia - Chile Free Trade Agreement.

**Recommendation 5**

The Committee supports the *Australia - Chile Free Trade Agreement* and recommends that binding treaty action be taken.