The Senate

Foreign Affairs, Defence and Trade Legislation Committee

Customs Amendment (Japan-Australia Economic Partnership Agreement Implementation) Bill 2014 [Provisions]

Customs Tariff Amendment (Japan-Australia Economic Partnership Agreement Implementation) Bill 2014 [Provisions]

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Abbreviations

ACBPS	Australian Customs and Border Protection Service
ECA	Export Council of Australia
EIF	Entry into Force
EM	Explanatory Memorandum
EPA	Economic Partnership Agreement
DFAT	Department of Foreign Affairs and Trade
FTA	Free Trade Agreement
KAFTA	Korea-Australia Free Trade Agreement
JAEPA	Japan-Australia Economic Partnership Agreement
JSCOT	Joint Standing Committee on Treaties
ROO	Rules of origin

Chapter 1
Introduction

Referral of the bills

1.1 On 30 October 2014, the provisions of the following bills were referred to the Foreign Affairs, Defence and Trade Legislation Committee for inquiry and report by 27 November 2014:

- Customs Amendment (Japan-Australia Economic Partnership Agreement Implementation) Bill 2014; and
- Customs Tariff Amendment (Japan-Australia Economic Partnership Agreement Implementation) Bill 2014.[1]

1.2 The reasons for the referral of the bills cited by the Selection of Bills Committee were:

- to enable thorough scrutiny of the provisions of the legislation; and
- to supplement the inquiry of the Joint Standing Committee on Treaties into the Agreement.[2]

1.3 As their titles indicate, the bills implement parts of a bilateral trade agreement, the Japan-Australia Economic Partnership Agreement (JAEPA). JAEPA was signed by the Prime Minister, the Hon Tony Abbott MP, and Prime Minister of Japan, Mr Shinzo Abe, on 8 July 2014 in Canberra. The treaty text together with the national interest analysis (NIA), regulation impact statement (RIS) and annexures was tabled in the Parliament on 14 July 2014.[3]

1.4 The Joint Standing Committee on Treaties (JSCOT) tabled its report into JAEPA on 28 October 2014. JSCOT concluded:

> The Committee is satisfied that JAEPA has the potential to provide Australian business and industry with a range of profitable opportunities. The Committee believes JAEPA will provide a net benefit to the economy and is in the National interest and recommends that the Treaty should be ratified and binding treaty action be taken.[4]

1.5 The Minister for Trade and Investment, the Hon Andrew Robb MP, introduced the bills into the House of Representatives on 29 October 2014.[5]

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1 *Journals of the Senate*, 30 October 2014, p. 1691.

2 Senate Selection of Bills Committee, *Report 14 of 2014*, 30 October 2014, Appendix 4.

3 House of Representatives, *Votes and Proceedings*, 14 July 2014, p. 688.

4 Joint Standing Committee on Treaties, *Report 144, Treaty tabled on 14 July 2014, Agreement between Australia and Japan for an Economic Partnership*, October 2014, p. 32.

5 House of Representatives, *Votes and Proceedings*, 29 October 2014, p. 941.

Conduct of inquiry

1.6 The committee advertised the inquiry on its website and in *The Australian* newspaper. The committee also wrote to individuals and organisations likely to have an interest in the bill, drawing their attention to the inquiry and inviting them to make written submissions.

1.7 The committee received 13 submissions to the inquiry. These submissions are listed at Appendix 1, and are available on the committee's website: www.aph.gov.au/senate_fadt.

Structure of report

1.8 Chapter 2 provides an overview of the bills. Chapter 3 discusses key issues raised during the inquiry and contains the committee's view and recommendation.

Acknowledgements

1.9 The committee acknowledges the short period of time available for those who made submissions. The committee thanks all those who assisted with the inquiry.

Chapter 2

Overview of the bills

The Customs bill

2.1 The Customs Amendment (Japan-Australia Economic Partnership Agreement Implementation) Bill 2014 (Customs bill) amends the *Customs Act 1901* (Customs Act) to implement Australia's obligations under Chapter 3 of JAEPA.

2.2 Chapter 3 of JAEPA (and the Schedule of Product Specific Rules in Annex 2) sets out the criteria for determining whether a good qualifies for preferential tariff treatment under the agreement (whether a good 'originates' in Australia or Japan) known as the 'rules of origin'. Chapter 3 also outlines the procedures and documentation for demonstrating that a good qualifies for preferential treatment under JAEPA and, if necessary, the process for verification.[1]

2.3 The key provisions of the Customs bill are contained in the three parts of Schedule 1.

2.4 Part 1 of Schedule 1 inserts a new Division 1K into Part VIII of the Customs Act. Titled 'Japanese originating goods', the new division will set out the rules for determining whether goods are Japanese originating goods and therefore eligible for a preferential rate of customs duty under the Tariff Act.

2.5 Part 2 of Schedule 1, inserts new 'Division 4H—Exportation of goods to Japan' into Part VI of the Customs Act. The new division will impose obligations on people who export goods to Japan and who wish to obtain preferential treatment.

2.6 In particular, proposed new section 126ANB provides that the regulations may prescribe recording keeping obligations on exporters or producers of goods exported to Japan and claimed to be Australian originating goods for the purpose of obtaining a preferential tariff in Japan.

2.7 Proposed sections 126ANC and 126AND would allow an authorised officer to require a person subject to the record keeping obligations to produce records and answer questions in order to verify the origin of goods. Authorised officers may, for the purpose of verifying a claim for a preferential tariff in Japan, disclose records and answers to Japanese customs officials.

2.8 It is noted that failure to produce a record or answer a question when required to do so by an officer may be an offence under the Customs Act. However, a person does not have to produce a record or answer a question if it would tend to incriminate the person.

2.9 Part 3 provides for the application of Parts 1 and 2.

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1 DFAT, *Japan-Australia Economic Partnership Agreement: Summary of Chapters and Annexes*, p. 3.

The Tariff bill

2.10 The Customs Tariff Amendment (Japan-Australia Economic Partnership Agreement Implementation) Bill 2014 (Tariff bill) amends the *Customs Tariff Act 1995* (Tariff Act). According to the Minister's Second Reading Speech, the Tariff bill will implement JAEPA by:

- providing duty-free access for certain goods and preferential rates of customs duty for other goods that are Japanese originating goods;
- phasing these preferential rates to zero by 2021;
- amending schedule 4 to maintain customs duty rates for certain Japanese originating goods in accordance with the applicable concessional item; and
- creating a new Schedule 11 to specify excise-equivalent duties on certain alcohol, tobacco, and petroleum products and to provide for phasing rates of duty on certain goods as specified in JAEPA.[2]

Financial impact

2.11 The removal of tariffs on imports under JAEPA will lead to reductions in tariff revenue. The financial impact statement for the bills estimates that tariff revenue would decline by $1,590 million over the forward estimates.[3] However, this figure does not include the second-round effects on government revenue from increased economic activity, which are expected to be positive.[4]

2 Mr Andrew Robb AO MP, Minister for Trade and Investment, *House of Representatives Hansard*, 29 October 2014, p. 2.

3 EM, Customs Bill, p. 2.

4 JAEPA Regulatory Impact Statement, 12 March 2014, p. 32.

Chapter 3

Key issues and committee view

Key issues

3.1 The committee's inquiry was focused on the provisions of the proposed legislation rather than JAEPA more generally. However, most submissions to the inquiry raised broader issues which were not matters covered by the provisions of the bills. Key issues raised included:

- the context to the agreement;
- a range of implementation issues;
- trade outcomes and tariff reductions; and
- rules of origin issues.

Context to JAEPA

3.2 The importance of Australia establishing a bilateral trade agreement with Japan was stressed in a number of submissions. For example, in the case of vegetable exports, AUSVEG observed that despite 'some favourable results from Australia's FTAs of the last decade, international vegetable market remains relatively distorted' with 'many trading partners [having] high tariffs on vegetable imports'. It noted that while only 7 per cent of Australian vegetable production is exported 'there is growing recognition that expansion to international markets mitigates domestic market risks and increases the scope for future growth'.[1] AUSVEG stated:

> Japan's [economic partnership agreement (EPA)] negotiations with Australia's competitors in the Japanese market, including the European Union (EU), Canada and China, are ongoing. Successful completion of EPA's with China, the EU and Canada will put pressure on Australia's current market share. China's generally low cost of production and subsequent price to market give the country a significant competitive advantage. Both Canada and the EU are currently Australia's main competitors in export to Japan; with comparable vegetable quality.[2]

3.3 In this context, AUSVEG supported a pragmatic approach of targeting trading partners such as Japan for comprehensive bilateral agreements, while slower moving, multilateral trade policy reform takes place.[3]

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1 *Submission 10*, p. p. 2.

2 AUSVEG, *Submission 10*, p. 4.

3 *Submission 10*, p. 5.

3.4 In relation to beef exports, the Australian Beef Industry Japan FTA Taskforce considered that 'JAEPA is critical to the long term positioning of Australian red meat, with a more liberalised import regime in Japan providing a welcome boost in an environment characterised by increasing competitive pressure'.[4] One large beef exporter, JBS Australia, noted that 'any negotiation on improved access for Australian beef to Japan was always going to be difficult'. However, it highlighted the absence of alternative paths to trade liberalisation for Australian exporters, noting that the 'WTO Doha Round of trade negotiations has been proceeding for well over a decade and we do not see any outcomes in the near future being achieved, which are superior to the JAEPA'.[5]

3.5 The Minerals Council of Australia also highlighted the importance of JAEPA in the context of Australia's other trade agreements and relationships. It argued:

> No other option to JAEPA exists at this time to deepen the Australia-Japan economic relationship. Waiting for [Trans Pacific Partnership] negotiations to conclude would be pointless, as would waiting for the conclusion of Regional Comprehensive Economic Partnership (RCEP) and Doha Round negotiations. TPP negotiations could take several more years before an agreement enters into force. RCEP negotiations are at an early stage, with key decisions still to be taken on the scope and level of goods and services market access. And Doha negotiations are in limbo (again).
>
> Without JAEPA, Australia would gradually lose competitiveness in important sectors of the Japanese market. Japan, like Australia, has negotiated trade agreements with several countries and country groupings, including some of Australia's competitors, and is negotiating new agreements with the European Union and Canada among others. Trade diversion would be especially damaging for Australia in areas like agriculture and services.
>
> Doing nothing also would also carry non-negligible risks for Australia's trade in minerals and energy.[6]

Implementation issues

3.6 A range of implementation issues were raised in submissions. These issues included: timely entry into force of JAEPA; scrutiny of implementation; education regarding JAEPA; and the infringement notice scheme.

Entry into force

3.7 The Department of Foreign Affairs and Trade (DFAT) website for JAEPA notes that 'Australia and Japan are aiming to complete their domestic treaty processes to allow entry into force in early 2015'.[7] A large number of submissions supported the

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4 *Submission 8*, p. 1.

5 *Submission 11*, p. 2.

6 *Submission 6*, p. 2.

7 DFAT, 'JAEPA - Implementation timeline', available at: http://www.dfat.gov.au/fta/jaepa/fact-sheets/fact-sheet-implementation-timeline.html (accessed 21 November 2014).

swift passage of the bills to facilitate the rapid implementation of JAEPA.[8] For example, the Australia-Japan Business Co-operation Committee commented that an 'early date of entry into force would signal Australia's welcoming of the policy shift and the long term structural reforms being initiated'.[9] Similarly, despite some concerns with JAEPA, Australian Pork considered it was important that to ensure an early entry into force and implementation of the agreement 'in order to secure maximum commercial value from the JAEPA'.[10]

3.8 The potential for specific practical benefits of timely entry into force were also frequently emphasised in submissions. For example, the Australian Lot Feeders' Association urged that the bills be passed without delay. It noted:

> If the Bills are passed and the Japan Diet also ratifies the JAEPA, there is the possibility that Australian beef will benefit from two tariff cuts next year. EIF in the period January-March 2015, for example, will deliver the first tariff cuts on beef (as above) with the second tariff cuts (1% chilled and 2% frozen) due on 1 April 2015 - coinciding with the commencement of the Japanese fiscal year. This will provide a significant preference to Australian beef over other imported product into the country.[11]

3.9 Similarly, the Australian Grape and Wine Authority welcomed the earliest possible entry into force of JAEPA and highlighted that 'entry into force prior to April 2015 should guarantee two consecutive monthly reductions in the tariff rate applying to Australian bottled wine entering the Japanese market'.[12] AUSVEG also stated that '[t]he relatively early conclusion of JAEPA is reasonably expected to provide Australia with some level of advantage against other competitors in the Japanese market.[13]

Scrutiny of implementation

3.10 The Export Council of Australia (ECA) considered it important that the agreement was implemented 'in a manner consistent with the terms of the JAEPA'.[14] It was concerned that 'many of the "Customs" provisions of the JAEPA are being implemented by way of Regulations and not by the JAEPA Customs Bills, although the Regulations have yet to be made available'. While it appreciated the rationale for the use of the regulations, the ECA was concerned that the regulations have yet to be made available for scrutiny and will not made available before the JAEPA Customs Bills have passed through Parliament.[15]

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8 For example, Mitsui & Co (Australia), *Submission 9*, p. 1.

9 *Submission 6*, p. 2. Also see Toyota Australia, *Submission 3*, p. 3.

10 *Submission 4*, p. 1.

11 *Submission 1*, p. 1.

12 *Submission 5*, p. 1.

13 *Submission 10*, p. 6.

14 *Submission 12*, p. 3.

15 *Submission 12*, p. 2.

3.11 The Australian Customs and Border Protection Service (ACBPS) commented:

> A number of provisions in JAEPA will be provided for by the making of new Regulations pertaining specifically to JAEPA and by the amendment of the *Customs Regulations 1926* (Customs Regulations)…
>
> In line with Parliamentary practice these Regulations were forwarded to the Office of Parliamentary Counsel for drafting after the introduction of the JAEPA Bills in the Parliament on 29 October 2014.
>
> Under the provisions of the *Legislative Instruments Act 2003* the Regulations (when agreed) are required to be registered on the Federal Register of Legislative Instruments and tabled in both Houses of Parliament for scrutiny.[16]

3.12 The ECA recommended that ACBPS provide a table which refers to each of the specific provisions of Chapters 3 and 4 of the JAEPA and that also identifies where those provisions have been adopted or are proposed to be adopted whether by the bills, otherwise in the Act by the regulations or by procedure.[17] ACBPS noted that, in response to a recommendation from the Senate Legal and Constitutional Affairs Legislation Committee's report into the Korea-Australian Free Trade Agreement (KAFTA) implementation bills, it had published a table referring to each of the specific provisions of Chapters 3 and 4 of KAFTA and identifying where those provisions have been adopted whether in the Bills, in regulations or by procedure. It advised that a similar table is currently being prepared for the JAEPA Agreement and will be 'available on the JAEPA web page as soon as possible after the legislative processes are finalised'.[18]

Education and awareness

3.13 The ECA noted research which identified that the complexity of trade agreements poses some of the most significant impediments to adoption and usage of those trade agreements. The ECA considered it was importance that the terms of the JAEPA, and the legislation enabling the JAEPA, were communicated to the trading community 'in a way which makes JAEPA readily accessible and comprehensible to those parties'.[19]

3.14 It recommended that 'that an education program be developed on the benefits and access to the JAEPA to be funded either by DFAT itself or jointly with other agencies using funding from Australian and Japanese Government sources'. The ECA believed that the program should be focussed in a way to ensure that SME importers and exporters and their service providers are best able to benefit from the JAEPA.[20]

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16 *Submission 13*, p. 4.

17 *Submission 12*, p. 5.

18 *Submission 13*, p. 4.

19 *Submission 12*, p. 3.

20 *Submission 12*, p. 3.

3.15 ACBPS noted that it would continue to work with DFAT, other government agencies and industry to improve access to free trade agreements (FTA) by improving awareness of their scope and the requirements and processes for accessing benefits under these agreements. It stated the Australia Government would 'also keep working to reduce the complexity of these agreements by, for example, promoting greater standardisation in their language and rules, whenever possible'.[21] In relation to JAEPA it advised:

> ACBPS is currently undertaking an education campaign that will provide industry with information on how to access the benefits of the recently concluded JAEPA by holding seminars in major capital cities. These seminars will be similar in content to those provided for the implementation of other FTAs, including those scheduled in this week for the [KAFTA].
>
> The seminars are aimed at customs brokers, freight forwarders and other professional service providers and will provide information on how to access preferential tariff treatment under JAEPA. They will include information on how to identify the relevant tariff commitment rules of origin for imported goods, including the Product Specific Rules. They will be underpinned by Instructions and Guidelines and other material which will be available publically on the ACBPS website before the commencement of JAEPA.[22]

Infringement Notice Scheme

3.16 The ACBPS may issue infringement notices in certain circumstances rather than prosecute a customs offence. The ECA argued that the administration of JAEPA should be undertaken 'in a manner which is sympathetic to its complexities especially in relation to the compliance with the Rules of Origin (ROO)'.[23] It recommended that the guide associated with the Infringement Notice Scheme be amended to address a number of its concerns. It noted that such changes would reflect the practice adopted at the time of the introduction of the free trade agreement between Australia and the United States.[24] The ECA stated:

> Given that the provisions of the JAEPA and especially its [rules of origin] and the Certificate or Declaration of Origin regime may be complicated, the ECA is concerned that Customs does not adopt an unnecessarily strict approach to compliance by penalising inadvertent errors using the strict liability provisions of the Act or its associated Infringement Notice Scheme.

3.17 The ACBPS told the committee:

> The new Infringement Notice Scheme (INS) which commenced on 1 February 2014 is applicable to specific strict liability offences that are listed in Schedule 1ABA of the *Customs Regulations 1926*. A person may

21 *Submission 13*, p. 2.

22 *Submission 13*, p. 2.

23 *Submission 12*, p. 3.

24 *Submission 12*, p. 7.

> be given an infringement notice in relation to any contravention of a provision of the Customs Act that is subject to an infringement notice under this Schedule. In determining whether an infringement notice is an appropriate enforcement response, the ACBPS takes into account a broad range of factors.[25]

3.18 The ACBPS also indicated that the circumstances where is was more likely to give an infringement notice rather than prosecute for an offence included:

- where the alleged offence is isolated or non-systematic;
- where remedial or risk mitigation action was taken following ACBPS bringing the issues of concern to the person's attention (for example, through a formal warning);
- where the facts that led to the alleged offence are straight forward and are not in dispute;
- where the alleged offence does not pose a significant risk to the border or the collection of revenue; or
- where the ACBPS considers the infringement notice is necessary to form part of a broader industry or sector compliance and enforcement program.[26]

Trade outcomes and tariff reductions

3.19 A number of industry submissions indicated that, while not all Australian goals in relation to the trade agreement had been reached, significant gains had been made in relation to trade outcomes and tariff reductions. For example, the Australia Japan Business Co-operation Committee described JAEPA as the 'most ambitious and comprehensive trade agreement Japan has concluded to date':

> Its scope encompasses not only goods but services, investment, movement of people, government procurement, intellectual property, etc. The conclusion of the agreement with Australia represents a seismic shift in Japan's traditional protections of many of its sectors and the recognition that in Japan's national interest, there is a need for the sectors to be globally competitive, not protected.[27]

3.20 The Australian Lot Feeders' Association noted that under JAEPA the tariffs on frozen Australian beef entering Japan will drop from 38.5% to 19.5% over 18 years (with an 8% cut on entry into force) while the tariffs for chilled beef will fall from 38.5% to 23.5% over 15 years - including a 6% cut on entry into force. It stated:

> Whilst falling short of the beef industry's tariff elimination objective, modelling suggests that the tariff reductions will benefit Australian beef

25 *Submission 13*, p. 3.

26 *Submission 13*, p. 3.

27 *Submission 7*, p. 2.

> export sales by around $5.5 billion over 20 years and annual gross value of Australian beef production by up to 7%.[28]

3.21 Further, JBS Australia noted that, under JAEPA, Australian beef producers will not face 'snap back' tariffs on beef of up to 50 per cent. It also outlined that '[i]mportantly, there are also provisions for a 'Most Favoured Nation' (MFN) clause and timeframes for renegotiation of the agreement should competitors secure better market access to Japan'.[29]

3.22 Mitsui & Co stated:

> JAEPA incorporates provisions to eliminate or reduce Japanese tariffs on a wide range of Australian goods, and improve access and protection for Japanese corporations seeking to invest in Australia. These arrangements will certainly boost the ability of companies like Mitsui to increase Australian exports to the Japanese market, and stimulate further investment into Australia.[30]

3.23 The Minerals Council of Australia outlined that many minerals and energy products enter Japan duty free already, however it nonetheless considered that JAEPA should 'have a positive impact by creating a more favourable climate for trade'. It noted that there were a number of commodities where tariffs will be eliminated under JAEPA which 'account in aggregate for Australian exports of around $310 million' and would provide a significant boost to Australia's trade.[31]

3.24 The Australian Grape and Wine Authority (AGWA) highlighted that Australian wine has lost market share in Japan to wine from Chile. It noted that Chilean wine has attracted a preferential tariff rate since 2008 as a result of the free trade agreement between Chile and Japan. Under JAEPA, the tariff on Australian bulk wine exported to Japan will be eliminated upon entry into force, and the tariff on Australian bottled wine will decrease in instalments over a seven year period.[32] Despite JAEPA, the AGWA noted that 'Australian wine producers attempting to access the Japanese market face a number of technical barriers associated with authorised wine production techniques'.[33]

3.25 Other submissions also highlighted ongoing concerns. For example, AUSVEG's view was that, on balance, the JAEPA tariff outcomes represent a favourable outcome for Australian vegetables, particularly the removal of the tariff on key commodities such as asparagus. It noted that the vegetable tariff outcomes were as favourable (if not more) as those provided for in the Japan-Thailand EPA.[34] However,

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28 *Submission 1*, p. 1.

29 *Submission 11*, p. 2.

30 *Submission 9*, p. 2.

31 *Submission 6*, p. 9.

32 *Submission 5*, p. 1.

33 *Submission 5*, p. 2.

34 *Submission 10*, p. 6.

AUSVEG also argued that 'improved market access for vegetable commodities will, to a significant extent for vegetables, remain unrealisable unless improved phytosanitary access is also achieved'. It stated:

> The existence of phytosanitary non-tariff barriers diminishes the potential of vegetable trade liberalisation under Australia's FTAs. Competitive market access for vegetables can only be achieved by phytosanitary access under commercial conditions. AUSVEG urges the Australian Government to increase its focus on achieving phytosanitary access to ensure that the vegetable industry can realise the full benefit from FTAs/EPAs.[35]

3.26 In relation to beef offal, JBS Australia outlined its concerns around quotas:

> Under the JAEPA it has been agreed that Japan will reduce tariffs immediately by 40 per cent for beef offal under a growing quota starting at 17,000 tonnes and growing to 21,000 tonnes over ten years. Based on a long run average Australia has exported between 21,000 and 24,000 tonnes of beef offal to Japan per year.
>
> The net impact is that based on historical performance volume, exported over the 17,000 tonnes in year one will attract the existing 12.8 per cent tariff. Therefore, the impact will be that this disadvantages those such as JBS who produce high quality and high value offals to supply Japan 52 weeks of the year as opposed to other who export into this market on a speculative basis…[36]

3.27 Under JAEPA the 'quota to Japan will be treated as a country to country quota allocation administered…through the Department of Agriculture, Fisheries and Forestry (DAFF)'. JBS Australia stated that '[t]his was not clear to industry at the end of the JAEPA negotiations'. JBS Australia recommended:

- In order to maximise the economic value of the quota to Australia and the Australian beef producer that the offal quota be in the hands of those who both own the processing assets and also ship the product to add maximum value to that product.
- The basis for annual offal allocation including the year one of the JAEPA quota for offal must be allocated at a company level based on performance over the past 3 year rolling average of offal into Japan.[37]

3.28 While supporting the implementation of JAEPA, Australian Pork raised two concerns with the trade outcomes achieved for its industry. Firstly:

> [Australian Pork] questions the need for an arbitrary quota of 14,000 tonnes when there has been no application of tonnage restrictions to date. Moreover, with recent annual Australian exports to Japan only a fraction of this quota, pork exports from Australia to Japan pose no threat to the profitability of Japanese pork producers. Given the JAEPA has already

35 *Submission 10*, p. 6.

36 *Submission 11*, p. 4.

37 *Submission 11*, p. 4.

> been signed, Australian Pork seeks that the Australian Government requests the abolition of the quota following the conclusion of the implementation period. [38]

3.29 Secondly, Australian Pork highlighted that the continued application of the gate price system 'remains a barrier to full commercial uptake of exports to Japan under JAEPA'. It wished the Australian Government to continue to advocate for its removal 'for example, at the general review of JAEPA set for the sixth year after entry into force'.[39]

3.30 Some submissions also stated that the reduction of tariffs on Japanese goods coming to Australia would also provide benefits. For example, the Minerals Council of Australia noted:

> JAEPA may also encourage more competitively priced imports of some items used by the mineral industry, especially capital equipment. For example, the 5 per cent Australian tariff on dumpers and medium-large goods vehicles is to go to zero on entry into force. This will also be the case for the tariff on imports of iron and steel railway or tramway track construction material. Provided such tariff reductions are not offset by increases in other taxes, they will benefit the Australian minerals and energy industry. In mining, as in other sectors, success in exporting depends on being an efficient importer of inputs to production as well.[40]

Rules of origin

3.31 Rules of origin determine the country of origin of a product for the purposes of determining whether the product can benefit from a preferential tariff rate under a trade agreement. In JAEPA, the rules of origin are contained in Chapter 3 and are implemented in the provisions of the Customs bill. The Australian Customs and Border Protection Service (ACBPS) outlined:

> In terms of origin documentation, JAEPA provides two options for Australian traders: a certificate of origin issued by an authorised body (currently the Australian Chamber of Commerce and Industry (ACCI) or the Australian Industry Group (AiGroup), or an origin certification document (self-declaration) completed by the importer, the exporter or the producer. There is a strong international trend towards self-declaration of origin in FTAs. Self-declaration is supported by a broad range of Australian industry sectors including agriculture. It is particularly beneficial to small and medium-sized enterprises seeking to cut red tape and costs.[41]

3.32 Several submissions commented on the approach to rules of origin under JAEPA. For example, AUSVEG stated that the 'initiative to cut red tape and costs for Australian horticulture producers and the implementation of a system of preferential

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38 *Submission 4*, p. 1.

39 *Submission 4*, p. 1.

40 *Submission 6*, p. 8.

41 *Submission 13*, p. 2.

treatment with either self-certification or a certificate of declaration that the product is Australian is strongly supported'.[42] Similarly, Toyota Australia supported the flexible approach taken by JAEPA in regards to the application of rules of origin and origin procedures:

> The inclusion of criteria for two approaches to verify that a good can qualify as 'originating' (change of tariff classification and qualifying value content) will minimise compliance burden for businesses taking advantage of JAEPA. Further, the provision of allowances for traders to either self-certify their own products or utilise a third party to validate on their behalf to obtain preferential tariff treatment will also be beneficial.[43]

3.33 The ECA encouraged the use of the ongoing consultation processes in JAEPA to further streamline and improve the rules of origin processes in JAEPA which it noted can form a barrier to full utilisation of a trade agreement. It highlighted this could occur through Article 3.28 of JAEPA which provides for the establishment of a 'Subcommittee on Rules of Origin' which will commence a review within one year following entry into force.[44]

3.34 ACBPS acknowledged that concerns expressed by 'industry bodies regarding the complexity and lack of harmonisation of the rules of origin processes across Australia's FTAs have been noted'. However, it stated:

> The approach to rules of origin in JAEPA is consistent with the approach taken in Australia's other preferential trade agreements. A key criterion used to determine origin is the change of tariff classification approach, which is based on the World Customs Organization (WCO) harmonised system (HS). How these rules are presented in the Product Specific Rules schedules differs from one FTA to another. Some agreements are more complex than others…
>
> The Department of Foreign Affairs and Trade is working closely with ACCI and the AiGroup to ensure the smooth implementation of processes relating to certificates of origin issued by Australian authorised bodies. Both the Japanese and Australian customs authorities are familiar with implementing preferential origin requirements under existing FTAs.[45]

42 *Submission 10*, p. 1.

43 *Submission 3*, p. 3.

44 *Submission 12*, p. 3.

45 *Submission 13*, pp 1-2.

Committee view

3.35 Japan is a major economic, political, and security partner of Australia. It is Australia's second-largest export market and second-largest trading partner, with over $70 billion in two way trade in 2013. This close relationship makes JAEPA an historic outcome. As noted during the inquiry, this is the first trade agreement of this kind which Japan has signed with a major agricultural producer and the most liberalising agreement Japan has negotiated with any of its trading partners. For Australia, the tariff reductions achieved through JAEPA are particularly important given the competitive market for many key goods exported to Japan. Tariffs and quotas have also been identified as an important barrier to trade with Japan for Australian businesses.[46]

3.36 Negotiations with Japan regarding this trade agreement have taken place over a long period of time. Accordingly, like Minister Robb, the committee acknowledges the contributions made by previous Trade Ministers to reaching this trade agreement.

3.37 The committee recognises that Australian exporters did not get everything they hoped could be achieved by JAEPA. This is to be expected from a negotiated trade agreement between two countries with priorities which reflect their own national interests. For example, the committee notes the beef offal and pork quota issues raised in submissions, as well as the point made by AUSVEG that trade liberalisation must also be accompanied by improved phytosanitary access. However, it is clear that JAEPA has been structured with a view to further strengthening trade ties between Japan and Australia in the future. The committee urges the Australian Government to continue to work with local exporters and Japanese authorities to resolve any outstanding issues which may be obstacles to increased trade.

3.38 Further, the committee notes the concerns of the ECA which relate to a lack of clarity in respect of how JAEPA will be implemented. The committee urges the Australian Government to take measures to ensure that the implementation of JAEPA does not inappropriately disadvantage local exporters. In particular, the committee welcomes the commitment by the ACBPS to provide a comparison table of the specific provisions of JAEPA and related legislation, regulations and procedures.[47]

3.39 The provisions of the bills before the committee provide the rules for determining whether goods are Japanese originating goods and provide for the preferential entry of goods which meet these rules. They also impose necessary obligations on producers and exporters of Australian goods to Japan. As such, the bills implement core aspects of JAEPA, and their passage is vital to the timing of the entry into force. Submissions to the inquiry have highlighted that the timely entry into force of JAEPA will have significant benefits for Australian exporters in terms of phased tariff reductions as well as providing a commercial advantage in an increasingly

46 Export Council of Australia, *Australia's International Business Survey: 2014 report - Japan*, 2014, p. 2.

47 *Submission 13*, p. 4.

competitive marketplace. In this context, the committee's view is that the bills should be passed as soon as possible.

Recommendation 1

3.40 The committee recommends that the Senate pass:

- **the Customs Amendment (Japan-Australia Economic Partnership Agreement Implementation) Bill 2014; and**
- **the Customs Tariff Amendment (Japan-Australia Economic Partnership Agreement Implementation) Bill 2014.**

Senator Chris Back
Chair

Appendix 1

Public submissions

1	Australian Lot Feeders' Association
2	Cattle Council of Australia
3	Toyota Australia
4	Australia Pork
5	Australian Grape and Wine Authority
6	Minerals Council of Australia
7	Australia Japan Business Co-operation Committee
8	Australian Beef Industry Japan FTA Taskforce
9	Mitsui & Co
10	AUSVEG
11	JBS Australia
12	Export Council of Australia
13	Australian Customs and Border Protection Service