

---

# Findings and recommendations

The Commission has included formal findings on a number of factual and normative matters for which the Commission's examination has enabled it to reach a sufficiently firm conclusion. These, and the Commission's recommendations on matters relevant to the reference, are set out below.

## Findings

### *Chapter 6*

- 1 Australia's preferential trade agreements contain commitments to reduce and bind at zero tariffs on most items of merchandise trade between agreement partners, although sensitive sectors are sometimes excluded or subject to lengthy phase-in periods.
- 2 APEC members have unilaterally reduced general tariffs on merchandise trade beyond their Uruguay Round commitments and have made substantial progress towards Bogor Declaration trade liberalisation goals.
- 3 Australia's BRTAs typically contain provisions addressing aspects of trade in services, but these do not necessarily lead to significant reductions to services barriers in partner countries. In a number of areas, the main impediments to effective competition by Australian services providers in partners' services markets are related to regulatory and institutional issues that lie outside the scope of BRTAs.
- 4 In most agreements, investment provisions in Australia's BRTAs have bound current arrangements and provided protections against future policy changes rather than reducing existing investment barriers.
- 5 While the incidence of preferential agreements has increased, their overall impact on multilateral liberalisation is not clear from available evidence.

---

## *Chapter 7*

- 1 Businesses have provided little evidence that Australia's BRTAs have generated significant commercial benefits. The information available suggests that, where benefits accrue, they are mainly to existing exporters.
- 2 Although a major departmental activity, no useful information is publicly available regarding the staffing and other costs incurred by the Department of Foreign Affairs and Trade in pursuing BRTAs.

## *Chapter 8*

- 1 Based principally on various quantitative studies on the effects of BRTAs and other trade liberalisation scenarios:
  - a) While bilateral tariff preferences between the members of a trade agreement can yield economic benefits to those countries, the net benefits are likely to be small. Greater net benefits are available through countries lowering their own trade barriers on a non-discriminatory, most-favoured-nation basis.
  - b) The potential impacts on Australia of being excluded from, or choosing not to engage in, preferential trading agreements among its trading partners depend partly on Australia's own policy actions and the market responsiveness of its exporters.
  - c) The application of rules of origin in preferential trade agreements can lead to additional administrative costs for importers and exporters of merchandise goods.
  - d) Non-discriminatory trade agreements are more likely to result in net trade creation and associated economic benefits than agreements with restrictive preference structures.

## *Chapter 9*

- 1 The evidence available to the Commission indicates that the direct economic impacts from services and investment provisions in Australia's BRTAs to date have been modest. More significant gains may be achieved in the future through some of the processes established under Australia's agreements. However, their realisation will require concerted efforts from Australia and its BRTA partners over many years.

---

## *Chapter 11*

- 1 The extent to which a BRTA reduces trade and investment barriers depends on the particular form and coverage of the agreement, and the priorities of the partner countries.
- 2 Unilateral reform is the most direct means for reducing Australia's trade and investment barriers. Pursuit of BRTAs can create incentives to delay unilateral reforms as well as entailing administrative and compliance costs.
- 3 There is a continuing role for arrangements between governments to facilitate trade and investment; for example, by establishing consistent standards, institutional frameworks and measures to improve market openness. BRTAs are one means by which such arrangements can be established.

## *Chapter 13*

- 1 No preferential trade agreements have been entered into between major trading blocs. While accession clauses are often seen as a means to multilateralise preferential agreements, little use has been made of them to date by either large or small countries.
- 2 Trade facilitation measures are an effective means of enhancing trade. Such measures can be included in a BRTA, but are most beneficial if undertaken on a non-preferential basis.

## *Chapter 14*

- 1 There does not appear to be an underlying economic problem that necessitates the inclusion of ISDS provisions within agreements. Available evidence does not suggest that ISDS provisions have a significant impact on investment flows.
- 2 Experience in other countries demonstrates that there are considerable policy and financial risks arising from ISDS provisions.

## *Chapter 15*

- 1 The approach to conducting feasibility studies used for most previous Australian BRTAs has produced overly optimistic expectations of the likely economic effects of BRTAs. Such an approach does not provide an adequate basis for assessing their merits.

---

## Recommendations

### *Recommendation 1 (chapter 12)*

The Australian Government should only pursue bilateral and regional trade agreements where they are likely to:

- afford significant net economic benefits; and
- be more cost-effective than other options for reducing trade and investment barriers, including alternative forms of bilateral and regional action.

### *Recommendation 2 (chapter 12)*

The Australian Government should ensure that any bilateral and regional trade agreement it negotiates:

- as far as practicable, avoids discriminatory terms and conditions in favour of arrangements based on non-discriminatory (most-favoured-nation) provisions;
- does not preclude or prejudice similar arrangements with other trading partners; and
- does not establish treaty obligations that could inhibit or delay unilateral, plurilateral or multilateral reform.

### *Recommendation 3 (chapter 13)*

The Australian Government should adopt the composite model for rules to determine origin in merchandise trade, as in AANZFTA, as the basis for rules of origin in any future preferential trade agreement. In adopting this model:

- a choice of Regional Value Content and Change in Tariff Classification rules for determining origin should be afforded for each item of merchandise;
- the least restrictive variant of each test should be adopted, consistent with preventing trade deflection; and
- Australia should seek a waiver to rules of origin requirements where the difference between the MFN tariff rates in the partner countries is 5 percentage points or less.

---

*Recommendation 4 (chapter 14)*

The Australian Government should not include matters in bilateral and regional trade agreements that would serve to increase barriers to trade, raise costs or affect established social policies without a comprehensive review of the implications and available options for change. On specific matters, the Australian Government should:

- a) adopt a cautious approach to referencing core labour standards in trade agreements; and to exclusions from BRTAs for trade in cultural goods and services;
- b) avoid the inclusion of IP matters as an ordinary matter of course in future BRTAs. IP provisions should only be included in cases where a rigorous economic analysis shows that the provisions would likely generate overall net benefits for the agreement partners; and
- c) seek to avoid the inclusion of investor-state dispute settlement provisions in BRTAs that grant foreign investors in Australia substantive or procedural rights greater than those enjoyed by Australian investors.

*Recommendation 5 (chapter 15)*

The Australian Government should improve the scrutiny of the potential impacts of prospective trade agreements, and opportunities to reduce barriers to trade and investment more generally.

- a) It should prepare a trade policy strategy which identifies impediments to trade and investment and available opportunities for liberalisation, and includes a priority list of trading partners. This trade policy strategy should be reviewed by Cabinet on an annual basis, and be prepared before the pursuit of any further BRTAs. A public version of the Cabinet determined strategy should be released.
- b) Before entering negotiations with any particular prospective partner, it should undertake a transparent analysis of the potential impacts of the options for advancing trade policy objectives with the partner. All quantitative analysis and modelling should be overseen by an independent body.
- c) It should commission and publish an independent and transparent assessment of the final text of the agreement, at the conclusion of negotiations, but before an agreement is signed.

---

*Recommendation 6 (chapter 13)*

If it is deemed that capacity building should be part of a trade agreement development process, the Australian Government should fund and deliver capacity-building programs in a manner that minimises potential (or perceived) conflicts of interest. Any such programs should not impose an obligation to negotiate a trade agreement.

*Recommendation 7 (chapter 7)*

To enhance transparency and public accountability and enable better decision making regarding the negotiation of trade agreements, the Department of Foreign Affairs and Trade should publish estimates of the expenditure incurred in negotiating bilateral and regional trade agreements and multilateral trade agreements. These should include estimates for the costs of negotiating recent agreements.

*Recommendation 8 (chapter 12)*

The Australian Government should examine the potential to further reduce existing Australian barriers to trade and investment through unilateral action as a priority over pursuing liberalisation in the context of bilateral and regional trade agreements. The Government should not delay beneficial domestic trade liberalisation and reform in order to retain ‘negotiating coin’.

*Recommendation 9 (chapter 12)*

The Australian Government should support worthwhile efforts to achieve multilateral liberalisation. Should meaningful progress within the WTO prove elusive, the Government should weigh up with like-minded countries the feasibility of appropriate broadly based agreements to advance reform.

*Recommendation 10 (chapter 12)*

The Australian Government should lend support to initiatives directed at the establishment of domestic institutions in key trading countries to provide transparent information and advice on the community-wide impacts of trade, investment and associated policies.