
2 What are bilateral and regional trade agreements?

The terms of reference ask the Commission to examine the impacts of ‘bilateral and regional trade agreements’ (BRTAs). This chapter starts by considering what types of arrangements are covered by this term. It then provides a brief outline of Australia’s past, present and prospective BRTAs, and also identifies some key agreements around the globe.

2.1 Types of trade agreements

The terms bilateral trade agreement, regional trade agreement, free trade agreement, reciprocal trade agreement and preferential trade agreement are used at different times and in different ways. The term ‘customs union’ is also used to describe a particular form of trade agreement.

For the purposes of the study, the Commission has interpreted the term BRTA broadly to cover:

- agreements concluded between two parties in which one or, more usually, both the parties, whilst maintaining their own tariffs, obtain concessional entry to the market of the partner, such as in the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) — such bilateral arrangements are referred to in the WTO as Free Trade Agreements/Areas;
- similar agreements between multiple parties, such as Australia’s recent regional agreement with ASEAN and New Zealand and the North American Free Trade Agreement — also referred to as Free Trade Agreements/Areas in the WTO;
- agreements between two or more countries in which members adopt a common external tariff while allowing concessional trade between partners, called Customs Unions in the WTO — the customs union of the European Union is an example; and
- agreements between trading partners to lower their own trade barriers with respect to all parties (including those outside the agreement) either according to arrangements bound under the agreement or on a voluntary basis, such as between APEC members as enunciated in the 1994 Bogor Declaration.

Preferential BRTAs

The first three forms of agreement above all involve the provision of concessional access to the markets of other agreement members.

While most of these are commonly referred to as Free Trade Agreements (FTAs), it is important to distinguish the effects of these agreements from ‘free trade’. Free trade would require the removal of all tariffs, quotas, subsidies and other government measures that distort trade flows. FTAs involve preferential arrangements under which tariffs and some other barriers to trade are lowered (although not always eliminated), but only for those countries party to the agreement. The barriers for other countries are not reduced by the agreement.

As such, FTAs can potentially distort trade flows as between members and non-members and are termed ‘preferential trade agreements’ (PTAs) in this report. PTAs have been the main focus of participants’ comments, and in practice virtually all BRTAs to date have been PTAs.

Non-preferential BRTAs

Indeed, there is a legitimate question as to whether other arrangements such as the APEC Bogor Declaration, which while struck on a regional basis provides for reductions in members’ trade barriers to extend not only to members but also to those outside the region, should be included within the definition of ‘BRTAs’. In the case of the Bogor Declaration, an additional consideration is that the ‘agreement’ is not legally binding. While some have therefore questioned whether the Bogor Declaration could have much if any impact, others have argued that the non-legalistic and collegiate nature of APEC has in fact been instrumental in achieving reductions in trade and investment barriers by member countries in the years since the declaration (box 2.1).

An analytical requirement for this study is to examine the relative efficacy of alternative approaches to BRTAs for achieving trade liberalisation. Thus, whether or not the Bogor Declaration is included within the definition of BRTAs, the Commission would need to consider to what extent, if any, pursuing such agreements would be likely to bring about further and meaningful reductions in trade and investment barriers. While recognising that alternative classifications are possible, for practical purposes the Commission has included the Bogor Declaration within the study’s definition of BRTAs. At the same time, in analysing BRTAs, it has been conscious to recognise the differences between arrangements of this type and binding, preferential BRTAs.

Box 2.1 The APEC Bogor Declaration and its inclusion as a BRTA

Formed in 1989, the objectives of APEC are to promote free and open trade and investment, accelerate regional economic integration, encourage economic and technical cooperation, enhance human security and facilitate a favourable and sustainable business environment (APEC 2010).

As part of the 1994 Bogor Declaration, APEC members have committed to progressively lowering trade barriers to all trading partners by no later than 2010 for developed members and 2020 for developing members.

APEC and the Bogor Declaration differ substantially from most BRTAs, which are preferential arrangements between a pair or group of countries that bind members via international treaties, and are meant to be notified to the WTO. Meanwhile, the APEC Bogor Declaration is non-preferential and makes no binding commitment on members. However, the text of the Bogor Declaration uses language that in common parlance would be interpreted as an agreement — ‘we agree to adopt the long-term goal of free and open trade and investment in the Asia-Pacific’ — and, as noted, included timeframes for implementation (APEC 1994).

In commenting on the inclusion of the APEC arrangements within the definition of BRTAs adopted in the Issues Paper, Professor Peter Lloyd (sub. 3, pp. 6-7) cautioned:

APEC is quite different in nature from all other regionals and bilaterals already concluded or under negotiation. It is a forum whose agreements are non-binding and non-reciprocal, unlike other agreements, and it has not negotiated any opening of trade in goods and services. It is not listed in the WTO RTA Database and for the very good reason that it is not notifiable under WTO rules, not being either a free trade area or a customs union. If APEC is included in any Productivity Commission analysis, it should be treated as distinct from all binding reciprocal bilaterals and regionals.

While APEC members have to date fallen short of the full ambition expressed in the Bogor Declaration, there is nonetheless evidence consistent with the view that the Bogor process contributed to lowering trade and investment barriers. As discussed in chapter 6, APEC members made notable reductions in their trade barriers following the Declaration; reductions that were deeper than those required under their WTO Uruguay Round commitments. Further, at the Commission’s modelling workshop, Peter Drysdale — head of the East Asian Integration Project at the Australian National University — argued that in fact the non-legalistic, collegiate nature of APEC and the Bogor process had been influential in developing a consensus among member countries in moving ahead with non-discriminatory trade liberalisation, and had, for example, provided a critical platform for progress by China on the way towards accession to the WTO where it committed to large scale unilateral liberalisation in 1995. More recently, the then Australian Minister for Trade noted that ‘The work of APEC continues to boost trade and investment flows at, behind and across regional borders’ (Crean 2010, p. 3).

Distinguishing BRTAs from other trade agreements

BRTAs are distinguished from multilateral (or general) trade agreements concluded between a broad community of countries to provide a rules-based system for international trade and investment between members. The General Agreement on Tariffs and Trade (GATT) and the General Agreement on Trade in Services (GATS), administered by the WTO, are the principal agreements of this type currently governing global trade.

BRTAs can also be distinguished from ‘critical mass agreements’ — such as the 1996 WTO Information Technology Agreement — which come into effect once the signatories account for a designated percentage (90 per cent under the Information Technology Agreement) of world trade in the product in question. Once in effect, they impose obligations on signatories, with the resulting concessions typically offered on a most-favoured-nation (MFN) basis by signatories.

2.2 Australia’s bilateral and regional trade agreements

Since the formation of the GATT in 1947, development of Australia’s international trading relations has mainly been undertaken on MFN basis within the multilateral GATT/WTO framework. Australia, as a member of APEC, is also a party to the 1994 Bogor Declaration, discussed earlier. Australia has also negotiated and maintained PTAs with a relatively small number of countries. Some of these agreements are long-standing, while, more recently, Australia has entered in to a number of new agreements.

Early PTAs

Australia has a number of long-standing PTAs. Apart from its agreements with New Zealand, which have been extended in scope over time, these older agreements are confined to duty concessions on merchandise trade.

There has been a series of agreements with New Zealand, the first being signed in 1922. This was followed by the New Zealand–Australia FTA in 1965. Limitations with this agreement led to the establishment of a new, major agreement with built-in provisions for review and amendment, ANZCERTA, which commenced in 1983. The agreement initially only covered trade in goods, however, services provisions were added in 1988.

A non-reciprocal agreement with the South Pacific Forum Island Countries (SPARTECA) entered into force in 1981. This agreement provides for duty

concessions into both Australia and New Zealand from the Cook Islands, Fiji, Kiribati, the Republic of the Marshall Islands, the Federated States of Micronesia, Nauru, Niue, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

In addition to this agreement, Australia has a specific bilateral agreement with Papua New Guinea. The first agreement between the two countries (PATCRA) came into force in 1977. This was followed by a subsequent agreement (PATCRA II), which came into force in 1991.

Australia also has a long standing agreement with Canada. The first agreement was established in 1931, replaced with a new agreement in 1960 and amended in 1973. This agreement granted each of the countries preferential tariff rates on a limited range of goods. However, most of its provisions have been superseded by reductions in Australian and Canadian MFN tariffs.

Recent PTAs

More recently, Australia has entered into a number of new BRTAs. These are mostly bilateral, apart from the most recent regional agreement with ASEAN and New Zealand. Australia's recent agreements include:

- Singapore-Australia FTA (SAFTA), which commenced 28 July 2003;
- Thailand-Australia FTA (TAFTA), which commenced 1 January 2005;
- Australia-United States FTA (AUSFTA), which commenced 1 January 2005;
- Australia-Chile FTA (ACI-FTA), which commenced 6 March 2009; and
- ASEAN-Australia-New Zealand FTA (AANZFTA), which commenced 1 January 2010.

These agreements all cover a broadly similar range of topics. In addition to affording preferential access for goods trade between partners, these agreements all contain provisions, to differing extents, relating to trade in services, investment, intellectual property, electronic commerce, government procurement and competition policy. Some agreements cover additional issues. For instance, AUSFTA covers environmental and labour issues, while AANZFTA contains a dedicated chapter on economic cooperation.

While many of the chapter headings are common to all agreements, the content of each chapter varies between agreements, reflecting different sensitivities and priorities. For example, the US agreement contains a separate chapter on agriculture reflecting particular sensitivities with respect to some agricultural products.

The operation of PTAs is also affected by side letters to the agreements, which can extend, alter or clarify application of the agreement text. For example, letters between Australia and New Zealand, inter alia, omit the application of chapters on safeguards, investment, and consultation and dispute settlement of the AANZFTA between the two countries. More detail on the matters covered in Australia's recent PTAs is provided in parts B and C of the report.

Current PTA negotiations

In addition to existing agreements, negotiations for further bilateral and regional agreements are also under way — with negotiations on a number of prospective agreements being in train for some time. Negotiations towards bilateral agreements are proceeding with:

- China (negotiations commenced 2005);
- Malaysia (negotiations commenced 2005);
- Japan (negotiations commenced 2007); and
- Korea (negotiations commenced 2009).

The negotiations for regional agreements in which Australia is participating are:

- the Gulf Cooperation Council, which comprises Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates (negotiations commenced 2007);
- the Pacific Agreement on Closer Economic Relations (PACER) Plus negotiations within the Pacific Islands Forum, which comprises Australia, the Cook Islands, the Federated States of Micronesia, Kiribati, Nauru, New Zealand, Niue, Palau, Papua New Guinea, the Republic of the Marshall Islands, Samoa, the Solomon Islands, Tonga, Tuvalu and Vanuatu (negotiations commenced 2009); and
- the Trans-Pacific Partnership (TPP) Agreement which is intended to expand on the current Trans-Pacific Strategic Economic Partnership Agreement between Brunei Darussalam, Chile, New Zealand and Singapore, that entered into force in 2006. The United States, Peru, Vietnam and Malaysia have also joined the TPP negotiations (negotiations commenced in March 2010).

Feasibility studies have also been conducted on possible bilateral agreements with India and Indonesia. On 2 November, the Indonesian and Australian Governments agreed to enter negotiations for a 'comprehensive economic partnership agreement' between the countries. The Australia–India Feasibility Study remains under consideration and no announcement has yet been made over the commencement of negotiations or the scope and form that any agreement might take.

2.3 Other countries' agreements

With most countries now engaged in at least one bilateral or regional trade agreement (chapter 5), effects on international trade are likely to be pervasive. Bilateral and regional agreements are also likely to impinge on Australia's trading relations with parties to agreements of which Australia is not a member, as trade and investment flows of members are influenced by preferences negotiated under those agreements. Some key preferential trade agreements involving global economies include:

- The European Union. The European Economic Community (predecessor of the European Union), which entered into force in 1958, was the first major PTA. Since then, it has been expanded a number of times and now includes 27 members. Intra-EU trade now accounts for 18 per cent of total global goods trade. The European Union has also pursued trade agreements with a strong focus on traditional trading partners in Africa, the Caribbean and Pacific islands, often former colonies of EU members.
- US agreements. The United States entered its first PTA with Israel in 1985. This was followed by an agreement with Canada in 1987, while the North American Free Trade Area (NAFTA) was formed with the inclusion of Mexico in 1994. Trade between NAFTA members accounts for 6 per cent of global merchandise trade. The United States now has PTAs with 17 countries, including Australia. It has also negotiated agreements with Colombia, Panama and Korea, although these are yet to be approved by the US Congress.
- Japanese agreements. Japan entered into its first PTA with Singapore in 2002. It is now party to 11 notified¹ trade agreements, mostly with other Asian economies, including an agreement with ASEAN. Trade between Japan and its trade agreement partners amounts to almost 2 per cent of global trade.
- Chinese agreements. Like Japan, China has been a relatively late adopter of PTAs, with most of those focused within Asia. Outside of Asia, partners include Chile, New Zealand and Peru. Trade between China and its trade agreement partners amounts to 5 per cent of global trade.
- The ASEAN trade agreement between members of the ASEAN community. Trade between members of the ASEAN regional trade agreement amounts to over 1 per cent of global trade.
- Agreements between economies of South America, including the regional agreements of the Andean Community (entered into force 1988), the Latin American Integration Association (entered into force 1981) and MERCOSUR

¹ Notified agreements cover those notified to the WTO excluding the Generalised System of Preferences and Protocol on Trade Negotiations.

(commenced 1991) and many bilateral agreements between members of those regional agreements. Bilateral trade between members of those regional agreements amounts to about 1 per cent of global trade.

- New Zealand Agreements. New Zealand is involved in a number of agreements with Australia, namely ANZCERTA, AANZFTA and SPARTECA, and is also a member of Trans-Pacific Partnership agreement that Australia is currently in negotiations to join. It also has agreements with Singapore, Thailand and China.

Other countries that are notable for the number of BRTAs that they have undertaken include: Chile, which is currently a signatory to 16 notified agreements; Singapore, which has 18 notified agreements; and Mexico, which has 13 notified agreements.