

9th September, 2010

Review of Bilateral and Regional Trade Agreements
Productivity Commission
GPO Box 1428, Canberra City ACT 2601

By email: tradeagreements@pc.gov.au

Dear Sir/Madam

**Bilateral and Regional Trade Agreements (“FTA’s”)
Comments on July 2010 Draft Research Report concerning Bilateral and Regional Trade
Agreements (“the Report”)**

The Australian Chamber of Commerce, Singapore (“AustCham”) welcomes the opportunity to provide the following comments on the Report.

AUSTCHAM SINGAPORE

AustCham is an organization which fosters, and provides a forum for business links between Australia, Singapore and the Asian region. AustCham currently has over 600 members covering a broad cross-section of the Australian business community in Singapore including Australian companies in Singapore, Australians working in Singapore and Singaporeans and other nationalities who have a connection to Australian business.

Representing the Australian business community in Singapore, AustCham selectively takes a public position on policy issues affecting its members. These activities are coordinated through AustCham’s “Access Committee” which assesses issues worthy of comment and formulates AustCham’s position on such issues. All position papers are then sent to AustCham’s board for vetting and approval. The Access Committee’s role is then to seek the appropriate exposure of AustCham’s position with the objective of helping our members achieve business success.

As part of the Access Committee’s approach, it routinely surveys and seeks input from members and the wider Australian business community on issues under consideration. In the case of this response, members’ views were solicited and obtained.

SINGAPORE AUSTRALIA FREE TRADE AGREEMENT (“SAFTA”)

AustCham members have benefited greatly from the existence of SAFTA. SAFTA has facilitated the access of Australian service providers to the Singapore market and underpinned a lift in bi-lateral trade and investment such that Singapore is now Australia’s largest trade and investment partner in ASEAN. In 2008-09, goods and services exports to Singapore were valued at \$5.5 billion and \$3.9 billion respectively, while goods and services imports from Singapore were valued at \$13.4 billion and \$4.8 billion. Singapore is also a significant source of foreign investment into Australia, with total Singaporean investment stock at the end of 2008 valued at \$43 billion. (Australian Bureau of Statistics, 2010)

Specific examples of our members and members of the Australian business community who have benefited from SAFTA are:

1. Woodhead Architects – Woodhead have enjoyed considerable success in Singapore having completed major design work contracts at Singapore’s Changi Airport and the National Library. In

doing so, they have extensively leveraged the SAFTA provisions relating to temporary residency of professionals and government procurement.

2. Beer Importers and Distributors Pty Limited ("BIAD") – As the distributor of James Boag's Premium Lager, Sydney based BIAD was able to break into the Singapore market following the SAFTA reduction of tariffs on beer and stout. James Boag's now enjoys a substantial market share in Singapore's pubs, restaurants and supermarkets.
3. Universities – SAFTA introduced the recognition of certain Australian university law degrees for admission to the Singapore Bar. This gives Singapore students the option to study law in Australia in order to pursue a legal career in Singapore, creating a new market for the export of Australian educational services

In addition to these and the many other examples of SAFTA's direct benefits, the existence of SAFTA has created a platform for the frequent engagement between Singapore and Australia at both a government and business level, allowing relationships, trust and friendships to develop. These elements support the success of every Australian business operating in Singapore and provide a foundation for the future development of the bilateral trade and investment relationship.

In summary, AustCham is a strong supporter of SAFTA and believes it has not only contributed to the significant development of trade and investment between Singapore and Australia, but also enhanced the overall bilateral relationship.

FTA's GENERALLY

AustCham supports the widely held view (which is quoted in your report) that multilateral trade and investment liberalisation yields greater benefits than bilateral liberalisation. AustCham also acknowledges the significant work of the Australian government, and the governments of our trading partners, in pursuing this agenda via the WTO and the Doha round. However, we also note the recent lack of results this considerable effort has yielded.

AustCham also notes Australia's recent participation in negotiations to become a party to the TPP. Prior to the Australian Government's decision to commence negotiations; AustCham participated in numerous forums with our colleagues from the American Chamber of Commerce of Singapore and the Singapore Ministry of Trade and Industry on the issue of expanding the membership of the TPP. We believe both bodies are supportive of Australia's decision to commence negotiations to enter the TPP. The widely held view at these forums was that the TPP, and similar "club" type Regional FTA's, if drafted properly, have the ability to build their membership over time and to therefore be more effective than the multilateral Doha efforts in promoting wide reaching trade and investment liberalisation.

A frequently mounted argument against developing a multitude of FTA's is the so-called "spaghetti bowl" effect – the tangled web of provisions that supposedly makes it difficult for business to take advantage of FTA's. In AustCham's view, this issue is often overstated. Almost all cross-border business transactions will require a detailed review of the regulatory issues associated with that particular transaction. Taxation, product licensing, investment regulations, labour laws etc. will need assessment. In each case, the review will be specific to the transaction and the countries involved. Our view is that the added burden of having to review a specific FTA is not great, when compared with the work necessary to assess the myriad of other regulatory issues that lie outside the purview of FTA's or the WTO, and will always be specific to each country and each transaction. There are also often excellent summary publications produced by Austrade which aid FTA interpretation. Accordingly, we do not see that the issue of multiple FTA's creates a great burden to business, over and above that which will always be associated with cross border transactions.

RECOMMENDATIONS

In the context of AustCham's experience with SAFTA and the abovementioned observations regarding FTA's generally, AustCham wishes to respectfully make the following comments regarding the Report:

The Productivity Commission should encourage the Australian Government to:

1. Vigorously pursue FTA's with all our major trading partners.
2. Increase the allocation of government resources dedicated to the negotiation of FTA's, particularly regional agreements.
3. Pursue a multi-lateral agenda via the WTO and continue to make efforts to revive the Doha round.
4. Ensure contemporary FTA issues are incorporated in all new FTA's i.e.: behind the border restrictions, access to services, and inclusion of investment access via a negative list.
5. Ensure FTA's contain a mechanism for regular, face-to-face reviews with counterparties.
6. Seek uniformity in the concessions given and received across all of Australia's FTA's so that they can be easily incorporated into future, wider reaching FTA's and to simplify their understanding by the business sector.
7. Take a "club" approach to regional FTA's, so as to allow the easy entry of new participants, and to discourage the detailed and costly renegotiation of such agreements each time a new entrant joins.
8. Pursue a broad based assessment of the return on the investment associated with negotiation of FTA's, including an assessment of the benefits relating to security, defence, tourism, education and general trade and investment flows that accrue in the environment of an FTA relationship.

In addition to these general recommendations, we have attached a specific response to each of the Commission's draft recommendations.

CONCLUSION

AustCham members have significantly benefited both directly and indirectly from FTA's. AustCham encourages the continued development of FTA's, particularly regional FTA's, with all of Australia's major trading partners.

Thank you again for the opportunity to comment on this important policy area.

Yours faithfully
AustCham Singapore

Graham Lee
President

Productivity Commission Recommendations	AustCham Comments
<p>DRAFT RECOMMENDATION 1 The Australian Government should consider pursuing bilateral and regional trade agreements to reduce foreign barriers to trade and investment when alternative channels, including plurilateral and multilateral means, are not practicable and where a prospective bilateral or regional agreement offers additional opportunities, provided the prospective arrangement:</p> <ul style="list-style-type: none"> • 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; • does not establish treaty obligations that could inhibit unilateral, plurilateral or multilateral reform; and • is assessed, through an independent and transparent analysis, to afford meaningful net economic benefits. 	<p>AustCham generally supports this recommendation, but adds the following suggestions:</p> <ul style="list-style-type: none"> • Increase the allocation of government resources dedicated to the negotiation of FTA's, particularly regional agreements. • Pursue a multi-lateral agenda via the WTO and continue to make efforts to revive the Doha round. • Pursue a broad based assessment of the return on the investment associated with negotiation of FTA's, including an assessment of the benefits relating to security, defence, tourism, education and general trade and investment flows that accrue in the environment of an FTA relationship.
<p>DRAFT RECOMMENDATION 2 The Australian Government should continue to comply with WTO requirements in forming bilateral and regional agreements. Within this framework, the Government should:</p> <ul style="list-style-type: none"> • adopt a more flexible approach to the coverage of bilateral and regional trade agreements and consider less comprehensive, while still WTO-consistent, agreements; and • make greater use of implementation schedules that rely on built in agendas to promote reductions in barriers to trade and investment. 	<p>AustCham generally support this recommendation, but adds the following suggestions:</p> <ul style="list-style-type: none"> • Less comprehensive agreements, while creating the platform for the development of further trade and investment links, may fall short on producing specific benefits and should, if they are more general at the outset, have specific provisions for the specific reduction of barriers over time.
<p>DRAFT RECOMMENDATION 3 The Australian Government should adopt the composite model for rules to determine origin in merchandise trade as used in AANZFTA, as a basis for rules of origin in future preferential trade agreements. In adopting this broad model:</p> <ul style="list-style-type: none"> • a choice of Regional Value Content and Change in Tariff Classification 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 	<p>In reference to the first bullet point AustCham supports the implementation of less restrictive practices in FTA's.</p>

<ul style="list-style-type: none"> • Australia should seek to negotiate agreement partners' agreement to a waiver to rules of origin requirements that would be applied where the MFN rates in the partner countries are close (that is, the difference between tariff rates is 5 percentage points or less) 	
<p>DRAFT RECOMMENDATION 4 The Australian Government should not include matters in bilateral and regional trade agreements that increase barriers to trade, raise industry costs or affect established social policies without a comprehensive review of the implications and available options for change. It should adopt a cautious approach to:</p> <ul style="list-style-type: none"> • negotiating and including IP protections in agreements, particularly when these involve extensions to current thresholds; • referencing core labour standards in agreements; and • exclusions for audiovisual and cultural services. 	<p>AustCham supports this recommendation.</p>
<p>DRAFT RECOMMENDATION 5 The Australian Government should be cognisant of the capacity of legal systems in prospective partner countries to resolve disputes on all relevant aspects emerging from cross border commerce.</p> <ul style="list-style-type: none"> • Where the legal systems of partner countries are relatively underdeveloped, it may be appropriate to refer cases to third party dispute settlement mechanisms. • However, such process should not afford foreign investors in Australia or partner countries with legal protections not available to residents. • Investor-state dispute settlement procedures should be subject to regular review to take into account changing international best practice and the evolving legal systems in partner countries 	<p>AustCham supports this recommendation.</p>
<p>DRAFT RECOMMENDATION 6 The Australian Government should institute measures to substantially enhance the scrutiny of the potential impacts and benefits of prospective agreements, particularly those involving preferential arrangements.</p> <ul style="list-style-type: none"> • Before negotiations commence, greater attention should be given to the reasons for seeking to negotiate with a trading partner, the proposed topics for negotiation, potential impacts and benefits of a 	<p>AustCham does not support this recommendation as worded.</p> <p>AustCham's view is that:</p> <ul style="list-style-type: none"> • Consultation and publication on the proposed issues to be negotiated in prospective agreements should be comprehensive, but an assessment of the benefits can only come at the conclusion of negotiations. AustCham also is of the view that identifying all benefits arising from an

<p>prospective agreement, expected timeframe, resource requirements, relevant exit strategies where negotiations cannot be concluded within, say, 2 years, and the relative merits and feasibility of alternative strategies, including unilateral and multilateral reform options.</p> <ul style="list-style-type: none"> • Before an agreement is signed, an independent and transparent assessment of the likely impacts and community-wide benefits of the proposed agreement, commissioned independently of the executive, should be undertaken. The assessment should be made against the text of the agreement and not an overly optimistic scenario. It should take into account any additional administrative and compliance costs and the economic effects of the proposal for reducing barriers to trade and investment and other provisions. 	<p>FTA is likely to be difficult and so any process of assessment of benefits is likely to be incomplete.</p> <ul style="list-style-type: none"> • Excessive transparency prior to negotiation may weaken Australia's negotiation position. • Negotiation approaches in other countries often differ from Australian approaches and setting time lines (such as the 2 year limit) may weaken Australia's negotiation position. • Any independent assessment of the likely benefits of an FTA should be broad based and include an assessment of the benefits relating to security, defence, tourism, education and general trade and investment flows that accrue in the environment of an FTA relationship
<p>DRAFT RECOMMENDATION 7 To enhance transparency and public accountability, 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.</p>	<p>AustCham does not support this recommendation as worded.</p> <p>AustCham's view is that the cost of compliance will be high and the complexities of measuring such expenditure and the vagaries of what to include and exclude will make the value of the information questionable.</p>

Australian Bureau of Statistics. (3 June, 2010). *1301.0 - Year Book Australia, 2009–10*. Retrieved 4 September, 2010, from <http://www.abs.gov.au/AUSSTATS/abs@.nsf/0/9083718854BDBB26CA25773700169C49?opendocument>