

SUBMISSION ON TRADE AGREEMENTS

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BRIEF COMMENTS ON PC DRAFT

1. Draft is not easy to read and would benefit from a major edit by someone external from the exercise to this point. Coherence and relevance of argument should be a key priority.
2. The Editor should take as their starting point the terms of reference and ensure all the text speaks directly to the terms of reference.
3. At the outset, and consistently through the report, the discussion and the conclusions should deal with the limited nature of the terms of reference, not the imagined “perfect” world the drafters often fall into of “first best” policy paradigms.
4. PTA’s – this is what BRTA’s actually are – are second best policy options but are a current trade policy reality. At times the report at best gives only grudging acknowledgement of this reality. Of course, preferential arrangements have been a fact of the trading system for most of the 20th Century. Unfortunately the multilateral system has still not found a way to operationally deal with preferential agreements and regrettably, in the early 21st Century, economies are drifting further from multilateralism. I doubt Australia refusing to countenance PTAs will do anything to stop the drift.
5. A glaring omission from the draft report and recommendations is that Australian policy makers should be implored to redouble their efforts to bring PTA’s under multilateral surveillance and discipline in the WTO. Article XXIV of GATT, The WTO Understanding on Interpretation of Article XXIV and GATS Article V all need elaboration and the report should say this more forcefully and press for Australia to argue this case and be resourced to do so. (Germane to dot points 3, 4 and 5 of Scope of the Study in the Terms of Reference and third point of Key Considerations). Accordingly, Section 12.7 needs significant elaboration and reorientation.
6. Another omission is insufficient recognition that PTAs are “works in progress”. The 1988 Review of CER was a giant step forward in the achievement of free trade across the Tasman Sea but was not the end of closer economic relations. Similarly, the Singapore FTA has progressed further since entry into force, and notwithstanding the stalemate with the Thai agreement I believe at some point this too will advance.
7. Nowhere does the report deal directly with the reality, in present world circumstances where PTA’s are proliferating, that not to pursue PTA’s amounts to imposing a penalty on Australia’s most internationally competitive industries while imposing some incentive on those least competitive industries to lift their game.
8. PTA’s are not panaceas but are, if well conceived and negotiated, incremental and sequential trade liberalization which contribute to greater efficiency, productivity improvement, consumer choice and economic welfare. With generally now low Australian tariffs risks of significant trade diversion are minimal. Unilateral liberalization can achieve superior overall economy wide gains– but some sectors viz autos and TCF remain significantly sheltered and subsidized at considerable cost. PTAs do chip away at these aberrations and should be viewed as another policy option

albeit modest in their contribution. They also deliver benefits to efficient export industries through the reduction of barriers to market entry.

9. Draft is correct to say other considerations than just economic ones are also relevant in assessing PTAs. It could usefully say that ANZCERTA was a contributor to liberalization on a wide front in the Australian and NZ economies in the 1980's and early 1990's – not just on tariffs but a host of issues, viz services, procurement, recognition of qualifications, eliminating anti-dumping, breaking down the barriers erected by State and Territory governments to the operation of a truly national market, constraining bounties (subsidies) and so on. (Incidentally, I have never seen an econometric model that adequately measures these outcomes). Equally, the report is silent on the principal motivation behind the Australia-Singapore FTA and the Australia Thai FTA. These were “demonstration” agreements to encourage liberalization in the Asia Pacific region, particularly in ASEAN, following on China's very large liberalization involved in its accession to the WTO in 2001. ASEAN among others has come too slowly to accept this need and China continues to liberalize ahead of the region generally. This is a vitally important and on-going strategic and economic issue where PTAs have a role to play.
10. Section 13 should be substantially “beefed up” to provide some more specific benchmarks for best practice PTAs than have been suggested in the APEC context, ADB and Mortimer. This is not to say they will always be achievable but benchmarks of good practice should exist and be part of the debate and assessment of PTAs. Without such benchmarks debate inevitably will be woolly and imprecise. They might also serve to strengthen the Ministers' resolve regarding carve-outs in advance of negotiations –every trade negotiators worst fear. Also the report would be strengthened if it had more descriptive analysis of Australia's PTAs identifying their good points as most of the negotiated agreements are at the forefront of good PTAs. Some indicative ideas on benchmarks are set out below.
11. Finally, a comment on the draft recommendations. Obviously I would argue for seeking a recommendation to entrench benchmarks with rigour and objectivity as well as a recommendation on pressing for operationally effective WTO surveillance and strengthened rules. This could first be taken up in an APEC context. I think the less comprehensive coverage idea needs to be expressed more conditionally – e.g. only where a comprehensive approach is clearly not feasible and where very significant sectoral benefits are demonstrable. I have serious reservations regarding the draft recommendations for last minute review of a negotiated agreement of the kind proposed, I believe negotiating partners would not countenance the heightened uncertainty inherent in such a process and in any case acceptability of the negotiated outcome is what the chief negotiator and the Government should be constantly focussed upon in the course of the negotiations. The proper time for such a review is at the outset and the Australian body politic is fully capable of assessing any deviations from initial assessments. The Australia-USFTA approval process speaks to this point. I think this recommendation also sits illogically oddly with the call for

transparency in DFAT costs – surely the cost figure should be all costs of Departments and agencies, including the Parliament? Further, on the call for transparency of DFAT expenditures I suggest if the Federal and State Governments were willing, as they should be, to publish public monies going to auto industry, or many other government programs, DFAT should make an estimate. Failing complete disclosure, we shall just have to put up with not quite knowing an amount but we can be sure that it is a great deal less than the Industry Department vote and overall a whole lot more useful in the national interest. Look no further than here for the real source of sector carve-outs from multilateral and PTA negotiations as well as thwarting unilateral liberalization!

SOME INDICATIVE BENCHMARKS FOR ASSESSING PTAs AND ESTABLISHING THE QUALITY OF PTAs

GENERAL

Does the agreement provide for automatic accession by others?

Can benefits be readily identified? What will the agreement do that could not be achieved otherwise? Quantify and assess these outcomes

Will benefits flow at implementation and in what proportion. What proportion of benefits will be deferred in their implementation. Former should be high, latter low. Full implementation in 3-5 years indicates potential for quality agreement and minimal on-going administrative costs. Highest quality will have full implementation at entry into force (e.g. Australia Singapore FTA)

Is the agreement unarguably fully consistent with GATT Article XXIV, GATS Article V and the Understanding on Interpretation of GATT Article XXIV? Also fact of WTO notifications, comprehensiveness and timeliness?

Is it pro-adjustment or does it deny adjustment in protected goods and services sectors?

Are there economy wide benefits? What are the costs, if any? (Winners and losers is a different assessment)

Are there commitments to facilitate removal of SPS barriers based on sound science and risk, what is their scope and likely effectiveness?

Are there commitments on facilitating removal of TBT barriers, what is their scope and likely effectiveness

What are the non-economic benefits? Quantify

Is the agreement a living agreement with comprehensive and strong review commitments? Rate this on a scale

Existence of any compensating adjustment (liberalization) for non-included trading partners?

Are there any sovereignty trade-offs? If so what are they and have they been most carefully assessed?

All of the agreement should be public and consultations with the public should have been on-going, frank and extensive throughout the negotiations.

GOODS

Are there exceptions to free trade between the economies? If so why? What is the extent of the exemptions? Are they in perpetuity or can they be re-visited and when? Quantify

Is implementation rapid or drawn out – for developed economies higher implementation thresholds should apply Quantify

Are ROOs simple and comprehensive? – beware special sectoral ROOs. Are they extra national as in Australia Singapore FTA?

Are there safeguard provisions? –none is excellent, beware especially safeguards that diminish WTO obligations and assess whether liberalization of access is a sufficient offset for the safeguard

Are there any anti-subsidy provisions? Conventional wisdom is that PTAs cannot deal with subsidy issues but this is not strictly correct in fact or practice

Are export taxes proscribed?

Do provisions chip away at long standing sectoral protection? If so this is positive. Quantify

SERVICES

Does the Agreement bind future developments in services? Is it a negative listing approach (strongly preferred) or is it a positive list?

On what proportion of service sectors have commitments been undertaken? Quantify and assess

Are the commitments across the four WTO modes? If not what modes are covered and to what degree? Quantify and assess

Do commitments exceed existing WTO commitments?

What proportion of each signatory's UN CPC service sectors have commitments? – through this measurement technique benchmarks for coverage which amount to a quality agreement in the services sector could be established –e.g. for developed economies say at the outset of an agreement a minimum of 70% of sectors with commitments in all modes and 50% for a developing economy

What provisions are included to encourage additional commitments on all sectors?

WTO PLUS ELEMENTS

Openness and comprehensiveness of Government Procurement provisions

Investment liberalization, nature of commitments and enforcement

Dispute settlement

Competition policy provisions and enforcement cooperation

Mutual recognition of qualifications and standards

E-commerce

Facilitation of visa entry conditions

Trade Facilitation

Etc.

Assess and quantify all WTO Plus elements