



14 April 2021

Committee Secretary
Joint Standing Committee on Foreign Affairs, Defence and Trade
PO Box 6021
CANBERRA ACT 2600

By email: jscfadt@aph.gov.au

Dear Committee Secretary

INQUIRY INTO EXPANDING MEMBERSHIP OF THE COMPREHENSIVE AND PROGRESSIVE AGREEMENT FOR TRANS-PACIFIC PARTNERSHIP

We are pleased to make this submission to the Inquiry into expanding Membership of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (**Inquiry**). We strongly believe that measures to facilitate trade are beneficial for Australian manufacturers, importers, consumers and logistics professionals. We believe that the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (**CPTPP**) is the best vehicle for advancing Australia's international trade facilitation agenda.

We would be pleased to provide further information to the Committee in relation to the topics raised in this submission.

1. Customs and Global Trade Law

CGT Law is a Melbourne based law firm that specialises in customs and international trade. CGT Law assists importers, exporters and logistics professionals in the use of free trade agreements, including the CPTPP. The assistance provided by CGT Law includes industry training on the benefits of free trade agreements, assistance with customs compliance issues and providing advice on how best to utilise free trade agreements. CGT Law's director, Russell Wiese, has specialised in customs and trade law for 15 years. More information on CGT Law can be found at www.cgtlaw.com.au.

2. Freight and Trade Alliance

Freight and Trade Alliance (FTA) is the peak body for the international trade sector with a vision to establish a global benchmark of efficiency in Australian border related security, compliance and logistics activities. FTA represents in excess of 400 corporate members including Australia's largest logistics service providers and major importers.

On 1 January 2017, FTA was appointed the Secretariat role for the Australian Peak Shippers Association (APSA). APSA is the peak body for Australia's containerised exporters and importers under Part X of the Competition and Consumer Act 2010 as designated by the Federal Minister of Infrastructure and Transport.

APSA is also a member and has board representation on the Global Shippers Forum (GSF) that represents shippers' interests and that of their national and regional organisations in Asia, Europe, North and South America, Africa and Australasia.

More information on FTA and APSA can be found at www.ftalliance.com.au.

3. Is Australia pursuing a trade liberalisation agenda?

We make this submission on the assumption that the parliament believes that facilitating freer trade is in the best interests of the Australian economy and public in general. This view point is evidenced by Australia having entered into free trade agreements with our largest trading partners and continuing to pursue free trade agreements with the European Union, India and the United Kingdom.

Whilst free trade agreements are a positive and effective way to improve cross border trade, it is important that Australia gives consideration to measures that Australia implements which restrict trade, such as:

1. very high dumping and countervailing duties, such as those on Chinese steel and aluminium;
2. very strict biosecurity measures;
3. export restrictions, such as those imposed on Covid-19 related products;
4. onerous food labelling requirements; and
5. GST registration requirements on offshore suppliers of goods with a value under \$1,000.

Australia also imposes an import processing charge of \$152 for containers with a value over \$10,000 and a biosecurity cost recovery charge for sea importations over \$1,000 of \$49. With many imports being duty free, these fees are often the largest government imposed impost on imported goods.

While Australia is right to look at expanding the CPTPP to increase trade, at a future time attention should be given to the measures Australia imposes that make trade more difficult.

4. The best vehicle to facilitate trade

We believe that the CPTPP is an excellent vehicle to expand Australia's trading relationships. The CPTPP is a high quality agreement from various viewpoints, including:

1. the level of market access granted by the members;
2. the quality and diversity of members;
3. the rules of origin which specify which goods qualify for preferential treatment under the CPTPP; and
4. the documentation requirements association with proving that goods qualify for preferential treatment.

This has the result that it is beneficial that a greater proportion of Australia's trade is covered by the CPTPP. The benefits that flow from the above features of the CPTPP are further explained below.

a. Existing members and commitments

When negotiating a free trade agreement, Australia is seeking outcomes that are better than those that apply by virtue of being a member of the World Trade Organisation. Often the benefit most sought after by Australia is a reduction in tariffs that apply to agricultural exports. While many products are not subject to high levels of tariffs, such as minerals, agricultural products remain highly protected, with tariffs sometimes exceeding 50%. Australia's ability to negotiate deep tariff cuts can be limited by the fact that Australia's own tariffs are very low (0-5%). It does not start at an equal bargaining position.

Australia's main barrier to trade are biosecurity measures and dumping duties. However, these measures are not subject to negotiation under a free trade agreement.

This problem is overcome to an extent with the CPTPP as Australia can leverage off the benefits offered by other existing members. To obtain membership of the CPTPP, a potential member will need to make a market access offering that appeals to all members. This offering may be disproportionate to the stand alone offer by Australia.

For example, when negotiating the original Trans-Pacific Partnership (**TPP**), Japan offered deeper tariff cuts on many agricultural products than it had offered Australia when negotiating its bilateral free trade agreement. It is expected that this improved offering was due to Japan attempting to make an offer that would bring a corresponding level of commitment from the US (then a negotiating party to the TPP).

Similarly, any potential new member to the CPTPP may have to make a more substantive market access offering than would be the case than if that member was negotiating with Australia alone.

While Australia would no doubt seek a high level of commitment in any bilateral free trade agreement, the existing market offering of the collective CPTPP members is a more substantive starting position than anything Australia could offer on its own.

This makes the CPTPP a desirable vehicle to facilitate trade.

This should be contrasted to the Regional Comprehensive Economic Partnership (**RCEP**) which does not involve as significant a market access offering. Further, under RCEP, members can make different market access offering to each other member country. This would mean that Australia may not under RCEP obtain an offering that reflects the collective benefit of RCEP to a new potential member.

b. Ease of use

A free trade agreement is only of use if exporters and importers use it. The extent to which a free trade agreement will be used depends to an extent on its ease of use. Issues that can impact the ease of use of a free trade agreement are the documentation requirements and the rules of origin.

CPTPP is regarded as a relatively easy free trade agreement. In respect of documentation requirements there is an absence of formality that may be found in other free trade agreements. For instance, the Thailand Australia Free Trade Agreement requires Thai exporters to firstly register with a government body and following this, obtain a certificate of origin issued by an authorised body. By contrast, under the CPTPP, the exporter, producer or importer can issue its own certificate of origin. This document can be in electronic form and has no set format (only mandatory fields that must be included).

This means that exporters do not have to go through a process that may incur costs and possibly cause delays in the supply chain in order to use the CPTPP. Australia's other multilateral free trade agreements do not offer this administrative ease.

Our view is that Australia should be seeking to make further use of free trade agreements that make trade easier, rather than impose another administrative burden.

c. Greater likelihood of qualifying

Rules of origin

The rules of origin determine which goods qualify for the benefits of a free trade agreement. The rules of origin effectively quarantine the benefits of a free trade agreement to goods that have a close connection with the member countries. However, assessing whether goods satisfy the rules of origin can be one of the most difficult aspects of free trade agreements.

The difficulty does not arise for products that are grown in Australia or produced from 100% Australian originating materials. The difficulty arises with products that have content from various countries, which

is almost always the case with manufactured goods. Usually in such a case, a product specific rule will apply. These product specific rules can be difficult to apply.

The rules of origin under the CPTPP can be difficult to interpret for a party that is not a specialist in international trade. However, we do not believe that the rules of origin under the CPTPP are more difficult than the rules that exists under other free trade agreements.

The CPTPP has a greater variety of rules of origin than other free trade agreements. For some tariff lines there are a variety of product specific rules of origin that can apply. This should be contrasted to other free trade agreements where there may only be one product specific rule that applies. While the CPTPP may have a greater variety of product specific rules of origin, those rules can be used in the alternative. As such, there are not additional requirements to meet, rather there are additional pathways for a good to qualify.

There is an argument that a greater variety of rules brings more confusion. However, this added complexity does produce a greater likelihood that the goods will qualify for the CPTPP. As such, we believe that the rules of origin under the CPTPP favour its expanded use.

More countries – more qualifying material

When assessing whether goods satisfy the rules of origin, you can take into account content from all members of the CPTPP. As an example, a jacket made in Japan from Australian wool, Vietnamese cotton and Japanese plastic buttons will be 100% made from CPTPP materials.

The more members there are of the CPTPP, the easier it is for goods to meet the rules of origin. From this respect, it makes sense to add members to the CPTPP that are already deeply integrated in Australia's value chains. The most obvious example would be China.

Lessens the problem of overlapping free trade agreements

One of the most confusing aspects of Australia's system of free trade agreements is that there are multiple free trade agreements that cover many of our trading partners. For instance, trade with Singapore is already covered by 3 different free trade agreements and this will expand to 4 when RCEP commences. Traders can choose which free trade agreement to use so it may be thought that multiple free trade agreement options do not cause a detriment.

However, multiple free trade agreements for the one country can cause problems as each agreement may have different rules of origin, offer different benefits and have different documentation requirements. Even trade professionals may make errors when using different free trade agreements. There may be the incorrect assumption that if a good qualifies for one agreement it will qualify for other agreements covering that same country.

By expanding trade though the use of the CPTPP the problem of overlapping free trade agreements is lessened. For instance, if the UK joined the CPTPP, there would not be an additional agreement for Australian traders to consider, just an expansion of an existing agreement.

Even bringing existing free trade agreement partners into the CPTPP can lessen the problem. For instance, if the US joined the CPTPP and RCEP was implemented, about 75% of Australia's exports would be covered by these 2 agreements alone. It is conceivable that a time would come when for almost all trade Australian traders would only need to consider the CPTPP, RCEP, the US free trade agreement and any EU free trade agreement. However, this will only occur if the membership of the CPTPP continues to grow. This should be contrasted to the 15 free trade agreements currently in place.

5. Strategic considerations

In electing to encourage the expansion of the CPTPP over bilateral free trade agreements, there are strategic trade considerations to take into account. The benefits of any new member of the CPTPP will be enjoyed by all parties to the CPTPP. In this respect, Australia gains no competitive trading advantage over other TPP members.

Where there are countries with whom Australia already has a bilateral free trade agreement, its trading position may be worse if that country joined the CPTPP. For instance, the US joining the CPTPP may result in Australia losing a competitive advantage regarding exports to the US. New Zealand does not currently have a free trade agreement with the US and Australia has an advantage when it comes to US wine and other agricultural exports.

As another example, if Australia could secure a bilateral free trade agreement with Taiwan this may be preferable to Taiwan joining the CPTPP. This is because Australia would have the exclusive benefit of a trade agreement with Taiwan and would not have this trade advantage diluted by CPTPP competitors being on level ground with Australia.

Before deciding on which countries should be admitted to the CPTPP, Australia should consider the benefits to Australia of a bilateral free trade agreements versus that country's membership of the CPTPP. This assessment should not only be based on Australian direct improved trade relations, but also the negative impact of other CPTPP members having improved trading conditions with the country.

6. Particular countries

Which particular countries should join the CPTPP is largely a political decision that should be informed by economic considerations. Whether a particular country is an appropriate party to join the CPTPP will depend on whether that country can meet the high standards expected of CPTPP members. These standards cover not only trade issues, but also issues such as environmental protection, labour laws and intellectual property. Given the CPTPP reflects capitalist market philosophies, South Korea, the UK and US are countries that would have little work to do to meet these standards. The US, in particular, is well placed given it was a party to the original TPP.

Australia should be slow to encourage membership of the CPTPP by countries that do not currently reflect the CPTPP standards around open and transparent trade. Those countries should not be expected to lift their approach to trade if gifted CPTPP membership. Rather, those countries should first have to demonstrate trade facilitative behaviour.

In addition to looking for new members to join the CPTPP, Australia should also put efforts towards encouraging existing members Malaysia, Chile, Peru and Brunei Darussalam to ratify the implement the CPTPP.



Please feel free to contact Russell Wiese at CGT Law or Clint Latta at FTA to discuss this submission further.

Yours faithfully

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