



Australian Government

Australian Government response to the
Senate Foreign Affairs, Defence and Trade References
Committee report:

*Proposed Comprehensive and Progressive Agreement for
Trans-Pacific Partnership*

APRIL 2019

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Inquiry into the Comprehensive and Progressive Agreement for Trans-Pacific Partnership

The Government thanks the Committee for its consideration of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (TPP-11).

The Government provides the following responses to the Committee's recommendations.

Recommendation 1:

The committee recommends that the Department of Foreign Affairs and Trade conduct an evaluation of the consultation mechanisms used by the department.

Response:

The Government notes the recommendation.

The process for engaging stakeholders on the TPP-11 built on extensive consultations undertaken in relation to the original TPP negotiations which began in 2008. Stakeholders' views were actively encouraged and considered. The Government continues to consult stakeholders, State and Territory Governments and interested members of the public as the TPP-11 is implemented.

The Government keeps its consultation practices in relation to trade negotiations under active review, regularly considering whether there is scope for improvement. The Government will continue to explore new options.

Recommendation 2:

The committee recommends that the Australian Government: provide public updates on each round of trade negotiations; release draft texts during negotiations where feasible and with appropriate safeguards; and table the text of proposed agreements in Parliament before they are signed.

Response:

The Government notes the recommendation.

The Government has made considerable efforts to increase transparency around trade negotiations. The Department of Foreign Affairs and Trade (DFAT) maintains close and ongoing contact with all relevant stakeholders, including those in civil society and consumer groups. This includes holding joint stakeholder briefings in the margins of rounds, where possible.

The power to enter into treaties for Australia is an Executive power under the Constitution. Under Australia's existing treaty-making system the Parliament, through the

Joint Standing Committee on Treaties (JSCOT), already has the opportunity to review and make recommendations on treaties prior to the Executive taking binding treaty action.

The Government keeps its consultation practices in relation to trade negotiations under active review, regularly considering whether there is scope for improvement. The Government will continue to explore new options.

Recommendation 3:

The committee recommends the creation by legislation of an Accredited Trade Advisors program where industry, union and civil society groups would provide real time feedback on draft trade agreements during negotiations.

Response:

The Government does not accept the recommendation.

DFAT has an extensive program of outreach on its FTA agenda, including broad and regular consultation with all interested stakeholders, such as joint briefings in the margins of negotiating rounds.

The creation of an Accredited Trade Advisors program would provide some stakeholders with a greater level of access than other stakeholders and would have significant confidentiality implications. Australia's practice has been to maintain an open, inclusive and flexible approach to consultation, to ensure all stakeholders who want to contribute views can do so.

Recommendation 4:

The committee recommends that the Department of Foreign Affairs and Trade review the stakeholder consultation mechanisms used internationally and assess their appropriateness for an Australian context and provide recommendations to government.

Response:

The Government notes the recommendation.

As noted in the Government's response to recommendation 1, the Government keeps its consultation practices in relation to trade negotiations under active review, including in relation to international practice, regularly considering whether there is scope for improvement. In doing so, the Government necessarily considers the approach to confidentiality of our negotiating partners, including those who would not contemplate enhanced openness. The Government will continue to explore new options.

Recommendation 5:

The committee recommends that before new free trade agreements are signed, the Australian Government commission the Productivity Commission to undertake independent economic modelling and that this modelling be released publicly.

Response:

The Government notes the recommendation.

Economic modelling of trade agreements is only one tool to assess whether an agreement is in the national interest. DFAT commissions economic modelling of trade agreements on a case-by-case basis. Statistical and methodological limitations mean that current models are unable to estimate the total impact of an FTA on the economy and are heavily reliant on modelling assumptions used. For example, it is difficult to model accurately the impact of changes to non-tariff barriers, trade facilitation, increased regulatory certainty and other aspects of an FTA, such as rules of origin.

Recommendation 6:

The committee recommends that the Australian Government make a reference to the Productivity Commission to conduct a review of Australia's bilateral and regional trade agreements.

Response:

The Government notes the recommendation.

High quality and comprehensive free trade agreements offer the best prospects for securing more open markets for Australian exporters, investors and innovators. Today, close to 70 per cent of our total trade enjoys preferential access into export markets through these agreements. The Government keeps under active review its free trade agreement and regional trade policy approach.

Recommendation 7:

The committee recommends the Australian Government remove ISDS provisions from existing free trade agreements and legislate so that a future Australian government cannot sign an agreement with such provisions.

Response:

The Government does not accept the recommendation.

The Government considers the inclusion of Investor-State Dispute Settlement (ISDS) clauses in FTAs on a case-by-case basis in light of the national interest. This approach provides flexibility in FTA negotiations.

ISDS provisions provide important protection for Australian businesses investing abroad. The mechanism allows investors to enforce their rights directly under international investment treaties.

Where the Government agrees to include ISDS, it ensures robust safeguards to protect the Government's ability to regulate in the public interest and pursue legitimate public welfare objectives, such as public health and the environment.

In relevant negotiations, the inclusion of ISDS provides an opportunity to replace older-style bilateral investment treaties lacking these explicit safeguards with a modern FTA chapter that includes them.

Concluded FTAs represent a negotiated outcome, reflecting a balance of interests. Reopening such negotiations to remove ISDS provisions would likely result in a shift in the balance of outcomes against Australia's interests in other areas.

Recommendation 8:

The committee recommends that the Department of Foreign Affairs and Trade include the provision of further information on labour market testing in its outreach strategy and seminars.

Response:

The Government notes this recommendation.

DFAT will continue to provide information on commitments related to waivers of labour market testing on its TPP-11 web pages, and will continue to respond to questions about labour market testing from stakeholders, including through FTA seminars.

The Government notes that all of Australia's trade agreements that make commitments on movement of natural persons include waivers of labour market testing (including the GATS) and FTAs concluded by the previous government.

Recommendation 9:

The committee recommends that the Australian Government reinstates labour market testing for contractual service suppliers where it has been waived and legislate so that a future Australian Government cannot waive labour market testing for contractual service suppliers in new agreements.

Response:

The Government does not accept the recommendation.

The Government decided the overall balance of the TPP-11, including the commitments on movement of natural persons, was beneficial to Australia and in line with our national interest. Any change to those commitments could only be made through re-negotiation with all TPP-11 Parties. The agreement provides unprecedented outcomes for Australian exporters, and sets a benchmark for economic liberalisation in our region. Australia agreed to waive labour market testing for TPP-11 Parties in categories where they offered similar substantive temporary entry commitments to Australian business persons.

We would also expect our negotiating partners to seek further concessions in exchange for removing labour market testing waivers from existing agreements.

Recommendation 10:

The committee recommends that the Department of Foreign Affairs and Trade develop and publish an outreach strategy which includes a schedule of information sessions in a wide variety of locations and considers the most appropriate mechanism for publishing key outcomes from the information sessions on the Department's website.

Response:

The Government notes the recommendation.

DFAT has published a TPP-11 outreach strategy which includes a summary of published advocacy materials, updates on the ongoing Austrade/DFAT FTA seminar series, and the provision of contact points for businesses and citizens seeking more information.

Recommendation 11:

The committee recommends that the Department of Foreign Affairs and Trade and Austrade consider options, including possible partnerships with the private sector, for providing additional information about the TPP-11 to businesses.

Response:

The Government agrees with the recommendation.

DFAT and Austrade have capacity to support tailored outreach efforts, both individually and in partnership with the private sector, to increase awareness and utilisation by Australian business of FTAs.

The DFAT website includes a range of practical information resources that will help Australian importers and exporters take advantage of the TPP-11 such as:

- a guide to obtaining preferential tariff treatment (<https://dfat.gov.au/trade/agreements/in-force/cptpp/outcomes-documents/Pages/guide-to-obtaining-preferential-tariff-treatment-when-exporting-and-importing-goods-using-cptpp.aspx>)
- frequently asked questions (<https://dfat.gov.au/trade/agreements/in-force/cptpp/outcomes-documents/Pages/cptpp-importers-and-exporters-frequently-asked-questions.aspx>)
- specific outcome documents by sector (<https://dfat.gov.au/trade/agreements/in-force/cptpp/outcomes-documents/Pages/outcomes-documents.aspx>).

The DFAT FTA Portal has also been updated to include TPP-11 goods market access outcomes of interest to Australian businesses and is in the process of being updated for services market access outcomes.

Recommendation 12:

The committee recommends that the Department of Foreign Affairs provide regular public updates about matters discussed at the TPP-11 Commission.

Response:

The Government notes the recommendation.

Information (including the outcomes) from the first Commission is publicly available on the DFAT website. DFAT will continue to provide information about Commission meetings on the website as they occur.

Recommendation 13:

The committee recommends that the Joint Standing Committee on Treaties consider a resolution to enable participating membership for inquiries and, if agreed, put the necessary changes to both chambers.

Response:

The Government does not accept this recommendation.

The Government considers JSCOT's current terms of reference, including its membership, to be working well.

Recommendation 14:

The committee recommends the Australian Government provide the Government's Statement of Objectives for Negotiation to the Joint Standing Committee on Treaties for consideration and feedback; and to provide the Joint Standing Committee on Treaties with a briefing at the end of each round of negotiations.

Response:

The Government notes the recommendation.

JSCOT is already mandated by Parliament to provide treaty oversight. The Government considers JSCOT's current terms of reference to be sufficient for it to perform this oversight role.

The Government keeps its consultation practices in relation to trade negotiations under active review, regularly considering whether there is scope for improvement. In doing so, the Government necessarily considers the approach to confidentiality of our negotiating partners, including those who would not contemplate enhanced openness. The Government will continue to explore new options.

Dissenting Report – Coalition Senators

Recommendation 1:

The Trans Pacific Partnership Agreement be fully embraced by the Parliament noting the benefits to job opportunities for Australians, the economy, as well as to individual workers and families.

Response:

The Government agrees with the recommendation. Australia ratified the TPP-11 on 31 October 2018 and it entered into force on 30 December 2018.

Recommendation 2:

The Customs Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Bill 2018 and the Customs Tariff Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Bill 2018 be passed as a matter of urgency.

Response:

The Government agrees with the recommendation and notes that the bills passed both Houses on 17 October 2018 and received assent on 19 October 2018. Australia ratified the TPP-11 on 31 October 2018 and it entered into force on 30 December 2018.

Recommendation 3:

The Australian Government fully support the addition of the United Kingdom to the TPP should they wish to join.

Response:

The Government agrees with the recommendation.

Australia and the United Kingdom are working towards a comprehensive bilateral free trade agreement, which the Government wants to conclude as soon as possible after the United Kingdom is in a position to enter into negotiations. A TPP-consistent agreement with Australia could be a stepping stone for the UK joining the TPP-11.

Australia's ratification of the TPP-11 demonstrates Australia's commitment to open trade and investment and defence of the rules-based approach to trade, which is integral to Australia's ongoing prosperity. The Government welcomes interest from the United Kingdom and others who also share this vision and are considering joining the TPP-11.

Recommendation 4:

The Hon. Malcolm Turnbull be congratulated on his personal stewardship of the TPP and ensuring that an agreement could be reached between the 11 nations.

Response:

The Government agrees with the recommendation. The Government acknowledges the contribution of the Hon Malcolm Turnbull in driving the TPP-11 forward, recognising its value for both the region and the global trading system. The Government also appreciates the leadership of Japan and New Zealand in pressing ahead with Australia on a revised TPP-11 agreement.

Recommendation 5:

The City of Darebin and the Yarra City Councils refocus their use of ratepayer resources to their core business of roads, rates and rubbish instead of dabbling in areas where they have neither experience nor mandate.

Response:

The Government notes the recommendation.

Additional Comments – Senator Rex Patrick

Recommendation 1:

Noting Ministers seem unwilling to challenge the trade orthodoxies within the Foreign Affairs and Trade bureaucracy, the Parliament must draw a line in the sand before any change will occur. The Parliament must reject the enabling legislation and state a clear objection to the closed manner in which these treaties are negotiated.

Response:

The Government does not accept the recommendation and notes that the bills passed both Houses on 17 October 2018 and received assent on 19 October 2018. Australia ratified the TPP-11 on 31 October 2018 and it entered into force on 30 December 2018.

Recommendation 2:

ISDS is a discriminatory regime that seeks to transfer sovereign risk from foreign corporations to the Australian taxpayer. ISDS provisions are also an attack on our legal sovereignty. The Parliament must reject the enabling legislation and state a clear objection to ISDS provisions being in any future trade agreements.

Response:

The Government does not accept the recommendation.

The Government considers the inclusion of ISDS clauses in FTAs on a case-by-case basis in light of the national interest. This approach provides flexibility in FTA negotiations.

ISDS provisions provide important protection for Australian businesses investing abroad. The mechanism allows investors to enforce their rights directly under international investment treaties.

Where the Government agrees to include ISDS, it ensures robust safeguards to protect the Government's ability to regulate in the public interest and pursue legitimate public welfare objectives, such as public health and the environment.

In relevant negotiations, the inclusion of ISDS provides an opportunity to replace older-style bilateral investment treaties lacking these explicit safeguards with a modern FTA chapter that includes them.

Concluded FTAs represent a negotiated outcome, reflecting a balance of interests. Reopening such negotiations to remove ISDS provisions would likely result in a shift in the balance of outcomes against Australia's interests in other areas.

Recommendation 3:

The waiving of labour market testing is an unnecessary assault on Australian workers and is therefore an unacceptable proposition. The Parliament must reject the enabling legislation and state a clear objection to the waiving of labour market testing in any future trade agreements.

Response:

The Government does not accept the recommendation.

The Government decided the overall balance of the TPP-11, including the commitments on movement of natural persons, was beneficial to Australia and in line with our national interest. Any change to those commitments could only be made through re-negotiation with all TPP-11 Parties. The agreement provides unprecedented outcomes for Australian exporters, and sets a benchmark for economic liberalisation in our region. Australia agreed to waive labour market testing for TPP-11 Parties in categories where they offered similar substantive temporary entry commitments to Australian business persons.

The Government notes that all of Australia's trade agreements that make commitments on movement of natural persons include waivers of labour market testing (including the GATS) and FTAs concluded by the previous government.