

27 February 2017

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White Paper Task Force  
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Dear Taskforce,

RE: UNSW LAW SOCIETY SUBMISSION TO THE 2017 FOREIGN POLICY WHITE PAPER

The University of New South Wales Law Society welcomes the opportunity to provide a submission to the Foreign Policy White Paper Taskforce.

The UNSW Law Society is the representative body for all students in the UNSW Faculty of Law. Nationally, we are one of the most respected student-run law organisations, attracting sponsorship from prominent national and international firms. Our primary objective is to develop UNSW Law students academically, professionally and personally.

The UNSW Law Society is proud to represent students from a diverse mix of cultures, backgrounds and passions, including those who have come from overseas and who now form an inseparable part of our multicultural nation. As young Australians, we are concerned with the preservation of our great multicultural society and urge the government to conduct a foreign policy that will safeguard the security and prosperity of Australia.

Our enclosed submission reflects the opinions of the students of the UNSW Law Society. It addresses all the terms of reference of the Foreign Policy White Paper. The submission's key findings are that:

- Australia's national interests should continue to be defined as being national security and economic prosperity;
- Australia should pursue an independent foreign policy that prioritises its national interests and enables it to develop closer relations with key partners such as China and Indonesia;
- the alliance with the US remains important to Australia's security interests currently, though we must be willing to adapt to changing global conditions amidst the rise of China, and not allow our relationship with the US to jeopardise our relations with other countries;
- alternative economic opportunities to the TPP such as the European Union, ASEAN and increasing Australia's interaction within the WTO should be pursued;
- Australia should continue to balance between China and the US to encourage compromise;
- DFAT should support a whole-of-government approach to transnational terrorism;

- foreign aid should be reframed to focus more on the needs of developing countries and account for the impact of climate change; and
- mutual win-win strategies to foreign aid that can be an alternative to increasing spending should be explored, such as opening up Australia's labour markets to Pacific Islanders.

The enclosed submission elaborates on the above key findings through being structured into distinct sections. In particular, the first section addresses Australia's national interests; the second section addresses our relationships with major international partners; the third section addresses Australia's economic interests and regional and global engagement; the fourth section addresses our security interests and strategic competition in the Asia-Pacific and finally the fifth section addresses foreign aid.

We thank you for considering our submission and should you require any further information, please do not hesitate to contact us.

Yours faithfully,



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Policy Submissions Director



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# Submission to the Foreign Policy White Paper Taskforce

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## Acknowledgements

We acknowledge the support of the following individuals who made this submission possible.

### **UNSW LAW SOCIETY CO-PRESIDENTS**

Stephanie Blancquart and Khushaal Vyas

### **UNSW LAW SOCIETY VICE-PRESIDENT (SOCIAL JUSTICE)**

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# Domestic and International Trends and Australia's National Interests

## I DOMESTIC AND INTERNATIONAL TRENDS AFFECTING AUSTRALIA: A SWOT ANALYSIS.

This section places emphasis on constructing a 'SWOT' (strengths, weaknesses, opportunities, and threats) analysis, operating at a high level of generalization, in order to analytically deconstruct the domestic/international trends that will impact Australia. In particular, this SWOT analysis will enable DFAT to effectively develop policy priorities thereby enabling Australia to better consider its long-term strategic direction (in terms of national interest) and to act more proactively on security issues. Notably, the broad overview of key trends detailed below inform the analysis and recommendations provided in the rest of the submission.

### A *Strengths*

#### 1. *Commitment to Sustainable Development*

The Sustainable Development Goals (SDGs) have been a commitment of the United Nations since 2015 and provide a framework through which Australia can assess its own development and its foreign aid program up to 2030. The SDGs are an international strength, affirming the international community's commitment to development, placing an emphasis on sustainable growth and providing metrics by which to judge global progress over 15 years.

#### 2. *Global Relationships*

One of Australia's international strengths is our relationship with key partners, including the United States and China. These relationships will have an impact on Australia's economy, security and global influence.

The longstanding US-Australia alliance transcends individual governments and in a long-term

strategy, this relationship remains of vital importance, particularly in the field of defense. It is positive that we have been able to balance our relationship with the United States with that of key geographically-proximate Asian trading partners such as China, Japan, South Korea and Indonesia. Australia successfully secured a term on the United Nations Security Council in 2013, a testament to our strong diplomatic efforts and relationships with a range of countries. These are positive indications, ahead of our next bid in 2029, which would renew and strengthen Australia's influence at the highest levels of the United Nations.

### **3. *Service-Based Economy***

Australia is developing a strong service-based economy after the mining boom. Our largest service sector, education exports, hit a record high of \$21.8 billion in 2016<sup>1</sup>. As part of an educational institution, this strength is of particular importance to the UNSW Law Society. The strength of our education export is felt not only economically, but academically and socially within these institutions. Other service sectors such as finance and insurance services as well as the emerging financial technology sector are also performing strongly.<sup>2</sup>

## **B *Weaknesses***

### **1. *Instability in Established Democracies***

An emerging global trend is that of instability in established democracies. Long-standing democracies such as Turkey, the Philippines and the United States have been destabilised by the actions of political leaders and the resulting public response.

Recently, the United States' status was downgraded from a 'full democracy' to a 'flawed democracy'<sup>3</sup>. A global weakening of democracies has an impact on Australia, both as an ally of countries such as the United States and as an established democracy itself. It is important for Australia

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<sup>1</sup> Universities Australia, *Australia's education exports at record high* (3 February 2017) <<https://www.universitiesaustralia.edu.au/Media-and-Events/media-releases/Australia-s-education-exports-at-record-high>>.

<sup>2</sup> The Committee for Sydney, *Adding to the Dividend, Ending the Divide #3* (January 2017) <<http://www.sydney.org.au/wp-content/uploads/2015/10/CfS-Issues-Paper-14-Adding-to-the-Dividend-Ending-the-Divide-3-1.pdf>>.

<sup>3</sup> Elena Holodny, 'The United States was downgraded to a 'flawed democracy'' *Business Insider Australia* (online), 26 January 2017 <<http://www.businessinsider.com.au/economist-intelligence-unit-downgrades-united-states-to-flawed-democracy-2017-1?r=US&IR=T>>.

to consider the values we stand for and how we respond to developments in foreign governments.

## **2. *Decline in Support for Globalisation***

An additional global trend is the decline in support for globalisation and a rejection of multilateral institutions from states such as the United States and the United Kingdom, which have traditionally been supportive of globalisation. A clear example of this is the decision of the United Kingdom to leave the European Union. This trend may weaken the effectiveness of global institutions, change the types of countries leading these bodies, and impact on Australia's trade relationships with key allies.

## **3. *Low Dynamic Efficiency***

Whilst the service sector is performing strongly, a major weakness for the Australian economy is in our industry sectors such as mining and manufacturing. The Australian economy has lacked a long-term focus, particularly during the mining boom. As the shape of our economy changes, we will need to devote significant resources into the development of new sectors and the training of a skilled workforce to fit those demands.

## **4. *Demographic Trends***

In comparison to much of the developed world, Australia's ageing population has increased dramatically due to greater life expectancy and low fertility rates. has an ageing population as a result of sustained low fertility and increasing life expectancy<sup>4</sup>. As the number of working-aged people declines, taxation revenue will reduce. An ageing population also results in increased pressures on government services, particularly healthcare. Overall, this strain on government revenue may cause further difficulties in the prioritization of funding between domestic and foreign issues.

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<sup>4</sup> Australian Bureau of Statistics, *Feature Article: Population by Age and Sex, Australia, States and Territories*, (15 December 2016)  
<<http://www.abs.gov.au/ausstats/abs@.nsf/0/1CD2B1952AFC5E7ACA257298000F2E76?OpenDocument>>.



## 5. *United Nations Criticisms*

Whilst Australia has been a successful influencer at the United Nations, as discussed in the Strengths section, aspects of our performance have garnered criticism, which demonstrate weaknesses in our ability to support the goals of the United Nations and may come at a detriment to our reputation.

Examples of Australia's weaknesses in the eyes of the United Nations include the environmental damage caused to the Great Barrier Reef<sup>5</sup>, the offshore detention of asylum seekers<sup>6</sup>, and the treatment of Indigenous Australians<sup>7</sup>. Furthermore, Australia has been heavily criticized for being one of the few countries advocating against a treaty on the prohibition of nuclear weapons<sup>8</sup>. These criticisms may indicate weaknesses in Australia's foreign policy, which should be carefully evaluated.

## C *Opportunities*

### 1. *Demand from Asia*

Australia is well placed to service the demands of an increasingly prosperous Asia. Rising incomes in emerging economies could be well suited to Australia's service sectors such as education, tourism and financial services. Australia could also find further opportunities specifically in the Chinese market. China is the leading investor in renewable energy, a sector that Australia would be well placed to develop due to its "abundant, low-cost renewable energy, land availability, and proximity to the emerging Asian region"<sup>9</sup>.

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<sup>5</sup> Elle Hunt, 'Great Barrier Reef: UN report lead author 'shocked' all Australian references removed', *The Guardian* (online), 27 May 2016 <<https://www.theguardian.com/environment/2016/may/27/great-barrier-reef-un-report-lead-author-shocked-all-australian-references-removed>>.

<sup>6</sup> United Nations High Commissioner for Refugees, *UNHCR Calls for Immediate Movement of Refugees and Asylum-Seekers to Humane Conditions* (2 May 2016) <<http://unhcr.org.au/news/unhcr-calls-immediate-movement-refugees-asylum-seekers-humane-conditions/>>.

<sup>7</sup> Ben Doherty 'UN countries line up to criticise Australia's human rights record' *The Guardian* (online) 10 November 2015 <<https://www.theguardian.com/law/2015/nov/10/un-countries-line-up-to-criticise-australias-human-rights-record>>.

<sup>8</sup> Tilman Ruff, 'As the world pushes for a ban on nuclear weapons, Australia votes to stay on the wrong side of history' *The Conversation* (online) 16 November 2016 <<https://theconversation.com/as-the-world-pushes-for-a-ban-on-nuclear-weapons-australia-votes-to-stay-on-the-wrong-side-of-history-68337>>.

<sup>9</sup> Sophie Vorrath, *How Australia can become a renewable energy superpower* (19 October 2015) Renew economy <<http://reneweconomy.com.au/how-australia-can-become-a-renewable-energy-superpower-35215/>>.

Australia's reputation as a quality agricultural exporter may also produce certain opportunities to China where demand for dairy products has been high<sup>10</sup>. Overall, our freight task is predicted to increase by 26% in the next decade<sup>11</sup>.

## 2. *Immigration*

Australia has long been a country built on immigration. Immigration is an opportunity for Australia to acquire workers, particularly in fields where there are skills shortages, and to combat our ageing population. Other developed economies are recognising the opportunity that immigrants, including refugees can bring. For example, a number of large German companies provide skills and language training to refugees and view them as an opportunity for economic growth<sup>12</sup>. In Australia, recent refugees have contributed to the agricultural sector and the development of our regional economy<sup>13</sup>.

## 3. *Technological Development*

The rapid development of technology, particularly in telecommunications, financial and transport sectors is a global opportunity and an opportunity for Australia's economy. These technologies can disrupt service delivery models, transform way we conduct business and improve our attractiveness to global investors. Furthermore, advances in military technology represent an opportunity to strengthen Australia's security.

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<sup>10</sup> Dairy Australia, *Market Brief Greater China* (August 2016) <[http://www.dairyaustralia.com.au/~media/Documents/Stats%20and%20markets/Exports%20and%20trade/2016%20Market%20briefs/Market%20briefs\\_Greater%20China\\_V2.pdf](http://www.dairyaustralia.com.au/~media/Documents/Stats%20and%20markets/Exports%20and%20trade/2016%20Market%20briefs/Market%20briefs_Greater%20China_V2.pdf)>.

<sup>11</sup> National Transport Commission, *Who Moves What Where* (August 2016) 15 <[https://www.ntc.gov.au/Media/Reports/\(D62E6EFC-36C7-48B1-66A7-DDEF3B04CCAE\).pdf](https://www.ntc.gov.au/Media/Reports/(D62E6EFC-36C7-48B1-66A7-DDEF3B04CCAE).pdf)>.

<sup>12</sup> Laura Colby, Stefan Nicola, Sheenagh Matthews, 'Germany Ramps Up Internship Programs for Refugees' *Bloomberg BusinessWeek* (online) 28 July 2016 <<https://www.bloomberg.com/news/articles/2016-07-28/germany-ramps-up-internship-programs-for-refugees>>.

<sup>13</sup> Warwick Long, 'Afghan refugees make new home in Goulburn Valley orchards', *ABC News* (online) 17 March 2016 <<http://www.abc.net.au/news/2016-03-17/afghan-refugee-workers-find-a-home-in-shepparton/7213870>>.

## D *Threats*

### 1. *Uncertain Relationship Between China and the United States*

The uncertain relationship between the two nations may be a threat to Australia's stability and long term strategic planning. Policy changes that are likely to be triggered by a change of government in the United States only serve to increase these uncertainties. In particular, the United States and China have ongoing military tensions such as in the South China Sea, and differences in economic policy. Australia may be implicated in both military and economic issues. We have US military bases for example, near Alice Springs and Darwin, which may become threats to our security. Australia is also included in the proposed Regional Comprehensive Economic Partnership, led by China and was involved in the Trans Pacific Partnership.

### 2. *Climate Change*

Climate change is a global threat with concrete impacts on Australia. Global climate change negotiations have focused on the role that developed economies should play in providing assistance to less developed countries in the implementation of emissions reductions measures or climate change abatement and mitigation strategies.

Australia may engage on this issue further with countries in the Pacific, such as Kiribati, which is at risk of disappearance due to rising sea levels. Australia may also engage with international market-based strategies such as green bonds and emissions trading, whilst needing to manage the impacts to our economy domestically. Climate change could also impact Australia's tourism industry, as key attractions such as the Great Barrier Reef are harmed. It could also affect Australia's security due to increased extreme weather events and increased global conflict over resources.

### 3. *Rising Role of Non-State Actors*

Non-state actors are increasingly playing an active role in global politics. This ranges from the economic influence of large multinational corporations, to the humanitarian and advocacy roles of non-government organisations, to the security threats posed by terrorist organisations. Non-state actors may threaten the level of global influence traditionally held by states or challenge the national identity or sovereignty of states.

## II AUSTRALIA'S NATIONAL INTERESTS

UNSW Law Society's submission is that Australia's national interests are to maintain both national security and economic prosperity. This section outlines aspects of our security and economic interests which UNSW Law Society believes to be most important.

### A *Australia's Security Interests*

#### 1. *Security of the Australian Continent*

Any discussion of Australia's security interests must first begin with the defence of the Australian continent. In the recent Defence White Paper, three of the four strategic interests identified included the defence of Australia, its immediate neighbours, and nearby approaches.<sup>14</sup> There is little need to elaborate upon these, except to note that the security of Australia encompasses both defence from foreign states, and from non-state threats – especially terrorism.<sup>15</sup> UNSW Law Society believes that this is the highest priority for Australia's security interests.

#### 2. *Preservation of the International Order*

The Defence White Paper identifies the maintenance of a 'stable, rules-based global order' as the other core Australian security interest.<sup>16</sup> Several International Relations scholars have also conceptualised the international society in terms of a loose 'system' or order, rather than a purely anarchical collection of states.<sup>17</sup> The primary reasons why maintaining the current 'rules-based international order' is in Australia's interest are: first, the protection enjoyed by Australia from the collective security apparatus

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<sup>14</sup> Australian Department of Defence, 'Defence White Paper 2013' (White Paper, 2013) 24–6.

<sup>15</sup> Ibid 25 [3.12].

<sup>16</sup> Ibid 26–7 [3.23]–[3.29]. Foreign Minister Julie Bishop has also expressed her support for a 'rules-based international order' in response to the recent South China Sea arbitration: Foreign Minister Julie Bishop, 'Australia Supports Peaceful Dispute Resolution in the South China Sea' (Media Release, 12 July 2016) <[http://foreignminister.gov.au/releases/Pages/2016/jb\\_mr\\_160712a.aspx](http://foreignminister.gov.au/releases/Pages/2016/jb_mr_160712a.aspx)>.

<sup>17</sup> See, eg, Nicholas J Wheeler and Timothy Dunne, 'Hedley Bull's Pluralism of the Intellect and Solidarism of the Will' (1996) 72 *International Affairs* 91; Ilan Kapoor, 'Capitalism, Culture, Agency: Dependency versus Post-Colonial Theory' (2002) 23 *Third World Quarterly* 647, 648–50; A F K Organski, *World Politics* (Alfred A. Knopf, 2<sup>nd</sup> ed, 1968); Ronald L Tammen and Jacek Kugler, 'Power Transition and China–US Conflicts' (2006) 1 *Chinese Journal of International Politics* 35.

and prohibition of the unjustified use of force;<sup>18</sup> and secondly, the economic benefits which Australia enjoys as a result of freedom of trade and maritime navigation.

### 3. *Promotion of Australia's Values*

Although not mentioned in the Defence White Paper, it is important to note that Australia's security objectives are not merely guided by pragmatic considerations, but also its values and moral purpose. Often this interest will overlap with one or both of the core interests outlined above, as with Australia's humanitarian intervention in Timor-Leste in 1999.<sup>19</sup> However, Australia has also involved itself in military actions on moral grounds even where the impact on its core interests are marginal or even deleterious. This can be seen, for example, in Australia's participation in air strikes against distant Islamic State,<sup>20</sup> even though this may increase the threat of terrorism at home.<sup>21</sup> In general, however, moral considerations should be subordinate to the two interests above.

#### B *Australia's Economic Interests*

UNSW Law Society believes that Australia's economic interests must be guided by a pragmatic assessment of what benefits Australia the most economically. Furthermore, we submit that our economic interests should be subordinated to our security interests, and specifically to the priority of the security of the Australian continent.

Foreign policy priorities which we see as relevant to achieving economic prosperity for Australia include:

1. Maintaining and expanding our access to an open and globalised world economy;
2. Deepening our bilateral economic relationships with major economies in Asia and other growing parts of the world; and
3. Supporting multilateral regional and global free trade agreements.

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<sup>18</sup> Peter J Opitz, 'Collective Security' in Helmut Volger (ed), *A Concise Encyclopedia of the United Nations* (Martinus Nijhoff Publishers, 2<sup>nd</sup> revised ed, 2009) 33, 35–8. See also *Charter of the United Nations*, opened for signature 26 June 1945, 1 UNTS XVI (entered into force 24 October 1945) art 4(2) ('UN Charter').

<sup>19</sup> James Goodman, 'Humanitarian Collective Security: Restoring Order?' (2013) 13 *Global Networks* 345, 347.

<sup>20</sup> 'Australia Launches First Airstrikes inside Syria', *BBC News* (online), 16 September 2015 <<http://www.bbc.com/news/world-australia-34265118>>.

<sup>21</sup> Alex Braithwaite, 'Transnational Terrorism as an Unintended Consequence of a Military Footprint' (2015) 24 *Security Studies* 349.

# Relationships with Major International Partners

## I CHINA – DEVELOPING PEOPLE TO PEOPLE LINKS

It is impossible for Australia to break free from the Trump administration without irreparably harming the inalienable historical bond between Australia and America. Great dependence upon military protection from the US has created a significant barrier to Australia's co-operation with China.<sup>22</sup> The cost to Australia to build its own independent arms force to remove America's control and interference over Australia's foreign policy is quite high.<sup>23</sup> However, an incremental process must be implemented. Trump's unpredictable methods in dealing with immigration and refugee issues it goes against Australia's societal values.

This unpredictability associated with the Trump Administration must be juxtaposed with the political paradigms propagated by Xi. To maintain stable /sustainable economic development whilst urging international recognition of China's national reunion of its disputable territories is a major task that Xi intends to undertake over the next few decades.<sup>24</sup> In particular, China intends to place greater focus on the foreign market, complimentary economic structures and common aims of stimulating economic growth, which emphasises the need to maintain and improve upon the Aus. – China economic relationship. Furthermore, co-operation between Australia and China should extend to the business of defence such as in the sale of arms and weaponry.

The risk of potential wars and conflicts in the Asia-Pacific is a threat to Australia's security and economic national interests throughout the next decade.<sup>25</sup> The following two factors embody the key issues that dominate the Aus.-China relationship regarding Trade/Security:

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<sup>22</sup> 'Defence and Strategic Relations', *Australian Centre on China in the World*, <<http://aus.thechinastory.org/archive/defence-and-strategic-relations/>>.

<sup>23</sup> Australia in the Asian Century White Paper, (Department of Defence, 2012) 228.

<sup>24</sup> Ibid 229.

<sup>25</sup> Australia in the Asian Century White Paper, (Department of Defence, 2012) 237.

- 1. South China Sea Disputes:** Australia has already witnessed China's disputes with its geographical neighbors, such as the Philippine's and Japan in the South China Sea. Also, the issue regarding the 'One China' sovereignty dispute between Taiwan and mainland China and China's island building may operate as a catalyst for war on a regional scale.
- 2. Nuclear Proliferations:** The proliferation of weapons of mass destruction is another sensitive issue which threatens global peace. DPRK and Japan may take further actions in establishing nuclear weapons, which needs to be considered when developing Australia's Foreign Policy.

Clearly, Australia must attempt to prevent any escalation in regional tensions that could lead to War or the proliferation of nuclear weapons in the Asia-Pacific area. It is especially important in light of the Trump presidency that negotiation and diplomatic co-operation are used to avoid dispute between China and America, two of Australia's most important trading partners.

## II USA – GROWING NEED TO PURSUE AN INDEPENDENT FOREIGN POLICY

The relationship between Australia and the United States of America has been symbiotic throughout its history. Australia and the United States have enjoyed a decades-long alliance, and the two nations share many values and cultural influences. However, recent changes in the global environment, as well as changes in the nature of Australia's relationships with other countries, mean that it is necessary to honestly and frankly reassess the benefits of our relationship with America. UNSW Law Society's recommendation is that whilst the alliance with America remains beneficial to Australia now, our foreign policy must be thoroughly independent so that it is ready to adapt to changing global conditions in the future and must always prioritise Australia's national interests over that of other countries.

Future threats to America may not always equate to threats to Australia. In this case, in the future America may find itself in a major costly conflict that is to the benefit of America's national interests, but may not be beneficial to Australia's national interests. In this regard, it would not be wise for Australia to commit its limited resources to a conflict where it has no significant interests in purely to demonstrates support for the US-Australia alliance. Instead, Australia must be ready to act independently and prioritise its own national interests, especially where they do not align with America's.

One contemporary flashpoint where this may play out is in the South China Sea. Australia currently has a burgeoning relationship with China, and it is argued that China is our most important economic partner. However, America has expressed interest in intervening in the dispute, which primarily concerns South East Asian countries.<sup>26</sup> This is arguably to the interest of America, as a demonstration of its military might would reaffirm its status as the global superpower. However, Australia's sole interest in the South China Sea is simply that trade continues to flow through the area. In that regard, it is highly unlikely that China would cut off trade in the South China Sea, given the fact that most of its own exports and imports run through the South China Sea. Hence, if Australia were to join American freedom of navigation patrols in the South China Sea to demonstrate its support, it would jeopardise our own ties with China at little gain to our national interests. Indeed, some critics have argued that the 2003 invasion of Iraq was an example of this, where Australia committed military

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<sup>26</sup> Bonnie S. Glaser, *Conflict in the South China Sea Contingency Planning Memorandum Update* (April 2015) Council on Foreign Relations < <http://www.cfr.org/asia-and-pacific/conflict-south-china-sea/p36377>>.



troops to a conflict that was of greater significance to America's interests than Australia.<sup>27</sup> Thus, continued commitment to the US-Australia alliance is beneficial, but the extent of this commitment should be revised.

In terms of trade and foreign investment, Australia is reliant on American imports of Elaborately Transformed Manufactures (ETMs), such as motor vehicles and aircraft parts, with American imports constituting 12% of total imports as Australia's second largest source of imported goods and services. Conversely, Australia exports a mixture of primary goods and Simple Transformed Manufactures (STMs) to America, making Australia America's fourth largest trading partner.<sup>28</sup> This relationship reflects the continued success of the AUSFTA, and highlights the vitality of trade relations between the two countries. America is also the world's largest economy, and provides opportunities for technological investment and innovation, which should always be of interest to Australia as a continuously modernising country. Considering America's wealth and resources, Australia should actively seek collaborative opportunities for the research and development of new technologies and medical and scientific innovation. Australia's CSIRO is a talented and commendable organisation through which these collaborations may be channelled. In particular, it is advisable for both Australia and America to devote more time and resources to mitigating climate change. America's volatile leadership and Australia's inconsistent history concerning climate change makes this difficult, but collaborative solutions could only further unite the two nations and benefit the global community. Although Australia's services of education and tourism are touted as future areas of focus and opportunities for Australia, America has many venerable and sophisticated universities which overall could be considered to be superior to Australia's education services. Hence, promoting Australian education services to America may not yield returns.

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<sup>27</sup> Marrickville Peace Group, Submission No 1 to Australian Government Department of Defence, *Questioning the Value of the Australia/US Alliance*, 2015, 3-4.

<sup>28</sup> Australian Government Department of Foreign Affairs and Trade, *United States Fact Sheet* (December 2015) <<http://dfat.gov.au/trade/resources/Documents/usa.pdf>>.

### III INDONESIA – LEVERAGING THE RELATIONSHIP

#### A Introduction

Indonesia is unquestionably one of Australia’s most important regional partners, and one of five ‘priority’ regional partners identified in the 2013 country-specific strategies for achieving the objectives of the Asian Century White Paper.<sup>29</sup> Over the next few decades, Indonesia is projected to rise from regional power to global influencer, driven by a remarkable economic ascendance – it is forecast to be the world’s 10<sup>th</sup> largest economy by 2025 with a GDP of more than US\$1 trillion,<sup>30</sup> underpinned by a burgeoning consumption-oriented middle class that will increase to 135 million by 2030;<sup>31</sup> and a young, dynamic population that is remarkably well-connected to global social media.

Australia’s existing, comprehensive relationship with Indonesia and geographical proximity thus presents an unparalleled opportunity. Australia’s resources, tourism, education and financial services industries are particularly well-placed to exploit Indonesia’s economic rise,<sup>32</sup> while opportunities in infrastructure and skills development will increasingly manifest as Indonesia’s economy addresses structural constraints to enable its transition.<sup>33</sup>

However, despite the healthy and expansive bilateral partnership subsisting between the two countries, the relationship remains fundamentally underutilised. To put this in perspective, Indonesia remains outside Australia’s top ten trading partners, and Australian foreign direct investment in Indonesia was just \$5.5 billion at the end of 2015, compared to \$60.5 billion in NZ, which has a vastly smaller population.<sup>34</sup> The window of opportunity for developing a closer, mutually-beneficial relationship is also closing, and the Australian Institute of International Affairs has argued that a failure to develop this relationship may not only represent a missed opportunity, but have broader detrimental impacts on Australia.<sup>35</sup>

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<sup>29</sup> Department of Foreign Affairs and Trade, *Asian Century Country Strategies*.

<sup>30</sup> Department of Foreign Affairs and Trade, *Indonesia Country Strategy: Australia in the Asian Century towards 2025* (2013), 2.

<sup>31</sup> *Ibid* 14.

<sup>32</sup> *Ibid* 4, 5, 8, 9, 12, 14, 17.

<sup>33</sup> *Ibid* 14.

<sup>34</sup> Peter Hartcher, ‘Trust between Indonesia and Australia Has Been Restored, says Jokowi’, *Sydney Morning Herald* (online), 19 February 2017 <<http://www.smh.com.au/world/trust-between-indonesia-and-australia-has-been-restored-says-jokowi-20161103-gsht4s.html>>.

<sup>35</sup> John McCarthy and Melissa Conley Tyler, *Shifts in Australia-Indonesia Relations* (19 February 2017) Australian Institute of International Affairs <[http://www.internationalaffairs.org.au/australian\\_outlook/shifts-in-australia-indonesia-relations/](http://www.internationalaffairs.org.au/australian_outlook/shifts-in-australia-indonesia-relations/)>.

## B *Strategies for Leveraging the Indonesia – Australia Relationship*

### 1. *The significance of ‘Indo – awareness’*

A pervading lack of ‘Indo-awareness’ in the Australian community remains the largest obstacle to increased cultural and economic ties with Indonesia. While Indonesia has developed from a regional leader to a global influencer, Australian perceptions have failed to adapt in reflecting these shifts. Old stereotypes of Australia as a rich country and Indonesia as a poor country have been unchanged by a shift in the relative importance of both economies.<sup>36</sup>

Indonesia’s Foreign Minister Retno Marsudi remarked that Australian media coverage of Indonesia tended to focus on three “B’s” – Bali, Beef and Boats,<sup>37</sup> while the Lowy Institute observed that the recent popularity of AAMI’s ‘Rhonda and Ketut’ commercials indicates a culturally-insular Australian community image of Indonesia.<sup>38</sup> Government and business stakeholders have also failed to appreciate these economic changes and the opportunities in both countries that might lend themselves to transnational business partnerships or more long-term relationships, which require a heightened sense of mutual cultural understanding to sustain and foster. ANU Associate Professor Greg Fealy notes a need for politicians who are informed about Indonesia ‘beyond the next deal’, and who view Indonesia as a country of opportunity.

The Australian Government’s current 2025 strategy places significant emphasis on updating community and business perceptions of Indonesia through people-to-people exchange and skills development, which arguably does address the most pressing inhibition to stronger Australian-Indonesian relations. Existing cultural programs such as the Australian Awards and institutions such as the Australian Indonesian Institute (AII) represent a concerted effort to change community perceptions and encourage more people-to-people interaction, so that more accurate and familiar cultural ties can be developed. DFAT’s New Colombo Plan also represents an excellent initiative

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<sup>36</sup> Ibid.

<sup>37</sup> Jewel Topsfield, ‘We Can’t Afford to Have Bad Relations with Australia: Indonesian Foreign Minister’, *Sydney Morning Herald* (online), 19 February 2017 <<http://www.smh.com.au/world/we-cant-afford-to-have-bad-relations-with-australia-indonesian-foreign-minister-20151015-gkale9.html>>.

<sup>38</sup> Greta Nabbs-Keller, *A Frank and Refreshing Assessment of Australia-Indonesia Relations* (19 February 2017) The Interpreter (The Lowy Institute) <<https://www.lowyinstitute.org/the-interpreter/frank-and-refreshing-assessment-australia-indonesia-relations>>.

aimed at developing cultural awareness -- of Indonesia within Australia, as part of a broader strategy to give priority to Indonesia in granting scholarships and study grants.<sup>39</sup>

There is also bipartisan support for addressing the decline in Indonesian literacy through exchange and language programs to enable development of Indonesian language skills.<sup>40</sup> These efforts will help to build stronger business and cultural relationships in two ways – first, changing existing cultural perceptions will help stakeholders in both countries better appreciate the transnational opportunities that currently exist and will increasingly become available; secondly, they will help people and businesses to develop the deeper cultural understandings and awareness that provide the foundation for deeper, long-term relationships that survive beyond initial transactions. In the long-term, stronger cultural awareness will help to initiate more collaborative business relationships; and support stronger growth in the currently underutilised Australia-Indonesia tourism and education industries.

## **2. *Business and Awareness Regulatory Form***

In addition to changing cultural perceptions, it remains imperative that both countries work towards putting each other on their respective domestic business radars. In recent years, Australia's economic spotlight has tended to be focussed on larger partners such as China and India, but a failure to focus similar attention on economic ties with Indonesia may lead us to rue a missed opportunity in the future.<sup>41</sup> Building this relationship is a priority for both -countries. President Widodo's November visit to Australia focussed on encouraging private business investment in Indonesia, where there are currently only 500 Australian firms.<sup>42</sup>

Part of the untapped potential also lies in Indonesia's economic trajectory which has meant that domestic firms have not been required to look abroad for growth opportunities. Concurrently, Australian firms have not always seen the opportunities available in Indonesia. The AIIA argues that as both countries shift from being primarily commodity exporters, there will be more opportunities for

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<sup>39</sup> Ibid 12.

<sup>40</sup> Ibid 4, 5, 8, 9.

<sup>41</sup> Ibid 14.

<sup>42</sup> Australian Associated Press, 'Indonesian President Jokowi Set to Visit Australia', *Special Broadcasting Service* (online), 19 February 2017 <<http://www.sbs.com.au/news/article/2017/02/10/indonesian-president-jokowi-set-visit-australia>>.

complementary economic ties, for example in education, health and financial services, areas in which Indonesia's rapidly growing 'consumer class' will increasingly experience higher demand.<sup>43</sup>

Furthermore, core to enabling these relationships is the continued commitment by both countries to build a regulatory and policy environment conducive to bilateral trade and investment. Legal infrastructure created by agreements such as the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA) and the proposed Indonesia-Australia Comprehensive Economic Partnership Agreement (IACEPA) provides the regulatory certainty and reduce trade barriers necessary for transnational business investment and partnerships. Australia's unusually low historical investment into Indonesia, despite its proximity and Indonesia's growing population and middle class, can partly be explained by the lack of such an infrastructure – including regulatory uncertainty, land acquisition difficulties, bureaucracy, lack of transparency, policies such as bans on raw mineral exports and an unreliable legal system.

However, there have been signs that recent regulatory efforts have had some impact. The Sydney Morning Herald recently reported that a group of Australian firms had been exploring the development of major infrastructure near Jakarta's international airport in a multi-billion dollar partnership with the provincial government – which could pave the way for increased Australian foreign investment in Indonesia.<sup>44</sup> Infrastructure development is a key economic priority for President Widodo,<sup>45</sup> as Indonesia's future economic prosperity is contingent on overcoming constraints associated with existing infrastructure. Plans for a proposed gas-fired power plant and seaport provide a good example of how the partnership could work in practice, as Australia has both an abundant supply of gas and world-class seaport building expertise. In fact, Australia-Indonesia Business Council (AIBC) President Debnath Guharov recently expressed a desire to see an Australian-led Special Economic Zone, which may not be an entirely impractical suggestion. China's 'Open Door Policy' was famously premised on creating a regulatory and policy environment highly-conducive to foreign trade and investment; and Australia's relevant expertise, proximity and existing ties place it in an ideal position to exploit such an opportunity. Any economic partnership will likely involve collaboration between public and private sector stakeholders in both countries.

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<sup>43</sup> Ibid.

<sup>44</sup> Jewel Topsfield, 'Australia Explores Investment in Indonesia Ahead of President Joko Widodo Visit', *Sydney Morning Herald* (online), 19 February 2017 <<http://www.smh.com.au/business/world-business/australia-explores-investment-in-indonesia-ahead-of-president-joko-widodo-visit-20161103-gsgzr0.html>>.

<sup>45</sup> Ibid.

### 3. *Adapting and Advancing Political Awareness*

Part of the problem with Australia's strategy with respect to Indonesia also lies in how political leaders have viewed Indonesia and approached management of the relationship and its occasional tensions. Consistent with theme of relationship underutilisation, governmental policy at the highest level has reflected an undervaluing of the relationship with Indonesia.

In November 2012, former Prime Minister Paul Keating argued that successive Australian governments has not fully appreciated Indonesia's strategic significance, noting that policy towards our largest neighbour has 'languished, lacking framework, judgments of magnitude and coherence.'<sup>46</sup> Ken Ward goes further, arguing that the heart of the problem with Australia-Indonesia relations is a failure of political communication.<sup>47</sup> He laments the 'clumsy' and 'tactless' handling of issues considered highly sensitive to Indonesia, and the irresponsible tendency of senior political figures to use the Indonesian relationship for partisan advantage. The Lowy Institute agreed, noting a similarity with the views of Fergus Hanson who argued that Australian governments had tended to treat Indonesia 'like a miscreant Pacific atoll rather than a country fundamental to Australia's future prosperity and stability.'<sup>48</sup> There is much force in Ward's argument, as bilateral relations have repeatedly suffered from partisan political statements that do nothing to advance the overall efficacy of the relationship. A broader appreciation of Indonesia's importance and its long-term value as an economic and diplomatic partner both globally and in the region, may also help to contextualise political actions when they relate to the relationship.

It is also worth noting the debate that exists over the frequent and arguably ongoing tensions implicit in Australia's relationship with Indonesia. While some, as Ward notes, view cultural differences as the main source of tensions between the countries, Indonesia's equally difficult relations with more culturally-proximate neighbours like Malaysia and Singapore suggest that this may not necessarily be the case. Instead, Ward argues that Indonesia's acute sensitivity about its sovereignty and territorial integrity are key causal factors behind its political differences with its neighbours. Dr Cameron Hill observes that these issues and events sometimes overwhelm formalised structures – debate over

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<sup>46</sup> Cameron Hill, 'Australia and Indonesia: From Good Neighbours to Strategic Partners?' (Research Paper, Parliamentary Library) <[http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BriefingBook44p/AustIndo\\_](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BriefingBook44p/AustIndo_)>

<sup>47</sup> Above n 10.

<sup>48</sup> Guest Blogger, *Explaining Australia's Indonesia Caution* (19 February 2017) The Interpreter (The Lowy Institute) <<https://www.lowyinstitute.org/the-interpreter/explaining-australias-indonesia-caution>>.

irregular maritime arrivals from Indonesia, live cattle exports, the ongoing conflict in Papua and consular issues consistently revive the negative and populist narratives in both countries – which he argues is demonstrative of the increasingly close and complex interconnections between domestic and foreign policy considerations in the two, very different societies.<sup>49</sup> Both Ward and Hill raise valid points – tensions between Australia and Indonesia cannot be easily diagnosed, nor can it be denied that the various incidents between the countries revive what appears to be a consistent sentiment of negativity and populism in both countries.

However, the better view perhaps begins with the acknowledgement that both countries understand the value of a long-term relationship. It is squarely in the interests of both countries to maintain their economic, cultural and diplomatic ties. Where tensions arise are in the unique interests and values of both countries, sourced significantly in cultural differences in areas from sovereignty to law and order. Engendering a better understanding of these differences, and how the relationship is likely to evolve is arguably the best strategy for managing the dynamic nature of the Australia-Indonesia relationship in the future. As Secretary of the Department of Defence Dennis Richardson argues for example, Australians - - must be alive to the diplomatic consequences of Indonesia's economic ascendance;<sup>50</sup> and politicians may need to adapt to this new reality to truly leverage the full benefits of the relationship.

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<sup>50</sup> Ibid.

# Economic Interests and Regional and Global Engagement

Recently, the Minister for Trade, Tourism and Investment Steven Ciobo described the TPP as “an agreement of unprecedented scope” that could underpin significant future economic growth,<sup>51</sup> the Trump Administration’s decision not to ratify the agreement<sup>52</sup> warrants a re-energised search for new significant trade associations. Although ratification of the TPP would deliver tangible economic benefits to Australia through comprehensive liberalisation of Pacific trade,<sup>53</sup> the departure of the United States of America coupled with the Japanese Government’s palpable scepticism of the TPP’s post-USA withdrawal net benefit<sup>54</sup> emphasises the need to consider new economic opportunities. In particular, this section analyses the significance of the following three factors as viable economic opportunities (excluding the TPP):

1. ASEAN and its correlative strategic measures.
2. The European Union and its surrounds.
3. The World Trade Organisation (WTO) as a conduit for improving trade liberalisation.

Clearly, recent events such as ‘Brexit’ and increased political momentum against regional trade structures, and the aforementioned shifting trade policy under the Trump Administration are indicative of the TPP’s failure to operate as a means to address uncertainty regarding the continued stability of existing political and trade structures relied upon by the West<sup>55</sup>.

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<sup>51</sup> Steven Ciobo, *Trans-Pacific Partnership* (27 January 2017) Minister for Trade, Tourism and Investment, <[http://trademinister.gov.au/releases/Pages/2017/sc\\_mr\\_170122.aspx](http://trademinister.gov.au/releases/Pages/2017/sc_mr_170122.aspx)>.

<sup>52</sup> Conor Duffy, ‘Donald Trump signs executive order withdrawing US from Trans-Pacific Partnership’, *ABC* (online), 24 January 2017, <<http://www.abc.net.au/news/2017-01-24/trump-withdraws-from-tpp/8206356>>.

<sup>53</sup> Mireya Solis, ‘The High Stakes of TPP Ratification: Implications for Asia-Pacific & Beyond’ (2016) 35 *2 Economy, Culture & History* 46.

<sup>54</sup> AAP, ‘TPP meaningless without the US: Japan’, *SBS* (online), 24 January 2017, <<http://www.sbs.com.au/news/article/2017/01/24/tpp-meaningless-without-us-japan>>.

<sup>55</sup> See ‘Pivot to Asia’ and the shifting focus to the Asia-Pacific of the United States’ strategic focus with respect to its foreign policy, namely, the development of Asia-Pacific norms and rules: US Congress, ‘Pivot to the Pacific? The Obama Administration’s “Rebalancing” Toward Asia’, (Report R42448, Congressional Research Service, 28 March 2012) <<http://www.fas.org/sgp/crs/natsec/R42448.pdf>>, 2-6.



**I. CONTEMPORARY DEVELOPMENTS: CONTEXTUALISING THE NEED FOR ECONOMIC ALTERNATIVES OTHER THAN THE TPP.**

**A. ASEAN 2025 Plan**

Originally conceived as a political and regional security pact to promote political, economic and social cooperation and regional stability in 1967,<sup>56</sup> the Association of Southeast Asia Nations (ASEAN) has evolved since its formation to adopt an ambitious economic agenda. The flagship of this economic agenda is the ASEAN Economic Community (AEC), which aims to produce a unified market and production base and transform ASEAN into a region with free movement of goods, services, investment, skilled labour and free flow of capital. This agreement was a significant milestone in a concerted process of regional integration premised on three pillars: The Political-Security Community, Economic Community and Socio-Cultural Community.

The AEC offers opportunities in the form of an integrated market of US\$2.6 trillion and over 622 million people, comprising the 3<sup>rd</sup> largest economy in Asia and the 7<sup>th</sup> largest in the world (based on 2014 figures).<sup>57</sup>

The AEC Blueprint 2025 was adopted by the ASEAN Leaders at the 27<sup>th</sup> ASEAN Summit on 22 November 2015 in Kuala Lumpur, Malaysia, and provides broad directions through strategic measures for the AEC from 2016-25, forming part of the ASEAN 2025 Plan.<sup>58</sup> The Blueprint is aimed towards achieving the vision of having an AEC by 2025 that achieves 5 interrelated aims:<sup>59</sup>

1. Economic integration and cohesion;
2. Market competitiveness and technological innovation;
3. Enhanced connectivity and cooperation;
4. People-oriented social awareness; and,
5. Greater global involvement of ASEAN.

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<sup>56</sup> Formed in 1967 by Indonesia, Malaysia, the Philippines, Singapore and Thailand, with 5 nations joining in following decades (Brunei in 1984, Vietnam in 1995, Laos and Burma in 1997, and Cambodia in 1999).

<sup>57</sup> Association of Southeast Asian Nations (ASEAN), *ASEAN Economic Community*, <<http://asean.org/asean-economic-community/>>.

<sup>58</sup> The 2025 Plan also includes policy and strategy in other areas of ASEAN's operation, including ASEAN Community Vision 2025, and the ASEAN Political-Security Community (APSC) Blueprint 2025 and the ASEAN Socio-Cultural Community (ASCC) Blueprint 2025, the AEC Blueprint 2025.

<sup>59</sup> ASEAN, *ASEAN Economic Community*, <<http://asean.org/asean-economic-community/>>.

While ASEAN has come a long way to achieving its goal of greater regional integration, progress is not uniform and there are still many obstacles to be overcome for progress to be maintained. The ASEAN Forum 2015 identified three themes which underlie the implementation of the AEC:<sup>60</sup>

- *Connectivity*; according to the Master Plan on ASEAN Connectivity, increased connectivity is said to promote economic growth, narrow development gaps, build the ASEAN Community, enhance the region's competitiveness, develop deeper social and cultural understanding, and promote greater interactivity between people. Speakers in this stream will address the physical, institutional and people-to-people aspects of connectivity within ASEAN and between ASEAN and other regions.
- *Mobility*; the means in which workers, students, businesses, tourists and others move across the borders of ASEAN countries, but also between ASEAN and other regions.
- *Trade*; a key goal of the AEC is to create a cohesive and competitive economic region with a single market and production base and equitable economic development that is integrated with the global economy. While some progress has been made towards achieving this target, namely, through tariff reduction, trade facilitation, and investment and services liberalisation, there are still many processes that need to be put in place to achieve this goal.

The AEC should not be considered in isolation; its formulation is related with wider 'mega-regionalism' initiatives of the TPP, RCEP and the proposed Free Trade Area of the Asia-Pacific (FTAAP).<sup>61</sup>

## B *ASEAN and Australia*

### 1. *Overview*

Over the last decade, Australia's economic and security interests have become inextricably linked with the countries of Southeast Asia, a region which, with a population of 620 million and combined GDP of around US\$2.5 trillion, remains an increasingly important partner for Australian trade and

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<sup>60</sup> ASEAN Forum 2015, <<http://sydney.edu.au/southeast-asia-centre/events/asean-forum-2015.shtml>> (2 October 2015).

<sup>61</sup> M Plummer, 'Making the ASEAN Economic Community a Reality' (Keynote Address to the ASEAN Forum 2015, Sydney, 2 October 2015).

investment such that in 2014, total trade with ASEAN countries amounted to over \$100 billion, more than with Japan, the European Union or the United States.<sup>62</sup>

In the DFAT 2003 White Paper, ASEAN was only considered with respect to regional and multilateral cooperation on security efforts,<sup>63</sup> and growing concern due to terrorist activity and the slow economic recovery from the Asian financial crisis from 1997 limiting the potential trade and economic opportunities for Australia.<sup>64</sup> The main focus on free trade agreements centred mainly around WTO-mediated multilateral talks such as APEC to boost regional integration,<sup>65</sup> and a bilateral agreement with the United States.<sup>66</sup>

Australia's relationship with ASEAN is longstanding, as its first dialogue partner in 1974 and the formation of a Strategic Partnership with potential for greater engagement at the 40<sup>th</sup> Anniversary Commemorative Summit in November 2014.

In the half century of this working relationship, Australia has been an active participant in multilateral processes and has demonstrated a firm commitment to the region in the past decades.<sup>67</sup>

Despite a mismatch of approaches in terms of politics, economics and cultures, Australia and ASEAN share the same aspirations for stability, cooperation and prosperity, and, as such, the relationship should not be overlooked in assessing the trade and economic opportunities that Southeast Asia offers to Australia.<sup>68</sup>

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<sup>62</sup> DFAT, Association of Southeast Asian Nations (ASEAN), <<http://dfat.gov.au/international-relations/regional-architecture/asean/Pages/association-of-southeast-asian-nations-asean.aspx>>; see also DFAT, 'ASEAN-10' (Factsheet, 2016).

<sup>63</sup> DFAT, *Advancing the National Interest: Australia's Foreign and Trade Policy White Paper* (2003) 23, 40-1.

<sup>64</sup> *Ibid*, 82-5.

<sup>65</sup> *Ibid*, 63-5.

<sup>66</sup> *Ibid*, 61-2.

<sup>67</sup> For a historical overview of Australian economic relations with ASEAN since 1974: see J Okamoto, 'Australia's Economic Relations with ASEAN: Learning to Deal with the Evolving Organization' in SP Wood and B He (eds), *The Australia-ASEAN Dialogue - Tracing 40 Years of Partnership* (Palgrave Macmillan 2014) 127-40.

<sup>68</sup> SP Wood, 'The Australia-ASEAN Dialogue Partnership at 40: Past Dilemmas and Future Prospects' (Keynote Address to the ASEAN Forum 2014, Sydney, 12 September 2014), <<http://sydney.edu.au/southeast-asia-centre/events/asean-forum-2014.shtml>>.

## 2. *ASEAN-Australia-New Zealand FTA (AANZFTA)*

This relationship is currently underpinned by the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) which entered into force in January 2010, and was Australia's first multilateral FTA, the negotiation of which involved joint cooperation with New Zealand.<sup>69</sup>

The FTA is on the most comprehensive to date in the Asia-Pacific, with key features including:<sup>70</sup>

- Extensive tariff reduction and elimination commitments;
- Regional rules of origin to provide opportunities for Australian exporters to tap into international supply chains;
- Promotion of greater certainty for Australian service suppliers and investors, including through certain legal protections for investment in ASEAN territories;
- Provision of a platform for ongoing economic engagement with ASEAN through a range of built-in agendas, economic cooperation projects and business outreach activities;
- Appropriate consideration of the level of economic development of ASEAN members in differential time frames for the implementation of certain FTA commitments; and,
- Greater integration with existing FTAs between Australia and ASEAN members, namely, with Singapore,<sup>71</sup> Thailand,<sup>72</sup> and Malaysia.<sup>73</sup>

In August 2015, the Minister for Trade and Investment, Andrew Robb, launched 'Why ASEAN and Why Now?' a joint DFAT-Austrade publication designed to provide practical insights on doing business in ASEAN and how to use regional free trade agreements to the Australian business community.<sup>74</sup>

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<sup>69</sup> *Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area*, signed 27 February 2009, [2010] ATS 1 (entered into force 1 January 2010) (AANZFTA).

<sup>70</sup> DFAT, *ASEAN-Australia-New Zealand Free Trade Agreement* <<http://dfat.gov.au/trade/agreements/aanzfta/Pages/asean-australia-new-zealand-free-trade-agreement.aspx>>; DFAT, *The ASEAN-Australia-New Zealand Free Trade Agreement* <<http://dfat.gov.au/trade/agreements/aanzfta/Pages/the-asean-australia-new-zealand-free-trade-agreement.aspx>>; *ibid*.

<sup>71</sup> *Singapore-Australia Free Trade Agreement*, signed 17 February 2003, [2003] ATS 16 (entered into force 28 July 2003).

<sup>72</sup> *Australia-Thailand Free Trade Agreement*, signed 5 July 2004, [2005] ATS 2 (entered into force 1 January 2005).

<sup>73</sup> *Malaysia-Australia Free Trade Agreement*, signed 22 May 2012, [2013] ATS 4 (entered into force 1 January 2013).

<sup>74</sup> DFAT and Austrade, 'Why ASEAN and Why Now? Insights for Australian Business - A Joint Austrade and DFAT Publication' (2015).

With the declaration of the AEC and the ASEAN 2025 Plan, it is clear that Southeast Asia is a region that offers significant trade and economic opportunities for Australia.

## II. MOVING FORWARD: AUSTRALIAN OPPORTUNITIES VIS-À-VIS ASEAN

### A. *ASEAN and China, and Australia: RCEP*

Professor Ba's keynote speech to the ASEAN Forum 2016<sup>75</sup> acknowledged that China, as an emerging political superpower with a large population, rapid economic growth and increased military spending, poses both an opportunity and a concern for Australia as we move forward in this coming decade. At the same time, the movement of ASEAN nations towards greater economic integration in the form of the AEC compounds the importance of Southeast Asia, as a region that already finds itself at the intersection of United States security, economic and political arrangements and emerging Chinese ones - namely, China's Silk Road Economic Belt and 21<sup>st</sup>-Century Maritime Silk Road strategies which seek to promote the connectivity of Asian, European and African continents and adjacent seas, and of which ASEAN's maritime ports stand to greatly benefit.<sup>76</sup>

Although the economic relationship between ASEAN and China have been formalised through series of agreements dating back to 2002,<sup>77</sup> geopolitical tensions have also arisen between China and a number of Southeast Asia states due to competing territorial claims for islands in the South China Sea. Although this section does not seek to focus upon Australian strategic defence and security interests in the region, we submit that it is a factor that greatly informs the regional context of our trade and economic policy in the Asia-Pacific.

In this section, we note the continuing progress of negotiations since 2012 in relation to the Regional Comprehensive Economic Partnership (RCEP), involving the 10 ASEAN nations and other economies with existing FTAs with ASEAN - Australia, China, India, Japan, South Korea and New Zealand,<sup>78</sup> in its potential as an alternative to the TPP. In focusing on the trade and economic

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<sup>75</sup> A Ba, 'Where China Meets Southeast Asia' (Keynote Address to the ASEAN Forum 2016, Sydney, 6 October 2016), <<https://sydney.edu.au/southeast-asia-centre/events/asean-forum-home>>.

<sup>76</sup> See also M Crosby, 'China's Rise and Its Impact on South East Asian Businesses' in P Verhezen, I Williamson, M Crosby and N Soebagjo (eds), *Doing Business in ASEAN Markets - Leadership Challenges and Governance Solutions across Asian Borders* (2016) 65-71.

<sup>77</sup> ASEAN, *ASEAN-China Free Trade Agreements*, <[http://asean.org/?static\\_post=asean-china-free-trade-area-2](http://asean.org/?static_post=asean-china-free-trade-area-2)>.

<sup>78</sup> DFAT, *Regional Comprehensive Economic Partnership*, <<http://dfat.gov.au/trade/agreements/rcep/Pages/regional-comprehensive-economic-partnership.aspx>>.

opportunities Australia has vis-à-vis ASEAN, we hope that this section will complement considerations in relation, but also in addition, to Australia's involvement in RCEP negotiations - that is, Australia's interests in ASEAN should not be considered mutually excluded by nor mutually exclusive to RCEP.

## B. *Towards the AEC and beyond*

### 1. *Development of the AEC*

A regional approach to economic integration in Southeast Asia was first initiated with the proposal for an ASEAN FTA in 1992 between ASEAN member states, though this was stalled by the Asian financial crisis of 1997-8.<sup>79</sup>

It took over a decade before the establishment of the AEC as a step to deepen economic integration was resolved during the ASEAN Summit in 2003, with a Framework Agreement signed in 2004.<sup>80</sup> In 2007, this was shortened to 2015.<sup>81</sup>

The AEC is based on four 'pillars':

- single market and production base;
- competitive economic region;
- equitable economic development; and
- integration into the global economy

As a single market and production base with free movement of goods, services, investment, skilled labour and freer flow of capital,<sup>82</sup> these commit ASEAN to work toward maintaining 'ASEAN Centrality' in its external economic relations, including, but not limited to, its negotiations for FTAs and comprehensive economic partnerships. Each pillar is defined by detailed implementation objectives, timelines, and action points.<sup>83</sup>

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<sup>79</sup> S Basu Das, R Sen and S Srivastava, 'Can ASEAN+1 FTAs Be a Pathway towards Negotiating and Designing the Regional Comprehensive Economic Partnership (RCEP) Agreement?' (2016) 50 *Journal of World Trade* 253, 254.

<sup>80</sup> MS Austria, 'Moving Towards and ASEAN Economic Community' (2012) 29 *East Asia* 141, 141-2.

<sup>81</sup> J Dosch, 'The ASEAN Economic Community: What Stands in the Way?' (Asia Pacific Issues Analysis No 119, East-West Centre, September 2015) 2.

<sup>82</sup> Austria, above n 91, 141-2.

<sup>83</sup> Dosch, above n 92, 2.

## 2. *AEC Blueprint 2025*

In the AEC Blueprint 2025, the AEC's aspirational aims were outlined to involve the following objectives:<sup>84</sup>

- i. Create a deeply integrated and highly cohesive ASEAN economy that would support sustained high economic growth and resilience even in the face of global economic shocks and volatilities;
- ii. Engender a more equitable and inclusive economic growth in ASEAN that narrows the development gap, eliminates if not reduces poverty significantly, sustains high growth rates of per capita income, and maintains a rising middle class;
- iii. Foster robust productivity growth through innovation, technology and human resource development, and intensified regional research and development that is designed for commercial application to increase ASEAN's competitive edge in moving the region up the global value chains (GVCs) into higher technology and knowledge-intensive manufacturing and services industries;
- iv. Promote the principles of good governance, transparency, and responsive regulatory regimes through active engagement with the private sector, community-based organisations, and other stakeholders of ASEAN;
- v. Widen ASEAN people-to-people, institutional, and infrastructure connectivity through ASEAN and sub-regional cooperation projects that facilitate movement of capital as well as skilled labour and talents;
- vi. Create a more dynamic and resilient ASEAN, capable of responding and adjusting to emerging challenges through robust national and regional mechanisms that address food and energy security issues, natural disasters, economic shocks, and other emerging trade-related issues as well as global mega trends;
- vii. Incorporate a sustainable growth agenda that promotes a science-based use of, and support for, green technology and energy;

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<sup>84</sup> ASEAN, 'ASEAN Economic Community: Blueprint 2025' (2015) ('AEC Blueprint 2025') 2 [6]; see also ASEAN, 'A Blueprint for Growth - ASEAN Economic Community 2015: Progress and Key Achievements' (2015).

viii. Promote the use of the ASEAN Protocol on Enhanced Dispute Settlement Mechanism (EDSM) and develop other approaches to speed up economic dispute resolution;

ix. Reinforce ASEAN centrality in the emerging regional economic architecture by maintaining ASEAN's role as the centre and facilitator of economic integration in the East Asian region; and

x. Work towards a common position and enhance ASEAN's role and voice in global economic fora.

The Blueprint also outlines prospective competition and innovation measures, and enhanced connectivity and cooperation within and between ASEAN member states.

The former initiative includes the areas of:

- competition policy;
- consumer protection;
- intellectual property;
- research and development, technology commercialisation, and innovation;
- taxation;
- financial governance and regulation;
- and,
- environmental sustainability.

The latter initiative includes the areas of

- transport;
- information and communications technology;
- e-commerce;
- energy;
- food, agriculture and forestry;
- tourism;
- healthcare;
- minerals; and,
- science and technology



ASEAN strategic measures in relation to greater regional and international integration include:<sup>85</sup>

- i. Develop a more strategic and coherent approach towards external economic relations with a view to adopting a common position in regional and global economic fora;
- ii. Continue to review and improve ASEAN FTAs and CEPs to ensure that they remain modern, comprehensive, of high-quality and more responsive to the needs of businesses operating the production networks in ASEAN;
- iii. Enhance economic partnerships with non-FTA Dialogue Partners by upgrading and strengthening trade and investment work programmes/plans;
- iv. Engage with regional and global partners to explore strategic engagement to pursue economic partnerships with emerging economies and/or regional groupings that share the same values and principles on improving the lives of their people through economic integration;
- v. Continue strongly supporting the multilateral trading system and actively participating in regional fora; and
- vi. Continue to promote engagement with global and regional institutions.

### 3. *Implementation of the AEC.*

ASEAN's 10 economies vary substantially in population, per capita income and economic structure. Their performance has been somewhat uneven, but strong on average; the region has grown at an annual rate of 5 percent over the past two decades, despite two major financial crises - the Asian financial crisis of 1997-8, and financial crisis of 2007-8.<sup>86</sup> Over the past two decades, the region's exports and imports have shifted from natural-resource-intensive goods to electronics and other relatively sophisticated manufactures. Manufacturing exports account for almost three-quarters of total ASEAN exports (up from less than two-thirds in 1990), and machinery and transport equipment constitute almost half of both exports and imports.<sup>87</sup>

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<sup>85</sup> ASEAN, 'AEC Blueprint 2025', 35-6 [79]-[80].

<sup>86</sup> PA Petri, MG Plummer and F Zhai, 'ASEAN Economic Community: A General Equilibrium Analysis' (2012) 26 *Asian Economic Journal* 93, 95.

<sup>87</sup> *Ibid*, 97.

ASEAN economies have relied on outward-oriented trade and investment strategies. Their policies have focused on macroeconomic stability, trade liberalisation, infrastructure investments in ports and roads, human capital development and support for technology.<sup>88</sup>

Consideration of the trade policy environment suggests that:<sup>89</sup>

1. Protection is relatively high in agriculture and beverage products relative to manufactures (with the exception of chemicals, transport equipment and clothing for some countries).
2. Protection is reasonably symmetric otherwise; in any given country, tariffs are similar across most commodity categories. This limits distortion effects.
3. Protection tends to fall with income. The region's wealthiest economies (Singapore and Brunei) have essentially free-trade regimes; those with intermediate incomes (Indonesia, Malaysia, the Philippines and Thailand) have mostly low tariffs; and its low-income economies (Cambodia, Laos and Vietnam) have relatively high tariffs. (Myanmar is an anomaly with low tariffs.)

Petri, Plummer and Zhai assess that real incomes of ASEAN economies could rise by 5.3 percent. Most of these benefits would result from the deeper integration effects of the AEC; that is, from initiatives that go beyond the full elimination of intra-regional tariffs. The benefits could be still larger if, as expected, regional integration enhances ASEAN's clout and enables it to negotiate attractive agreements with major trade partners. These effects could more than double the gains to 11.6 percent of income. Somewhat more than half of the additional gains would come from deeper FTAs with neighbouring nations.<sup>90</sup>

Despite these promising projections, the AEC reflects a hesitant pattern of regional collaboration towards 'shallow integration' based mainly on political motives and not economic factors.<sup>91</sup> Dosch argues that the main hurdle in the process of implementing the AEC is the mismatch between political ambitions, and the capabilities of several ASEAN member states to follow through on the former. Given the regional integration process in Southeast Asia often involving a gap between ambitious political goals (the visions for economic integration as prominently spelled out in the AEC Blueprint and also the ASEAN Charter) and the realities of substantial development gaps, nationalism, and the

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<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

<sup>90</sup> Ibid, 115.

<sup>91</sup> Dosch, 'above n 92, 3.

prevalence of vested interests, there has been a shift towards extra regional trade agreements by ASEAN member states.<sup>92</sup>

More broadly, ASEAN's approach to economic integration may be characterised in three layers- (1) development of the AEC, (2) signing of ASEAN+1 FTAs, and (3) negotiation and conclusion of FTAs between ASEAN's external FTA partners with individual ASEAN member states.<sup>93</sup> Rationales behind greater economic integration amongst ASEAN nations may be placed on the pressure to remain competitive, particularly in relation to the manufacturing sector in China and the business process outsourcing industries in India; the growing expansion of bilateralism and regionalism; and recognition of the ASEAN's role as the integration hub for FTA activities in East Asia.<sup>94</sup> The TPP and RCEP negotiations also complemented these developments as a fourth, overarching layer of integration which sought to tie the region in an umbrella agreement. With the likely lapsing of the TPP, it is clear that more focus should be directed at the third layer.

The strategy of pursuing trading arrangements among selected number of parties, such as bilateral and regional FTAs, instead of the multilateral trade liberalisation process facilitated by the World Trade Organisation are guided by two considerations - (1) the near stagnation of multilateral trade talks necessitating alternative options for trade liberalisation through bilateral or regional initiatives, and (2) multiple purposes of such a strategy in coupling not only economic ends but also diplomatic and security ones.<sup>95</sup> In addition to merchandise trade liberalisation, these agreements also relate to services and investment sector liberalisation and other facilitation measures such as standards, safeguard provisions, customs administration, and domestic regulations areas of competition policy, government procurement, environment - and labour, education and other economic cooperation under the umbrella framework of a comprehensive economic partnership agreement, such as RCEP.<sup>96</sup>

Published concurrently with the formal announcement of the AEC, DFAT and Austrade noted trade and economic opportunities in ASEAN, namely, its regional economic architecture of bilateral FTAs and ongoing RCEP negotiations, growth of the services sector, development of regional supply

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<sup>92</sup> Ibid; see also DM Jones, 'ASEAN's Imitation Economic Community: The Primacy of Domestic Political Economy' in B Jetin and M Mikic (eds), *ASEAN Economic Community - A Model for Asia-wide Regional Integration?* (Palgrave Macmillan, 2016) 11-28, L Jones, 'Explaining the Failure of the ASEAN Economic Community: The Primacy of the Domestic Political Economy (2016) 29 *The Pacific Review* 647.

<sup>93</sup> D Kleimann, 'Beyond Market Access? The Anatomy of ASEAN's Preferential Trade Agreements' (2014) 48 *Journal of World Trade* 629, 630.

<sup>94</sup> Austria, above n 91, 142-4; Basu Das, Sen and Srivastava, above n 90, 254.

<sup>95</sup> Ibid, 255-6.

<sup>96</sup> Ibid.

chains, status as an emerging FDI destination, commitment to infrastructure development and connectivity, productivity gains through education and training.<sup>97</sup> It was further noted:<sup>98</sup>

While the declaration of the AEC in late 2015 will not represent complete economic integration for the region, it will be an important milestone and an opportunity to benchmark progress against the AEC framework. The strategic and economic imperatives for integration mean that overall, there is strong political and business will continue the integration process beyond 2015, even if it is uneven and faces opposition in some of the more challenging sectors. Indeed, business is already driving economic integration in the region, taking advantage of existing opportunities and often pressing governments to make further progress in some areas.

Australia's trade and economic opportunities with ASEAN in light of the AEC's continuing implementation may be considered from two perspectives - (1) a domestic private sector, and (2) international, intergovernmental approaches.

#### **4. Domestic, private sector approach.**

Austrade and DFAT reiterated that the next steps for domestic businesses as long-term approaches involving adapting Australian standards and approaches to local ASEAN markets.<sup>99</sup>

In addition to intergovernmental agreements discussed below, opportunities for Australian businesses include areas of information and communications technology,<sup>100</sup> financial services,<sup>101</sup> and participation in regional value chains with potential benefits in productivity.<sup>102</sup>

On a more long-term basis, direct investment, and infrastructure development and connectivity in ASEAN member states,<sup>103</sup> in addition to provision of education and training, scholarship schemes such as the New Colombo Plan for domestic students to study overseas and educational pathways for

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<sup>97</sup> DFAT and Austrade, 'Why ASEAN and Why Now? Insights for Australian Business - A Joint Austrade and DFAT Publication' (2015) 10-11, 13.

<sup>98</sup> Ibid, 30.

<sup>99</sup> Ibid, 15.

<sup>100</sup> Ibid, 40-1.

<sup>101</sup> Ibid, 42-3.

<sup>102</sup> Ibid, 47-50.

<sup>103</sup> Ibid, 57, 62.

overseas students from ASEAN nations,<sup>104</sup> were identified as providing significant opportunities for both the Australian public and private sectors.

##### **5. *International, intergovernmental approach.***

DFAT and Austrade identified as four options for complementing the AEC on an intergovernmental basis, including continued amendments and negotiation of Optional Protocols to the AANZFTA, negotiation and implementation of further bilateral FTAs, RCEP and the TPP.<sup>105</sup>

Given the lapsing of the TPP and continuing negotiations on the RCEP likely to extend for a considerable time, and considering the practical limitations on developing comprehensive regional agreements, the first two options are perhaps the most pragmatic.

Of note is the potential utility of AANZFTA as a model for prospective bilateral FTAs with ASEAN member states, particularly in areas of agreement that are comprehensive in scope than other ASEAN+1 FTAs - tariff reduction in trade of goods, trade facilitation, and cross-border investments.

Tariff reduction and coverage of goods AANZFTA is by far the most comprehensive among the ASEAN+1 FTAs in terms of TIG provisions. The agreement stated that 90% of tariffs were eliminated upon effect in 2010. An additional 6%, which covers predominantly agricultural commodities, will be eliminated by 2020. The remaining goods are excluded from tariff. Australia has excluded cars and car parts and Indonesia has excluded sugar from tariff. Textiles, clothing and leather goods have long transition periods in the case of Australia and New Zealand. Under the AANZFTA, dairy products have a transition period of ten years. Cambodia, Laos, Myanmar and Indonesia have transition periods of up to 2025.<sup>106</sup>

In relation to trade facilitation of customs procedures, customs valuation, trade regulations publication and administration and use of information and communications technology, AANZFTA is also the most comprehensive of the ASEAN+1 FTAs<sup>107</sup>

With respect to investment, AANZFTA is comparatively liberal (when considered with the ASEAN Comprehensive Investment Agreement, ASEAN-China FTA and ASEAN-South Korea FTA) allows for rights of establishment, repatriation of capital and profits, national treatment to entry and

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<sup>104</sup> Ibid, 69; see also A Welch, 'Richer Relations? Four Decades of ASEAN-Australia Relations in Higher Education' in SP Wood and B He (eds), *The Australia-ASEAN Dialogue - Tracing 40 Years of Partnership* (Palgrave Macmillan 2014) 144-61.

<sup>105</sup> DFAT and Austrade, above n 108, 33-6.

<sup>106</sup> Basu Das, Sen and Srivastava, above n 90, 264-5.

<sup>107</sup> Ibid, 268-9.

establishment rights, prohibition of performance requirements, compensation of foreign investors in event of expropriation, facilitation of investment, investor protection, investor-state dispute settlement.<sup>108</sup>

C. *Recommendations*

In considering both the official ASEAN strategy and observations on its implementation, we seek to submit the following two recommendations as relevant in furthering Australia's and ASEAN's mutual interests, and capitalising upon trade and economic opportunities within the Southeast Asian region:

1. **Heads of focus identified by the AEC Blueprint 2025's competition and innovation measures, and enhanced connectivity and cooperation strategy are areas in which Australia should encourage greater private sector engagement, particularly in industries and markets in which Australia possesses comparative advantages in trade vis-à-vis ASEAN member nations, and in light of ASEAN's interest in continued regional and international integration. As such, the 2015 DFAT-Austrade publication relating to business opportunities in ASEAN should be both reinterpreted in light of the AEC and inform further intergovernmental interaction between Australia and ASEAN member states.**
2. **Australia should complement the AEC Blueprint 2025's measures relating to greater regional and international integration (particularly (i), (ii), (iv) and (v)) in line with the economic cooperation objectives relating to AANZFTA and regional economic integration under DFAT's 2015 Plan of Action to Implement the ASEAN-Australia Strategic Partnership.<sup>109</sup> Namely, Australia should pursue further bilateral FTAs with ASEAN nations, striving for greater economic integration with ASEAN nations, both in light, and in lieu, of the continuing negotiations for RCEP.**

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<sup>108</sup> Ibid, 271-2.

<sup>109</sup> DFAT, 'Plan of Action to Implement the ASEAN-Australia Strategic Partnership' (2015) 5-6 [2.1]- [2.2].

### III. THE EUROPEAN UNION AND UNITED KINGDOM: POTENTIAL ECONOMIC SAFE HAVENS.

Currently, trade between Australia and the European Union operates under the bilateral EU-Australia Partnership Agreement of 2008 ('the Agreement').<sup>110</sup> In 2015, the European Union imported \$13.44 billion of Australian goods, and exported \$43.5 billion worth of goods,<sup>111</sup> which, when compared to Australia's Gross Domestic Product of \$1.56 trillion dollars,<sup>112</sup> highlights a mutually beneficial trade partnership and the potential for increased trade. Prime Minister, Malcolm Turnbull, as well as the President of the European Commission Jean-Claude Juncker, and the President of the European Council Donald Tusk, recognise the potential economic benefits of increasing trade between the European bloc and Australia, emphasising through a joint 2015 statement their wish to "launch negotiations for a Free Trade Agreement ('FTA')".<sup>113</sup>

It would be advantageous to deepen scoping and negotiation for a Euro-Australian FTA. A complete agreement tailored to Australia's competitive advantages, such as commodities and educational services,<sup>114</sup> both of which are in high demand in the EU,<sup>115</sup> would provide Australian businesses comprehensive access to 500 million European consumers,<sup>116</sup> whilst deepening EU direct investment in Australia and cheapening European goods and services for Australians. European leaders have expressed an interest in a high-quality and thorough Euro-Australian FTA,<sup>117</sup> demonstrating the diplomatic feasibility of commencing negotiation. Further, the cultural, economic and value similarities between the EU and Australia would facilitate full trade liberalisation due to a low psychic distance.<sup>118</sup> While the United Kingdom's vote to leave the European Union has undermined political stability in the EU and highlighted a growing protectionist ideology, and the member states of Greece

<sup>110</sup> DFAT, *European Union Partnership Framework* (2017) <<http://dfat.gov.au/geo/europe/european-union/Pages/australia-european-union-eu-partnership-framework.aspx>>.

<sup>111</sup> European Commission, *Australia* (2017) <<http://ec.europa.eu/trade/policy/countries-and-regions/countries/australia/>>

<sup>112</sup> The World Bank, *Australia* (2017) <<http://data.worldbank.org/country/australia>>.

<sup>113</sup> European Commission, *Statement of the President of the European Commission Jean-Claude Juncker, the President of the European Council Donald Tusk and the Prime Minister of Australia Malcolm Turnbull* (2015) <[http://europa.eu/rapid/press-release\\_STATEMENT-15-6088\\_en.htm](http://europa.eu/rapid/press-release_STATEMENT-15-6088_en.htm)>.

<sup>114</sup> John Roberts and Chris Styles, 'Australia's Competitive Advantage: Gaining the Marketing Edge' (2001) 26 *Australian Journal of Management* 105.

<sup>115</sup> Roger Skirrow, David Huston, Terrence Mernagh, Jane Thorne, Helen Dulfer and Anthony Senior, *Critical commodities for a high-tech world* (Geoscience Australia, 1<sup>st</sup> ed., 2013).

<sup>116</sup> European Commission, *EU position in world trade* (2014) <<http://ec.europa.eu/trade/policy/eu-position-in-world-trade/>>.

<sup>117</sup> European Commission, above n 124.

<sup>118</sup> Andrea Benvenuti and Philamena Murray, *EU-Australia Relations* (Palgrave Macmillan, 2013).

and Italy present financial risk and burden, the collective hub of European states presents a reliable supply of trade opportunities of which Australia can benefit.

The United Kingdom's vote to leave the European Union ("Brexit") created domestic volatility and economic uncertainty, with effects including the UK's credit rating reduction and the erosion in the exchange value of the British pound.<sup>119</sup>

It is an option that Australia capitalise on the economic consequences Brexit and strengthen economic diplomacy with the UK through a free trade agreement. However, the success of negotiation on such an agreement will be dependent on the impact of a number of factors, including the timing of Prime Minister Theresa May's formal notice of the invocation of Article 50 of the Treaty of the European Union, when trade policy between the UK and the EU is finalised, and the UK's general negotiating stance and position during and post withdrawal from the European Union.

It should be considered that the UK may not be best positioned to commence negotiation with Australia due to preoccupation with EU negotiations.<sup>120</sup> Further, the economic benefits to Australia through a free trade agreement are likely to have diminished due to the forecasted reduction of the United Kingdom's purchasing power.<sup>121</sup>

Whilst commencement of free trade agreement negotiation between the UK and Australia may be viable and advantageous in the future, it should not be a priority for the Australian Government until more economic certainty for the UK can be ascertained, and may present strong trade opportunities in tens of years of time.

One appropriate roadmap to protect Australia's interests is to support new multilateral trade structures with relatively stable and prosperous economic entities. In the short term, Australia should heighten negotiations with the European Union for a free trade agreement. In the long term, the Australian Government would be prudent to also consider its options for a potential free trade agreement with the United Kingdom to maximise national prosperity.

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<sup>119</sup> BBC, 'Ratings agencies downgrade UK credit rating after Brexit vote', *BBC* (online), 27 June 2016, <<http://www.bbc.com/news/business-36644934>>.

<sup>120</sup> Robyn Munro, *Negotiating Brexit Briefing Paper* (Institute for Government UK, 1<sup>st</sup> ed., 2016).

<sup>121</sup> Zlata Rodionova, 'UK GDP growth slows to 0.5% following Brexit', *Independent* (online) <<http://www.independent.co.uk/news/business/news/uk-gdp-brexit-growth-drop-fall-economy-eu-referendum-a7382556.html>>.



### III. WTO: FACILITATING TRADE AND BUILDING INFRASTRUCTURE.

The Australian Joint Standing Committee on Foreign Affairs, Defence and Trade has validated that trade facilitation activities are of growing importance to APEC member economies, and vital for improving Australia's international competitiveness.<sup>122</sup> With the potential for global trade costs to drop by 10.5% and subsequently Australia trade costs reduced by 1.4%,<sup>123</sup> Australia must commit as a leader in the WTO Trade Facilitation Agreement, for subsequent regional and bilateral agreements to follow and gain the advantages of the agreement.

World trade growth in 2016 has had the weakest performance since the crisis year of 2009,<sup>124</sup> which creates urgency to advocate for the Trade Facilitation Agreement's potential to reverse these trends. Australia's priority, as a nation dedicated to reducing trade costs for Australian exporters, should be to encourage other WTO Member countries with the ratification and implementation of this agreement. However, the estimated potential cost reduction for Australia, if countries reach mandatory obligations of the Trade Facilitation Agreement is 10.4% compared to a 'full' implementation is 11.8%.<sup>125</sup>

This statistical difference should be an incentive for Australia to explore greater avenues of garnering support, additional to the Trade Facilitation Support Program, such as supporting developing countries. There has been global recognition that many countries lack financial resources towards, institution changes, training staff, equipment and infrastructure,<sup>126</sup> all of which has not been addressed by the Trade Facilitation Support Program. Australia assisting to facilitate infrastructure development that aligns with the policies under the World Trade Agreement as well as continuing to support the World Bank with funding will encourage developing nations to extend its commitment

<sup>122</sup> The Australian Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Inquiry into Australia's Trade and Investment Relations with Asia, the Pacific and Latin America* (2011) 17-39

<sup>123</sup> Lawrence Speer, 'Global Trade Costs could drop dramatically if countries implement WTO Trade Facilitation Agreement, WTO says', (Media Release, 4 June 2015) <<http://www.oecd.org/newsroom/global-trade-costs-could-drop-dramatically-if-countries-implement-wto-trade-facilitation-agreement.htm>>

<sup>124</sup> Mark Thirlwell, 'Australia's export performance in 2014-15' (Media Release, 22 December 2015) <<http://www.austrade.gov.au/news/economic-analysis/australias-export-performance-in-2014-15>>

<sup>125</sup> Trade and Agriculture Directorate, *Implementation of the WTO Trade Facilitation Agreement: The Potential Impact on Trade Costs* (June 2015) The Organization for Economic Cooperation & Development <[http://www.oecd.org/tad/tradedev/WTO-TF-Implementation-Policy-Brief\\_EN\\_2015\\_06.pdf](http://www.oecd.org/tad/tradedev/WTO-TF-Implementation-Policy-Brief_EN_2015_06.pdf)>

<sup>126</sup> World Trade Organisation, *Aid For Trade at a Glance 2015: Reducing Trade Costs for Inclusive Sustainable Growth* (2015) the Organization for Economic Cooperation & Development, 109-132 <[https://www.wto.org/english/res\\_e/booksp\\_e/aid4trade15\\_chap4\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/aid4trade15_chap4_e.pdf)>

and actions to support the World Trade Agreement. Additionally, frequent participation in discussion with other nations would unite all nations with the purpose of regional and international efficacy, through providing evidence of similar success case stories. A consistent, international political base, supported with evidence that the benefits outweigh the cost, will result in the long-term implementation of these trade policies that will reduce global trade costs.

Currently, Australia is not meeting the demand for its infrastructure requirements, with its rank in quality of overall Infrastructure reduced from 37 to 35 between 2014-15.<sup>127</sup> This inability to meet demand is further exemplified through the statement published in the statement Australian Infrastructure Audit Report that inadequate attention is placed on the level and prices of service Australians need and expects from their infrastructure.<sup>128</sup>

With Australia's population growth increasing the demand for infrastructure services, Australia must prioritise establishing infrastructures to support global value chains, to assist development with the Australian Infrastructure Plan.

According to the World Trade Organisation's assessment of Australia trade, 43.6% of total gross exports are involved in global value chain participation in 2011.<sup>129</sup> Furthermore 29% of respondents in the 2016 business survey also participate in global value chains (GVCs), and are split between businesses that act as suppliers to a lead firm in a GVC, those that were themselves the lead firm, and those that described themselves as a vertically integrated firm running production activities across multiple geographies.<sup>130</sup> Evidently, internationalising production networks serves a greater gain to Australia than building a supply chain. With approximately 14% of Australia's total export market are wholesale and retail trade to global value chains, it is difficult to engage in bilateral trade agreements due to the nature of supply chains varying based on product. Hence, Australia should promote infrastructure for integrated supply chains in their Asia-Pacific region. The time and cost benefits of providing a system of managing multiple production processes cross these countries can be used to encourage international supply chain control after the Doha negotiations.

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<sup>127</sup> World Economic Forum, *The Global Competitiveness Report 2014-2015*, (2014), p. 428.

<sup>128</sup> Infrastructure Australia, Australian Government, *Australian Infrastructure Audit* (2015) 6.

<sup>129</sup> World Trade Organisation, *Trade in Value Added and Global Value Chains* (2011)

<[https://www.wto.org/english/res\\_e/statis\\_e/miwi\\_e/AU\\_e.pdf](https://www.wto.org/english/res_e/statis_e/miwi_e/AU_e.pdf)>

<sup>130</sup> Austrade, Australian Government, *Australia's International Business Survey* (2016).

# Security Interests and Strategic Competition in the Asia-Pacific

## I STRATEGIC COMPETITION BETWEEN THE UNITED STATES AND CHINA

### A Introduction

While other countries in the Indo-Pacific region are engaged in strategic competition, by far the most important instance of such competition for Australia is that between the United States ('US') and the People's Republic of China ('PRC'). The US is Australia's most important military ally,<sup>131</sup> while China is Australia's largest trading partner.<sup>132</sup> When considered alongside Australia's strategic interests in the Indo-Pacific,<sup>133</sup> the escalating military competition, and thus heightened possibility of military confrontation and regional instability, is a matter of vital importance to Australia.

First, it is necessary to understand why strategic competition between the US and China is occurring. Some international relations scholars have conceptualised the dynamics of China-US relations in terms of a struggle between the stagnant hegemon and an emerging, revisionist power.<sup>134</sup> Assuming that China's extraordinary economic growth continues, and that economic growth is matched by an increased military capacity, it is theorised that China will attempt to 'mould' the international order to better suit its interests – by force if necessary.<sup>135</sup> Even if China fails to actually achieve power parity

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<sup>131</sup> Australian Department of Foreign Affairs and Trade ('DFAT'), 'Advancing the National Interest: Australia's Foreign and Trade Policy White Paper' (White Paper, 2003) 88–9 ('DFAT White Paper 2003'). Australia has signed a security treaty with the US (and New Zealand) which requires the parties to 'act to meet the common danger' of an 'armed attack in the Pacific Area': *Security Treaty between Australia, New Zealand and the United States of America*, signed 1 September 1951, [1952] ATS 2 (entered into force 29 April 1952) art IV ('ANZUS Treaty').

<sup>132</sup> In terms of both imports and exports: Australian Department of Foreign Affairs and Trade, 'China' (Fact Sheet, December 2016) <<https://dfat.gov.au/trade/resources/Documents/chin.pdf>>. Australia recently signed a free trade agreement with China: *Free Trade Agreement between the Government of Australia and the People's Republic of China*, signed 17 June 2015, [2015] ATS 15 (entered into force 20 December 2015).

<sup>133</sup> 'Defence White Paper 2013', above n 14, 24–7; see also 'Australia's National Interests' section above.

<sup>134</sup> Tammen and Kugler, above n 17; David Lai, *The United States and China in Power Transition* (Strategic Studies Institute, 2011) <<http://www.strategicstudiesinstitute.army.mil/pdf/files/pub1093.pdf>>.

<sup>135</sup> Organski, above n 17, 361–3; Tammen and Kugler, above n 17, 36.

with the US in the next twenty years, over-confidence and misjudgment by both sides creates the risk of violent confrontation.<sup>136</sup>

In the present situation, the US has two options to maintain their predominance in the long-term: (1) to accommodate China and increase its satisfaction with the international order; or (2) to actively contain or prevent China's economic and military rise.<sup>137</sup> While American freedom of navigation exercises in the South China Sea and strengthening of military ties with Asian allies may suggest an intention to pursue the latter course, US foreign policy since the normalisation of relations in 1979 has also featured some important concessions to China.<sup>138</sup> Australia's foreign policy position will ultimately be guided by the extent to which the US is willing to engage with or challenge the PRC.

## B *Approach to the United States*

The Australian government's continued commitment to the US alliance has been criticised by some commentators in recent times.<sup>139</sup> However, given Australia's security interests, it appears clear that there is still great value in preserving the US alliance – unless its foreign policy trajectory were to undergo an *extreme* shift. The US alliance serves Australia's security interests by: providing protection from external threats; strengthening a global order which conforms with Australian interests; and by not requiring any significant moral compromise.

### 1 *Protecting the Australian Continent*

Australia–US military cooperation is substantial and deeply ingrained – an Australian serves as the Deputy Commanding General (Operations) of US forces in the Pacific,<sup>140</sup> and hundreds of Australian

<sup>136</sup> Dan de Luce, 'Trump's China Policy: "This Is How You Stumble into a Crisis"', *Foreign Policy* (online), January 26 2017 <<http://foreignpolicy.com/2017/01/26/trumps-china-policy-this-is-how-you-stumble-into-a-crisis/>>.

<sup>137</sup> Organski, above n 17, 364.

<sup>138</sup> For example, the acceptance of the PRC's 'One China Policy' (though possibly questioned by the current US administration): Philip Wen, 'China Expresses "Serious Concern" over Trump's "One China" Taiwan Remark', *The Sydney Morning Herald* (online), 12 December 2016 <<http://www.smh.com.au/world/china-expresses-serious-concern-over-trumps-one-china-taiwan-remark-20161212-gt9ln9.html>>; and the dropping of public opposition to Chinese actions in Tibet: Andrew J Nathan and Andrew Scobell, *China's Search for Security* (Columbia University Press, 2012) 204.

<sup>139</sup> See, eg, Malcolm Fraser, *Dangerous Allies* (Melbourne University Press, 2014); Leigh Sales, Interview with Paul Keating (Television Interview, 10 November 2016).

<sup>140</sup> Bates Gill and Tom Switzer, 'The New Special Relationship: The US–Australia Alliance Deepens', *Foreign Affairs* (online), 19 February 2015 <<https://www.foreignaffairs.com/articles/australia/2015-02-19/new-special-relationship>>.

Defence Force ('ADF') personnel are embedded in the US army.<sup>141</sup> Australia is part of the 'Five Eyes' intelligence network, along with the US, United Kingdom ('UK'), Canada and New Zealand ('NZ'). The alliance with the US provides Australia with technology and equipment that a power of its size would not normally have access to.<sup>142</sup> The US also has the force projection to be able to protect Australia from external threats. No other world power, including China, could equally provide these crucial advantages – while the PLA may be able to win a localised conflict in its immediate proximity, 'by many standards, the Chinese military continues to lag [technologically] far behind that of the United States' and its 'power diminishes rapidly across even modest distances'.<sup>143</sup>

## 2 *Strengthening the International Order*

While it is theoretically possible that Australia could 'free-ride' by stepping back and allowing the US to protect the international order, this strategy is a risky one. On the one hand, it may decrease the willingness of the US to engage in the region. Australia is crucial for the US strategy in the Asia-Pacific: being situated at the 'fulcrum' between the Pacific and Indian Oceans; being a steadfast and reliable ally of the US in previous conflicts; and having 'leverage' as a key resource exporter to the PRC.<sup>144</sup> Being unable to count on Australian support could certainly prompt the US to reassess and scale back their involvement in the Asia-Pacific – a policy direction already favoured in some US foreign policy quarters.<sup>145</sup> Given Australia's interests in maintaining the regional status quo, it should do all it can to encourage continued US involvement, rather than give it an excuse to shy away.

On the other hand, if the US chooses to continue its engagement without Australian involvement, Australia's capacity to influence and temper US actions in the Asia-Pacific will be reduced. As explained by Bisley, 'privileged access to Washington was and remains a key purpose for ANZUS'.<sup>146</sup> By abandoning the US alliance, Australia would abdicate all capacity to push for the compromise that might prevent a major conflict in the Asia-Pacific. Maintaining close links with the US and playing the

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<sup>141</sup> Brendan Taylor, 'Unbreakable Alliance? ANZUS in the Asian Century' (2016) 8 *Asian Politics and Policy* 75, 76.

<sup>142</sup> For example, the newly-purchased fleet of joint-strike fighters: Gill and Switzer, above n 151.

<sup>143</sup> Eric Heginbotham et al, *The US-China Military Scorecard: Forces, Geography and the Evolving Balance of Power 1996–2017* (RAND Corporation, 2015) 21–2.

<sup>144</sup> Gill and Switzer, above n 151.

<sup>145</sup> See, eg, John J Mearsheimer and Stephen M Walt, 'The Case for Offshore Balancing: A Superior US Grand Strategy' (2016) 95 *Foreign Affairs* 70; Joseph M Parent and Paul K MacDonald, 'The Wisdom of Retrenchment' (2011) 90 *Foreign Affairs* 32.

<sup>146</sup> Nick Bisley, 'An Ally for All the Years to Come: Why Australia Is Not a Conflicted US Ally' (2013) 67 *Australian Journal of International Affairs* 403, 406.

role of ‘honest broker’ between the two powers would therefore reduce the prospect for conflict and prevent the breakdown of the rules-based global and regional order.<sup>147</sup>

### 3 *Australian Values and Foreign Policy Independence*

There are, of course, other costs involved in the maintenance of the US alliance beyond the risk of endangering Australia’s relationship with the PRC. Over the course of Australia’s alliance with the US, it has been required to support the US even where its actions may be contrary to Australian values. Most notably in recent times has been Australia’s involvement in long-term military engagements on foreign soil without just cause.<sup>148</sup> It is in this area that Australia has the scope to pursue an independent foreign policy. Ignoring the fact that US military dominance has waned and foreign excursions have become increasingly unlikely,<sup>149</sup> in the event that Australia is called upon, it should only become involved where it is in Australia’s interests and commensurate with its values to do so. NZ, for instance, has managed to maintain important security links with the US even after refusing involvement in the Iraq War,<sup>150</sup> and as discussed above, Australia is far more significant in terms of the US’ overall strategy.

#### C *Approach to China*

Given the discussion above, it is clear that there is no immediate need for Australia to choose between its relationship with the US and China.<sup>151</sup> Rather, Australia should be maintaining its strong links with both sides, in order to encourage compromise between them and prevent military escalation. However, the question remains as to *how* to accomplish this – and where Australia should draw the line. At the outset, it is important to reemphasise Australia’s interest in maintaining the global status quo, and thus the necessity of accommodating China in some respects while standing firm on the central tenets of the international order.<sup>152</sup>

<sup>147</sup> Weihua Liu and Yufan Hao, ‘Australia in China’s Grand Strategy’ (2014) 54 *Asian Survey* 367, 392–4.

<sup>148</sup> See, eg, the recent controversy in the UK surrounding a report considering inter alia former Prime Minister Tony Blair’s decision to commit troops to the Iraq War at US urging: John Chilcot et al, ‘Report of the Iraq Inquiry’ (Report, UK Government, July 2016). The implications of the Report have also been considered in the Australian context: see, eg, Amin Saikal, ‘Chilcot Report Offers Important Lessons for Australia’, *ABC News* (online), 7 July 2016 <<http://www.abc.net.au/news/2016-07-07/saikal-chilcot-report-offers-important-lessons-for-australia/7576582>>.

<sup>149</sup> Parent and MacDonald, above n 156, 32.

<sup>150</sup> Paul G Buchanan, ‘Lilliputian in Fluid Times: New Zealand Foreign Policy after the Cold War’ (2010) 125 *Political Science Quarterly* 255, 268–9.

<sup>151</sup> ‘Defence White Paper 2013’, above n 14, 11 [2.28].

<sup>152</sup> See the discussion in ‘Section I(A): Introduction’ above.

## 1 *Australia as a 'Role Model' on International Law*

First, Australia should lead by example when it comes to upholding the international legal order. Parallels certainly can be drawn between Australia's handling of its maritime dispute with Timor-Leste and China's approach in the South China Sea – both parties leveraging their superiority with heavy-handed tactics while disputing the jurisdiction of international courts to adjudicate.<sup>153</sup> While the favourability of the negotiated treaty<sup>154</sup> for Timor-Leste is not clear-cut compared to the expected result under international law,<sup>155</sup> there is certainly an appearance of unfairness, and the tactics employed by ASIS are clearly unacceptable.<sup>156</sup> Furthermore, by maintaining a foreign policy which is independent from the US on several controversial issues, Australia may appear more legitimate in pushing for the PRC to respect the prevailing global legal order.<sup>157</sup> If Australia wants China to treat its neighbours fairly and in conformity with international law, Australia must do the same.

## 2 *Maintaining Relationships in the Region*

Secondly, Australia should be building and maintaining its relationships with other countries in the region to prevent any defection from the established global and regional order and the development of a hostile power on Australia's doorstep. This is especially the case given increased competition from China for influence over the small Pacific states.<sup>158</sup> As well as expanding regional economic integration<sup>159</sup> and maintaining a robust aid programme<sup>160</sup> in the Asia-Pacific, this requires Australia not to abandon our partners on issues of vital interest to them in order to appease the PRC. This will not only make our allies feel less secure, and thus more likely to escalate tensions or even turn against us, but also may not guarantee the satisfaction of Chinese ambitions.<sup>161</sup> However, in doing so, Australia

<sup>153</sup> See Ben Saul, 'On Timor, Australia Looks Like It's Denying an Impoverished Neighbour Its Birthright', *The Guardian* (online), 29 August 2016 <<https://www.theguardian.com/commentisfree/2016/aug/29/on-timor-australia-looks-like-its-denying-an-impoverished-neighbour-its-birthright>>.

<sup>154</sup> Signed 12 January 2006, [2007] ATS 12 (entered into force 23 February 2007).

<sup>155</sup> Madeleine J Smith, 'Australian Claims to the Timor Sea's Petroleum Resources: Clever, Cunning or Criminal?' (2012) 37 *Monash University Law Review* 42, 67.

<sup>156</sup> Australia's seizure of East Timor's legal documents pertaining to the case has attracted sanctions from the International Court of Justice: *Questions Relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v Australia) (Provisional Measures)* [2014] ICJ Rep 147.

<sup>157</sup> The United States, for instance, while calling for China to obey the *UN Convention on the Law of the Sea*, has failed to ratify it itself: William Gallo, 'Why Hasn't the US Signed the Law of the Sea Treaty?', *VOA*, 6 June 2016 <<http://www.voanews.com/a/united-states-sign-law-sea-treaty/3364342.html>>.

<sup>158</sup> Jian Yang, *The Pacific Islands in China's Grand Strategy: Small States, Big Games* (Palgrave Macmillan, 2012) ch 6.

<sup>159</sup> See recommendations for Terms of Reference 4, 5 and 6 above.

<sup>160</sup> See recommendations for Term of Reference 8 below.

<sup>161</sup> Edward Friedman, 'China's Ambitions, America's Interests, Taiwan's Destiny, and Asia's Future' (2012) 53 *Asian Survey* 225, 229, 243–4.

must tread lightly so as not to directly provoke the PRC. For example, Australia should be wary about expanding its military cooperation with Japan because of its highly antagonistic relationship with China (while still maintaining strong economic and diplomatic links as with any important US ally and key Asian economy).<sup>162</sup>

### 3 *Encouraging Concessions to China*

Thirdly, Australia should encourage the US and other nations to make concessions on some issues of importance to the PRC, where this *does not* conflict with the vital interests of Australia or its allies. In calculating whether there is scope for such a concession or not, it is important to take into account certain practical considerations. For example, it makes sense for Australia to abide by the ‘One China Policy’ – the economic benefits of engagement with the PRC far outweigh the minor diplomatic slight to Taiwan, with which Australia maintains informal diplomatic relations in any case.<sup>163</sup> More cynically, it also makes sense for Australia to avoid *openly* criticising Chinese human rights abuses in Tibet and Xinjiang<sup>164</sup> – two land-locked and distant provinces which have been heavily colonised by Han Chinese, pacified by the central government and seen as crucial to its security<sup>165</sup> – despite any moral misgivings.

However, Australia can and must stand against the PRC wherever its position puts our core benefits from maintaining the international order at risk – namely collective security and freedom of trade and navigation. For instance, acceptance of a military solution to the Taiwan issue would undermine international norms against the unlawful use of force, and potentially increase the willingness of other nations in the Asia-Pacific to resort to violence. It would also be contrary to Australian values, as a ‘liberal democracy with a proud commitment to the core values of political and economic freedom’,<sup>166</sup> to sacrifice a democratic Taiwan. However, Australia should equally discourage any drastic changes to the status of Taiwan, which may provoke China to act.<sup>167</sup>

Similarly, Australia must treat the international status of the South China Sea as non-negotiable. 54 per cent of Australia’s trade passes through the South China Sea, and it is vital that such an important

<sup>162</sup> Taylor, above n 152, 5–6.

<sup>163</sup> Although the Trump administration’s recent actions have raised the question of whether the US is getting enough in return for acceptance of ‘One China’: Dan de Luce, above n 147.

<sup>164</sup> Liu and Hao, above n 158, 376–7.

<sup>165</sup> Nathan and Scobell, above n 149, ch 8; Tim Marshall, *Prisoners of Geography: The Maps that Tell You Everything You Need To Know about Global Politics* (Elliott and Thompson, 2015) ch 2.

<sup>166</sup> ‘DFAT White Paper 2003’, above n 142, vii.

<sup>167</sup> Nathan and Scobell, above n 149, ch 9.



waterway be recognised as a ‘global common’,<sup>168</sup> rather than a Chinese territorial sea. If this were not enough, failure to resist the PRC’s push to nationalise the South China Sea could encourage other countries to seize control of important waterways, such as the Suez or Panama Canals, the Strait of Malacca or the Gulf of Hormuz. However, that does not mean that Australia should dismiss Chinese claims to the islands themselves, or its preference for (non-coercive) bilateral negotiations over their status with its neighbours. In this manner, Australia can serve as a bridge between China and the US – discouraging any inflammatory action by either side, while encouraging measured concessions by the US to enhance Chinese satisfaction with the global order.

## II RESPONDING TO THE TRANSNATIONAL THREAT OF TERRORISM

In response to mitigating transnational threats, a highly monitored system of enforcement is to be upheld. Under the *Terrorism (Emergency Powers) Act*,<sup>169</sup> a terrorist act includes an action or threat imposed with the intention of advancing a political, religious or ideological cause.<sup>170</sup> Accordingly, with the unprecedented nature and radicalisation of the Islamic State of Iraq and Syria (ISIS), Australia must ensure that discretionary powers are carefully exercised to maintain risk and societal cohesion. As our nation cannot afford to be complacent towards terrorism, there is an emphasis for all agencies to be at the highest state of alert. This requires coordinated efforts amongst our Prime Minister, the Australian Security Intelligence Organisation (ASIO), the Australian Customs and Border Protection Service (ACBPS) and the Australian Federal Police (AFP).

The UNSW Law Society recommends that DFAT support a whole of government approach to responding to the transnational threat of terrorism. In particular, DFAT should lead by example through facilitating international cooperation between Australia’s security agencies and their foreign counterparts, and recognise this as a high priority in the Foreign Policy White Paper.

### A ASIO

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<sup>168</sup> Michael Wesley, ‘Australia’s Interests in the South China Sea’ in Buszynski et al, ‘The South China Sea and Australia’s Regional Security Environment’ (Occasional Paper 5, National Security College, 5 September 2013) 45, 47–8 <<http://nsc.anu.edu.au/documents/occasional-5.pdf>>.

<sup>169</sup> 2016 (NT).

<sup>170</sup> Ibid s 5.

As Australia's national security intelligence service, the role of ASIO is to gather information and produce intelligence to warn the government of possible threats to the stability of Australia's security. In an attempt to expand transparency and accessibility for ASIO, the *National Security Legislation Amendment Act [No 1]*<sup>171</sup> amended numerous pieces of national security and intelligence gathering legislation such as the *Intelligence Services Act*.<sup>172</sup> This legislative amendment was also an attempt to effectively address the alarming rise of deaths from terrorism between 2000 and 2014, which increased over nine-fold from 4800 deaths in 2000 to over 30, 000 deaths in 2014.<sup>173</sup>

In particular, under this 2014 law, ASIO officers are able to copy, delete or modify data held on any of the computers it has a warrant to monitor.<sup>174</sup> Increased stringency towards confidential information is also evident as ASIO agents who remove or copy intelligence material without authorisation can also face a maximum of three years in jail. Moreover, information handed to a third party (such as a journalist) can result in up to ten years of jail.<sup>175</sup> This ensures that leaked information for large media companies is not modified for the competitive commodification of capitalist, published gain and not exposed to vulnerable members of society who are sensitive to sensationalised terrorist threats. Thus, in continuing to mitigate the risk of terrorism in the future, there must be a maintained success of these discretionary powers, as reflected in the 57 people charged across 25 counter-terrorism operations since September 2014.<sup>176</sup> Further, the combined effort of ASIO and the AFP can be demonstrated in the mitigated 2016 Christmas Day terror attack in Melbourne, where four men were charged with planning a terrorist act.<sup>177</sup>

## B AFP

In dealing with the transnational threats of terrorist plots, the expanded powers of law enforcement agencies promotes a cautious investigative process that encourages enhanced security. In adopting all 21 recommendations of the Parliamentary Joint Committee on Intelligence and Security, the *Counter-*

<sup>171</sup> 2014 (Cth).

<sup>172</sup> 2001 (Cth).

<sup>173</sup> Melissa Clarke, 'Globally, Terrorism Is on the Rise – But Little of It Occurs in Western Countries', *ABC News* (online), 17 November 2015 <<http://www.abc.net.au/news/2015-11-17/global-terrorism-index-increase/6947200>>.

<sup>174</sup> *National Security Legislation Amendment Act [No 1] 2014* (Cth) s 27D.

<sup>175</sup> *Ibid* s 35B.

<sup>176</sup> David Wroe, 'Young Terror Suspects Make Up Bulk of ASIO's Work', *Sydney Morning Herald* (online), 11 May 2016 <<http://www.smh.com.au/federal-politics/political-news/young-terror-suspects-make-up-bulk-of-asios-work-20160511-gost4e.html>>.

<sup>177</sup> 'Melbourne Terrorist Plot: Four Charged, One in Custody over Alleged Christmas Day Attack Plan', *ABC News* (online), 24 December 2016 <<http://www.abc.net.au/news/2016-12-23/police-foil-alleged-christmas-day-terrorist-plot-in-melbourne/8143762>>.

*Terrorism Legislation Amendment Act [No 1]*<sup>178</sup> reduces the age at which children can receive control orders from 16 to 14. This legislative change by the Turnbull government is responsive to the shooting at Parramatta Station in 2015, where 15-year-old Farhad Jabar murdered police employee Curtis Cheng by shooting him in the back of the head.<sup>179</sup>

Additionally, this legislation also expands both judicial discretion and the powers of the AFP in relation to preventative detention orders. Schedule 5 of the *Counter-Terrorism Legislation Amendment Act [No 1]* amended Division 105 of the *Criminal Code Act*. As a result, a preventative detention order can be issued if a member of the AFP suspects under reasonable grounds that a terrorist act is capable of being carried out, and could occur, within the next 14 days. A distinct virtue of the preventative detention regime is that it provides convicted terrorists to not engage in additional radicalisation following his or her release. This allows offenders to have an effective attitude towards rehabilitation.

Accordingly, in addressing the risk of terrorism under the new 2016 law with respect to preventative detention orders, judges or magistrates can continue the detention of a convicted terrorist, striving to ensure that the safety and protection of society is paramount. This is because this measure for counter-terrorism is closely modelled to existing State and Territory legislation for ‘high risk’ sex offenders such as the *Crimes (High Risk Offenders) Act*.<sup>180</sup> Under Division 105, the offender can be detained for a maximum of 48 hours if the person has not been taken to custody, unless the order is further extended.<sup>181</sup> This co-exists with legislative regimes at the state and territory level such as Part 2A of the *Terrorism (Police Powers) Act*,<sup>182</sup> which allows police to detain a person for up to 14 days.

## C ACBPS

In responding to the security threat of terrorism, the ACBPS has also strived to maintain the integrity and security of Australia’s border. Having received \$49.6 million from Abbott’s \$630 million counter-terrorism package, Border Force Counter-Terrorism Unit (CTU) teams have been established across eight major airports.<sup>183</sup> This initiative also employed an additional 100 border force workers within the

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<sup>178</sup> 2016 (Cth).

<sup>179</sup> Thomas Oriti, ‘Parramatta Police Headquarters Shooting: Sydney Teenager Accused of Providing Gun for Attack Refused Bail’, *Sydney Morning Herald* (online), 3 February 2016 <<http://www.abc.net.au/news/2016-02-03/raban-alou-refused-bail-parramatta-police-headquarters-shooting/7135874>>.

<sup>180</sup> 2006 (NSW).

<sup>181</sup> *Criminal Code Act 1995* (Cth) div 105.

<sup>182</sup> 2002 (NSW).

<sup>183</sup> Australian Customs and Border Protection Service, *Concept of Operations* (13 August 2014) <<https://www.border.gov.au/AccessandAccountability/Documents/FOI/2015-009639-Documents-Released.pdf>>.

telecommunications interception division.<sup>184</sup> The particular role of these workers is focused on monitoring, analysis and dissemination of information lawfully intercepted under the *Telecommunications (Interception and Access) Act*.<sup>185</sup> Hence, in mitigating future security risks towards terrorism, consistent future funding towards the ACBPS will allow for skilled training to identify possible terrorist suspects. With coordinated efforts to the AFP, the recent effectiveness of the ACBPS can be exemplified by the successful prevention of two radicalised brothers, aged 16 and 17, from leaving Sydney Airport to fight in the Middle East in 2015.<sup>186</sup>

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<sup>184</sup> Ibid.

<sup>185</sup> 1979 (Cth).

<sup>186</sup> Andrew Greene, 'Teen Brothers Stopped at Sydney Airport Suspected of Trying To Join Islamic State in Syria', *ABC News* (online), 9 March 2015 <<http://www.abc.net.au/news/2015-03-08/customs-stop-teens-en-route-to-middle-east-conflict-zones/6288718>>.

# Foreign Aid

## I REFRAMING THE OBJECTIVE OF AUSTRALIA'S AID PROGRAM

The UNSW Law Society recommends that the goals of the Australian aid program are reframed so that the needs of developing countries are prioritised, rather than Australia's own interests.

In the 2016–17 Australian Aid Budget Summary, aid is framed as 'an investment', that 'will continue to support Australia's strategic, security and economic interests and respond to the current and evolving needs of our partner countries'.<sup>187</sup> The choice of words is significant as it highlights the economic framework that underpins the government's understanding of aid. However, aid policy founded on the promotion of economic growth in developing countries should be careful not to overlook the fact that in developing countries, economic growth results in increasing inequality within the population.<sup>188</sup> Economic growth in itself does not automatically translate into a decrease in poverty, as it is necessary that robust social institutions and services, such as health and education, exist in order for those in poverty to benefit from economic growth.<sup>189</sup> Indeed, many of the current aid projects are concerned with the provision of health and education services, as well as programs designed to facilitate the empowerment of women.<sup>190</sup> Furthermore, the 2016–17 Australian Aid Budget Summary itself concedes that in many countries that receive Australian aid, economic growth has not resulted in positive outcomes for all, citing inequality as a main impediment to poverty reduction.<sup>191</sup> Yet, the planned trajectory of aid is to focus more on market liberalisation, consolidating trade infrastructure and partnerships with the private sector in developing countries.<sup>192</sup>

Granted that it may be easier to garner political support for programs that act as 'investments' for Australia's future prosperity, but this view has the potential to undermine aid's fundamental objective of poverty reduction and guaranteeing a basic quality of life for all, as projects with stronger and more

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<sup>187</sup> Department of Foreign Affairs and Trade, *Australian Aid Budget Summary 2016-17* (2016) v.

<sup>188</sup> Roberto Ezcurra and Andrés Rodríguez-Pose, 'Does Economic Globalization Affect Regional Inequality? A Cross-country Analysis' (2013) 52 *World Development* 92.

<sup>189</sup> Chiara Amini and Silvia Dal Bianco, 'Poverty, Growth, Inequality and Pro-poor Factors: New Evidence from Macro Data' (2016) 50 *Journal of Developing Areas* 231.

<sup>190</sup> Department of Foreign Affairs and Trade, above n 198.

<sup>191</sup> *Ibid* 21–2, 26.

<sup>192</sup> *Ibid* 41–3.

quantifiable economic returns may be favoured over projects that qualitatively improve living standards.

Furthermore, the order of the objectives for providing aid quoted above, suggests that Australia perceives its aid program to be *humanitarianism as diplomacy*, rather than *humanitarian diplomacy*.<sup>193</sup> That is, giving aid is motivated by the desire to further national interests, rather than being motivated by an altruistic desire to help others, or a moral sense of obligation. This is further underscored by the merging of AusAID into DFAT which has resulted in aid policy being conceived through DFAT's lens of *pragmatic realism*.<sup>194</sup> Yet, aid, as the name itself suggests, is about helping others, and not self-serving actions. We advise that Australian aid should refocus on delivering programs that best serve the needs of the target community, even if this does not necessarily serve our strategic interests.

## II FOREIGN AID SPENDING AND BUSINESS PARTNERSHIPS

The UNSW Law Society recommends that the White Paper shifts the focus on aid away from trade liberalisation and decrease reliance on partnerships with the business sector through reversing the numerous cuts made to foreign aid spending since 2014.

In the current economic climate where government spending on aid as a percentage of total spending on aid is decreasing, private sector initiatives such as Corporate Social Responsibility, Public-Private Partnerships and microfinance are making an important contribution to developing countries.<sup>195</sup> However, the efficacy of concentrating on private partnerships as a pillar of Australian aid policy is questionable as ultimately, the *raison d'être* of the private sector is to make profits. Business is accountable to their stakeholders and their best interests will not always align with reducing inequality or combating poverty.

Consequently, although partnerships with business may be economically fruitful, it is not recommended that the government increase spending on trade projects to 20% of the aid budget by 2020.<sup>196</sup> Investing aid money into business that may or may not return benefits for all members of the community is not a

<sup>193</sup> Jacinta O'Hagan, 'Australia and the Promise and Perils of Humanitarian Diplomacy' (2016) 70 *Australian Journal of International Affairs* 657.

<sup>194</sup> Benjamin Day, 'Australian Aid After the "Golden Consensus": From Aid Policy to Development Policy' (2016) 70 *Australian Journal of International Affairs* 641.

<sup>195</sup> David Black and Ben O'Bright, 'International Development and the Private Sector: The Ambiguities of "Partnership"' (2016) 71 *International Journal* 144.

<sup>196</sup> Department of Foreign Affairs and Trade, above n 198, 42.

viable method of upholding Australia's international commitment to the UN Millennium and Sustainable Development Goals. Instead, the aid budget should firstly be restored so that spending on aid is the same as it was before the first budget cut in 2014 (0.32% of GNI). Secondly, a timeframe for increasing the aid budget to 0.7% of GNI should be determined.

### III CLIMATE CHANGE AND AID

UNSW Law Society recommends that DFAT works with the Department of Environment and Energy to develop and implement aid programs that involve mitigation of, and adaptation to, climate change.

The UN Sustainable Development goals provide a holistic framework for development, interweaving human development and environmental objectives.<sup>197</sup> Indeed, the world's poorest countries are the ones that most keenly experience the effects of climate change, due to their weaker economies that are highly dependent on agriculture, fishery and forestry. Climate change hugely impacts these sectors.<sup>198</sup> For example, the 2016–17 Australian Aid Budget Summary itself recognises climate change as a major impediment to poverty reduction in Pakistan.<sup>199</sup> Consequently, it is becoming increasingly evident that adaptation to and mitigation of climate change should play an important part in aid programs.

Currently, the Department of Environment is contributing an estimated \$800 000 to aid in 2016–17.<sup>200</sup> However, there is scope for greater collaboration and sharing of expertise, for example on projects to develop renewable sources of energy to increase access to electricity.

### IV LABOUR MARKET REFORM AS FOREIGN AID

#### A *Current Approach*

The countries in the Pacific region face a plethora of challenges, ranging from high unemployment coupled with isolation from global markets, to political instability and high levels of crime, to daunting health problems and an uncertain environmental future. It is unsurprising, then, that in the

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<sup>197</sup> United Nations, *Sustainable Development Goals* (1 January 2016) Sustainable Development Goals <<http://www.un.org/sustainabledevelopment/sustainable-development-goals/>>.

<sup>198</sup> Keshav Lall Maharajan and Niraj Prakash Joshi, *Climate Change, Agriculture and Rural Livelihoods in Developing Countries* (Springer, 2013) v.

<sup>199</sup> Department of Foreign Affairs and Trade, above n 198, 31.

<sup>200</sup> *Ibid* 61.

past 40 years, Australia has given over US\$40 billion to the region; representing almost two-thirds of the total Australian aid.<sup>201</sup> Despite this, the countries in this region have at best, kept their heads above the water, seemingly unable to achieve economic growth and increased human development through conventional means.<sup>202</sup> Consequently, it is timely that another approach is considered.

## B *A New Approach to Aid*

One idea that has gained currency recently is to significantly open up Australia's labour market to Pacific Islanders. Australia already has a Seasonal Worker Program (SWP) which provides access to work opportunities in the Australian agriculture sector for nine participating Pacific countries. This has witnessed great success, with a 50% increase in the last 12 months alone.<sup>203</sup> However, Pacific Island Country (PIC) migration should be expanded dramatically, as it would likely result in 'triple-win' of benefits to the migrants themselves, as well as to Australia and the PICs.<sup>204</sup>

## C *Benefits*

The first benefit would be economic – if just 1% of the entire Pacific population (approximately 3,000 people) was allowed to annually work in Australia, this would generate the equivalent of 20% of the entire Pacific region's GDP in a year<sup>205</sup> and by 2040 would deliver 3 times the amount of benefits to the Pacific Island citizens than Australia's current aid program.<sup>206</sup> Furthermore, if just 5% of the entire Pacific population (approximately 23,900 people) were able to work in Australia, this would deliver a benefit 29 times the value of the existing aid program.<sup>207</sup>

The second major benefit would be the increases in the human development in the PICs.<sup>208</sup> In a recent survey conducted among Tongan families who had received remittances from seasonal worker programs in Australia and New Zealand, 40 per cent of them stated that the most important use of

<sup>201</sup> Leon Berkelmans and Jonathan Pryke, 'The Development Benefits of Expanding Pacific Access to Australia's Labour Market' (Report, Lowy Institute, 2016).

<sup>202</sup> Ibid.

<sup>203</sup> Department of Education (Cth), *More Jobs. Great Workplaces*, Annual Report (2016) 29.  
<https://www.employment.gov.au/annual-reports>

<sup>204</sup> Richard Curtain et al, 'Pacific Possible, Labour Mobility: The Ten Billion Dollar Prize' (Report, World Bank, 2016) 2.

<sup>205</sup> Ibid 6.

<sup>206</sup> Leon Berkelmans and Jonathan Pryke, 'The Development Benefits of Expanding Pacific Access to Australia's Labour Market' (Report, Lowy Institute, 2016).

<sup>207</sup> Ibid.

<sup>208</sup> As per the Human Development Index, 'human development' does not simply refer to economic growth alone, but also factors such as health, education and standards of living.



these remittances was school expenses.<sup>209</sup> It is unsurprising, then, that these remittances attained from higher levels of migration have improved school attendance by up to 20 per cent in Tonga.<sup>210</sup> Furthermore, Pacific Island expatriates can transfer knowledge and skills at home and abroad. Gibson and McKenzie found that from a sample of Tongan academic high achievers living abroad, 13 per cent provided consultancy services to the Tongan government while overseas, while more than 50 per cent provided advice to fellow Tongans on study and work opportunities.<sup>211</sup>

The final set of benefits comes directly to Australia. The 2016 Defence White Paper identified the security and stability of Australia's neighbourhood as our highest strategic priority after the defence of Australia.<sup>212</sup> If the PICs were to attain the economic benefits and increases in their human development, it is highly likely that it would help to stabilise what has historically been a very volatile region. Additionally, increasing Pacific Islander labour mobility within Australia would likely broaden cultural, social and economic linkages with PICs, which would help generate Australia's soft power in this region.<sup>213</sup> Finally, and most importantly, should the projected benefits of this labour mobility materialise, it would reduce dependency on Australian aid, while simultaneously allowing Australia reduce its aid expenditure on the region.

#### D *Potential Problems*

Notwithstanding these benefits, one of the strongest critiques of greater labour mobility from PICs in Australia lies in the fact that Australia does not currently have labour shortages in the agricultural sector where the Seasonal Workers Program is focused.<sup>214</sup> While true, Australia will require net migration in the coming years to address labour market shortages in other sectors. As an example, in the health care and social assistance sectors, the Department of Employment projects that by 2020, there will be 258,000 new jobs.<sup>215</sup> Pacific Islanders, with specific training could be well positioned to fill these gaps. Consequently, the SWP should be broadened to include other sectors, such as those mentioned above.

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<sup>209</sup> John Gibson and David McKenzie, 'The Development Impact of a Best Practice Seasonal Worker Policy' (Policy Research Working Paper 5488, World Bank, 2010) 4.

<sup>210</sup> Ibid.

<sup>211</sup> Richard Curtain et al, 'Pacific Possible, Labour Mobility: The Ten Billion Dollar Prize' (Report, World Bank, 2016) 8.

<sup>212</sup> Australian Government, *Defence White Paper* (2016) 15.

<sup>213</sup> Richard Curtain et al, 'Pacific Possible, Labour Mobility: The Ten Billion Dollar Prize' (Report, World Bank, 2016) 10.

<sup>214</sup> Ibid 11.

<sup>215</sup> Department of Employment (Cth), *Employment Outlook to November 2019* (2015) 3.