



**Australian Government
Department of Foreign Affairs and Trade**

Review of Bilateral and Regional Trade Agreements

**Submission to the
Australian Productivity Commission**

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The Department of Foreign Affairs and Trade (the Department) leads work by Australian officials in support of the Government's trade agenda.¹ This includes the advancement and protection of Australia's national interests through contributions to national economic and trade performance, and developing public understanding in Australia and overseas of Australia's trade policy. The Department coordinates whole-of-government positions on all issues relating to Free Trade Agreements (FTAs), and leads the Government's efforts to advance agreed objectives in these areas.

¹For further information on the Department's role, see the Department of Foreign Affairs and Trade submission of 10 December 2009 to the Advisory Group on Reform of Australian Government Administration: http://www.dPMC.gov.au/consultation/aga_reform/submissions.cfm#listsubmissions.

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Overview

Trade makes an important contribution to Australia's economic performance. Trade has been crucial to our economic prosperity, employment growth and rising living standards. Maintaining existing access to open markets and liberalising access to other markets are key trade policy objectives.

Trade liberalisation is important in shifting resources in line with competitive strengths. Our participation in foreign markets and the contribution to the Australian economy of foreign goods and services, investment and expertise provide additional competition and access to markets, products, skills and ideas that boost Australia's productivity, growth and employment prospects. A recent study by the Centre for International Economics (CIE), commissioned by the Department, detailed the benefits of trade and trade liberalisation and found:

*'By itself trade liberalisation has increased GDP by between 2.5 to 3.5 per cent relative to where it would otherwise have been (depending on what account is taken of dynamic productivity and labour market effects),'*²

On behalf of the Government, the Department seeks to create a 'cascade effect' of trade liberalisation where the reductions to barriers to Australia's exports are sought through all approaches available, whether through multilateral trade liberalisation, or bilateral or regional approaches.

Australia's ability to pursue the reduction of barriers to our exports has been heightened when Australia has itself pursued an ambitious economic reform agenda domestically. This is for two reasons. First, such reform enables the economy to be more competitive and thereby enables economic actors to be able to compete in global markets. Second, it provides a valuable demonstration effect. Domestic reforms give Australia credibility in trade negotiations. Agreeing to bind such reforms provides useful negotiating coin.

The Department actively pursues trade liberalisation through negotiations under the World Trade Organization (WTO) and by securing on-going benefits from our membership of that organisation. Successfully concluding the Doha Round of WTO negotiations remains the Australian Government's highest trade policy priority. The WTO provides Australia with the largest forum (currently 153 members) through which to negotiate multilateral trade rules and market access commitments, and seek enforcement of these commitments, including through the WTO's binding dispute settlement mechanism. The WTO estimates that Doha Round tariff reductions alone have the potential to add US\$150 billion per year to the world economy leading to increased consumption and global growth. The US-based Peterson Institute estimates that up to US\$592 billion per year could be added to world trade on the basis of the Doha Round goods and services offers members have already laid out.³ Such an outcome would help the world economy return to a higher growth path in the aftermath of the Global Financial Crisis (GFC) in providing a stimulus for national economies, and reduce the need for ongoing government stimulus programs. For Australia, the WTO Doha Round

² CIE, *'Benefits of Trade and Trade Liberalisation'*, Canberra and Sydney, May 2009, p31.

³ M. Adler, C. Brunel, G. Hufbauer, J. Schott and W Wong (February 2010), *Figuring Out the Doha Round*, Working Paper Series, Peterson Institute for International Economics, Washington, D.C. 2010.

negotiations offer the greatest opportunity to reduce barriers to trade and increase access to overseas markets across agriculture, industrial products and services.

While the multilateral approach to trade liberalisation offers the most potential trade gains for Australia, and is therefore the favoured approach for policy makers, bilateral and regional free trade agreements (FTAs) have an important role to play. The Australian Government, and the WTO itself, recognise that FTAs can support the WTO's multilateral trading system by providing momentum toward the completion of the Doha Round. FTAs can deliver economic benefits to participating countries more quickly than might be possible through a WTO round. They can tackle specific issues in more depth and often with a higher level of ambition than is possible in the WTO. They can be more comprehensive, covering issues not fully addressed in the WTO, such as investment. The development in FTAs of rules in newer areas has paved the way for agreement in the WTO. Services, intellectual property, investment, government procurement and competition policy are all issues where progress in FTA negotiations has contributed to work on them in the WTO.

Australia also encourages trade and economic integration through a range of other regional and bilateral trade and economic fora, including through contributing to the work of the Asia-Pacific Economic Cooperation (APEC) forum's implementation of the Bogor Goals.

The combination of these efforts – multilateral, regional and bilateral – creates a self-reinforcing network of commitments at a number of levels – the so-called cascade effect⁴ – where each agreement, or reform, flows into building a more robust and predictable trading environment for Australia. In the absence of the conclusion of the Doha Round, the best approach is to pursue these parallel efforts.

The integration of these efforts benefits each participant, as well as the relevant region and the global economy. It also enhances prospects for peace and stability in the Asia-Pacific. But trade liberalisation at the border needs to be supported by structural reforms behind the border and, where trade liberalisation involves negotiations with developing countries, those countries need to be supported in their efforts to build competitive economies and to ensure that they have the capacity to undertake the relevant reforms.⁵ This support for capacity building has been extended by the Government as part of the FTA process itself to both assist our developing country FTA partners embrace a comprehensive approach during the negotiating phase and, following entry into force of the FTA, to help them implement the outcome of the FTA effectively, and allow their traders and investors to take advantage of the opportunities it presents. Aid for trade programs such as capacity building in FTAs can also drive and contribute to structural reform in developing countries, and take on a strategic importance in the broader trade liberalisation agenda. For example, a capacity building economic cooperation program, involving financial commitment by Australia, was (for the first time) a key feature of the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA), and similar programs are expected to feature in a number of upcoming FTA negotiations, in particular the Pacific Agreement on Closer Economic Relations (PACER) Plus negotiations.

The constructive role that FTAs play in supporting these efforts is reflected in the breadth and depth of the coverage of contemporary FTAs, and in the level of engagement by governments

⁴ See Speech by Trade Minister, the Hon. Simon Crean, *Regional Economic Integration as a Foundation for Prosperity – an Australian Perspective*, ANU, 11 February 2010.

⁵ Ibid.

involved in their negotiation. Imposing discipline on tariffs, while still a core component of any FTA outcome, is only one of a wide range of disciplines that are engaged in contemporary FTAs aimed at more closely integrating the countries involved. As illustrated in Box 1 FTAs are not just about market access, but are also larger economic agreements that deal with regulatory and other barriers at and beyond the border.

In this manner, FTAs help drive significant economic reform agendas in many countries, and to this end, are key to Australia's strategic objective of greater regional and global prosperity.

The expertise of the officials involved in FTAs reflects not only that breadth of coverage but also the level of commitment governments have made to advancing FTA negotiations. One consequence of such intensive engagement at official level is the deeper understanding that each side gains of their counterpart organisations and administrative arrangements, institutionalising close working relationships and creating strong people-to-people networks in government across the breadth of economic policy issues.

Box 1: Chapters Under Negotiation for an FTA Between Australia and the Republic of Korea

Initial Provisions and Definitions
Trade in Goods
Rules of Origin and Origin Procedures
Customs Administration and Trade Facilitation
Technical Barriers to Trade and Sanitary and Phytosanitary Measures
Trade Remedies
Cross-Border Trade in Services
Financial Services
Telecommunications
Movement of Natural Persons
Investment
Government Procurement
Intellectual Property Rights
Competition Policy
Electronic Commerce
Cooperation on Agriculture, Fisheries and Forestry
Cooperation on Energy and Mineral Resources
Labour
Environment
Transparency
Dispute Settlement
Institutional Provisions (including committees and working groups)
General Provisions and Exceptions
Final Provisions

Maintaining and Enhancing Australia's Competitiveness

While Australia is largely an open market, the bulk of our nearest and most dynamic markets – and therefore current and prospective FTA partners – are countries where significant border measures remain in place in sectors of commercial interest to Australia, which impede our capacity to compete in those markets. In a number of these trading partners, particularly

developing countries, behind the border impediments – including a range of non-tariff measures, regulatory restrictions (such as foreign equity limits, joint venture requirements, geographic restrictions on the location of foreign firms, numerical or other limits on the temporary entry and stay of foreign personnel), a lack of legislative and regulatory transparency, a lack of competition policy and restrictive access to government procurement markets – also impair Australia’s ability to compete. It makes sense for Australia in these circumstances to seek to negotiate the elimination or reduction of these barriers and improved domestic procedures to help secure better conditions of access for Australian goods and services exporters, and investors. Such trade-related issues are not comprehensively addressed in the WTO, and FTAs provide an opportunity to incorporate commitments in these areas.

The dynamics of global and regional FTA activity further compels Australia to engage our key trading partners in FTA negotiations. Since the mid-1990s there has been a proliferation in the number of bilateral and regional FTAs negotiated around the world. The WTO estimated that close to 400 regional trade agreements were scheduled to be implemented by 2010.⁶ The Mortimer Review of Export Policies and Programs (the ‘Mortimer Review’) found that, in 2008, about 100 bilateral and regional trade agreements were already in force in the Asia-Pacific region (more than three times the number in 1990), and a further 50 were under negotiation.⁷

Heydon and Woolcock, in their 2008 study of FTAs, estimated that ‘within the past five years, the share of world trade accounted for by PTAs [preferential trade agreements] has risen from some 40 per cent to over half.’⁸ However, as they note, this does not mean that over half of world trade is preferential trade. In practice, many FTA members have a range of tariff lines at zero most-favoured-nation (MFN) rates, so that no preference can be accorded to goods entering under them. In addition, some tariffs may be so low that traders will choose to enter their products at MFN rates rather than preferential rates, in order to reduce administrative costs. The World Bank estimated in a 2005 study that around 15 per cent of world trade was preferential after taking into account these two factors.⁹ These varying estimates illustrate that the situation is dynamic, but it would seem safe to conclude that a significant, and growing, part of world trade is making use of FTA commitments.

In addition to the arguments outlined above supporting ongoing trade liberalisation, the fact is that with practically all of Australia’s key regional trading partners involved in FTA negotiations with our competitors, choosing to stand back from FTA negotiations risks Australia’s competitive position in those markets eroding over time. As the Mortimer Review noted ‘the increasing number of global and regional FTAs has important implications for Australia: as more FTAs are negotiated, Australian goods and services exports face the prospect of loss of market share.’¹⁰ In short, standing still equates to going backwards.

⁶ http://www.wto.org/english/tratop_e/region_e/region_e.htm. Note that in reaching this figure, the WTO has included goods and services agreements between FTA parties as separate agreements.

⁷ D. Mortimer, and Dr J. Edwards, *Winning in World Markets: Review of Export Policies and Programs*, 1 September 2008, p92.

⁸ K. Heydon and S. Woolcock, *The Rise of Bilateralism: Comparing American, European and Asian Approaches to Preferential Trade Agreements*, United Nations University Press, Tokyo and New York, 2009, p10.

⁹ See World Bank, *Global Economic Prospects 2005: Trade, Regionalism and Development*, Washington, D.C., 2005, p41. The Bank’s estimate appears to exclude non-reciprocal preferential arrangements.

¹⁰ D. Mortimer, and Dr J. Edwards, *op.cit*, p92.

Furthermore, FTA negotiations offer significant opportunities to achieve trade liberalisation that complements both unilateral reform initiatives and the work of the WTO.

These offensive and defensive considerations explain the principal commercial imperative for Australia's pursuit of an active FTA program.

Strategic considerations also influence the pace and focus of Australia's FTA agenda. FTAs provide a strong basis on which to build the broader economic relationship between parties by encouraging enhanced economic integration over time, and providing a forum to resolve trade-related disputes. Some of Australia's FTAs feature devices to automatically incorporate into the FTA any future liberalisation undertaken by parties, including the 'ratchet mechanism', 'most-favoured-nation' provisions, and 'negative listing' approaches to scheduling market access commitments in services and investment.

The Asia-Pacific region continues to emerge as the most dynamic generator of global growth and this has focused governments' consideration of future regional economic architecture. It is in Australia's interest to ensure that we are part of that evolving architecture and that we have a role in helping to shape it. It is clear that many countries in the region consider participation in the formal consultative arrangements, including those involving trade agreements, as a necessary precursor to involvement in shaping the future of the region. Not to actively pursue that involvement through FTAs would put Australia's current and future capacity to shape our region's development at risk.

Maximising the Effectiveness of Australia's FTAs

The global acceleration in FTA activity has drawn comment from a range of sources, much of it adverse. Not all FTA activity around the world is positive. The downsides of negotiating preferential trade deals are well known. FTAs, by lowering tariffs for imports from partner countries, can divert trade from other supplier countries. At the same time, some of the criticism of FTA activity, particularly concerns about a 'spaghetti bowl' in respect of different Rules of Origin (ROO) in different FTAs, may be overstated or based on over-simplistic analysis.

However, the comprehensive trade liberalisation commitments in Australia's FTAs, together with Australia's low MFN tariffs and the globally competitive nature of our FTA partners, mean that trade creation effects should outweigh trade diversion effects.

Such comprehensive coverage was what was envisaged by the General Agreement on Tariffs and Trade (GATT) provisions when such arrangements were first contemplated. By GATT/WTO standards, FTAs should result in duties and other trade barriers being removed on substantially all trade. Furthermore, the GATT and WTO provisions have been very clear that FTAs should not result in any increase in barriers to trade with other countries. Australia's approach to FTAs is consistent with WTO obligations and supportive of efforts to ensure that FTAs meet high standards and contribute to an international environment supportive of multilateralism.

Australia seeks to ensure that its FTAs are comprehensive in coverage and scope and reflect contemporary expectations of both border protection, and behind the border measures. In its FTAs, Australia seeks to achieve outcomes that, upon full implementation, eliminate all goods tariffs and quotas; effectively address non-tariff barriers; provide substantial 'WTO-

plus' liberalisation of services; provide protection for investors and reduce barriers to foreign investment; facilitate the temporary entry of Australian business people for commercial purposes; and reduce behind the border barriers to trade including in the areas of competition policy, government procurement, intellectual property and electronic commerce.

Importantly, Australia seeks to improve business certainty and enhance the ability of exporters and investors to make long-term business decisions by committing FTA partners not to introduce measures that are more trade restrictive than those currently applied.

Needless to say, FTAs are a product of negotiations between countries and not all of Australia's identified objectives are met in all circumstances. It is the role of governments to weigh and assess the overall balance of benefits in deciding how and when to conclude any particular FTA negotiation. These assessments will necessarily have regard to a broad range of considerations, including commercial and strategic considerations.

The longer-term economic benefits of FTAs for the Australian economy come from the removal of tariffs and other restrictive measures in the markets of our FTA partners, the elimination of Australia's own tariffs, and the certainty for investment provided by the binding of tariffs (including where there is already applied but unbound tariff-free treatment). This can be particularly valuable in circumstances where WTO bound rates exceed applied rates (as is often the case, particularly in developing economies) or where tariff rates are not bound in the WTO. It is the certainty provided by the FTAs about the access we enjoy into our FTA markets that will deliver an improved environment for businesses to make investment decisions aimed at realising the economic opportunities created.

Securing agreement to comprehensive coverage and scope by FTA partners, particularly developing country governments, is challenging. Australia has increasingly focused on supporting aid for trade programs such as capacity building activities as part of the FTA process. Such support is aimed at assisting our developing country FTA partners embrace a comprehensive approach during the negotiating phase and, following entry into force of the FTA, helping them implement the outcome of the FTA effectively, and allow their traders and investors to take advantage of the opportunities it presents.

Australia's FTA policy is complemented by an active trade promotion and trade facilitation agenda, and the provision of tailored trade finance support. Australia's trade agenda further encompasses a progressive reform agenda to address domestic constraints aimed at raising productivity and making our exports more globally competitive, thereby enhancing Australia's trade performance and increasing our capacity to take advantage of trade and investment opportunities wherever they emerge.

The body of this submission elaborates on the above points and provides examples from Australia's FTA experience.

Australia's FTA Agenda

Australia's earlier trade agreements were generally with its near neighbours. A series of trade agreements, including with New Zealand, since 1922 culminated in the Australia–New Zealand Closer Economic Relations Trade Agreement (ANZCERTA), as well as a non-reciprocal agreement with the South Pacific Forum Island Countries (SPARTECA) from 1981, and agreements with Papua New Guinea since 1976.

The growth of FTA activity, including with more distant trading partners is, however, more recent and dates from the early years of the current decade. Since 2003 Australia has become a party to the following FTAs, which are discussed in this submission. The text of these treaties, along with detailed explanatory material, can be found on the Department's website.¹¹

Box 2: Australia's Free Trade Agreements

FTA Partners	Agreement	Date
New Zealand	Australia–New Zealand Closer Economic Relations Trade Agreement (ANZCERTA)	1983
	Services Protocol	1989
Singapore	Singapore–Australia Free Trade Agreement (SAFTA)	2003
United States	Australia–United States Free Trade Agreement (AUSFTA)	2005
Thailand	Thailand–Australia Free Trade Agreement (TAFTA)	2005
Chile	Australia–Chile Free Trade Agreement (ACI–FTA)	2009
ASEAN (Brunei, Burma, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand, Vietnam) and New Zealand	Agreement Establishing the ASEAN–Australia–New Zealand Free Trade Area (AANZFTA)	2010 ¹²

Australia is currently negotiating bilateral FTAs with China, Japan, Malaysia and the Republic of Korea. Australia is also negotiating a FTA with the Gulf Cooperation Council (GCC) and Australia and New Zealand are negotiating with Pacific Islands countries (the Pacific Agreement on Closer Economic Relations (PACER) Plus). Australia, along with Brunei, Chile, New Zealand, Peru, Singapore, the United States and Vietnam, is also participating in the Trans–Pacific Partnership (TPP), the first round of negotiations of which was held in March 2010. In addition, a joint feasibility study on the impact of a possible bilateral free trade agreement has been finalised with Indonesia, and a similar study is underway with India. Information on these FTA negotiations and feasibility studies, including submissions from stakeholders, can also be found on the Department's website.

The countries covered by Australia's concluded FTAs accounted for 28 per cent of Australia's total two–way trade in goods and services in 2008–09. If Australia successfully concludes the FTAs currently under negotiation, this figure will rise to approximately 65 per cent.¹³

¹¹ Links to this information can be found at: <http://www.dfat.gov.au/trade/ftas.html>

¹² AANZFTA entered into force for Australia, Brunei, Burma, Malaysia, the Philippines, Singapore, Vietnam and New Zealand on 1 January 2010. It entered into force for Thailand on 12 March 2010, and it is anticipated that it will enter into force for the remaining countries (Cambodia, Indonesia, and Laos) later this year.

¹³ Australian Bureau of Statistics, catalogue number 5368.0, *International Trade in Goods and Services 2008–09*.

1. Australia's FTAs: Reducing Trade and Investment Barriers

Terms of Reference # 1

Examine the evidence that bilateral and regional trade agreements have contributed to a reduction in trade and investment barriers. Consider also to what extent such agreements are suited to tackling such barriers, including in the context of the proliferation of such agreements between other countries.

Australia's FTAs are high quality agreements that are comprehensive in scope and reduce trade and investment barriers by securing enhanced market access for our goods and services exports. They achieve very high levels of tariff elimination and provide substantial, 'WTO-plus' liberalisation of services. In addition, our FTAs have been designed to address issues that are lightly covered in the WTO, such as government procurement, investment, and competition policy, and to varying degrees have ensured gains for Australia in these areas.

Australia is committed to negotiating high quality, comprehensive agreements, even if such agreements can take longer to negotiate.

The liberalising outcomes of Australia's FTAs can be demonstrated in terms of access for goods, services and investment gained through the implementation of the agreements themselves (see below), as well as through the analysis of the trading data between Australia and our FTA partners (see under Terms of Reference #5).

The Department has not commissioned any econometric modelling of the results of existing FTAs. However, the Department acknowledges the value such studies would have in the future and, consistent with the findings of the Mortimer Review in this regard, will consider such studies after a period of time and experience with each FTA.¹⁴

1.1 Trade in Goods

1.1.1 Tariffs

It is evident that Australia's FTAs have secured market access for our goods through the elimination of all, or a very high percentage of, tariffs on our goods exports covered by our existing FTAs. An overview of the tariff reductions in Australia's FTAs follows.¹⁵

ANZCERTA: Since 1 July 1990, all goods meeting the ANZCERTA rules of origin have been eligible to be traded across the Tasman free of any duty or quantitative import restrictions.

SAFTA: At entry into force, all remaining tariffs on bilateral trade between Singapore and Australia were eliminated. Immediately prior to SAFTA entering into force, all Australian

¹⁴ D. Mortimer and Dr J Edwards, op.cit, p95. *'The Review considers that there would be value in undertaking an econometric analysis of these agreements [AUSFTA, SAFTA, TAFTA] after they have been in force for 10 years'*

¹⁵ Details of these FTAs and their entry into force are shown in Box 2, in the section on Australia's FTA Agenda in the Overview to this submission.

products, other than beer and stout, had duty-free access and 86 per cent of Singapore's exports to Australia were duty-free.

AUSFTA: The tariff elimination period under AUSFTA is 10 years for Australia and covers 99.8 per cent of tariff lines, while for the United States the transition period is 18 years and covers 98.4 per cent of its tariff lines.¹⁶ Tariff elimination started on 1 January 2005 from the base rates applied on 1 January 2004.

Prior to entry into force, 37.6 per cent of US tariff lines were duty-free. AUSFTA eliminated tariffs on an extra 44.8 per cent of tariff lines at entry into force. An additional 4.1 per cent of US tariff lines were reduced to zero on 1 January 2010. By 2015, duties on a further 10.7 per cent of tariff lines are to be eliminated. By 2022, 98.4 per cent of tariff lines, which represents 99.9 per cent of imports from Australia in 2002-04, will be duty-free.

Prior to entry into force, 47.6 per cent of Australia's tariff lines were duty-free at the MFN level. At entry into force, a further 39.1 per cent of Australia's total tariff lines for goods originating in the United States were made free of duty. This 86.7 per cent of tariff lines liberalised at entry into force equated to 97.6 per cent of imports from the United States in 2002-04. As of 1 January 2010, a further 3.1 per cent of tariff lines became duty-free. All but eight of Australia's tariff lines will be fully liberalised by 2015.¹⁷

Existing commitments under AUSFTA do not require any change to US tariffs on sugar and sugar products nor to the above-quota duty rate for dairy products. However, there is an increase in the volume of the duty-free quota available for dairy.

TAFTA: This FTA reduces all Australian tariffs to zero at 10 years after entry into force and all Thai tariffs to zero in 20 years. Tariff elimination commenced on 1 January 2005 and, for Australia, is based on tariff rates applying to Thailand in 2004, i.e. the MFN rate and some developing country preferences. For Thailand, the base rate is the applied rate as at 1 July 2003.¹⁸

Prior to entry into force, 51 per cent of Australia's tariff lines were duty-free for Thailand. At entry into force, an additional 33 per cent of lines became duty-free. The percentage of trade with a zero duty in 2005 was equivalent to 83 per cent of imports from Thailand in 2002-04. A further 13 per cent of tariff lines have become duty-free in 2010. By 2015, all Australian tariff lines will be duty-free for products of Thai origin.

Only 4 per cent of Thailand's tariff lines were duty-free in 2003.¹⁹ At entry into force, Thailand liberalised its duties on Australian goods for 49 per cent of its tariff lines, which represented 79 per cent of its 2002-04 imports from Australia.²⁰ By 2015, an additional 50 per cent of tariff lines will be liberalised and all tariff lines will be duty-free for products of Australian origin by 2025.

¹⁶ All tariff data is sourced from the WTO, *Factual Presentation: Free Trade Agreement between the United States and Australia (Goods)*, Report by the Secretariat, (WT/REG/184/3), Geneva, June 2007.

¹⁷ These 8 lines relate to used passenger motor vehicles and retain a specific duty.

¹⁸ All tariff data is sourced from the WTO Factual Presentation: Free Trade Agreement between Thailand and Australia (Goods), Report by the Secretariat (WT/REG185/3), Geneva, August 2006.

¹⁹ Customs Amendment (TAFTA) Bill 2004, Customs Tariff Amendment (TAFTA) Bill 2004, p5.

²⁰ WTO Factual Presentation, *Free Trade Agreement Between Thailand and Australia (Goods)*.

ACI-FTA: On entry into force of the ACI-FTA, Australia eliminated tariffs on 90.8 per cent of tariff lines (covering 97.1 per cent of trade) and Chile eliminated tariffs on 91.9 per cent of tariff lines (covering 96.9 per cent of trade). Both sides are to eliminate the remaining tariffs by 2015, except for a component of Chile's sugar tariff that will remain subject to its current 'price band' system.

Prior to entry into force, 46.2 per cent of Australia's tariff lines and 0.5 per cent of Chile's tariff lines were duty-free on an MFN basis. At entry into force, an additional 44.6 per cent of Australia's tariff lines and 87 per cent of Chile's tariff lines became duty-free.

Box 3: The Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area

AANZFTA is Australia's first plurilateral FTA and the most comprehensive FTA ever concluded by ASEAN. It provides market access gains on exports to ASEAN, which account for 15 per cent of Australia's trade, valued at \$83 billion in 2008-09. The Agreement entered into force on 1 January 2010 for eight of the twelve signatory countries: Australia, Brunei, Burma, Malaysia, New Zealand, the Philippines, Singapore and Vietnam. The Agreement entered into force for Thailand on 12 March 2010. Cambodia, Laos and Indonesia are completing their domestic acceptance processes, and the Agreement is expected to enter into force for them during 2010.

The successful conclusion of the FTA, which took place during the Global Financial Crisis and in the face of slow progress with the WTO Doha Round, demonstrated not only the commitment of Australian and ASEAN Governments to work against emerging global 'protectionist sentiment', but demonstrated that trade agreements can be pursued which recognise different stages of economic development among its members.

Immediate gains to Australian exporters include the elimination of a 10 per cent tariff on \$9.6 million of Australian processed cheese exports (in 2008) to Malaysia, the immediate elimination of a 5 per cent tariff on \$7.2 million of exports of fresh grapes to Malaysia, the immediate elimination of a 3 per cent tariff on \$22 million of wheat exports to the Philippines, the immediate elimination of a 5 per cent tariff on \$3 million of sheep-meat exports to the Philippines, and the immediate expansion from 7 to 36 subject areas that Australian education providers can deliver in Vietnam.

AANZFTA: This FTA provides extensive commitments on the reduction and elimination of tariffs. Key features of the tariff outcomes are:

- tariffs will be eliminated on a high percentage of tariff lines in all AANZFTA Parties. Most tariffs will be progressively phased down until they are eliminated. This phasing generally commences on entry into force of the Agreement, including immediate tariff elimination for some products in individual countries. The phasing uses as a starting point applied MFN tariffs in 2005.
- many tariffs currently at very high levels will be reduced to levels that should allow trade to flow within a few years.
- exclusions from tariff commitments in individual ASEAN countries have been kept to a minimum, and generally do not exceed 1 per cent of a country's national tariff lines.
- the tariff outcomes provide for longer transition periods, and lower tariff elimination outcomes, for Vietnam and the three least developed countries (Burma, Cambodia and

Laos), in recognition of their status as newer ASEAN members with less developed economies. As least developed countries Burma, Cambodia and Laos were already receiving duty free access to the Australian market.

A snapshot of the tariff elimination outcomes is provided in Table 1, which shows, for each Party, the percentage of tariff lines with applied (most-favoured-nation (MFN)) tariff-free treatment in the base year of 2005, and with bound tariff-free treatment in AANZFTA in 2010, in 2013, in 2015, and at the end of the transition period for each country. The table demonstrates that high levels of tariff-free treatment – generally around 90 per cent – will be achieved as early as 2013 for the more developed ASEAN markets. Significant changes happen even from the date of entry into force of the Agreement: for example, the number of tariff lines with tariff-free treatment jumped from 3.9 per cent in the base period to 60.3 per cent on 1 January 2010 for the Philippines; and will increase from 21.2 per cent to 58 per cent on the day the Agreement enters into force for Indonesia.

Even when tariffs are not being eliminated, they are generally being reduced to very low levels that should allow trade to flow. For example, when AANZFTA's commitments are fully implemented, the percentage of tariff lines that will have tariffs of 5 per cent or less will be: 95 per cent for Cambodia; 96.2 per cent for Indonesia; and 95 per cent for Vietnam.

Table 1: AANZFTA – Percentage of Tariff Lines with Tariff-Free Treatment²¹

Country	2005 Base Tariffs (%)	2010 (%) ²²	2013 (%)	2015 (%)	Final Tariff Elimination (%)	Year Achieved
Australia	47.6	96.4	96.5	96.8	100	2020
Brunei	68	75.7	90	93.1	98.9	2020
Burma	3.7	3.6	3.6	3.7	85.2	2024
Cambodia	4.7	4.7	4.7	4.7	88	2024
Indonesia	21.2	58	85	91.1	93.2	2025
Laos	0	0	0	0	88	2023
Malaysia	57.7	67.7	90.9	91.1	96.3	2020
New Zealand	58.6	84.7	90.3	90.3	100	2020
Philippines	3.9	60.3	91	93.5	94.6	2020
Singapore	99.9	100	100	100	100	2010
Thailand	7.1	73	87.2	90.1	99	2020
Vietnam	29.3	29	29	29	89.8	2020

²¹ Tables 1 and 2 use the tariff schedules in HS2002 format that are annexed to AANZFTA. The tariff commitments are being implemented in the HS2007 format but conversion of the tariff schedules has not yet been completed for all countries.

²² This column lists the percentage of tariff lines with tariff-free treatment on 1 January 2010 for the eight Parties for which AANZFTA entered into force on this date, and for Thailand from the Agreement's entry into force on 12 March 2010. For the other three signatory countries, the column lists the percentage of tariff lines with tariff-free treatment on the date of entry into force for that country, assuming that this is some date in 2010.

An additional perspective on the significance of AANZFTA's tariff commitments is provided in Table 2. It shows the number of tariff lines at high tariffs of 15 per cent or more in the base period and at selected years. It demonstrates both the extent to which most ASEAN member countries have had high tariffs, and the very significant reductions to these tariffs achieved in AANZFTA. The table has been compiled by including all *ad valorem* tariffs of 15 per cent or higher, specific and mixed tariffs (although the extent to which these would in practice be equivalent to a 15 per cent *ad valorem* or higher tariff in any particular year would depend on movements in world prices) and all tariff lines excluded from tariff commitments (although in practice many of these lines are subject to lower tariffs). The table therefore captures all tariff lines potentially with a 15 per cent or higher tariff, i.e. all other tariff lines must have tariffs lower than 15 per cent. It is because the table measures tariff lines on this basis that, for a number of countries, it shows a slight increase in the number of lines with high tariffs in 2010 (i.e. this reflects the lines that are excluded from tariff commitments – some of these have low applied tariffs).

Table 2 is particularly striking for the significant reduction in the number of tariff lines potentially subject to high tariffs that took place in Brunei, Malaysia and the Philippines on 1 January 2010, and will take place in Indonesia on the Agreement's entry into force for that country. As high tariffs generally restrict trade, this significant change should open up new trade opportunities.

Table 2: AANZFTA – Percentage of Tariff Lines with Tariffs of 15 Per cent or Higher

Country	2005 Base Tariffs (%)	2010 (%)	2013 (%)	2015(%)	2020 (%)	2025 (%)
Australia	4.2	2.9	2.4	0	0	0
Brunei	22.6	6.6	6.6	4	1.2	1.2
Burma	19.8	20.5	20.5	8.3	8.3	2.6
Cambodia	55.5	56	56	26.1	9.4	3.8
Indonesia	24.4	7.2	4.8	3.6	3.5	2.7
Laos	18.9	19.1	19.1	12.7	6.9	3.9
Malaysia	26.7	8.8	7.4	2.8	1	1
New Zealand	5.9	5.1	1.7	0	0	0
Philippines	20.8	4.2	3.7	2.9	1.4	1.4
Singapore	0	0	0	0	0	0
Thailand	26.5	7.3	7.3	1.9	1.1	1.1
Vietnam	43.2	44	34.8	8.1	4.8	4.8

Tables 1 and 2 provide snapshots of outcomes in particular years, and do not tell the full story of significant reductions happening throughout AANZFTA's implementation period. For example, in the case of Burma, Cambodia, Laos and Vietnam, there are very significant reductions in the number of high tariffs in 2015. However, these tariffs have generally been subject to significant reductions before this. Vietnam had 1,104 tariff lines with a 40 per cent tariff, and 815 lines with a 50 per cent tariff, in the base period. This fell to 83 tariff lines with a 40 per cent tariff on 1 January 2010, and 73 lines with a 50 per cent tariff, with most of

the other lines being reduced to a 35 per cent tariff. Most of these lines will be subject to further annual reductions (e.g. to 30 per cent in 2011, 25 per cent in 2012 and so on).

1.1.2 Non-Tariff Measures

In addition to measures on the reduction and/or elimination of customs tariffs, all Australia's Free Trade Agreements contain a general set of provisions relating to non-tariff measures affecting trade in goods. In general, these provisions affirm relevant existing WTO disciplines and establish arrangements for building on these commitments, either through enhanced information exchange and cooperation, or through 'WTO-plus' obligations aimed at facilitating market access for goods.

For example, the Trade in Goods Chapter of the AANZFTA contains provisions relating to:

- . elimination of export subsidies for agricultural goods (Article 3);
- . national treatment (Article 4);
- . fees and charges connected with importation and exportation (Article 5);
- . publication and administration of trade regulations (Article 6);
- . quantitative restrictions and non-tariff measures (Article 7); and
- . import licensing (Article 8).

The Chapter on Trade in Goods also provides for the establishment of a Committee on Trade in Goods which will, inter alia, review the implementation of the Trade in Goods Chapter, review non-tariff measures with a view to considering the scope for additional means to enhance the facilitation of trade in goods between the Parties (Article 7.4), and identify and recommend measures to promote and facilitate improved market access, including the acceleration of tariff commitments (Article 11.2).

The AANZFTA contains a Chapter on Customs Procedures (Chapter 4) which establishes arrangements for expeditious, predictable, transparent and simplified customs administration aimed at facilitating trade among the Parties. In particular, the Chapter encourages procedures that facilitate the clearance of low-risk goods and the use of automated, electronic customs transactions.

The Chapter affirms that the customs value of goods is to be determined in accordance with the WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Agreement on Customs Valuation). In addition, the Chapter provides that, wherever possible, authorities will provide advance rulings to enable exporters to verify tariff classification, and seek rulings about the valuation and the origin of goods in advance of export. The Chapter also contains provisions relating to the assurance of protection of confidentiality of information provided by exporters.

The Chapter also provides for the establishment of inquiry points and publication of all statutory, regulatory and administrative requirements, either on the internet or in print. There is also a requirement for Parties to ensure importers have access to administrative review within customs administrations or, where applicable, access to further administrative or judicial review of determinations.

The AANZFTA also contains Chapters on Sanitary and Phytosanitary Measures and Standards, Technical Regulations and Conformity Assessment Procedures (Chapters 5 and 6). These affirm the Parties' rights and obligations under the relevant WTO Agreements, and provide for enhanced information exchange and cooperation among the Parties on these matters.

Australia's other FTAs contain similar non-tariff provisions.

1.1.3 Safeguards

Several of Australia's FTAs provide scope for the use of transitional safeguard measures. These provisions are to be found in AUSFTA, TAFTA, and AANZFTA. These provisions are generally modelled on WTO provisions on safeguards, and allow for temporary increases in tariffs in certain circumstances where FTA reductions have led to an increase in imports that cause or threaten serious injury to a domestic industry that produces like or directly competitive products. The safeguard provisions are intended to provide a breathing space in tariff liberalisation to facilitate adjustment. AUSFTA and TAFTA also have special safeguard provisions for some products.

1.1.4 Rules of Origin

Rules of Origin (ROO) are used to determine the eligibility of goods to access tariff commitments made by parties in an FTA. As tariffs in an FTA may be lower than the tariffs that a country applies multilaterally (i.e. MFN tariffs) some mechanism is needed to determine what goods are eligible for FTA tariffs. Appropriate ROO are therefore an essential instrument in ensuring that the liberalisation of trade between the parties is achieved while preventing the welfare gains of the FTA being undermined by FTA tariffs being extended to goods that have not been subject to economic activity in the parties. The key internationally recognised bases for determining eligibility are 'wholly obtained goods' and 'substantial transformation'.

For some goods all materials from their raw state through to the finished product have been obtained and processed within the FTA region. These are referred to as wholly obtained goods. These are typically natural resource-based goods which are undeniably the produce of a single country or final goods which are manufactured in a party from such wholly-obtained input materials. These goods automatically qualify as originating without any need to satisfy an additional test.

The other category relates to those goods which have undergone a substantial transformation of non-originating material.²³ This principle was laid down in the International Convention on the Simplification and Harmonization of Customs Procedures (as amended, the 'Revised Kyoto Convention') which entered into force in 2006. Basically this occurs when the processing of non-originating raw materials or parts leads to the creation of a new or different article of commerce, with altered characteristics. Substantial transformation must take place in the territory of a party to the agreement. Without substantial transformation,

²³ 'Non-originating material' means a material that does not qualify as originating in accordance with the relevant provisions of the agreement. Alternatively, an 'originating material' means a material that qualifies as originating in accordance with the relevant provisions of the FTA.

simple transshipment could confer origin – i.e. goods could benefit from the tariff commitments even though no economic activity has taken place in the FTA region.

The concept of substantial transformation is applied using the following methodologies:

- *value added (Regional Value Content, RVC) test* – requires that the cost of originating materials and processing costs in the Party represent a set minimum proportion of the cost or value of the final product.
- *change of tariff classification (CTC) test* – requires that non-originating material comes from a different part of the Harmonized Commodity and Description Coding System (the HS Code) than the final good.
- *specific production process* – requires non-originating materials to undergo a specified manufacturing or processing operation.

In practice, many ROO regimes make use of more than one of these methodologies. This is particularly the case with ROO regimes based on the CTC approach, which may include an additional value added test or a specific production process test for some goods (e.g. where a simple CTC test is not sufficient to establish substantial transformation).

1.1.4.1 ROO in Australia's FTAs

The ANZCERTA ROO, when it entered into force in 1983, was based on a value added approach with a requirement that the last process of manufacture take place in the exporting country. The originating materials and processing used in this last process were required to represent a minimum of 50 per cent of the ex-factory cost of the exported product.

This approach was retained in the SAFTA ROO. Some modifications were added to the rules, notably an allowance for earlier processing of most products within the exporting country's boundaries to be included in the value added calculation (i.e. processing that took place in Singapore prior to further working in the territory of a non-Party). This reflected the rather unique nature of Singapore's industrial structures as a small island state where materials are imported, partially processed and then sent to neighbouring countries for further processing before being returned to Singapore for final processing, assembly and export. SAFTA also provided for a 30 per cent RVC for an agreed list of products, mostly electrical goods.

The catalyst for Australia's decision to change its approach on ROO was the commencement of FTA negotiations with the United States. The United States had previously concluded a number of FTAs – including the North American Free Trade Agreement (NAFTA) with Canada and Mexico and its Agreement with Singapore – using Product Specific ROO (PSR) mainly based on a CTC approach.

Furthermore, wide discussions with Australian industry in recent years had flagged some doubts about the capacity of the value added approach to meet the criteria for effective ROO. Some industry contacts had raised concerns about the lack of clarity in determining allowable and non-allowable costs under the value added approach. Importantly these calculations involved considerable compliance and administrative costs for business. The ex factory cost method also requires industry to obtain and keep records solely for the purpose of determining ROO. These records are a cost to industry as they are not required for the general running of their businesses.

Australian industry has expressed three main concerns about the value added approach. First, the value added test is the least certain method of calculating origin as it is highly susceptible to changes in the costs of non-originating materials. Industry expressed concern that fluctuations in exchange rates and world resource prices were having a large impact on origin calculations. In some cases these fluctuations raise the proportion of non-originating material in the final good while the sale price remains the same due to competitive pressures. This could result in a loss of preference for goods which are close to the required percentage and may have more significant effects over time on a producer's capacity to meet the thresholds despite there being no change to the production process of the good.

A second issue raised by industry was the constraints the value added approach placed on innovation. If the RVC of a good is close to the minimum value added threshold, manufacturers have an incentive to maintain the current production process rather than reduce costs through adopting more efficient processes where those costs relate to originating materials and activities undertaken in the party.

A third key concern raised by industry was the failure of the value added approach to take into consideration the concept of substantial transformation across industries. Industries in different sectors will require unique mixes of materials, labour and capital; therefore using the same percentage across different sectors will mean that some sectors can achieve origin more easily than others.

During consultations with industry it became clear that CTC methodology would resolve many of the concerns identified with the value added approach. This led Australia to adopt PSR based on a CTC approach in AUSFTA. Australia also adopted PSRs based on a CTC approach in TAFTA. In many cases the required PSR are similar to those under AUSFTA.

Following the 2005 entry into force of both AUSFTA and TAFTA, further consultations have been held with industry to examine the application of the ROO. These consultations have confirmed industry support for the CTC-based approach and have resulted in this becoming Australia's preferred approach in FTAs.

In recent years Australia and New Zealand have re-negotiated the ROO in ANZCERTA to use PSR based on a CTC approach. This approach was also used in ACl-FTA.

AANZFTA establishes a ROO based on 'co-equal' rules for many products, i.e. exporters have the choice of using either the CTC rule or a value added rule. For some products, there is only a CTC test, or only an RVC test, and there is also use of specified process requirements for some products. The key benefit of the 'co-equal' approach is that it marries the objectivity of the CTC approach – there is a single, clear rule for each tariff line – with ASEAN's greater familiarity and comfort with the value added approach. The agreement to provide a choice of ROO allows additional flexibility for exporters who may choose to export their goods under either test.

As the number of FTAs has increased criticism has been levelled at ROO for the creation of a so called 'spaghetti bowl' or 'noodle bowl' effect. Critics argue that the multiplicity of rules in each agreement and between FTAs creates confusion and is an unnecessary barrier for business. These claims overstate the impact that multiple ROO have on an exporter. While an FTA may have a number of different ROO, an exporter only needs to be concerned with

those ROO which relate to their products. In Australia's case there is a great deal of harmonisation among our ROO. Most changes to Australia's ROO in more recent FTAs – for example, in the PSRs in ANZCERTA, ACI-FTA and AANZFTA, compared to the PSRs used in AUSFTA and TAFTA – are due to refinement of the rules to remove unnecessary restrictions and to provide exporters with greater choice. Further, a regional FTA like AANZFTA – which links 12 countries – should significantly simplify trade arrangements for exporters.

1.1.4.2 Cumulation

The term cumulation refers to the ability of materials from outside a country where production of a final good occurs to be considered as originating in that country for the purpose of origin determination. Most FTAs involve two parties and use bilateral cumulation. This means that if a material passes its test of origin when traded between FTA parties it will be considered to be 100 per cent originating for the purpose of any subsequent test of origin for goods produced from that material. All of Australia's bilateral FTAs allow bilateral cumulation to occur. In Australia's agreements with the United States, Thailand, New Zealand and Chile, full cumulation is also permitted. Full cumulation allows any processing that occurs in one of the FTA Parties, including processing carried out on non-originating materials, to be counted in the origin determination of the final good.

Cumulation is particularly important in AANZFTA given the larger number of countries involved. AANZFTA's cumulation provision allow for originating materials used in the manufacture of goods in another Party to be treated the same as materials from that country in determining the origin of the final goods. For example:

- . materials originating in any AANZFTA Party can count towards Australian goods meeting the ROO for export to ASEAN countries or New Zealand;
- . similarly, exports by ASEAN countries and New Zealand to other AANZFTA Parties can count originating materials from Australia towards meeting AANZFTA ROO.

This 'regional cumulation' should be particularly valuable to the manufacturing sector by supporting greater integration into supply chains in the region. Specifically, it should open up opportunities for smaller and medium-sized companies to achieve economies of scale by producing larger volumes for a regional market, and should also support investors in AANZFTA Parties taking a 'regional' approach in their investment plans, both in regard to the location of manufacturing plants and also in their decisions on sourcing raw materials, parts and components. Over time, this should have a positive impact on the efficiency of production and increased productivity in the economies of the AANZFTA Parties.

AANZFTA does not provide for full cumulation. However, the Agreement provides for a work program to review whether its cumulation provisions should be extended to cover all value added to a good within the region. The work program is to report, with any recommendations, within three years of the Agreement's entry into force.

1.1.4.3 Claims for Preferential Tariff Access

When a claim of origin is made it must be based on information that the importer possesses that the good meets the relevant ROO in the FTA. The form that this information will be in is dependent on the provisions of the relevant agreement. Australia has experience in using

both a Declaration of Origin (DOO) which is completed by the exporter/manufacturer and a Certificate of Origin (COO) issued by an authorised body of the exporting country. In our agreement with the United States there is no requirement for a written declaration of origin.

Each of the methods outlined above for claiming origin have inherent issues. In the case of COO, the process of acquiring documentation can be an administrative burden although the costs associated with this process are relatively low, particularly as the size and frequency of consignments increase. COOs provide both the importer and customs authority of the importing party a measure of confidence that the goods meet the ROO. This is particularly important for some trading partners, so the use of a COO in an FTA may facilitate the customs clearance process. Alternatively, DOO are easier to complete but do not benefit from verification by a third party. In the case where no formal documentation is required a similar issue to DOO concerning verification has been raised.

1.1.4.4 Claims for Preferential Tariff Access in Australia's FTAs

ANZCERTA: In normal circumstances, Australian importers qualify for preferential tariff treatment if they are able to produce a written declaration from the manufacturer in New Zealand to the effect that the ROO have been satisfied. Importers must have sufficient information on which to base a claim for preferential entry.

SAFTA: All goods claiming origin must be accompanied by either a COO issued by a designated authority or a separate declaration from the exporter for goods identical to those specified in a valid COO. A COO is valid for two years, provided it is first used within the first year of issue. A declaration must accompany each subsequent shipment of the goods for which the exporter holds a valid COO. Certificates for goods claiming Australian origin may be issued by the Australian Chamber of Commerce and Industry (ACCI) or the Australian Industry Group (AiG) or any other authorised body.

AUSFTA: A claim for preferential tariff treatment is based on the importer's knowledge that the good meets the ROO. A COO is not required, but the authorities in each country are entitled to request a statement from an importer verifying that the ROO have been satisfied.

TAFTA: Importers must hold a valid COO for each individual shipment in order to claim preferential tariff treatment. Certificates for goods claiming Australian origin may be issued by the ACCI or AiG or any other authorised body.

ACI-FTA: All goods claiming origin must be accompanied by a COO completed by the exporter. A COO is required for each shipment. While referred to as a 'COO' it is different from other COO in that it does not require third party certification. An exporter must complete the COO based on:

- . their knowledge that the good qualifies as an originating good; or
- . a producer's written declaration or statement that the good qualifies as an originating good of a Party.

The ACI-FTA does however contain a side letter confirming agreement that 'an agent of an exporter may complete, sign and date a Certificate of Origin'. This has enabled Australian exporters to continue to use industry bodies to provide COOs under the agreement. With any verification follow-up directed at the exporter.

AANZFTA: Importers must hold a valid COO issued by an authorised body. The COO is required for each shipment of goods. Pending establishment of a COO Accreditation Scheme, the Minister for Trade, Mr Crean has designated ACCI and AiG as Australia's issuing authorities under the AANZFTA for an interim period of twelve months following the Agreement's entry into force on 1 January 2010. ACCI and AiG will need to obtain accreditation under the Accreditation Scheme during this period to continue to be authorised to issue COO under the AANZFTA.

1.1.4.5 COO Accreditation Scheme

In response to the Mortimer Review relating to arrangements for COO for FTAs, the Government has decided to establish a new domestic accreditation framework to authorise bodies to issue COO. The scheme will respond to the increase in the amount of Australia's trade covered, or potentially covered, by FTAs, and the importance of our trading partners seeing that we have transparent and rigorous processes for accrediting bodies to issue COO. The scheme will also mean that additional bodies will be able to seek accreditation.

The Scheme will provide for the Joint Accreditation System of Australia and New Zealand (JAS-ANZ) to administer the accreditation process. When the Scheme commences, which is expected in 2010, bodies interested in being an authorised body for the purpose of issuing COO will be able to apply to JAS-ANZ for accreditation. It is expected that the accreditation process will take several months. When a body is successful in achieving accreditation, JAS-ANZ will notify the Department, who will undertake any necessary approval or notification requirements under relevant FTAs and advise when the body can begin issuing COO for a particular FTA.

1.1.4.6 The Productivity Commission's Work on a Restrictiveness Index

ROO have been subject to considerable debate about their impacts on the implementation of FTAs. The Department notes that the Productivity Commission has made a contribution to this debate in its work compiling a 'restrictiveness index' for ROO used in FTAs. On the basis of this work the Commission has concluded that its index calculations 'suggest that the restrictiveness of the new rules of origin in the...[ANZCERTA] trade agreement [i.e. the recently re-negotiated ROO based on a PSR approach] are on a par with other agreements recently entered into by Australia (that is with the United States and Thailand) but, if anything, are likely to be more restrictive than the pre-existing rules of origin governing trans-Tasman trade [i.e. the RVC ROO applying prior to the renegotiation of the ANZCERTA ROO] and the origin rules applying in trade between Australia and Singapore under the recently completed SAFTA Agreement... This reflects the product-specific nature of the rules, which often involve multiple criteria and more restrictive variants of certain criteria.'²⁴

The Commission's calculations suggest that the ROO in AUSFTA, TAFTA, ACI-FTA, and the renegotiated CTC-based ANZCERTA rules are more restrictive than those that were used in Australia's previously negotiated FTAs, i.e. the original RVC based ROO in ANZCERTA and SAFTA. The Department recognises that the Index may have value as a heuristic device,

²⁴ Productivity Commission, *Trade & Assistance Review 2007-08*, Annual Report Series, Canberra 2009, p.135.

i.e. as a form of ‘thought experiment’ to explore some of the key issues involved in understanding the impact of different ROO.

However, the Department questions the value of the Index as a means of evaluating ROO in different FTAs. The Index is not an objective or empirical basis for comparing the ROO in different FTAs. Instead, the Index is essentially a reflection of a particular set of assumptions about different types of ROO. The Index itself does not test any of these assumptions – it simply compares the ROO in different FTAs given this particular set of assumptions. The Department considers that several of the assumptions used in constructing the Index are incorrect; several others are at the very least questionable, while others have not been adequately explored to allow judgements to be made about their robustness.

The following sets out some of the Department’s views on the problems with the assumptions the Commission has used in constructing the Index.²⁵ The Department can make available a paper setting out a more detailed critique of the Commission’s methodology if the Commission would find this useful.

The CTC test used in Australia’s most recent FTAs specifies the required level of change in the tariff classification of the final good compared to non-originating materials used to produce it. The change is usually expressed at the Chapter (2 digit), Heading (4 digit), or Sub-heading (6 digit) of the Harmonized System (the internationally agreed Harmonized Commodity Description and Coding System – the HS). One important assumption used by the Commission in evaluating the restrictiveness of CTC based ROO is that a change in level by Chapter is more restrictive than a change at the Heading level which in turn is more restrictive than a change at the Sub-heading level.

This approach has a fundamental flaw. While the Commission’s assumption may be correct for some parts of the HS, for many parts it is incorrect. In many cases the level of the rule will make no material difference as the good cannot be ‘made’ from the other items in the Chapter or the Heading. This is particularly noticeable in the earlier Chapters of the HS which often represent goods that are generally wholly obtained (for example many agricultural goods). The table below illustrates this for onions. The HS has a 6-digit code for onions and it is possible to set the level of the ROO PSR requirement at the change of Chapter Heading or Sub-heading without affecting the outcome. An onion cannot be produced from garlic (a change in tariff Sub-heading, (CTSH) or from tomatoes (a change in tariff Heading, CTH).

²⁵ These comments are based on the description of the methodology used contained in Productivity Commission, *Restrictiveness Index for Preferential Rules of Origin*, Supplement to Productivity Commission Research Report, *Rules of Origin under the Australia–New Zealand Closer Economic Relations Trade Agreement*, Canberra 2004.

Table 3: TAFTA PSR – Fresh or Chilled Vegetables

CHAPTER 7		EDIBLE VEGETABLES AND CERTAIN ROOTS AND TUBERS	
0701		Potatoes, fresh or chilled.	Change to heading 0701 from any other chapter.
	0701.10	–Seed	
	0701.90	–Other	
0702.00		Tomatoes, fresh or chilled.	Change to heading 0702 from any other chapter.
0703		Onions, shallots, garlic, leeks and other alliacious vegetables, fresh or chilled.	Change to heading 0703 from any other chapter.
	0703.10	–Onions and shallots	
	0703.20	Garlic	
	0703.9	–Leeks and other alliacious vegetables	

But this may also be the case in later Chapters for manufactured goods where the items are finished goods. The table below showing an extract from Chapter 62 of the HS Code, and the ROO in the ACI–FTA, demonstrates a similar issue for men’s and boy’s clothing of Heading 6201. Although this HS Heading has several Sub–headings it is not possible to change clothing of wool into cotton for example. Therefore there is no real difference between CTH and CTSB for this item; however, there is a difference between CC and CTH as parts for clothing have their own heading in Chapter 62.

Table 4: ACI–FTA PSR – Clothing and Apparel

6201		Men’s or boys’ overcoats, car–coats, capes, cloaks, anoraks (including ski–jackets), wind–cheaters, wind–jackets and similar articles, other than those of heading 6203.	Change to heading 6201 from any other chapter.
	6201.1	–Overcoats, raincoats, car–coats, capes, cloaks and similar articles:	
	6201.11	—Of wool or fine animal hair	
	6201.12	—Of cotton	
	6201.13	—Of man–made fibres	
	6201.19	—Of other textile materials	
	6201.9	–Other:	
	6201.91	—Of wool or fine animal hair	
	6201.92	—Of cotton	
	6201.93	—Of man–made fibres	
	6201.99	—Of other textile materials	
6202		Women’s or girls’ overcoats, car–coats, capes, cloaks, anoraks (including ski–jackets), wind–cheaters, wind–jackets and similar articles, other than those of heading 6204.	Change to heading 6202 from any other chapter.

As the design of the HS varies considerably by product category the assumption made in the Index on the restrictiveness of the levels must be treated with care. It can certainly not be applied as a general principle that is universally applicable to the whole of the HS. It is important to examine each Chapter, Heading and Sub–heading to determine what would be restrictive for those goods.

The application of this assumption to the whole of the HS means that the Index will apply different restrictiveness scores to different ROO, even though for many products the ROO will be identical in their practical effect and only differ in relation to the form in which the ROO is written.

Another problem with the Index is its treatment of one of the key differences between RVC based ROO and CTC based ROO, i.e. the fact that the former are more affected by changes in exchange rates and other movements in prices. The Index contains the potential to recognise this difference by including a score for 'degree of certainty' – i.e. the predictability for producers that a good will be eligible for preferential tariff treatment. The Index allocates FTAs which use CTC based ROO a score of 0.00, i.e. low restrictiveness due to high certainty, as a producer knows that once they set up a production arrangement that passes the CTC test then goods produced by it will continue to meet the ROO. The Index allocates FTAs which use RVC based ROO a score of 1.00, i.e. a high restrictiveness due to significant uncertainty, as changes in exchange rates or other price movements could easily mean that a good will no longer meet the ROO.

However, the Index only assigns the 0.00 score to FTAs which are 100 per cent based on either the CTC or specific production process tests and contain no use of RVC tests. In practice ROO are not based solely on CTC or specific production process tests (specific production process tests by their very nature cannot be generalised to all products). This means that none of the FTAs examined is allocated a 0.00, and that all FTAs based on a CTC methodology are treated as equally uncertain as RVC based ROO (i.e. all are given a score of 1.00). It is difficult to see any justification for the Commission's approach on this issue. The fact that a CTC based ROO may include use of RVC criteria for some products will not lessen the increased certainty it provides for all other products. The Commission's methodology means that even if only one or two products were affected by the use of supplementary RVC criteria, then the whole agreement would be treated as providing no greater certainty than an RVC based FTA.

The effect of the Commission's approach on this issue is that the Index effectively includes no weighting on one of the key differences between RVC and CTC based ROO. In these circumstances it is very difficult to see how the Index can have any value in providing a comparison between FTAs based on these different ROO.

A range of other assumptions used in constructing the Index also raise concerns. For example, one of the measures used in compiling the Index assigns a low-restrictiveness score (0.00) if an FTA applies a single ROO to all sectors, and a high-restrictiveness score (1.00) if an FTA has multiple rules for different product sectors. As RVC ROO are typically based on a single percentage criterion (e.g. 50 per cent), they will normally get a 0.00 score under this assumption, while CTC based ROO, using a range of product-specific rules, will normally get a 1.00. The Commission does not provide sufficient justification for this assumption, even though it recognises that product-specific rules could, in fact, also provide a means for relaxing the constraints in a single sector-specific rule. In the absence of sufficient empirical evidence that product-specific rules are, by their nature, more restrictive than single criterion rules, we would question the basis on which this assumption has been made by the Commission.

It is also important to note that the notion of a ‘restrictiveness index’ needs careful handling. The notion of trade restrictiveness clearly has a meaning when dealing with trade barriers such as a tariff or non-tariff barrier. However, ROO are not trade barriers in themselves – they ‘enable’ the implementation of FTA tariff commitments by identifying those goods which are the result of economic activity in the Parties (as compared, for example, to goods which have simply been transhipped through one Party with the aim of trying to take advantage of preferential tariffs). The concepts of –wholly obtained goods– and goods which are the result of ‘substantial transformation’ of non-originating materials are the key, generally recognised, bases for ROO. In the case of substantial transformation, this concept is defined in the Revised Kyoto Convention as ‘the criterion according to which origin is determined by regarding as the country of origin the country in which the last substantial manufacturing or processing, deemed sufficient to give the commodity its essential character, has been carried out.’

It would not seem to be very useful to focus on the question of whether a particular ROO is more ‘restrictive’ than an alternative ROO. A more relevant question is whether any particular ROO is set at an appropriate level which is just sufficient to guarantee that a good is either wholly obtained or substantially transformed. A ROO which is too ‘liberal’ – i.e. it is not sufficient to ensure substantial transformation – is just as problematic as a ROO that is too ‘restrictive’ – i.e. it is set at a level which is well above what is economically justifiable to establish substantial transformation. A ROO that is too ‘liberal’ will simply encourage rent-seeking behaviour in which goods are transhipped through one FTA Party, not because of any economic rationale but simply to avoid paying customs duties. FTAs involve commitments to reduce and eliminate customs duties, but these commitments are justified on the basis that this trade liberalisation will encourage economically meaningful, welfare-enhancing activities that increase economic growth. If the elimination of tariffs is implemented through inappropriate ROO, which are too liberal and result in rent-seeking behaviour, then revenue will be foregone for little or no welfare gains. ROO which are too restrictive, on the other hand, would limit the scope for business to take full advantage of the FTA’s trade liberalisation commitments.

It is, therefore, the ‘appropriateness’ of the ROO – particularly its compatibility with the current nature of productive activity in a more globalised world with a trend towards global production chains – that is the more important question than the issue of its ‘restrictiveness’. Australia’s move towards CTC based ROO has been driven by Government and industry concerns to ensure that our FTAs are up-to-date with changes in both the Australian and international economies, including the globalisation of production.

1.2 Trade in Services

Services play a major role in all modern economies. As countries develop economically, services represent an increasingly important element of their growth. It would be difficult for any economic activity to take place without the enabling effect of supporting services, such as telecommunications, banking and freight logistics. Australia therefore takes a broad approach to the importance of services in trade negotiations which recognises the integral nature of the services sector with other parts of the economy, including the agricultural and manufactured goods sectors. There is a very strong correlation between the size and sophistication of an economy’s services sectors, and its level of development.

Australia's highest priority in negotiations on trade in services is the WTO services negotiations. Australian services exporters have key stakes in securing better and more secure access to global markets. Australia is therefore tackling the WTO services negotiations head-on with a view to achieving commercially meaningful outcomes for Australian service suppliers. For Australia, services are essential in the final package.

Even though services are often a very difficult sector in FTA negotiations, particularly with developing countries, FTAs still provide Australia with an opportunity to move faster on specific services interests than is possible in the WTO.

Australia's starting point for including services in FTAs has been to seek 'WTO-plus' outcomes. Key objectives we have sought include:

- . securing the binding of existing levels of market access;
- . negotiating new market access in sectors of priority commercial interest;
- . most-favoured-nation (MFN) commitments to ensure we gain the benefits offered to future FTA partners of our FTA partners;
- . improved transparency;
- . disciplines on domestic regulation (standards, licensing, recognition of qualifications);
- . commitments to treat services investors as least as well as investors in goods sectors;
- . separate chapters on sectors of particular interest e.g. telecommunications, financial services, education and movement of natural persons; and
- . a ratchet mechanism to ensure that future autonomous liberalisation by FTA partners is locked in.

Australia adopts a best practice approach to regulation. Regulations are essential for the proper functioning of society and the economy. The challenge is to deliver effective and efficient regulation – regulation that is effective in addressing an identified problem and efficient in terms of maximising the benefits to the economy, taking account of the costs.

The nature, scope and characteristics of industry regulation varies greatly across the services sector. Some forms of regulation are designed to address information asymmetries between suppliers and consumers (e.g. professional services); other regulation serves a prudential and systemic purpose (e.g. banking and insurance); and other regulatory regimes are tailored to sectors with 'natural monopoly' characteristics (e.g. ports, utilities and telecommunications networks). Services regulation also varies considerably between countries, reflecting differences in history, culture and economic structure. Some countries adopt a market-oriented approach to regulation which seeks to maximise the scope for private investment and foreign participation. Others, including many developing countries, have a high degree of state ownership and control in the services economy and seek to control and regulate foreign participation tightly with a view to building domestic capacity.

Services regulation does not constitute a 'trade barrier' in itself. Indeed, it is often the case that opening up a sector to foreign competition (i.e. market access liberalisation of a sector) needs to be accompanied by more, rather than less, regulation (e.g. in telecommunications, to ensure that new entrants can access network-based facilities that may be owned and controlled by a dominant or former monopoly incumbent). Moreover, any Australian services supplier that is seeking to do business in an overseas market will have to confront

and adapt itself to the regulatory environment of the host country, which in many cases will involve challenges ranging from cultural and linguistic differences through to dealing with under-resourced and inefficient regulatory agencies. An FTA cannot completely remove these burdens and risks, nor address the full range of behind the border issues. However, through FTA negotiations, opportunities exist for each party to learn about the other country's approach to regulation. Australia uses FTAs as a platform to advocate our best practice regulatory approaches in FTA partners' structural reform.

1.2.1 Market Openness

The core focus of services negotiations in FTAs is not to dismantle or remove the regulatory regimes of trading partners, but rather to identify and seek to address any trade-restrictive or discriminatory elements of such regulatory regimes. This may involve seeking to improve our understanding of the objectives for certain regulations of partner countries, in addition to advocating our own best practice approach to certain regulatory issues, such as competition policy, financial regulation or skills accreditation, in combination with a commitment to capacity building.

Consistent with differences in the type of regulation applied to different services sectors, these barriers will vary considerably across different services sectors. For example, the kinds of trade-related restrictions that may exist in a country's banking sector – foreign equity limits, lending and borrowing restrictions – will be quite different to restrictions in the telecommunications sector (where access by new entrants to network facilities on reasonable terms and conditions may be a key issue) or professional services (where barriers often relate to discriminatory licensing practices, prohibitions on the right to practice, and temporary entry restrictions).

The primary objective of services trade negotiations is to seek to ensure, as far as practicable, that Australian suppliers are essentially placed on the same competitive footing as domestic suppliers in the trading partner's domestic market. FTAs also provide scope to enhance transparency, including transparency in licensing procedures, establish cross-sectoral or sector-specific disciplines on domestic regulation (e.g. in the financial, telecommunications or education sectors), and to establish frameworks for the negotiation of mutual recognition agreements between professional bodies, which can expedite licensing processes.

Generally speaking, most services liberalisation is carried out by countries unilaterally for domestic policy reasons rather than in response to, or as a consequence of, FTA negotiations. Moreover, structural reform in services is generally implemented on a MFN basis, an approach Australia supports as maximising the potential productivity and international competitiveness benefits. In contrast to tariff negotiations, therefore, services negotiations in FTAs do not necessarily create new preferential market access opportunities for Australia's services exporters. The more likely FTA outcome is the binding of existing levels of openness ('standstill commitments'), which provides Australian services exporters with the benefit of improved business certainty and an assurance that any measures adopted in future by the FTA party to wind back existing levels of openness or make business conditions more trade-restrictive would be prevented by the FTA or need to be subject to FTA-treaty level processes.

Commitments by Australia's FTA trading partners that bind existing levels of openness can be characterised as 'gains' to Australia in three ways. First, such commitments will usually

go beyond the trading partner's commitments in the WTO, many of which date back to the Uruguay Round in 1994. The FTA can therefore close (for Australia) the wide gaps that exist in many instances between the country's WTO-bound and applied levels of openness (due to post-1994 autonomous liberalisation).

Second, such commitments will make it more difficult for the FTA partner to introduce new, more trade-restrictive measures (inconsistent with its FTA commitments) for Australian suppliers in the sector or sectors concerned.

Third, the commercial activities and operations of Australian services exporters, and their interactions with regulators in the host country market, will be buttressed by binding treaty-level commitments that could, depending on the circumstances, be invoked by the Australian government with the FTA partner in the event of disputes. These three benefits would not exist in the absence of the FTA.

The fundamental architecture for addressing trade-restrictive services regulation is set out in the WTO General Agreement on Trade in Services (GATS). The GATS includes a methodology by which countries can schedule (and thereby commit to not make more restrictive) measures that conform to an exhaustive list of market access barriers that impede services trade (e.g. foreign equity limits; restrictions on organisational form for the establishment of a commercial presence by a foreign service supplier; requirements for an economic needs test). It also provides for the scheduling of measures that result in less favourable treatment for foreign services suppliers than for like domestic suppliers (national treatment limitations). Australia's FTAs incorporate commitments on market access and national treatment in relation to the four modes of services supply identified in the GATS: cross-border supply (mode 1), consumption abroad (mode 2), commercial presence (mode 3) and the movement of natural persons (mode 4).

1.2.1.1 Approaches to Scheduling Services and Investment Commitments

There are two approaches utilised in Australia's FTAs for scheduling services and investment market access commitments. Under a negative list scheduling approach, market access and national treatment obligations apply to all services and service suppliers/investors and investments unless a reservation is made by the party in its schedule. As all sectors are automatically covered, a negative list approach is generally more comprehensive than a positive list approach. Under a positive list approach, market access and national treatment obligations only apply to services and service suppliers/investors and investments to the extent that a party makes a specific commitment to that effect in its schedule.

In compiling a negative list, a government performs a comprehensive audit of its services and investment trade regulation. This can be a resource-intensive exercise, particularly the first time it is undertaken, but is a useful mechanism for identifying existing trade barriers and assessing their continued relevance. A negative list may result in different lists of non-confirming measures for each country where FTAs have been negotiated, but is no more administratively burdensome to implement than a positive list approach. While a positive list may provide parties with a clearer picture of what they are committing to, this approach often lacks comprehensiveness and increases the possibility that countries will make commitments that are less liberal than the regulatory or statutory status quo.

Both approaches provide for commitments to safeguard against protectionist moves by governments responding to short term economic conditions, such as the 2008–09 Global Financial Crisis (see response to Terms of Reference 4).

Importantly, a negative list together with a ratchet mechanism,²⁶ provides greater scope for locking in future unilateral services and investment liberalisation. Australia's FTAs with the United States and Chile contain ratchet mechanisms.

AUSFTA, SAFTA, ACl–FTA and the ANZCERTA Services Protocol follow a negative list approach. Bindings that go beyond GATS span a wide array of sectors in AUSFTA. In SAFTA, and ACl–FTA parties have improved on the market access and national treatment commitments they made in the WTO. The ANZCERTA Services Protocol, with only eight remaining inscriptions (exclusions), is one of the most liberal agreements on trade in services in the world.

TAFTA and AANZFTA, on the other hand, follow a 'positive list' approach to services commitments. The schedules for both FTAs are modelled on the GATS schedules, and contain horizontal commitments that apply to all sectors listed and sector-specific commitments. Australia's commitments in TAFTA and AANZFTA largely mirror those sectors in which it was willing to make commitments in the WTO Doha Round negotiations.

1.2.1.2 Market Access Commitments

Services Protocol to ANZCERTA: The Services Protocol to ANZCERTA provides free trade in services between Australia and New Zealand, with a limited number of exceptions which were subject to existing government regulations when the Protocol was signed and which are inscribed in the Annex to the Protocol and which have been liberalised through regular reviews. The Protocol provides for mutual market access to each Party's service providers equal to that accorded to their own, national treatment, and commercial presence. Of the original 21 exemptions only eight now remain, six applying to Australia (air services, two broadcasting and television, third party insurance, postal services and coastal shipping) and two to New Zealand (airway services and coastal shipping). In some cases, inscriptions only exclude certain aspects of a service industry from the operation of the Protocol.

As the Annex to the Protocol is closed, all new services are automatically subject to the provisions of the Protocol.

SAFTA: The main gains for Australian service providers from SAFTA were concentrated in the areas of wholesale banking and financial services, legal services, education, environmental services, and telecommunications. Both Parties also agreed to provide market access and national treatment (subject to the negative list of commitments), to promote recognition of professional qualifications through their competent bodies, and to improve their commitments on residency and working conditions for business people and their spouses.

AUSFTA: AUSFTA has national treatment and a most-favoured-nation (MFN) provision, which requires Australia and the United States to accord to each other's service suppliers

²⁶ A ratchet mechanism ensures that if a non-conforming ('standstill') measure set out in a party's schedule is liberalised, it cannot subsequently be made more restrictive.

treatment no less favourable than that it accords, in like circumstances, to service suppliers of a non-Party. This means, for example, that if either Party signs a new, more liberalising FTA, the benefits of that will flow automatically to the other Party. AUSFTA also includes a ratchet mechanism for services and investment, which means that any liberalisation that either Party undertakes unilaterally with respect to certain listed measures will also be automatically locked in to the FTA. AUSFTA also prohibits local presence conditions that require a service provider of the other Party, as a condition for the cross-border supply of a service, to establish or maintain a representative office or any form of enterprise in its territory, or be a resident in its territory. Certain restrictions have been made by both Parties against national treatment, MFN, market access and local presence provisions.

The United States made 'GATS-plus' commitments in higher education, pipeline transport of fuels, translation, and radio and television distribution services, as well as in certain environmental services, express delivery services, business services, research and development services, technical testing and analysis, physical well-being services, and auxiliary transportation. Australia for its part made 'GATS-plus' commitments in a range of areas, including financial services (allowing life insurance branching by US companies), and audiovisual services (providing scope to continue existing content requirements and extend them in response to technological developments but with limitations to ensure that there is not a significant decrease in the openness of the market).

The Working Group on Professional Services (WGPS) established under AUSFTA currently supports initiatives pursued by the legal, engineering and accounting professions.

TAFTA: Thailand made a number of commitments that went beyond its GATS obligations. It agreed to relax foreign investment limits and agreed to liberalise its temporary entry regime for Australian business persons by providing for streamlined visa and work permit arrangements and administrative procedures.²⁷ Australia's commitments were also 'GATS-plus' and largely mirrored its market access and national treatment offers which were on the table at the time in the WTO Doha Round negotiations.

Reflecting the interim nature of the outcome on services, Australia secured agreement to launch a further round of bilateral negotiations on services within three years of entry into force (i.e. in 2008), but these negotiations have been delayed by political developments in Thailand.

ACI-FTA: ACI-FTA includes national treatment, MFN, a ratchet mechanism and a prohibition on local presence conditions (subject to certain restrictions by both parties). The Annex on Professional Services supports professional bodies seeking recognition of qualifications or registration/licensing of professionals in the other country.

In both services and investment, the main gains are for Australian or Australian-affiliated companies operating in the mining technology/services and gas distribution/power generation sectors.

²⁷ Department of Foreign Affairs and Trade, *Business Guide to the Thailand-Australia Free Trade Agreement (TAFTA)*, DFAT, Canberra, 2004.

Both parties agreed to provide market access; MFN and national treatment (subject to a negative list and ratchet mechanisms for services and investment); and to promote mutual recognition of professional qualifications.

AANZFTA: AANZFTA delivers greater certainty and transparency for Australia's services exporters and investors, including through 'GATS-plus' services commitments across a range of sectors and countries. These include key sectors of export interest to Australia, such as professional services, higher education, financial and telecommunication services. Most ASEAN countries also improved on their GATS commitments on the temporary entry of service suppliers. AANZFTA sets out sector-specific disciplines for financial and telecommunications services. The FTA also includes a built-in agenda to negotiate further liberalisation of services, which will commence no later than 2013.

1.2.2 Regulatory Disciplines

Australia's FTAs include a range of enhanced 'WTO-plus' regulatory disciplines aimed at improving the business environment for services exporters. For example, AANZFTA requires Parties to:

- encourage competent bodies to enter into negotiations for recognition of professional qualifications, licensing and registration requirements and procedures;
- ensure that the use of business names under which service suppliers normally trade in their respective home country markets is not unduly restricted;
- publish measures of general application affecting trade in services on the Internet, to the extent possible;
- endeavour to provide interested persons of other Parties with a reasonable opportunity for comment prior to adoption of new measures;
- provide license applicants with an opportunity to remedy incomplete applications, status reports on the progress of applications on request, and reasons for the denial or termination of applications;
- publish information on temporary entry requirements, process completed applications for temporary entry and stay promptly and to notify applicants, on request, about the status or outcome of the application;
- observe minimum standards of procedural transparency, such as reasonable notice of administrative processes (e.g. licensing and rule-making in specific cases) and opportunities to present facts and arguments before final administrative action; and
- afford services suppliers with a commercial presence certain post-establishment investment protections, as set out in the Investment Chapter, including investor-state dispute settlement.

In the area of telecommunications, AANZFTA Parties have agreed to pro-competitive regulatory disciplines to ensure that foreign suppliers can operate on a level playing field with monopoly or former monopoly incumbent operators, which may own or control essential network facilities and infrastructure. These provisions build on and go beyond the WTO Telecommunications Reference Paper. The disciplines cover interconnection, competitive safeguards, co-location, leased circuit services, regulatory transparency, resolution of regulatory disputes and review of regulatory decisions. Transitional arrangements apply to some countries (Burma, Cambodia, Laos, Thailand, Vietnam) in relation to some disciplines.

AANZFTA also includes ‘WTO-plus’ disciplines in financial services to promote greater transparency and timely processing of license applications.

1.3 Investment

Investment is a key driver of economic growth and trade. By encouraging inwards and outwards investment countries can improve their integration into the global economy, bringing new growth opportunities and allowing for the development of global supply chains.

There is no comprehensive, multilateral agreement on investment in the WTO. The WTO Agreement on Trade-Related Investment Measures (TRIMS) prohibits certain investment measures (performance requirements) relating to the trade in goods sector. The WTO GATS agreement covers market access for investment in services sectors indirectly, but only insofar as the investment results in the supply of services through the establishment of a commercial presence in another WTO member. The GATS does not contain any post-establishment legal protections for investors and their investments – such as guarantees of compensation in the event of expropriation, the minimum standard of treatment at customary international law or MFN or national treatment in relation to compensation for losses incurred through armed conflict or civil strife – commonly found in bilateral investment treaties.

Including investment in an FTA can provide a stable, predictable and transparent framework for attracting foreign direct investment (FDI) and maximising the benefits to host countries. Australia’s FTAs seek to include investment chapters that cover market access commitments for both services and non-services sectors, economy-wide performance requirements disciplines, enhanced transparency, and post-establishment legal protections for Australian investors and investments. As indicated above, this provides Australian investors with a level of commitment that goes beyond that which is afforded under the WTO. It also supports Australia’s comprehensive approach to FTAs, in particular the principle that FTAs should provide a framework for engaging the FTA partner on a broad range of trade-related issues that may arise for Australian exporters or investors (e.g. legal protections for investment, intellectual property, competition policy, transparency).

Many of the same considerations relating to the benefits that are delivered through FTAs to Australian services suppliers apply equally to investment. Countries will not necessarily liberalise foreign investment approval and regulatory regimes through an FTA negotiation, rather they will tend to do so unilaterally on the basis of domestic policy reform processes. A key objective for investment market access in FTAs is to provide certainty for Australian investors by establishing a floor under the FTA partner’s existing level of openness (through binding ‘standstill’ commitments). The FTA can provide a framework for harvesting future liberalisation in the trading partner’s investment regime, either automatically (through a ‘ratchet mechanism’) or by negotiation (through ‘built-in agendas’), as further discussed below.

ANZCERTA: The ANZCERTA was signed in 1983, and while it has no specific provisions for investment, the two governments are currently negotiating an Investment Protocol to add and build upon the agreement.

SAFTA: This FTA accords national treatment to investors and their investments, but has no MFN provisions. Modifications or additions of reservations can be made by giving three

months written notification to the other Party and, on request, consulting with the other Party to ensure the balance of commitments are maintained. Other disciplines include expropriation and nationalisation, compensation for losses, subrogation, investor–state dispute settlement and the disclosure of confidential information.

Singapore has removed the quantitative limit on the number of wholesale banking licences for Australian banks. Australia agreed to provide a help desk to assist Singaporean business investors with applications for direct investment in Australia.

AUSFTA: This FTA applies MFN treatment and national treatment to investors of the other Party and their investments. It also accords a minimum standard of treatment, in accordance with customary international law, with respect to investments. Performance requirements on all investments are also prohibited, including conditions related to exports, imports, foreign exchange, domestic content, technology transfer and exclusive supply, subject to some exceptions. Furthermore, AUSFTA prevents nationality restrictions on senior management positions, but does allow them for boards of directors, provided that they do not materially impair the ability of an investor to exercise control over its investment. Certain restrictions have been made by both parties against national treatment, MFN, performance requirements and membership, management and boards of directors provisions. Expropriation and nationalisation of investments are prohibited except under certain conditions and the Parties are required to pay compensation. Investors' funds related to investments in the territory of a Party must be permitted to be transferred freely and without undue delay. Other disciplines include treatment in case of armed conflict or civil strife and special formalities and information requirements.

Australia made commitments on investment in a range of areas, including in respect of foreign investment policy (with higher Foreign Investment Review Board thresholds for US investors). 'GATS-plus' commitments on investment in services commitments are outlined in the section on services above.

TAFTA: Investment provisions in TAFTA include separate national treatment articles relating to pre- and post-establishment and acquisition of investments (subject to those sectors listed in the positive list schedule of commitments on services and investment). MFN treatment is limited to post-establishment treatment of investment. A Party can modify its commitments by giving three months written notification to the other Party and, if requested, must enter into negotiations to ensure the general level of commitments are maintained. Furthermore, if a Party unilaterally liberalises measures applying to investors or investments, it shall consider a request by the other Party to incorporate it into the Agreement. Other disciplines include expropriation, compensation for losses, payments and transfers, subrogation and investor–state dispute settlement.

Thailand made commitments to liberalise foreign equity restrictions applying to Australian investment in mining, distribution, construction, management consulting, restaurants or hotels, certain tertiary education and maritime cargo services. We are working with Thailand to advance further negotiations on investment.

ACI-FTA: This FTA includes MFN treatment and national treatment provisions for investments (subject to a negative list and ratchet mechanisms for services and investment), and to promote mutual recognition of professional qualifications. It generally prohibits the imposition of performance requirements (similar to the AUSFTA) and includes similar

provisions to the AUSFTA on senior management and boards of directors. ACI-FTA protects free transfer of funds and prohibits expropriation of an investment unless it is undertaken on a non-discriminatory basis, for a public purpose, in accordance with due process of law, and accompanied by prompt, adequate and effective compensation. There are detailed provisions on investor-state dispute settlement.

AANZFTA: This FTA includes a work program to develop market access schedules for investment in non-services sectors within five years of entry into force of the agreement (i.e. by 2015). These schedules are to cover pre-establishment issues such as foreign equity limits in non-services sectors. The FTA also contains a range of obligations, primarily applying post-establishment, on Parties to enhance legal protection and certainty in relation to investment, including through investor-state dispute settlement provisions. The investment protections in AANZFTA are comparable to the pre-existing bilateral Investment Promotion and Protection Agreements Australia has with four ASEAN countries (Indonesia, Laos, the Philippines and Vietnam). The AANZFTA work program also provides for further discussions between Parties on the application of MFN treatment to investment.

1.4 Government Procurement

Given its significance for any developed economy, accounting for at least 10 per cent of GDP, disciplines on government procurement are important to maximising the benefits of trade liberalisation and the Australian Government seeks the inclusion of provisions in this area in its FTAs. SAFTA, AUSFTA and the ACI-FTA include substantive government procurement provisions which, inter alia, promote transparency and establish a core obligation to grant national treatment to the suppliers of the other Party. These obligations apply to procurements above agreed value thresholds by listed central and, in the case of the AUSFTA and ACI-FTA, sub-central government entities. As a general rule this means that neither Party is able to apply local preference arrangements or local content requirements. ACI-FTA, AUSFTA and SAFTA provide non-discriminatory access to government procurement markets that are covered by their commitments.

In addition to the direct market access gains which can flow from FTA commitments on government procurement, the associated reforms to an economy's procurement system can have broader positive impacts. The elimination of discriminatory procurement practices is consistent with a policy of seeking the best value for money outcome. An open and non-discriminatory approach to procurement promotes competitiveness, efficiency and good governance in the local market.

Notwithstanding the above, government procurement can be a sensitive issue, particularly for developing countries. It is not yet covered in TAFTA, however a bilateral working group has recommended that negotiations commence on a government procurement chapter. ASEAN was not prepared to enter into commitments in this area in the recently concluded AANZFTA as it regards government procurement as an issue of national sovereignty, and ASEAN countries have not undertaken government procurement commitments as part of their own ASEAN-wide FTA negotiations.

1.4.1 Case Study – AUSFTA and Government Procurement

The Government Procurement Chapter (Chapter 15) of the Australia–United States Free Trade Agreement has provided Australia with access it did not previously enjoy to the

world's largest government procurement market on equal terms with suppliers from the United States and over 60 other designated countries. In return, Australia has agreed to important changes to its government procurement arrangements operated by the Australian Government and the State and Territory Governments. Several State and Territory Governments were provided with a three year period to adjust specific non-compliant policies that gave preference to local suppliers.

The Australian Government and most State and Territory Governments extended changes required by the Government Procurement Chapter to all foreign suppliers and products. Initially, 79 US Federal Departments and 27 States – including California – the largest procurement entity in the United States, were covered by the Chapter. An additional four US States have made commitments under the Agreement since its implementation and the United States is required to encourage further States to make commitments.

Under the Government Procurement Chapter, Australia has become a 'designated country' under the US Trade Agreement Act, lifting restrictions on the ability of Australian suppliers to bid for contracts tendered by US Federal Government entities. The United States was also required to provide Australia with a waiver from the Buy American Act for contracts to which the Chapter applies.

The core principles of the Government Procurement Chapter are national treatment, non-discrimination and transparency in the conduct of government procurement. These principles are safeguarded by more specific provisions setting out rules and procedures that each Party has agreed to apply when undertaking procurements covered by the agreement. These provisions protect against indirect discrimination, such as through offsets or discriminatory supplier qualification arrangements. The Parties are required to treat suppliers of the other Party offering that Party's goods and services in the same way as their own domestic suppliers, goods and services.

Government entities that are covered by the Chapter, the thresholds that are applied, and the specific types of procurements and procurement arrangements that each Party has exempted from the application of the Chapter are set out in Annex 15-A. Thresholds specify the minimum value required for a procurement to be covered by the Chapter and vary for different groups of entities and between procurement of construction services and procurement of other goods and services. Thresholds are subject to periodic adjustment. For general goods and services (that is, non-construction) procurement by Central Government entities, the relevant financial threshold is aligned to the US threshold for this category under the North American Free Trade Agreement. This threshold is lower than the equivalent US commitments under the WTO plurilateral Government Procurement Agreement (GPA). Australia agreed to this lower threshold in order to provide maximum access for Australian suppliers and products.

AUSFTA's Government Procurement arrangements are particularly beneficial to Australia when viewed against US general policy with respect to market access for government procurement, which is to grant national treatment based on the principle of reciprocal agreements, with access to its government procurement market being subject to limitations under the US Trade Agreement Act. By contrast, access to the Australian Government procurement market is substantially open, based on achieving value for money through non-discriminatory competitive processes.

In addition, while the United States is a member of the plurilateral WTO GPA, Australia is not,²⁸ and therefore has no commitments or rights under the GPA. For procurement not covered by the GPA or other international agreements, the United States maintains a number of domestic purchasing requirements, such as those under the Buy American Act. The Buy American Act also imposes a 6 per cent penalty on foreign goods (not services). (Note that the US ‘Buy American Act’, which deals with price preferences, is distinct from the US ‘Buy America Act’ which deals with federal funding of State transport projects.) In some states, US sub-federal regulations grant preferences to local suppliers, and impose local-content requirements under certain conditions.

In December 2004, the Australian Government issued revised *Commonwealth Procurement Guidelines* (CPGs) to take effect from 1 January 2005 to ensure compliance with the AUSFTA (the CPGs were further revised in December 2008). Implementation of changes by the Australian Government has led to improved consistency and rigour in procurement processes and a generally more open and contestable government procurement market. While the revised CPGs required substantial changes to existing procurement arrangements the Australian Government anticipated this and allocated additional funding to a number of federal departments and agencies in the 2005 Budget to offset related costs. Although the general impact for suppliers is unclear, available evidence suggests that the changes were followed by a material increase in the share of contracts (by number and value) being won by (Australian and New Zealand) small and medium enterprises. The Department of Finance and Deregulation considers it most likely that this increase reflects the use of more open competitive processes in government procurement.

1.5 Intellectual Property

Intellectual property protection can play an important role in encouraging innovation and technological progress, which are critical to economic growth. There has been increasing recognition that the issue of adequate protection and enforcement of intellectual property has an international trade dimension. This is reflected in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and Australia’s approach to pursuing appropriate coverage of intellectual property issues in its FTAs.

Inadequate or excessive protection of intellectual property impedes trade and investment. Finding the appropriate level of protection involves balancing the rights of the creators of intellectual property with those of the users. While the WTO TRIPS Agreement sets minimum standards, many members are yet to fully implement those standards. Similarly, many World Intellectual Property Organization (WIPO) members are yet to implement many of the WIPO agreements to which Australia adheres, particularly those addressing pressing issues around copyright in a digital age.

All of Australia’s recent FTAs reaffirm the commitments in the WTO TRIPS Agreement – with the exception of the CER which was negotiated before TRIPS. AUSFTA and the ACl-FTA are more comprehensive in their coverage of intellectual property rights and the type of protective measures to be provided than SAFTA, TAFTA or AANZFTA. With respect to copyright and related rights, for example, the term of protection for works increased under AUSFTA to the life of the author plus 70 years.

²⁸ Australia maintains an open and non-discriminatory procurement system. It has not joined the GPA. .

The potential of FTAs to strengthen regional economic integration is evident in such agreements' treatment of intellectual property where common approaches can promote foreign investment, technology transfer and trade between the parties. For example, there are significant variations in intellectual property law and practice both within ASEAN and between some ASEAN member countries and Australia. This variation introduces complexity and uncertainty that impedes intellectual property related exports to the ASEAN region and adds to the transaction costs of those businesses which do seek to protect their intellectual property in ASEAN markets.

The AANZFTA outcome reinforces the Parties' existing rights and obligations under the WTO TRIPS Agreement and builds on those rights and obligations in a number of areas. AANZFTA contains specific obligations on protection of trademarks and geographical indications, copyright, government use of software and transparency. It provides for cooperation in many areas, including to promote the efficiency and transparency of intellectual property administration and registration systems, cooperation on border measures with a view to eliminating trade which infringes intellectual property and cooperation regarding accession to a number of international standard setting treaties which would facilitate further harmonisation of intellectual property systems in the region.

Australia is currently participating in negotiations to codify standards for intellectual property enforcement through a plurilateral agreement, the Anti Counterfeiting Trade Agreement (ACTA). ACTA seeks to address high and growing levels of counterfeiting and piracy.²⁹ A plurilateral initiative, it builds on a network of existing bilateral agreements between parties to the negotiation. With participants including important Pacific Rim trading partners such as Japan, the United States, Mexico, Korea, Singapore and Canada, ACTA can be seen as an example of the contribution of plurilateral agreements in building regional and supra regional norms that facilitate trade and investment.

1.6 Competition Policy

Competition policy is increasingly important, and now a standard feature of modern FTAs. It has an important role to play to help ensure that the potential gains to each country from an FTA are fully realised. For example, the liberalisation of restrictive trade policies (which have the potential to be anti-competitive) could enhance the degree of competition in markets and benefit industries and consumers, but our access in another market could be compromised if there are no disciplines on designation of future monopolies and state enterprises, no separation of interests (i.e. a regulator should not also be a commercial operator), no independent tribunals and processes of natural justice to appeal or review decisions.

Australia has had a consistent approach to the negotiation of competition elements of FTAs. The differences in the level of commitment on competition policy and cooperation in our trade agreements reflect the capacity of our negotiating partner to make the same level of commitment as Australia. A number of Australia's existing or prospective trading partners do not have comprehensive competition regimes (although they may have sector specific arrangements with different levels of legal standing). In these cases we seek a principles

²⁹ See OECD Phase 1 Report, *Magnitude of Counterfeiting and Piracy of Tangible Products: An Update*, November, 2009, at www.oecd.org/dataoecd/57/27/44088872.pdf

based competition chapter that might guide that FTA partner in its future development of a competition regime.

ACI-FTA and AUSFTA affirm the Parties' commitment to proscribing anti-competitive activities. The agreements provide for each Party to maintain a robust legal framework on anti-competitive activities; impose disciplines on state enterprises, designated monopolies and enterprises with special and exclusive rights; and allow for exchange of information and cooperation on enforcement activity. Under SAFTA, the Parties will conduct formal consultations once a generic competition law comes into effect in Singapore. Trading partners such as Singapore have a large number of government linked corporations and problematic regulator/provider linkages. The United States does not apply competition policy to state owned enterprises, and immunities are more variable.

TAFTA has a provision for a review of the scope of the commitments on competition to take place within three years of entry into force of the Agreement. AANZFTA establishes a framework for cooperation in the promotion of competition, economic efficiency, consumer welfare and the curtailment of anti-competitive practices.

1.7 Electronic Commerce

Australia has a consistent policy of including electronic commerce commitments in FTAs to promote the use of electronic commerce through the development of compatible regulation and improved consumer confidence. All of our FTA electronic commerce commitments include provisions to strengthen online consumer protection regulations, promote the use of paperless trading and work towards the mutual recognition of digital certificates at the government level. Australia seeks to make permanent the current WTO moratorium on imposing customs duties on electronic transactions with our FTA partners on a reciprocal basis, and has already done so with Chile, Singapore, Thailand and the United States.

While each individual economy has to assess any possible revenue loss and competitive neutrality issues raised by the WTO moratorium, there is also an increase in productivity as a result of these economies remaining at the leading edge of developments in electronic commerce. This approach helps sustain the ongoing development of e-business models.

1.8 Labour and Environment

The Australian Government's position on labour and environment in FTAs is that it has undertaken to explore the inclusion of environment protection and labour standards in FTA negotiations on a case-by-case basis.³⁰

Australia has included provisions on environment and labour in two previously negotiated FTAs, the Australia United States FTA (AUSFTA) and the Australia Chile FTA (ACI-FTA).

Under the AUSFTA, individual chapters on labour and environment were negotiated following the then US 'template' on these matters, including enforcement and dispute settlement provisions.

³⁰ See the Government's response of September 2009 to the Joint Standing Committee on Treaties (JSCOT) report on the Agreement Establishing the ASEAN–Australia–New Zealand Free Trade Area, at <http://www.aph.gov.au/house/committee/jsct/governmentresponses/102nd.pdf>

In particular, in the AUSFTA chapter on labour (Chapter 18), the Parties agreed to:

- . Reaffirm their existing obligation as members of the ILO, and their commitments under the ILO Declaration;
- . Enforce their respective domestic labour laws and not to waive or derogate from those laws in a manner that reduces or weakens adherence to internationally recognised labour principles for the purposes of attempting to encourage trade or investment between them;
- . Provide for procedural guarantees, such as the commitment to ensuring that persons with a legally recognised interest have appropriate access to administrative and judicial tribunals for the enforcement of labour laws, and that the proceedings of these tribunals are fair and equitable;
- . Promote public awareness of labour laws;
- . Allow for the possible establishment of institutional arrangements such as an FTA Subcommittee on Labour Affairs to facilitate discussion of matters related to the AUSFTA labour provisions;
- . Establish contact points within respective governments to facilitate exchange on labour matters, and provide a procedure for consultations regarding labour matters if requested by either Party;
- . Provide access to the government-to-government dispute settlement provisions of the FTA in respect of any sustained failure by either Party to effectively enforce its labour laws in a manner affecting trade between the Parties, with potential application of monetary assessments if the complained against Party is found to have failed in this requirement. Under the system of monetary assessments, the complained against Party is expected to contribute funds to the remediation of the labour (or environment) problems in its own territory. The provisions are included in the FTA's Dispute Settlement Chapter (Chapter 21).

Under the environment provisions of the AUSFTA (Chapter 19), the Parties agreed to:

- . Recognise the right of each party to establish its own levels of environmental protection and encourage high levels of environmental protection;
- . Effectively enforce domestic environmental laws and not derogate from that commitment by either action or inaction;
 - Access to the government-to-government dispute settlement provisions of the FTA is provided in respect of any sustained failure by either Party to effectively enforce its environmental laws in a manner affecting trade between the Parties;
- . Ensure that fair and equitable judicial, quasi-judicial and administrative systems are in place and that persons with a legally recognised interest under its laws have access to such proceedings as well as appropriate remedies;
- . Promote public awareness of environment laws;
- . Recognise that flexible, voluntary and market based mechanisms can contribute to the achievement and maintenance of high levels of environmental protection and encourage the development of such mechanisms;
- . Allow for the possible establishment of a Sub-Committee on Environmental Affairs;

- . Recognise the importance of strengthening capacity to protect the environment and to promote sustainable development in concert with strengthening bilateral trade and investment relations;
- . Acknowledge the importance of ongoing joint, regional and multilateral environment activities in a separate Joint Statement on Environmental Cooperation;
- . Recognise the importance of implementing multilateral environmental agreements and acknowledging their role in protecting the environment globally and domestically, including through the World Trade Organization.

Under Chapter 18 on ‘cooperation’ in the ACI–FTA, the Parties have agreed to cooperate on labour and employment matters of mutual interest based on principles embodied in the International Labour Organization (ILO) *Declaration on Fundamental Principles and Rights at Work and its Follow-up* (1998). The Cooperation Chapter also includes agreement to cooperate on environmental matters, reflecting the commitment of both Parties to strengthening environmental protection and the promotion of sustainable development.

2. Australia's FTAs: Safeguards Against New Barriers

Terms of Reference # 2

Examine the evidence that bilateral and regional trade agreements have safeguarded against the introduction of new barriers. Consider also the potential for trade discrimination against Australian businesses without full engagement in the evolving network of bilateral and regional agreements.

Free trade agreements, such as those concluded by Australia, are legally binding international treaties permitted under the relevant WTO provisions, GATT Article XXIV and GATS Article V. They are designed to liberalise trade and investment flows between the parties through the elimination of barriers and guard against the introduction of any new barriers.

2.1 Goods

In terms of trade in goods, FTAs are required to deliver the elimination of tariffs on substantially all the trade, either from entry into force of the agreement or gradually within a reasonable length of time.³¹ The resulting tariff-free treatment, or reduced tariff for some products, may be lower than the generally applied tariffs (MFN tariffs) faced by most other countries including WTO members. FTA parties are legally bound to apply this lower tariff to imports from other parties to the agreement. One exception to this is where FTAs include special safeguard provisions allowing a party to increase tariffs above the agreed rate if imports of sensitive goods from the other party exceed an established trigger point.

As legally binding agreements, FTA commitments on tariffs not only provide for the reduction and elimination of tariffs, but provide assurance that these tariffs will not be subsequently increased or re-introduced. Therefore, even for products where there is already tariff-free treatment, an FTA will be beneficial as it will provide an international commitment to maintain this tariff-free treatment. These bindings are particularly valuable in FTAs with developing countries, such as AANZFTA. These countries generally have 'ceiling bindings' in the WTO, i.e. their WTO tariffs are normally well above generally applied tariffs, including when applied tariffs are low. As FTAs are negotiated using the applied tariffs, rather than WTO bindings, they have very immediate trade impacts both in the effect of the tariff reductions and the certainty to business provided through tariff bindings.

For example, in addition to the progressive reduction and elimination of tariffs, AANZFTA will bind the 2005 applied tariff rates, for all but a few tariff lines. The binding of the 2005 applied tariff rates for almost all tariff lines affords Australian exporters to ASEAN markets certainty of continued access to these markets and additional opportunities from early in the Agreement's implementation as tariffs are reduced and, in most cases, eliminated. Exclusions from tariff commitments have been kept to a minimum and generally do not exceed 1 per cent of a country's national tariff lines

³¹ In the 1994 Understanding members agreed that 'a reasonable length of time' for FTA implementation was 10 years from entry into force.

2.1.1 Increases in MFN Tariffs

The significance of tariff bindings is highlighted by a WTO report on verified instances where countries have recently increased their applied MFN tariffs, as illustrated by the following:

Table 5: List of Recent Tariff Increases as Reported by the Director-General of the WTO³²

Country	Measure	Date
Bolivia	Increase of import tariffs (to 35%) for 324 tariff lines (i.e. clothing, textiles, furniture), as from June 2009.	15 May 2009
Brazil	Increase of import tariffs on wind turbines (from 0% to 14%).	18 June 2009
Brazil	Increase of import tariffs on lauryl and stearyl alcohol, used in the production of cosmetic products, (from 2% to 14%).	31 August 2009
Indonesia	Increase of import tariffs on 17 tariff lines such as: petrochemical, steel, and electronic parts.	13 February 2009
Indonesia	New import tariffs (from 0 to 5%) for raw materials for processed milk products (milk powder and processed milk).	28 May 2009
Korea, Rep. of	Tariffs on imports of crude oil increased to 3% in March 2009.	March 2009
Russian Federation	Increase of import tariffs on cars (by 5% up to 30%); trucks (by 10%–20% up to 25%); buses (by 5%–15% up to 25%), for nine months	6 November 2008
Russian Federation	Increase of import tariffs (from 5% to 15%) on wheat and silo harvesters, for nine months.	9 January 2009
Russian Federation	Increase of import tariffs (from 0% to 5%) on soy oil meal, for nine months.	31 January 2009
Turkey	Increase of import tariffs (from 80% to 130%) for 13 tariff lines (wheat, melsin, rye, oat, buckwheat).	15 May 2009
United States	Imposition of import tariffs (10%) on softwood lumber from four Canadian Provinces, as a result of an international arbitration tribunal, in the context of the bilateral Softwood Lumber Agreement.	15 April 2009
Viet Nam	Import tariffs on newsprint paper and uncoated paper were raised to 29% (up from 20% and 25% respectively).	10 February 2009

Instances of increases in applied tariffs should be seen against a background in which most countries have in recent years maintained or continued with programs to reduce their MFN

³² Source: World Trade Organization (WTO), *Overview of Developments in the International Trading Environment: Annual Report by the Director General – Part A: Trade and Trade Related Developments in 2009*, extracted from Annex 1 (Trade and trade-related measures (October 2008 – October 2009)). Available at: http://www.wto.org/english/news_e/news09_e/wt_tpr_ov_12_a_e.doc

tariffs. The WTO report also listed a number of cases where countries have recently reduced their MFN tariffs. Indeed, in some cases the tariff increases listed above involve the restoration of tariffs that had previously been reduced or temporarily suspended. It is a reality that many countries will, at times, increase their MFN tariffs on particular products. Where the tariffs are on products that Australia exports this can have a significant effect on our trade. It is partly because of this potential for countries to increase their MFN tariffs that Australia has, since the establishment of the GATT in 1947, put such a premium on obtaining international commitments to reduce and bind (cap) tariffs from its trading partners in multilateral trade negotiations and, more recently, in FTA negotiations. (The section of this submission covering TOR 1 has summarised the significant liberalisation and bindings achieved in Australia's FTAs.)

2.1.2 Safeguards

Under the AUSFTA, the Article on Global Safeguard Measures (Article 9.5) commits each Party to consider excluding products from the other Party from any global safeguard measure (i.e. a safeguard measure applied to all imported products of a particular type, regardless of their country of origin, under the WTO Agreement). Australian products may, for example, be excluded where they are not a substantial cause of the serious injury being suffered by the US industry.

2.2 Services

All of Australia's FTAs include chapters or protocols (in the case of ANZCERTA) on services in which we have sought to build on the existing WTO disciplines on trade in services. GATS Article V requires that FTAs provide for the elimination of substantially all discrimination in the sectors covered, through the elimination of existing discriminatory measures and the prohibition on the introduction of any new or more discriminatory measures, once again safeguarding against any future discrimination. An FTA places constraints on governments that may wish to introduce, or reintroduce, barriers to trade and investment affecting other parties to the agreement.

Box 4: AUSFTA – Safeguarding Access to US Government Procurement

A recent example of an FTA successfully safeguarding Australian business from the introduction of a new barrier is in the area of government procurement. As part of its response to the Global Financial Crisis, the United States Congress passed a bill requiring the US Federal and State governments to buy US-made steel when using funds from the US Government's financial stimulus package.

The Australian Government, along with a number of US trading partners, raised concerns about the negative message this protectionist measure sent at a time when the world was dealing with the fallout from the crisis, but also about the consistency of the announced measures with United States' international trade obligations in the area of government procurement. The Australian Government was able to cite the provisions contained in the Government Procurement Chapter of the AUSFTA and have the United States clarify its policy to confirm that it would be implemented in a manner entirely consistent with its international obligations, including under AUSFTA. (Also see under TOR 4).

2.3 Maintaining Competitive Access

The reality is that virtually all WTO members are parties to FTAs and/or are actively involved in FTA negotiations. It is unrealistic to suggest that Australia dismiss this avenue for securing market access gains when Australian business is faced with competitors based in countries likely to secure preferential access via their own FTAs. Notwithstanding the importance of a successful conclusion to the WTO Doha Round, and the broad-ranging benefits which such an outcome would deliver for Australian business, we cannot stand by in the interim while our competitors secure preferences disadvantaging Australian exporters and investors. In short, standing still equates to going backwards.

The Department receives regular and varied calls from industry associations and individual businesses to expedite current FTA negotiations and for an expansion of the FTA agenda. Recent examples of such calls include from the dairy sector following news that New Zealand had concluded its FTA negotiations with the GCC (not yet in force) and China (entered into force on 1 October 2008) and earlier representations from the beef industry upon conclusion of negotiations on the Korea–US FTA (not yet in force). The Australian auto industry also has an interest to ensure that Australia not lag behind other auto exporting countries currently negotiating FTAs with the GCC, such as Japan, Korea, the EU and China.

Box 5: New Zealand–China FTA

New Zealand's Minister of Trade, Mr Tim Groser, has recently noted that the value of New Zealand exports to China increased by 47 per cent for the 12 months ending November 2009, and commented that:

'The strong performance of New Zealand exports to China has paralleled the entry into force of the New Zealand–China Free Trade Agreement [entered into force on 1 October 2008]. Wider market forces, including robust demand for some of our key exports (notably for dairy and wood), has been a dominant factor in the trade equation. Nonetheless, the reduction in tariffs on New Zealand's exports to China (three rounds of tariff cuts to date) has contributed to export growth. Its impact will continue as tariffs further reduce and are eliminated. China's tariff on New Zealand wine, for example, has reduced to 5.6 per cent this year and will be zero in 2012 (compared to a base rate of 14 per cent). The duty on our kiwifruit is now 13.3 per cent (compared to a base rate of 20 per cent) and will be zero in 2016.'

(Address to KEA China, 3 February 2010)

Box 6: Australia's Agriculture Exports to the Republic of Korea (ROK)

Australian agricultural industries are pressing for the quick conclusion of a bilateral FTA with the ROK, noting that the ROK–US FTA, when ratified, will place Australia at a disadvantage in the Korean market vis-à-vis US exporters. The ROK's FTAs with Chile and the EU (when the latter enters into force) are also threatening the competitiveness of Australian products in the ROK market.

For example, Australia's beef exports to the ROK were worth over \$530 million in 2009. In the ROK's FTA with the US, it agreed to reduce its 40 per cent tariff to zero over 15 years. Beef exports from the US will be able to enter at lower duties than Australian exports from the first year of implementation of the agreement.

Similarly, in the ROK's FTAs with the US and the EU, it has agreed to liberalise trade in all dairy products. Korea's imports of dairy products are heavily constrained due to a regime of high tariffs and small quotas. Under their FTAs, exports from the US and the EU will be able to enter free of duty under sizeable quotas, with virtually all dairy products entering within 15 years. Australia's dairy exports to the ROK were worth over \$90 million in 2009.

Australia's beef and dairy industries, as well as other industries affected by ROK's FTAs, such as wine, horticulture and seafood, have emphasised the importance of redressing or preventing, through an Australian–ROK FTA, competitive disadvantage as a result of Korea's FTAs, including with the United States (not yet in force), the EU (not yet in force), Chile, ASEAN and (prospectively) New Zealand.

In addition, the Department, together with Austrade, works with business, both overseas and in Australia, to ensure that they are best placed to take full advantage of the additional market access secured under our FTAs.

These regular representations, as well as other independent surveys, make it clear that industry is broadly supportive of the Government's approach to FTAs.

3. FTAs: Lending Support to the WTO

Terms of Reference # 3

Consider the role of bilateral and regional trade agreements in lending support to the international trading system and the World Trade Organization.

The contribution of FTAs to supporting the WTO's multilateral trading system has been identified by a number of commentators. The WTO Secretariat, for instance, is on record as arguing that:

- . FTAs have allowed groups of countries to negotiate rules and commitments that go beyond what was possible at the time multilaterally;
- . in turn, some of these rules have paved the way for agreement in the WTO;
- . services, intellectual property, environmental standards, investment and competition policy are all issues that were raised in regional negotiations and later developed into agreements or topics of discussion in the WTO.³³

The issues identified by the WTO Secretariat, which have a crucial role to play in promoting greater commercial interaction, fostering competition and addressing some of the behind the border issues, can be advanced more effectively and quickly through FTA negotiations than is possible through the WTO's focus on goods and services trade. However a successful conclusion to the Doha Round, involving as it does 153 WTO members, has the potential to deliver an outcome which is more commercially significant than is possible via any FTA.

While the Government's number one trade priority remains concluding the Doha Round, at the same time, the Government has an active FTA agenda seeking high quality WTO-consistent agreements. The Government pursues bilateral and regional trade agreements which are supportive of Australia's efforts at the multilateral level – i.e. FTAs that are comprehensive, address trade in goods and services, as well as a range of 'WTO-plus' issues, and that minimise carve-outs.

The type of high quality agreement that Australia pursues can assist in moving the WTO membership towards the desirable goal of global trade liberalisation. For instance, in a bilateral or regional negotiation involving a limited number of parties, governments have shown themselves to be more willing to eliminate or phase out tariffs and gradually open markets in a range of other ways. Through such a progressive approach governments can expose import-sensitive sectors to greater competition and ultimately build a domestic consensus for broader trade liberalisation, and in so doing contribute to efforts at the multilateral level.

There has been discussion in trade policy and academic circles in recent years of the concept of 'multilateralising regionalism'.³⁴ This term is interpreted in a number of ways from the unilateral extension of the FTA preferences to non-parties, through to the expanding or linking of existing FTAs. All of these approaches have the potential to contribute to global liberalisation. The non-discriminatory approach which Australia takes in the area of

³³ See WTO website at www.wto.org

³⁴ For example see R. Baldwin, and P. Thornton, P. *Multilateralising Regionalism: Ideas for a WTO Action Plan on Regionalism*, The Graduate Institute, Geneva, 2009.

government procurement means that the increased transparency and procedural changes to our procurement regime, negotiated in the Australia-US FTA, were extended to all foreign suppliers. This is an example of an Australian FTA commitment being multilateralised. In some cases an accession provision can be very useful for encouraging an expansion of an FTA through its extension to new Parties.

This progressive approach interlinking the various strands of multilateral, regional and bilateral agreements has been described by the Government as ‘a self-reinforcing cascade effect’ towards broader trade liberalisation.³⁵

At the same time FTAs have well rehearsed limitations. Issues such as agricultural subsidies, for instance, negatively impact world prices, not just those between respective trading partners, and so, realistically, can only be adequately handled multilaterally. In addition, the scale of gains in FTAs is always limited compared to the substantial gains to global welfare a multilateral agreement can deliver.

Furthermore, the poor quality of FTAs negotiated by some WTO members which are narrow in focus (for example by addressing only trade in manufactured goods), and which feature substantial exclusions or carve-outs, risks undermining core WTO disciplines, and in particular the most-favoured-nation (MFN) provision which obliges WTO members to avoid discriminating against fellow WTO members. To avoid this possibility, envisaged by the original GATT contracting parties, GATT Article XXIV provides for the negotiation of FTAs so long as the parties to the FTA eliminate tariffs on ‘substantially all trade’ between them and Article V GATS allows for the possibility of economic integration agreements on trade in services. The Article XXIV rules have been very effective in ensuring that FTAs cannot involve any increase in the tariffs faced by non-Parties, unlike the preferential trade agreements negotiated by many countries in the 1920s and 1930s.

Of particular concern for Australia and other agricultural exporting nations is the tendency to exclude a significant proportion of agricultural tariff lines. This is particularly the case for a number of countries, including a number of developing countries, which have shown themselves to be reluctant to liberalise agricultural trade by excluding a significant number of tariff lines from tariff reduction and/or elimination commitments.

The capacity of the WTO to remedy the negotiation of poor standard FTAs may be hindered by the absence of a common understanding on some of the WTO provisions relating to FTAs (or Regional Trade Agreements (RTAs), the generic term used in the WTO). For example, the term substantially all trade has never been quantified. In part, this may reflect the reluctance of some WTO members to risk a finding that their FTAs – in force and under negotiation – do not comply with the Article XXIV standard.

To address concerns about the quality of some FTAs, as part of the Doha Round negotiations, members undertook to seek to clarify and strengthen the WTO rules applying to RTAs. Australia has played a central role in this area of the Doha Round as it sees greater clarity with respect to the rules as helping to guard against low quality agreements, which would ultimately be to the detriment of the WTO.

³⁵ See speech by Trade Minister Simon Crean, *Regional Economic Integration as a Foundation for Prosperity – an Australian Perspective*, ANU, 11 February 2010.

This area of the negotiations has two key elements: enhanced transparency on RTAs; and consideration of the scope to further clarify the GATT Article XXIV requirement to eliminate tariffs on substantially all trade. The first of these has produced a positive result, with an RTA transparency mechanism having been agreed (and applied) provisionally in late 2006. Australia seeks to ensure that the mechanism, under which WTO members have agreed to subject all FTAs (including those agreements notified under the enabling clause) to a standardised notification, reporting and review process, will be permanently adopted as part of a final Doha Round package. Australia is a leading advocate on RTA standards and transparency in the WTO.

The second issue has been much more contentious and little progress has been made. Australia has been one of the most active participants in these negotiations submitting a number of formal detailed proposals on the question of substantially all trade. At the core of Australia's submissions was a quantitative benchmark, which would require an RTA to eliminate tariffs on at least 95 per cent of tariff lines in order to meet the substantially all trade requirement.

In the absence of any real prospect of agreement to a rigorous definition of substantially all trade, the current focus in the Doha Round negotiating group on rules is shifting to a possible forward work program on RTAs. Australia is considering such a work program as a means of building on the success of the transparency mechanism and informing future consideration of the substantially all trade issue.

In addition, Australia's approach to its own FTAs seeks to drive higher standard agreements being adopted by its trading partners as well. The Trans-Pacific Partnership parties, for example, are striving for a 21st Century, high quality and comprehensive agreement, the membership of which will be open, with the agreement of existing Parties, to those countries willing to sign on to these same liberalising principles.

4. Global Economic Developments and Promoting Regional Integration

Terms of Reference # 4

Analyse the potential for trade agreements to facilitate adjustment to global economic developments and to promote regional integration.

While all market economies are susceptible to adverse impacts from fluctuations in global economic activity, those with more open markets and pro-competitive regulatory environments are best equipped to respond to such external shocks.

Trade agreements, including FTAs, can play an important role in facilitating adjustments to global economic developments within economies. FTAs aim to eliminate import barriers and improve behind the border regulatory frameworks, and therefore encourage more open economies, and can help those economies to develop more quickly in line with global growth, and to deal more robustly with fluctuations in global economic and financial conditions. By reducing or removing trade barriers that distort price signals, FTAs can allow price signals to be transmitted from global markets to domestic economies more effectively. In turn, this can facilitate the movement of resources within economies, either to take advantage of opportunities emerging in international markets or in response to competitive pressures from trading partners.

Australia's existing FTAs have played such a role. The Australian dairy industry is a good example of the way in which FTAs can facilitate structural adjustment. Historically, the Australian dairy industry gained through import protection and price support. The opening up of Trans-Tasman trade in dairy products under the CER agreement necessitated the Australian dairy industry rationalising and focusing on improving its efficiency in order to remain competitive. As a result of the adjustment process that the industry underwent, a smaller, more productive, more competitive dairy industry has emerged that has been able to capitalise on export opportunities in other markets around the world. The end result was that the Australian dairy industry improved its international competitiveness.

FTAs, by lowering tariffs for imports from partner countries, can divert imports from the most cost-efficient sources. However, the comprehensive trade liberalisation commitments in Australia's FTAs together with Australia's low MFN tariffs and the globally competitive nature of our FTA partners, mean that trade creation effects should outweigh trade diversion effects.

Trade agreements also play an important role in limiting the scope for governments to raise trade barriers in responding to adjustments to global economic developments. This was evident during the 2008–09 Global Financial Crisis (GFC) when global demand for a range of products collapsed. Governments around the world responded with a range of stimulus packages and support measures. There was clearly a chance that countries could have resorted to protectionist measures to ensure that stimulus spending was retained in the domestic economy and did not 'leak' to imports. Given the scale of the recent global economic contraction, the number and scale of trade distorting measures actually introduced was, however, remarkably small. In part this reflected the fact that stimulus measures were introduced by a wide range of countries, with international coordination through bodies such as the G-20 giving confidence to the benefits of coordinated action. However, the limited resort to protectionist actions was undoubtedly also a reflection of confidence that

international markets would remain open given the strength of commitments in trade agreements, and the continued support of governments for the open world economy embodied in these agreements. Trade agreements – both the WTO and FTAs – provided safeguards against the temptation by our trading partners to introduce crisis driven protectionist measures.

A recent example of the value of FTA obligations during the GFC was the role that the Australia–United States Free Trade Agreement (AUSFTA) played in Australia’s response to the ‘Buy America’ aspects of the US stimulus package, which went before Congress in February 2009 and which required US–made iron, steel and manufactured goods be used for any stimulus–funded project constructing, altering, maintaining or repairing a public building or public work.³⁶

The Government reminded the United States of its obligations under the AUSFTA, specifically that the United States was committed under the Government Procurement Chapter to treat (in covered procurements) Australian goods and services, and suppliers offering Australian goods and services, no less favourably than their US counterparts (national treatment) and to prohibit local content/local supplier preferences (offsets).³⁷

The United States was obliged to revise aspects of its ‘Buy America’ stimulus package to ensure that it was implemented in a way consistent with US international commitments on government procurement. After President Obama’s intervention, the bill expressly provided for this provision to be applied in a manner consistent with US obligations under international agreements, including obligations under AUSFTA. The Department continues to monitor implementation carefully to ensure the United States abides by its AUSFTA commitments in administering its stimulus package.

Significantly, the conclusion and signing of the ASEAN–Australia–New Zealand FTA (AANZFTA) during the GFC demonstrated the region’s commitment to open markets.³⁸

4.1 Promoting Regional Integration

Australia has a fundamental interest in promoting regional stability, security and prosperity, and is committed to playing a full role in the regional architecture, as demonstrated by our long term commitment to regional bodies such as APEC, the ASEAN Regional Forum and the East Asia Summit

Australia’s involvement in regional initiatives such as AANZFTA, the Comprehensive Economic Partnership in East Asia (CEPEA) and the TPP needs to be seen in the context of Australia’s FTA strategy of pursuing the negotiation of comprehensive FTAs that are

³⁶ The US Congress passed a US\$787.2 billion (A\$1.2 trillion) stimulus package for the United States economy on 13 February 2009. The President signed the package into law on 17 February 2009.

³⁷ There are various exceptions to the Chapter’s applicability, so Australia is not entitled to access all US government procurements. An extensive list of US federal entities are subject to these commitments, along with entities from 31 states (with some exceptions).

³⁸ The Minister for Trade, Mr Crean, noted at the time that ‘In the midst of the global downturn, Australia and New Zealand and ten nations from South–East Asia have sent a powerful message to the rest of the world. That message is this: the ASEAN region remains committed to pursuing free trade; we are determined to pursue trade liberalisation as a way to boost exports and job opportunities; we acknowledge that keeping trade flows open represents the best chance of a quick exit from this global economic storm’ (Statement to Parliament, 16 March 2009).

consistent with WTO rules and which complement and reinforce the multilateral trading system. Some of these FTAs and FTA negotiations are bilateral (e.g. concluded FTAs with Singapore, Thailand, the United States, New Zealand and FTA negotiations underway with China, Japan, Korea and Malaysia) while some involve multiple countries (as is the case with the AANZFTA and the TPP). The plurilateral agreements have the potential to build shared approaches to trade and investment, including through the adoption of a single approach to important administrative and implementation aspects of the FTAs, such as the ROO used. Plurilateral FTAs also enable a common framework to address behind the border issues.

Securing agreement to comprehensive coverage and scope by our regional FTA partners, particularly developing country governments, is challenging. Australia has increasingly focused on supporting aid for trade programs such as capacity building activities as part of the FTA process to both assist our developing country regional FTA partners embrace a comprehensive approach during the negotiating phase and, following entry into force of the FTA, to help them implement the outcome of the FTA effectively, and allow their traders and investors to take advantage of the opportunities it presents.

Australia's participation in the range of regional negotiations demonstrates our ability to engage in multiple processes in support of free trade in our region. These initiatives are important features of the evolving regional economic architecture. It is important that Australia participates in each of these initiatives to seek to guide and influence their development.

East Asian economic integration has been market-driven through trade, foreign direct investment (FDI) and the formation of regional production networks and supply chains. Following the 1997–98 East Asian Financial Crisis and the failure of the 1999 Seattle WTO Ministerial meeting to launch a new WTO Round, with associated concerns about the world splitting into regional blocs (North America, Europe and East Asia), there was a notable ramping up of East Asian policy efforts to accelerate the pace of economic integration by exploiting economies of scale and thereby improving international competitiveness. FTAs have been seen as important instruments to expand trade and FDI by eliminating barriers at the border and behind the border, thereby facilitating trade and investment flows, with the Asian Development Bank Institute (ADBI) noting that 'FTAs can be regarded as part of a supporting policy framework for deepening production networks and supply chains formed by global MNCs [multinational corporations] and emerging Asian firms'.³⁹

Global supply chains have deepened with advances in technology, declining logistic costs and lowering of trade barriers. This trend has been particularly marked in East Asia where production networks have been decentralised with the most cost effective units spread across national boundaries. The ADBI notes that 'intraregional trade in Asia has increased significantly, particularly in parts and components, and this trend may continue with further regionalisation via FTAs'.⁴⁰

The ADBI further notes that 'East Asia – a relative latecomer to using FTAs as a trade policy instrument – is now at the forefront of global FTA activity with 54 concluded FTAs'⁴¹ as at June 2009 (compared with three in 2000) and that 'ASEAN is emerging as a major regional

³⁹ M. Kawai, and G. Wignaraja, *Asian FTAs: Trends and Challenges*, ADBI Working Paper Series, No. 144 : Asian Development Bank Institute, Tokyo, August 2009, p5.

⁴⁰ Ibid, p3.

⁴¹ Ibid.

hub linking ASEAN members with the region's larger economies'⁴² through its FTAs with China, Japan, Korea, India and Australia–New Zealand. This could further support market-driven economic integration in the region by reducing trade barriers and logistic costs.

Aside from mobilising export sectors to opportunities presented by FTAs, the very process of negotiating FTAs – which involve deep and broad engagement on trade-related policy – creates strong institutional linkages between the Parties, and provides a platform for future engagement on economic issues. Negotiations are attended by officials from a range of government agencies including, for example, those responsible for regulation of telecommunications, competition, prudential management, environment, labour and electronic commerce. In some cases, FTA negotiations provide the first opportunity for intensive policy engagement between Australian and their respective partner government agencies. The people-to-people links developed during the negotiations can create ongoing benefits for Australia. Among other things, an enhanced awareness of our trading partners' regulatory approaches can prompt the identification of opportunities for economic integration that would not otherwise have been considered.

4.1.1 AANZFTA

As a region-wide FTA, the AANZFTA will deliver certain benefits in goods trade through regional Rules of Origin (ROO) that cannot be achieved through bilateral FTAs with individual ASEAN member countries. Specifically, under the AANZFTA's regional ROO, ASEAN firms using inputs produced in Australia or other AANZFTA Parties that comply with AANZFTA's origin requirements will be able to count these inputs toward meeting the ROO for the final product when exporting to other AANZFTA Parties using the Agreement's tariff commitments. This provides ASEAN member countries with a new incentive to use Australian inputs in their manufacturing processes. Bilateral FTAs usually only allow 'cumulation' of origin on a bilateral basis (i.e. between the two parties to the FTA) and therefore do not provide as great a set of opportunities for Australian exporters to become more integrated into regional production networks and supply chains as does AANZFTA.

Aid for trade, through a capacity building economic cooperation program, involving financial commitment by Australia, was (for the first time) a key feature of, and important in securing agreement to AANZFTA, and similar programs are expected to feature in a number of upcoming FTA negotiations.

AANZFTA is a good example of the 'cascade effect' and also can be seen as a building block for Australia's ongoing economic engagement with other regional countries on three key fronts:

- bilateral – with individual ASEAN countries through bilateral FTAs realising 'AANZFTA-plus' outcomes: Australia's approach in such bilateral FTAs is to add value to the AANZFTA outcome by focusing more intensively on particular market access and other priorities than has been possible in AANZFTA. This is aimed primarily at delivering some earlier or more far-reaching liberalisation in priority areas, as well as the inclusion of additional disciplines to address non-tariff barriers and provision of institutional arrangements to address specific bilateral trade and investment issues that may arise between the countries concerned;

⁴² Ibid, p6.

- regional – with ASEAN to support its own economic integration efforts: ASEAN member countries have committed to establishing an ASEAN Economic Community by 2015, aimed at bringing down barriers to goods, services, skilled labour and capital, to create a single market in ASEAN. AANZFTA has been influencing ASEAN's internal integration (e.g. the recently revised ASEAN Investment Agreement (AIA) has mirrored relevant AANZFTA provisions and the revised ASEAN Trade in Goods Agreement (ATIGA) has incorporated a number of provisions Australia had proposed in the AANZFTA negotiations) and provides a strong framework to strengthen services and investment outcomes over time in line with development of the ASEAN Economic Community; and
- at the broader regional level – for further regional engagement with other East Asia Summit (EAS) countries through the ASEAN+6 (China, Japan, Korea, India, Australia and New Zealand) process. ASEAN has now concluded goods agreements with all of its EAS partner countries which has opened the way for serious consideration of East Asian economic integration.

4.2 East Asian Regional Integration

Following the recent conclusion of five ASEAN+1 FTAs, policy discussion is now focusing on the recommendations of the non-government studies of an East Asia Free Trade Area (EAFTA), among ASEAN+3 countries (China, Japan and Korea), and the Comprehensive Economic Partnership in East Asia (CEPEA) among ASEAN +6 countries.

4.2.1 East Asian Summit: Comprehensive Economic Partnership in East Asia

The East Asian Summit (EAS) is a key regional grouping with an important role to play in advancing closer regional integration and cooperation, at a time of particular dynamism in East Asia. The 16 member countries represent collectively around half of the world's population, account for almost 30 per cent of global GDP and receive around 60 per cent of Australia's total exports.

Among the key outcomes of the Fourth EAS in October 2009 was the tasking of officials to consider the recommendations of both the EAFTA and CEPEA, noting they could be considered in parallel. A decision was also taken to establish four Working Groups, on rules of origin, tariff nomenclature, customs-related issues and economic cooperation, to take forward East Asian integration. These decisions do not mean that FTA negotiations have been launched. Rather they mark the beginning of a process for considering complex next steps on regional economic integration.

Box 8: Consideration of EAFTA and CEPEA Proposals

<p>EAFTA was the original vision of an East Asia-wide FTA, with origins dating back to 2001. CEPEA was proposed by Japan in 2006 – as a vision encompassing ASEAN+3 countries and India, Australia and New Zealand – and at the Second EAS in January 2007 leaders agreed to launch a study at the non-government (track two) level. The EAFTA and CEPEA proposals were pursued at a non-government level until the submission of their respective reports to ASEAN Economic Ministers and their meetings with counterpart ministers from relevant dialogue partners in August 2009.</p>	
<p>East Asia Free Trade Area (EAFTA)</p> <ul style="list-style-type: none"> October 2001: the East Asia Vision Group recommended the establishment of an EAFTA in a report to the leaders of ASEAN +3 November 2002: the East Asia Study Group also proposed the formation of an EAFTA 2004: the ASEAN +3 Economic Ministers (AEM +3) decided to set up the Joint Expert Group (JEG) to conduct a feasibility study of an EAFTA August 2006: JEG presented its report to AEM +3 (Phase I Report) – recommended an EAFTA be launched in 2007 January 2007: 10th ASEAN +3 Summit welcomed the proposal for the JEG to conduct a Phase II Study involving more in-depth sectoral analysis June 2009: Phase II Report submitted – proposals on how to achieve an EAFTA August 2009: Report considered by AEM +3 	<p>Comprehensive Economic Partnership in East Asia (CEPEA)</p> <ul style="list-style-type: none"> January 2007: 2nd East Asia Summit (EAS) agreed to launch a parallel process (Track II), including a study on a CEPEA among the EAS countries June 2008: Report of Track Two Study Group submitted (Phase I Report) setting out a roadmap for achieving a CEPEA August 2008: AEM +6 Meeting agreed to a Phase II Track Two Study on CEPEA, detailing the pillars of economic cooperation, trade facilitation, and liberalisation as well as institutional development July 2009: Report of Track Two Study Group submitted (Phase II Report)⁴³ August 2009: Report considered by ASEAN +6 Economic Ministers
<ul style="list-style-type: none"> October 2009: EAS Leaders tasked officials to consider the recommendations of both the EAFTA and CEPEA, noting they could be considered in parallel. 	

Current work is examining consolidation of the ASEAN +1 FTAs and looking at how they and other FTAs between the relevant countries could be made more coherent and consistent in their application. The Department sees this work being progressed through enhancing cooperation and trade facilitation to further support the market-driven economic integration underway in East Asia. This could be achieved by a deepening and widening of production networks and supply chains through a further lowering of trade barriers, declining logistic costs and technological advances.

4.3 Asia Pacific Regional Integration

4.3.1 Trans-Pacific Partnership Agreement

⁴³ A link to the Phase II Report of the Track Two CEPEA Study Group can be found at: <http://www.dfat.gov.au/asean/eas/cepea-phase-2-report.pdf>

Australia has embarked on regional negotiations with seven other countries for a Trans-Pacific Partnership Agreement (TPP). These negotiations commenced in March 2010 and are aimed at reaching a comprehensive, high quality regional agreement. TPP parties have agreed that the long term goal is to expand membership to include other countries who share their objectives for the agreement. TPP Parties are currently focussed on developing a good basis for the TPP. Once that basis has been established, TPP Parties will be able to progress the long-term goal of expansion. The Department sees the negotiation of a plurilateral FTA, the TPP as a strategic opportunity for Australia to help shape an agreement that will deepen and strengthen regional economic integration and liberalisation.

The TPP has the potential to promote regional integration because it has a broad-based initial membership (New Zealand, Chile, Brunei, Singapore, Australia, the United States, Peru and Vietnam) which is intended to expand further. Australia has comprehensive, high quality FTAs with all of these partners (with the exception of Peru) upon which to build.

The TPP also has the potential to promote regional integration because TPP Parties intend to negotiate a comprehensive 21st Century agreement that will complement the multilateral trading system, and respond more effectively to the interests of business and the trading community. For example, behind the border regulatory barriers will be a priority for Australia. Negotiators will also look for new and innovative approaches in areas like services and the promotion of trade and investment, including new technologies and emerging economic sectors such as green technology and the digital economy.

The Department envisages that the TPP will progressively expand over time to include other regional economies that are willing to sign up to the same high-quality, ambitious objectives that the current group is committed to. Given this long-term objective, the Government sees the TPP as one possible pathway towards realising the APEC goal of a Free Trade Agreement of the Asia Pacific (FTAAP).

TPP Parties commenced formal discussions in March 2010 and intend to make significant progress by the end of 2011. TPP Parties have agreed to hold four negotiating rounds per year to realise that goal.

4.3.2 *PACER Plus*

Another aspect of the role trade agreements can play in Asia Pacific Regional Integration can be seen in the new regional trade and economic agreement currently under negotiation known as the Pacific Agreement on Closer Economic Relations (PACER) Plus.

Australia's relationship with Pacific island countries is strategically important for the sustained development and stability of the Pacific. Australia places a high priority on fostering greater international trade and investment opportunities for Pacific island countries through economic cooperation and integration. Australia is the largest trading partner of Pacific island countries with two way total trade currently around \$6 billion per year.

In August 2009, Pacific Islands Forum Leaders agreed to launch negotiations for PACER Plus. This was a welcome step because closer economic integration of Pacific island countries with Australia and New Zealand is one of the best means available to create jobs, strengthen private sector development, raise living standards, and bolster long term economic

growth in the Pacific. Pacific Islands Forum Leaders agreed that PACER Plus negotiations will involve all Forum countries with the exception of Fiji. While suspended from the Forum, Fiji officials were nevertheless allowed to be kept informed of developments. Forum Leaders also agreed a mechanism to allow Fiji to have indirect input into the negotiations.

Along with trade and investment liberalisation, PACER Plus negotiations will include elements of trade capacity building and trade development assistance to strengthen Pacific island countries' ability to respond effectively to opportunities offered through economic integration (including from significant projects, such as Papua New Guinea's LNG project) and liberalised trade. Negotiations will take into account different country contexts, stages of development, and levels of capacity. Priority PACER Plus negotiating issues comprise rules of origin, trade facilitation, development assistance and regional labour mobility.

Australia's involvement in regional trade initiatives such as AANZFTA, CEPEA, the TPP and PACER Plus needs to be seen in the context of Australia's FTA strategy whereby the Australian Government supports the negotiation of comprehensive FTAs that are consistent with the World Trade Organization rules and which complement and reinforce the multilateral trading system.

5. Impact on Australia's Trade and Economic Performance

Terms of Reference # 5

Assess the impact of bilateral and regional agreements on Australia's trade and economic performance, in particular any impact on trade flows, unilateral reform, behind the border barriers, investment returns and productivity growth.

Discussion of the relationship between a trade agreement – whether FTAs or the WTO – and trade flows and economic performance needs to take account of the many factors that influence such flows and performance. It is generally difficult to isolate the impact of the trade agreement from the impact of other factors. While there may be a correlation between the period of existence of a bilateral FTA, for example, and a trend in bilateral trade or investment flows that correlation does not, by itself, establish the extent to which the FTA has been a factor in contributing to that trend.

The commitments in an FTA create opportunities for business, but the extent to which those opportunities will be pursued is a matter for business, taking account of the full range of factors that influence decisions about where to trade and to invest. Movements in exchange rates, differences in rates of growth between countries, movements in capital flows, other policy developments in each country, are among the other factors that will influence trade and investment flows.⁴⁴ At the level of individual businesses, other factors affecting whether they make use of a particular FTA's opportunities will include their access to capital, particular product market developments, and the firm's stage in the business lifecycle.

It is also important to note that there will generally be a time lag between the entry into force of an FTA and the realisation of its larger impacts on economic activity: for example, market research to assess new market opportunities, and increased investment to establish new production facilities or expand existing facilities to take advantage of these opportunities, takes time and will not be reflected immediately in trade flows.

Australia's FTA with New Zealand entered into force in 1983. Given the longer timeframe involved, many impacts associated with ANZCERTA would have worked themselves into the Australian and New Zealand economies to a much greater extent than Australia's more recent FTAs.

In addition, it is important to emphasise that Australia is a global trader, and that its FTAs are part of a multilateral trading system. The impact of an FTA should not be evaluated simply on the basis of possible impacts on trade and investment flows between the partner countries. The intention of an FTA is to expand the opportunities available to business by reducing trade and investment barriers, and providing a more secure environment for economic activities. However, if the opportunities for Australian business at a particular point in time are greater with non-FTA partners, then it is in Australia's interests that these opportunities be pursued rather than thinking that the focus should be on expanding trade and investment with FTA partners.

⁴⁴ For example, Australia's exchange rate has appreciated significantly since 2001, with the trade weighted index increasing by an average of 4.4 per cent per annum between 2001 and 2008: it fell significantly in 2009 with the fall in commodity prices caused by the Global Financial Crisis. An appreciating exchange rate makes imports cheaper and exports less competitive.

There may also be important synergies in trade and investment flows between Australia and an FTA partner, and trade and investment flows with the rest of the world. Increased exports between Australia and an FTA partner in a particular product may lead to increased imports of capital and intermediate goods from the rest of the world as inputs into the production of this product. Similarly, increased exports of a product to the rest of the world may be facilitated by the cheaper access to imports of capital and intermediate goods, or services, due to trade and investment liberalisation with FTA partners. The relationship between trade and investment flows between FTA partners, and those occurring with non-FTA countries, is not a zero-sum game.

The significant liberalisation achieved in Australia's FTAs, as documented in our response under Terms of Reference 1 of this Submission, and the fact that Australia's concluded FTAs now cover countries that account for some 28 per cent of our total trade in goods and services, would strongly suggest that these FTAs have become an important factor in Australia's economic framework.

The following analysis provides an overview of trade and investment flows with Australia's FTA partners for four FTAs – the ACl-FTA and AANZFTA are excluded as they are too recent to even have meaningful trade and investment statistics. However, given the many factors which influence trade and investment flows great care is needed in attempting to link these flows to the FTAs. This is particularly the case with SAFTA, TAFTA and AUSFTA, which have only been in existence for relatively short periods (and for these FTAs the following analysis is based only on four or five year statistical periods immediately prior to, and following, their entry into force).

Many of the changes in trade flows with an FTA partner will not be directly associated with the FTA – e.g. the fact that almost half of Australia's tariff lines have tariff-free MFN treatment means that many short-term changes in import flows may not be directly associated with the FTAs. Over time, the increased certainty associated with the binding of existing tariff-free treatment – as well as the binding of other tariff reductions and elimination – should lead to greater investment, leading in turn to greater trade between the FTA partners. In the short-term, there is likely to be a stronger association for changes in trade flows across tariff lines where tariffs have been reduced, or in services sectors subject to strong commitments. The significant liberalisation in Australia's FTAs provides a strong basis for considering that these FTAs have been one important factor in contributing to short-term growth in trade flows with FTA partners, as well as for considering that they will have longer-term impacts on investment and further growth in trade flows.

5.1 Trade and Investment Outcomes of Australia's FTAs

Australia's comprehensive, high quality FTAs appear to have contributed to changes in trade flows with FTA partners, and investment growth. Although early days, an examination of trade flows shows there has been solid growth in two-way trade, including exports, since our FTAs have entered into force.

This is most pronounced in our FTAs concluded before 2006, i.e. with New Zealand (CER), Singapore (SAFTA July 2003), Thailand (TAFTA January 2005) and the United States

(AUSFTA January 2005), all among the top 10 trading partners for Australia.⁴⁵ For our most recent FTAs, the Chile–Australia FTA (entered into force on 6 March 2009) and the ASEAN–Australia–New Zealand FTA (AANZFTA) (entered into force on 1 January 2010) it is too early to provide any realistic analysis and they are therefore excluded from this examination.⁴⁶

Similarly, it is too early for any econometric modelling to be conducted with any confidence on the impact of Australia’s FTAs, particularly as some goods tariff liberalisation under TAFTA and AUSFTA is still being implemented. There have not been enough years to average out the vagaries of the business cycle for these FTAs – eg at the start of these most recent FTAs, Australia benefited from a commodities boom but then commodity prices declined substantially in the middle of 2008 due to the Global Financial Crisis, and have bounced back since then to be at levels higher than experienced in 2006. However, an examination of the trade and investment figures suggests that some impacts have already been experienced from the FTAs, despite the fact that all except ANZCERTA are fairly recent.

In a number of international studies, increased openness to trade has been found to promote higher growth or income. For example, the OECD found, in a major 2003 study on the sources of growth, that a 10 percentage point increase in trade exposure (a weighted average of the share of exports in GDP and the share of imports in apparent consumption) increased output per working age person by 4.0 per cent in the long run.⁴⁷ In the case of Singapore, total trade has risen from 1.7 per cent of GDP to 2.1 per cent between 2002–03 and 2008–09. In the case of Thailand, this metric increased from 0.9 per cent in 2004 to 1.45 per cent in 2009, while for the United States there has been a slight weakening (0.1 per cent) in this measure.

Trade flow analysis shows that growth in total two–way trade (both imports and exports of goods and services) between Australia and Singapore, Australia and Thailand and Australia and the United States has increased faster post–implementation of the respective FTAs than in the same period immediately before implementation.⁴⁸ In the case of Singapore and Thailand, two–way goods and services trade has grown faster than Australia’s trade with the world, but this is not the case with the United States.

Since 1 July 2003 Australian exports to the world have grown on average by 11.6 per cent a year compared with 7.8 per cent a year for Singapore⁴⁹ and since 1 January 2005, Australian exports to the world have grown on average by 14.2 per cent a year compared with 12.2 per cent and 6.5 per cent a year respectively for exports to Thailand and the United States.⁵⁰ It

⁴⁵ The United States is ranked third, Singapore ranked sixth, New Zealand seventh and Thailand ninth as trading partners 2008–09 year end.

⁴⁶ For the AANZFTA no comparative figures are available. For the ACI–FTA only merchandise data is available for analysis for a period of 9 months and covers the period where the Global Financial Crisis was at its worst. Australian merchandise exports to Chile fell over 40 per cent in the first nine months of the FTA’s operation compared with the same period a year earlier while merchandise exports to the world for the period fell less than 20 per cent.

⁴⁷ OECD, *The Sources of Economic Growth in OECD Economies*, OECD, Paris. 2003.

⁴⁸ All figures taken from DFAT STARS consistent with ABS Catalogue 5368.0.

⁴⁹ Based on fiscal years as SAFTA entered into force on 28 July 2003 – with the most recent year referenced year being 2008–09.

⁵⁰ Based on calendar years as both entered into force on 1 January 2005 – with the most recent referenced year being 2008 to capture both goods and services trade.

should be noted that the exception is our oldest FTA, the CER in which exports of goods have grown faster to New Zealand than to the world, an average 8.8 per cent a year compared with 8.2 per cent a year.⁵¹

Imports have risen faster since 1 July 2003 for Singapore and 1 January 2005 for Thailand and the United States than the same period preceding these dates, with imports from Singapore and Thailand outstripping imports from the world by a significant amount.

But these aggregate figures do not tell the whole story about trade with Australia's most recent FTA partners. The majority of the growth in Australia's exports over the past seven years has come from the very significant growth in the value of exports of coal and iron ore, with the share of these exports in Australia's total (goods and services) exports rising from: 11.4 per cent in fiscal year 2002–03 to 31.3 per cent in 2008–09; and the share of these products in Australia's total exports from 12.5 per cent in 2004 to 27.9 per cent in 2008.

Excluding these exceptional exports from the equation provides a useful perspective on how Australia is doing in regard to exports to these FTA partners. In the case of Singapore, total Australian export growth to the world would be on average 7.7 per cent a year since 1 July 2003, compared with growth in exports to Singapore of 7.8 per cent a year. For Thailand, that same equation would be 10 per cent compared with 11.2 per cent per year and for the United States, there is an improvement with world export growth of 10 per cent compared with growth of 6.5 per cent a year.

In addition, trade is a two-way street and looking at only how exports have fared gives a limited and lopsided view of the benefits of trade. Imports also play a positive role.

5.2 Impact on Imports and Productivity Growth

It is generally recognised that imports can also contribute to higher productivity and domestic growth.⁵² Imports contribute to higher productivity and output in a number of ways. First, imports make it possible for firms to acquire inputs and capital goods more cheaply than would otherwise be the case, and to benefit from specialisation by other countries in sectors or products in which they have a comparative advantage. Second, and particularly important in the case of capital goods, imports can embody new technologies which make it possible for the importing firm to become more productive. Third, openness to imports increases competition in the importing economy, particularly if the domestic industry in the sector in question is highly concentrated. In this way, it fosters innovation. There may also be considerable scope for domestic suppliers to learn from the way in which foreign suppliers

⁵¹ Analysis is based on fiscal years 1982–83 to 2008–09 to ensure consistency in measures for both goods and services.

⁵² There are a number of recent studies which shows that imports make a very significant contribution to productivity and growth. See S. Kim, H. Lim., and D. Park. 2007, '*Could Imports be Beneficial for Economic Growth: Some Evidence from Republic of Korea*', Asian Development Bank, Economics and Research Department Working Paper Series No. 103, 2007 at www.adb.org/Documents/ERD/Working_Papers/WP103.pdf accessed 18 November 2009. Also A. Nguyen and C. Parsons 2009, *Import Variety and Productivity in Japan*, Centre for International Trade Studies (CITS) Working Paper, Yokohama National University, 2009 at <http://www.econ.ynu.ac.jp/CITShomepage/CITSWP2009-01.pdf>, accessed 18 November 2009 and S. Miroudot R. Lan., and A. Ragoussis 2009, *Trade in Intermediate Goods and Services*, OECD Trade Policy Working Paper No.93, TAD/TC/WP (2009)1/FINAL, 3 November.

approach their task, ranging from product or service design to marketing and sales. Finally, firms learn through links to global supply chains, again in a wide range of ways.

In the case of Australia, imports are a significant component of the benefits from trade and imports of capital goods are crucial to improving productivity.⁵³ Intermediate goods are used to manufacture Australian products for domestic consumption and export, in turn increasing competition, prompting firms to innovate and find new and innovative ways to generate products. Ultimately Australian consumers benefit through lower prices.

Several studies over the past 15 years have examined the gains from trade arising from the creation of new goods or increases in the number of product varieties. Some of this work suggests that taking new varieties into account has a significant impact on revealing some of the benefits of trade and trade liberalisation not captured by other measures. The American economist, Paul Romer, in 1994, argued that modelling distinct varieties could increase the demonstrated gains from trade liberalisation by an order of magnitude, with, in a simple example, a 10 per cent tariff leading to an almost 20 per cent decline in national income, instead of the 1 per cent predicted in more standard models.⁵⁴ Another key study, by Broda and Weinstein in 2004, found that the import prices into the United States over 1972–2001 had fallen 28.1 per cent more than the official import price index suggested, after taking into account new varieties (which they defined as goods identified in trade statistics and distinguished by country of origin).⁵⁵ This implied welfare gains from new varieties of about 2.8 per cent of GDP for the United States. A later study by Mohler (2009) suggests this may be the lower boundary of the benefit from new varieties.⁵⁶ The United States International Trade Commission used a similar metric to break down North American trade growth since the introduction of the North American Free Trade Agreement and concluded there was a net increase in varieties giving consumers and manufacturers a broader set of suppliers, which would reduce prices and improve the selection of goods available.⁵⁷

Using these two statistical methods, it can be said that the recently concluded FTAs may have had a positive effect on Australia. However, these metrics are based on a limited number of observations and drawing a conclusion, either positive or negative, may be premature.

Australia's FTAs have contributed to these benefits to productivity and consumer choice.

⁵³ The relationship between imports and labour productivity in Australia was explored in H. Bloch. and J. McDonald 2000, *Import Competition and Labour Productivity*, Melbourne Institute Working Paper No. 9/00. The paper found evidence that competitive pressure was an important factor explaining the variation in labour productivity in samples of Australian manufacturing firms, and that by encouraging greater competition, imports typically also promoted higher labour productivity.

⁵⁴ Romer P. 1994, *New Goods, Old Theory and the Welfare Costs of Trade Restrictions*, Journal of Development Economics, Vol. 43, No. 1, pp.5–38.

⁵⁵ C. Broda and D. Weinstein 2004, *Globalisation and the Gains from Variety*, National Bureau of Economic Research, Working Paper 10314, Massachusetts, February, 2004.

⁵⁶ L. Mohler, *Globalisation and the Gains from Variety: Size and Openness of Countries and the Extensive Margin*, MPRA Paper No. 17592, posted 30 September 2009, at <http://mpa.ub.uni-muenchen.de/17592> accessed 22 December 2009.

⁵⁷ R. Hillberry and C. McDaniel 2002, *A Decomposition of North American Trade Growth Since NAFTA*, International Economic Review, USITC Publication 3527 May/June 2002.

5.3 Impact on Investment

One of the most striking impacts of our economic relationship with our FTA partners has been increases in investment and returns. As detailed earlier under Terms of Reference #1, Australian investment has grown in all of our FTAs partners considered here since the entry into force (EIF) of those FTAs. This has been particularly notable with the AUSFTA. Australian investment in the United States picked up following the signing of the FTA and at \$394.6 billion, it is over 40 per cent higher than before the FTA and on average, investment income is around two times higher (\$12.8 billion) following the FTA, than before.⁵⁸

5.4 Domestic Reforms

Australia's FTAs have contributed to promoting reform within Australia.

For example, a significant and lasting reform to the Australian domestic economy and labour force came into operation on 1 May 1998 when the Trans-Tasman Mutual Recognition Arrangement (TTMRA) came into operation. This agreement allowed mutual recognition of goods and registered occupations, reducing the barriers to, and costs of, movements between Australia and New Zealand. Under this agreement people registered to practise an occupation in one country are entitled to practise the equivalent occupation in the other country without the need to undergo further testing or examination. In 2003, the Productivity Commission undertook a review of the TTMRA and found that the agreement contributed significantly to increased mobility of goods and labour.⁵⁹

Another series of significant domestic reforms resulted from the AUSFTA regarding Australia's foreign investment regime. The outcome of the negotiations liberalised Australia's foreign investment policy as it applies to US investors while retaining the right for the Government to examine all US investment of major significance. The nature of these commitments entailed significant domestic reform. Reservations under Annex I still allow Australia to examine US investment in certain defined circumstances, including: all direct investment and portfolio investment of 5 per cent or more in the media sector; investment in Australian businesses valued at \$50 million⁶⁰ or more in sensitive sectors, including telecommunications, transport, defence related industries and uranium mining; investments representing stakes in financial sector companies of 15 per cent or more; and private investment in Australian businesses in other sectors valued at \$800 million or more. The monetary thresholds are indexed each January to keep pace with inflation. As such, the monetary thresholds for 2010 are \$231 million and \$1004 million respectively.⁶¹

⁵⁸ 2008 end year.

⁵⁹ Productivity Commission, *Evaluation of the Mutual Recognition Schemes*, Canberra, 17 October 2003.

⁶⁰ On 22 September 2009, reforms to Australia's foreign investment screening framework came into effect for business proposals. As part of these reforms, the monetary threshold for US investors in sensitive sectors was increased to \$219 million (indexed on 1 January each year to keep pace with inflation).

⁶¹ Annex I, AUSFTA

5.5 Summary of Data on the Impact on Trade and Investment

The following details trade and investment flows for FTAs for which there is data.⁶²

ANZCERTA (EIF 1983):⁶³ With a population about the size of Queensland and GDP around 12 per cent of Australia's, New Zealand is overly represented in Australia's trade statistics given its size. While this reflects our geographic proximity and shared history, given the longer timeframe for ANZCERTA's existence, it would seem reasonable to conclude that the FTA has positively influenced trade between our two countries.

Since entry into force, Australian goods and services exports to New Zealand have grown by an average 8.5 per cent a year, which is the same rate as exports to the world. Exports of goods have grown faster to New Zealand than to the world (an average 8.8 per cent a year compared with 8.2 per cent a year), but have been a little slower for services. Exports of services to New Zealand grew by an average 7.9 per cent a year compared with 9.7 per cent a year to the world.

Imports from New Zealand have not grown as fast as imports from the world, but New Zealand is still an important source of imports, ranking eighth overall in 2008–09.

SAFTA (EIF 2003):⁶⁴ Exports to Singapore have grown at a rate slightly less in the six years since 1 July 2003 than the six years before (based on fiscal years). Exports grew by an average of 7.8 per cent per annum since 1 July 2003, compared with an annual rate of 8.5 per cent before, despite the fact that Singaporean tariffs on most goods were zero prior to SAFTA's entry into force. This reflects slower rates of growth in primary products, especially for fuels which were at very low levels prior to 1 July 2003 and therefore recorded high growth rates in the period before EIF.

Exports of manufactured goods saw an improvement on an average annual basis of 13 percentage points when comparing pre- and post-1 July 2003 rates of growth, from –4.8 per cent a year on average to 8.2 per cent. Both simply transformed and elaborately transformed manufactures have performed better following 1 July 2003.

Services exports to Singapore have however grown faster since 1 July 2003 than services exports to the world over the same period. Services exports to Singapore accounted for over 36 per cent of total exports compared with about 19 per cent of total exports to the world in 2008–09.

In terms of imports, Singaporean exports to Australia grew by more than double the rate of Australian imports from the world since 1 July 2003. Imports by Australia of intermediate and capital goods grew more rapidly following the FTA than in the six years before the FTA entered into force. Even excluding oil, which is a large component of intermediate imports from Singapore, imports of these goods have grown by an average of almost 17 per cent per

⁶² All figures taken from DFAT STARS consistent with ABS Catalogue 5368.0.

⁶³ Analysis is based on fiscal years 1982–83 to 2008–09 to ensure consistency in measures for both goods and services.

⁶⁴ Analysis is based on fiscal years 1996–97 to 2008–09 to ensure consistency in measures for both goods and services.

annum since fiscal year 2003, compared with about 12 per cent per annum on average in the period before. These are important inputs into Australian production and the increased capital goods could lead to higher productivity rates in the future.

Australian investment in Singapore has grown faster, on an average annual basis, in the past four years than in the three years before 2004.⁶⁵ Income on these investments has grown by almost 52 per cent per annum over the past four years, compared with growth of about 25 per cent in the same period from the world.

AUSFTA (EIF 2005):⁶⁶ An analysis of the trade data suggests that the AUSFTA has contributed to an arrest in the slide in exports to the United States, benefiting especially Australian exporters of manufactured goods.

Exports (goods and services) have grown significantly since 1 January 2005. In the four years (for which data is available) since this time, exports have grown by an average of 6.5 per cent per annum, compared with an annual average fall in exports of about 5 per cent in the four years before.

Exports of manufactured goods to the United States increased by an average of 8.3 per cent per annum in the four years since 1 January 2005, compared with –5.5 per cent per annum in the four years immediately before. Elaborately transformed manufactures (ETMs) grew by an average 8.0 per cent per annum compared with –4.8 per cent per annum in the four year's prior to the AUSFTA's entry into force. It is worth noting that growth of engineering products following 1 January 2005 outstripped that of these exports to the world over the same period.

While not growing as fast as services exports to the world, services exports to the United States have grown significantly faster since 1 January 2005 than before – a 13 percentage point turnaround – growing at an average 8.1 per cent per annum in the most recent four year period compared with –4.8 per cent in the four year period prior to the AUSFTA's entry into force.

While imports (goods and services) did increase, they did so only at about two-thirds the rate of imports from all sources since 1 January 2005. Imports of capital and intermediate goods rose significantly in the four years after this date, compared with the four years before, indicating a greater contribution to productivity in Australia.

As highlighted earlier, Australian investment in the United States picked up after 1 January 2005 and at \$394.6 billion, it is over 40 per cent higher than before this date.

Overall income on Australian investment in the United States has increased following 1 January 2005 – on average income is around two times higher (A\$12.8 billion), than before.

TAFTA (EIF 2005):⁶⁷ Australian export growth to Thailand is about 50 per cent higher on average per annum in the four years since 1 January 2005, than was the case four years immediately before then.

⁶⁵ Problems with data comparability mean that only data from 2001 could be used in this analysis.

⁶⁶ Analysis is based on calendar years 2000 to 2008 to ensure consistency in measures for both goods and services.

The growth in exports of manufactured products to Thailand more than doubled after 1 January 2005, with annual average growth in the four years following of 15.3 per cent, compared with 6.5 per cent previously. The rate of growth in exports of manufactures to Thailand is 57.5 per cent times faster than exports of these products to the world in the period 2004 to 2008.

Exports of processed primary products, especially of processed food, have improved significantly, with processed food growing by an average of 12.7 per cent per annum, compared with –8.5 per cent previously.

Services exports to Thailand have also grown faster since 1 January 2005 than services exports to the world over the same period.

Imports from Thailand have increased significantly over the same period, especially for capital and intermediate goods. Imports of intermediate goods have grown on average by almost 34 per cent per annum since 1 January 2005 and, even excluding fuels (a volatile item), they have grown almost three times faster than imports from the rest of the world. Capital goods imports from Thailand have risen at almost twice the average per annum rate of capital goods imports from the world. Most of this is industrial vehicles where tariffs were already low but TAFTA is likely to have strengthened and accelerated the trade growth, and reinforced regional economic integration that was occurring with automotive manufacturers establishing manufacturing hubs in Thailand.

The growth of Australian investment in Thailand has increased, although average per annum growth slowed in the four years following 1 January 2005 compared with the three years immediately before, albeit from a very low base. Income from this investment has grown at an average of around 60 per cent per annum after 1 January 2005, which is around two and a half times faster than growth in income from the world.

⁶⁷ Analysis is based on calendar years 2000 to 2008 to ensure consistency in measures for both goods and services.

6. Australia's FTAs: Promoting Structural Reform and Productivity Growth with our Partners

Terms of Reference # 6

Assess the scope for Australia's trade agreements to reduce trade and investment barriers of trading partners or to promote structural reform and productivity growth in partner countries. Consider alternative options for promoting productivity improving reform in partner countries.

Australia's FTAs have eliminated, reduced and continue to reduce trade and investment barriers maintained by our FTA trading partners against Australia (see response to Terms of Reference 1), and through their implementation have encouraged structural reform and productivity growth in our partner countries.

Australia's FTAs are not only about Australia gaining increased or improved market access but also about our FTA partners receiving increased, improved and more certain access to the Australian market. They are designed to integrate, to the extent possible or desirable, the economies of the Parties to the Agreement (see response to Terms of Reference 4). At its most basic, removing barriers under our FTAs, and thereby lowering the cost of imports, can have a positive impact on productivity growth for all FTA parties (see response to Terms of Reference 5).

Australia's FTAs contain elements which go beyond tariffs and address, amongst other things, government regulation and administration in areas such as government procurement, competition policy and investment; elements which underpin and give effect to the improved market access such as customs procedures and rules of origin; and elements which address trade facilitation such as standards and technical regulations. Other elements include, but are not limited to, provisions relating to the protection of intellectual property rights, institutional arrangements, dispute settlement and transparency.

Anecdotal evidence suggests that significant potential benefits of FTAs may not be realised by developing country partners. Unpublished research cited during the AANZFTA negotiations suggested that more than half of the potential FTA benefits may not be realised by developing countries because of poor implementation by them. AANZFTA is Australia's first FTA to include provisions on economic cooperation. Australia has agreed to provide up to \$20 million over five years to contribute to the funding of a Support Unit in the ASEAN Secretariat and mutually-agreed activities to assist the implementation of AANZFTA in line with the Economic Cooperation Chapter of the Agreement (Chapter 12) and the associated Economic Cooperation Work Program document. This is aimed at promoting trade facilitation and structural reform through a framework for enhanced cooperation in relation to customs procedures, sanitary and phytosanitary measures, standards, technical regulations and conformity assessment procedures, investment, services, sectoral integration, intellectual property and competition.

Australia's FTAs, by their very nature, can require parties to make changes to their domestic arrangements and undertake structural reforms. This can be illustrated in the area of competition policy through the inclusion of a competition policy chapter as an important underpinning to market access gains for services and investment in particular, which can be easily eroded without competition provisions (see response to Terms of Reference 1). An

example of how competition provisions in FTAs can contribute to structural reform can be illustrated with the negotiation of SAFTA. With Singapore we consulted extensively on how to properly institute a competition policy framework that conforms to the agreement.

Australia's recent FTAs have included chapters on investment which involve liberal commitments on investment in all sectors of the economy. Including investment in an FTA can provide a stable, predictable and transparent framework for attracting FDI and maximising the benefits to host countries (see description of FTA gains in investment under response to Terms of Reference 1). Investment chapters complement other core elements of FTAs – such as provisions on market access for goods and services, competition policy and intellectual property protection. The domestic regulatory changes necessary for FTA parties in implementing investment provisions vary, but all contribute to structural reform.

Structural reform can also be encouraged and undertaken through the negotiation of scheduling modalities for the agreement, notably through the benefits stemming from a 'negative list approach' used for investment and services (as described in detail under Terms of Reference 1).

The negative list approach provides for comprehensive coverage as all sectors are automatically covered except to the extent explicitly (and transparently) listed. This acts as a safeguard against 'protectionist moves' by governments responding to short term economic conditions, such as the GFC (see under Terms of Reference 4).

6.1 Alternative Options

Comprehensive high quality FTAs are not the only vehicle which policy makers can utilise to promote structural reform and productivity growth in partner countries. Encouraging unilateral liberalisation can be a powerful policy alternative. Liberalisation at the multilateral level (including through the WTO) can similarly encourage such reforms but often in a much longer timeframe.

Other non-binding bilateral arrangements such as Trade and Investment Agreements (TIFAs) and MOUs are routinely utilised by the Department on behalf of Government to achieve narrower trade, investment and economic objectives which can promote productivity improving reform in partner countries. These agreements can form the foundation precursors upon which FTAs are built.

Other alternatives to FTAs can promote productivity improving reform in partner countries. Australia's membership of APEC provides an alternative forum in which to promote structural reform in many of our FTA partner countries. The Department is the lead agency involved with advancing Australia's objectives in this forum.

6.1.1 Structural Reform Approaches Through APEC

Under the Framework for Strong, Sustainable and Balanced Growth agreed to by G20 Leaders at Pittsburgh, structural reform will become one of the key areas of international policy focus because of its critical role in increasing and rebalancing global growth.

As a non-binding, consensus-based forum with a strong emphasis on capacity building, APEC is well suited to promoting structural reform in areas not always covered in the negotiation of FTAs.

APEC's work in this area focuses on measures at, across and behind borders.

As average tariffs in the APEC region have fallen from 17 per cent in 1989 (when APEC held its first meeting) to around 5 per cent today, it is important that APEC now focuses on behind the border measures that reduce barriers to trade, for example: removal of logistics chokepoints; coordination of infrastructure development; harmonisation of standards; and make rules of origin more 'business friendly'.

In 2009, APEC launched an Ease of Doing Business (EoDB) initiative, which aims to encourage continuous and concerted efforts to make it cheaper, faster and easier to do business in the Asia-Pacific region. Based on input from the business sector and member economies, APEC has identified five priority areas: starting a business; getting credit; trading across borders; enforcing contracts; and dealing with permits. APEC Leaders mandated an APEC-wide improvement of 25 per cent in the five priority areas by 2015.

APEC's trade facilitation agenda focuses on the simplification and rationalisation of customs and other administrative procedures that hinder, delay or increase the cost of moving goods across international borders. APEC's first Trade Facilitation Action Plan led to a reduction in business transaction costs across the APEC region of five per cent in the period 2002–06. A second Trade Facilitation Action Plan (TFAP II) focuses on such areas as customs procedures, business mobility, standards and conformance and electronic commerce. It aims to reduce business transaction costs by a further five per cent in the period 2007–10.

Behind the Border

Australia is an active participant in APEC's deliberations on renewal of a long-term focus on barriers behind the border, including trade facilitation and developing investment linkages, which have the potential to deliver greater economic gains than liberalisation efforts at the border. Investment needs to be part of any new long-term focus on regional integration given that the level of integration of APEC economies through investment links remains well below potential.

A long-term commitment by APEC to undertake structural economic reform will be required to ensure the gains of further integration are sustainable and distributed fairly, and to help close the gap between developing and developed economies. In particular, domestic policies that help firms and citizens take advantage of the opportunities open markets offer must go hand in hand with deeper liberalisation. The growing inter-dependence of APEC economies, and the risk that problems in one economy can easily spread elsewhere, reinforce the need for a new focus on structural reform policies. The key to achieving these goals will be ensuring that APEC economies are able to reform institutions and markets, limiting systemic risk, while pursuing active public policies that are aligned with these objectives.

An active aid for trade agenda is being considered in APEC in order to assist developing APEC economies meet their Bogor Goals of free and open trade and investment by 2020, to help spread the benefits from regional integration and assist with closing the development gap between APEC economies.

In recognition of the negative effects of behind the border impediments to economic growth, APEC Leaders in 2004 adopted the Leaders' Agenda to Implement Structural Reform Towards 2010 (LAISR 2010). LAISR addresses five priority areas for reform:

1. *Regulatory reform* – good regulation is integral to well-functioning economies and can be used to achieve important social, economic and environmental goals, such as preventing anti-competitive conduct, and mitigating accidents and security risks.
2. *Competition policy* – promoting laws, policies, rules and regulations aimed at protecting and preserving competitive processes in an open marketplace boosts economic efficiency and consumer welfare.
3. *Corporate governance* – good governance encourages corporations to act transparently in the interests of shareholders, in turn creating benefits for the wider economy by promoting efficient use of resources and macroeconomic stability.
4. *Public sector governance* – good public sector governance is associated with public confidence and trust in government institutions, as well as the effective and efficient delivery of public goods and services.
5. *Strengthening economic and legal infrastructure* – sound economic and legal infrastructure is fundamental to efficient markets by ensuring property rights are protected and contracts and regulations enforced.

In 2010, APEC's Economic Committee will conduct a stock take on APEC's progress on structural reform, including an overview of how the work program has contributed towards the achievement of the Bogor Goals. APEC's informal manner of operation makes it a well placed forum to discuss economic policy challenges affecting the region.

There is scope for APEC to adopt a more creative approach to capacity building in relation to structural reform. Examples include twinning arrangements (reciprocal placements and exchanges of policy makers from like institutions), pilot projects, formal training programs and other mechanisms being examined by the Budget Management Committee under its Project Management Reform agenda.

7. FTAs Evolving Over Time

Terms of Reference # 7

Assess the scope for agreements to evolve over time to deliver further benefits, including through review provisions and built-in agendas.

Australia's FTAs are not static agreements but evolve over time to deliver further benefits. They do this through a range of mechanisms, including the operation of committees and working groups established under the FTAs, MFN and ratchet clauses, review provisions and built-in agendas.

In historic terms, the ANZCERTA is the best example to demonstrate the evolution over more than 26 years of a comprehensive FTA that has led to economic integration. When ANZCERTA entered into force on 1 January 1983 it was an important milestone in Australia's shift to an open trading environment. ANZCERTA was much more ambitious than previous Trans-Tasman trade agreements and represented a marked departure from the then prevailing protectionist trade policy environment. A review of ANZCERTA in 1988 resulted in the removal of the remaining obstacles to duty-free trade in goods across the Tasman from 1 July 1990.

This comprehensive liberalisation of merchandise trade was complemented by a Trade in Services Protocol to ANZCERTA that entered into force on 1 January 1989, and current work on an Investment Protocol to ANZCERTA seeks to further extend its coverage. Several aspects of ANZCERTA have, over the years, been amended, refined or simply become redundant. The more important of these changes include refinements to the rules of origin and the phasing out of margin of preference obligations. Past reviews of ANZCERTA have also deepened the agreement by seeking to streamline or harmonise a range of non-tariff measures that affect the free flow of goods and services, including in respect of customs issues, standards and business law.

The ANZCERTA Services Protocol was a landmark initiative internationally, being one of the first times services had been included in a free trade agreement and a forerunner in terms of its use of a negative list approach to scheduling commitments. A series of amendments to the Protocol, in 1991, 1992, 1995, 1997 and 1999, further liberalised its already comprehensive treatment of services. These amendments stemmed from reviews undertaken in 1990, 1995 and 1997, and progressively reduced the number of 'inscriptions' (i.e. exemptions) from the original twenty-one to the eight that still remain (six applying to Australia and two for New Zealand).

In contrast to our more recent FTAs, ANZCERTA contains no specific commitments on investment. The two governments have agreed to negotiate an Investment Protocol to ANZCERTA. These negotiations are currently in progress. This will be an important development given the importance of investment in modern high quality comprehensive FTAs.

The ANZCERTA rules of origin (ROO) have evolved over time, in step with reforms in trade and industry policy. Most fundamentally, a shift to ROO based on a Change of Tariff Classification (CTC) approach occurred on 1 January 2007. In accordance with an agreement between the Parties when the CTC approach was adopted, a review of these ROO was

commenced in late-2008, and is now close to completion. The purpose of the review is to assess whether the rules can be made easier for businesses to interpret and, where necessary, structured to be consistent with Australia's recently concluded FTAs.

As well as representing a global benchmark for an instrument to foster free trade, ANZCERTA has provided a foundation for a network of other bilateral agreements aimed at closer integration of the two economies, including the Trans-Tasman Mutual Recognition Arrangement (TTMRA) and the Single Economic Market (SEM) initiative. The Productivity Commission's 2003 review of the TTMRA found that the agreement contributed significantly to increased mobility of goods and labour.⁶⁸

All of Australia's FTAs establish regular meetings between the parties and contain review provisions.

The Thailand-Australia Free Trade Agreement (TAFTA) is monitored through regular meetings between Thai and Australian officials including a TAFTA Joint Commission, a Joint Working Group on Agriculture and an Expert Group on Sanitary and Phytosanitary Measures and Food Standards (both of which last met in September 2009). These formal meetings, as well as informal consultations and ministerial-level contacts, have delivered further benefits for Australia, including improved market access, awareness of Thai trade implementation, and opening of behind the border restrictions.

TAFTA also includes additional negotiations under a 'built-in agenda', covering services, investment, business mobility and competition issues. These negotiations have been delayed because of Thailand's political instability. The Thai Government has not obtained parliamentary approval to commence the built-in negotiations. But Australia has been seeking to commence negotiations as soon as possible.

Likewise, AUSFTA, which entered into force on 1 January 2005, is a living agreement which provides scope to evolve over time. The Agreement established an annual ministerial meeting and several working groups to review the trade relationship and promote increased trade and investment between Australia and the United States.

The Agreement provides for the establishment of a Joint Committee 'to supervise the implementation of this Agreement and to review the trade relationship between the Parties' (Article 21.1). The Joint Committee, which is co-chaired by the Australian Trade Minister and US Trade Representative (USTR), is to convene annually. The Joint Committee meeting is now known as the Australia-United States Ministerial Trade Talks (AUSMINTT) to reflect the evolution of the talks, which now include a strategic policy dialogue on trade and economic issues, in addition to reviewing the Agreement's implementation. For example, the most recent AUSMINTT on 15 October 2009 included discussion on the WTO Doha Round negotiations, and work in other fora on regional economic integration, in addition to discussion of bilateral trade issues pertaining to the Agreement.

There are also provisions in AUSFTA for working groups to address major trade issues, including agriculture and sanitary and phytosanitary (SPS) issues. The parties established a Committee on Agriculture to promote trade in agricultural goods between the parties and address barriers to trade in agricultural goods, and a Committee on Sanitary and

⁶⁸ Productivity Commission, *Evaluation of the Mutual Recognition Schemes*, Canberra, 17 October 2003.

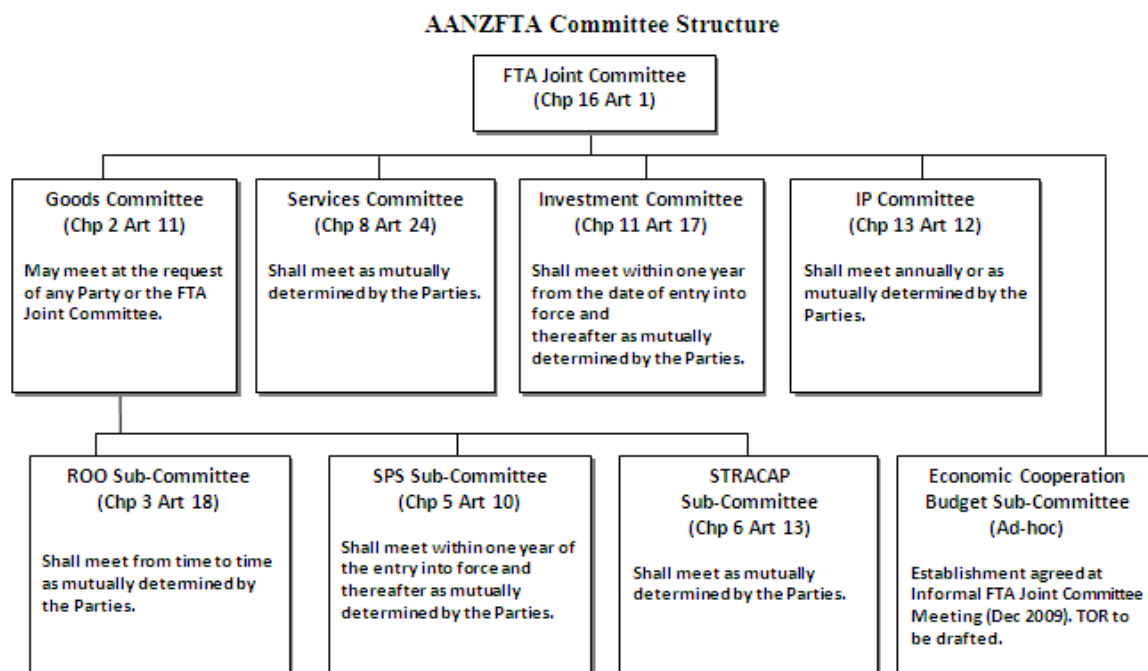
Phytosanitary matters to ‘enhance each Party’s implementation of the SPS Agreement, protect human, animal or plant life or health, enhance consultation and cooperation between the Parties on SPS matters, and facilitate trade between the Parties’. The Agriculture and SPS Committees last met (for the fifth time) on 26 August 2009 in Canberra. These Committees have prioritised and advanced market access and trade policy issues, and facilitated the strong working relationships between government experts.

A success of the AUSFTA has been the establishment of a Professional Services Working Group to ‘encourage the relevant bodies in their respective territories to develop mutually acceptable standards and criteria for licensing and certification of professional services suppliers and to provide recommendations on mutual recognition to the Joint Committee’. The Working Group on Professional Services (WGPS) has met five times since the AUSFTA entered into force and has achieved solid progress in supporting industry in their efforts towards developing mutually acceptable standards and criteria for licensing and certification of professional services suppliers. For example, under the auspices of the WGPS, Engineers Australia negotiated a Mutual Recognition Agreement (MRA) with the Texas Board of Professional Engineers, which was signed in September 2008. With regard to legal services, consultations through the WGPS led to the State of Delaware opening its foreign legal services market to Australia lawyers. In addition, the WGPS has supported efforts to increase recognition of existing accountancy MRAs at the state level in the United States. AUSFTA also established a Financial Services Committee, through which the Parties are exploring ways to further integrate the Australian and US financial services sectors.

Finally, the Agreement provides opportunities to review individual chapters, including to meet and to review the operation and implementation of the AUSFTA Government Procurement Chapter. The last such review took place in April 2007, and the next review is expected to take place in 2010. Other committees may also be convened by the Parties as required. For example, the Agreement provides for the Parties to establish a Committee on Trade in Goods to promote trade in goods and address barriers to trade.

Review provisions under the Singapore–Australia Free Trade Agreement (SAFTA) call for Ministers responsible for trade to review the Agreement on a biennial basis, or otherwise as appropriate. While SAFTA’s review provisions are simpler, they provide for flexibility and scope for exploring further market liberalisation gains.

AANZFTA establishes an FTA Joint Committee to consider all matters affecting the implementation and operation of the Agreement, which is required to regularly report to the consultations of the ASEAN Economic Ministers and the Australian and New Zealand Trade Ministers through the meetings of their Senior Economic Officials. AANZFTA also establishes a number of committees, sub-committees and provides for the FTA Joint Committee to establish additional subsidiary bodies, including ad hoc bodies. AANZFTA’s current committee structure is illustrated in the following diagram:



AANZFTA contains a built-in agenda of mandated reviews following its entry into force (EIF) on 1 January 2010 that will provide an opportunity for further economic integration between parties. Most notably, investment market access schedules are to be concluded within five years of EIF, and consideration of the application of MFN to investment is to be conducted in parallel. A new round of services negotiations will commence within three years of EIF. The Rules of Origin provisions on cumulation and on product specific rules are to be reviewed between 12 and 18 months of EIF, and a report on non-tariff measures in relation to trade in goods is to be submitted to the FTA Joint Committee within two years of EIF. Provision is also made for a general review of the AANZFTA to be undertaken in 2016 (i.e. one year after the date by which ASEAN member countries have committed to establish an ASEAN Economic Community) and every five years thereafter, unless otherwise agreed by the Parties.

7.1 MFN Provisions

Another mechanism which can contribute to the evolution of an FTA to capture continuing benefits to the parties is through most-favoured-nation (MFN) provisions, which require parties to accord to each other treatment no less favourable than that it accords, in like circumstances, to a non-party. Although generally used only for Services and Investment, it was a feature of the original tariff commitments in the ANZCERTA (which provided for gradual phase-outs of many tariffs), and remains an option on tariffs on goods to be considered by policy makers in the conduct of our FTAs, in cases where early elimination of all tariffs is not achieved (i.e. an MFN commitment is irrelevant where tariff-free treatment is achieved).

AUSFTA and ACI-FTA have a MFN provision, which requires Australia and its FTA partner to accord to each other's service suppliers, investors and investments, treatment no less favourable than that it accords, in like circumstances, to service suppliers, investors and investments of a non-Party. This means, for example, that if either Party signs a new, more liberalising FTA, the benefits of that will flow automatically to the other Party. AUSFTA

and ACl-FTA also include a ratchet mechanism for services and investment, which means that any liberalisation that a Party undertakes unilaterally with respect to certain listed measures will also be automatically locked in to the respective FTA.

Finally, accession clauses may be used in some FTAs to encourage expansion to include other potential future partners, which will be important in the future as we and other like-minded countries seek to multilateralise our gains.