Australian Government

Department of Foreign Affairs and Trade

Review of Bilateral and Regional Trade Agreements

Supplementary submission to the

Australian Productivity Commission

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The Department of Foreign Affairs and Trade (DFAT) leads work by Australian officials in support of the Government's trade agenda. 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. DFAT 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. This supplementary submission provides DFAT's views on the Productivity Commission's draft research report on bilateral and regional trade agreements.

General comments on the Productivity Commission's Draft Research Report

1. The Department of Foreign Affairs and Trade (DFAT) appreciates the analysis undertaken by the Productivity Commission in its Draft Research Report on Bilateral and Regional Trade Agreements. The draft report represents a timely contribution to public discussion of this issue, and it can potentially help to build a better understanding of issues associated with free trade agreements (FTAs). The Department appreciates the opportunity to provide comments as, from DFAT's perspective, there is scope for refinement of the analysis and recommendations contained in the draft report. This introductory section of this submission makes some general comments from DFAT's perspective on the draft report, and is followed by more specific comments in relation to each of the draft recommendations. DFAT understands that the final report will likely include research "findings" and may provide the Productivity Commission with further advice in this respect.

2. DFAT notes that the draft report contains a number of comments about Australia's constitutional arrangements, and on the relationship between the executive and Parliament, although it is not clear to DFAT how these statements relate to the terms of reference provided in November 2009. DFAT makes no comment on these statements, other than to note that they would appear to be the basis for draft recommendation 6. However, DFAT considers that the discussion informing this recommendation in Chapter 14 of the draft report contains some important factual omissions, and has sought to address these factual points by making some comments under draft recommendation 6.

3. Conversely, there are a number of areas within the terms of reference where further work could be undertaken to enhance the draft report. One such reference concerns "the potential for discrimination against Australian businesses without full engagement in the evolving network of bilateral and regional trade agreements". Assessments such as those on page 11.7 of the draft report, on "defensive considerations", could be deepened and broadened by a more systemic survey of the range and extent of interests where Australia has an interest in maintaining market access parity. Other areas where the draft report draws conclusions without adequate evidence include aspects of Rules of Origin (ROOs), intellectual property provisions and Investor State Dispute Settlement (ISDS). DFAT provides more detailed comments on the relevant draft recommendations below.

4. There may also be scope for the Productivity Commission to further develop aspects of its analytical and modelling work in accordance with the terms of reference. Many of the major gains from FTAs result not only from direct effects on trade, but also from investment flows, and DFAT supports further work to continue deepening understanding of these effects, as well as further efforts to understand the effects of services trade liberalisation (page 9.8), as the Productivity Commission recognises. Other refinements might include efforts to model the effects of dynamic productivity gains associated with FTAs (section 10.2). The Productivity Commission may also wish to consider the benefits of ROOs "cumulation" in plurilateral FTAs such as the ASEAN Australia New Zealand FTA (AANZFTA), as well as undertaking assessment of the cumulative economic effects of multiple FTAs. The effects of trade diversion on the Australian economy may have been overstated (e.g. page 8.11), given that Australia's applied average tariffs are already very low, and in view of the trade coverage of FTAs already concluded or under negotiation.

5. In developing assessments of FTAs, DFAT considers that it would be appropriate for the Productivity Commission to articulate more clearly the intrinsic difficulties associated with modelling as a device for measuring all of the associated effects and as a basis for

decision making. The draft report itself recognises that not all economic changes, let alone important qualitative assessments, are within reach of its own modelling analysis. DFAT supports efforts to deepen and broaden the range of economic factors and considerations that can be included in future analysis, including modelling. Even with such advancement, however, DFAT considers that modelling would remain only as one tool to inform policy decisions on FTAs. Modelling exercises, including those associated with FTA feasibility studies, can provide useful inputs to help assess the potential impacts of a trade agreement, but policy making needs to take into account a range of factors, of which modelling results are only one. Further comments on this issue are provided in relation to draft recommendation 6 below.

6. DFAT notes the draft report's use of the term "preferential trade agreements", which the Productivity Commission characterises as "involving the provision of concessional access to markets" (page 2.2). However, Australia's objective in undertaking FTA negotiations has been to secure improved market access, ideally full tariff elimination and genuine liberalisation of services and investment opportunities. The primary goal has not been to lock in "concessional" or "preferential" access vis-à-vis other export competing countries, but rather bound elimination of barriers to trade and investment with the FTA partner country. There is nothing to prevent such outcomes from being unilaterally extended to other countries or being multilateralised through the World Trade Organization (WTO). More detailed comments follow below.

Comments on the recommendations in the Productivity Commission's Draft Research Report

Draft Recommendation 1

The Australian Government should consider pursuing bilateral and regional trade agreements to reduce foreign barriers to trade and investment when alternative channels, including plurilateral and multilateral means, are not practicable and where a prospective bilateral or regional agreement offers additional opportunities, provided the prospective arrangement:

- **as far as practicable, avoids discriminatory terms and conditions in favour of arrangements based on non-discriminatory (most favoured nation) provisions;**
- **does not preclude or prejudice similar arrangements with other trading partners;**
- **does not establish treaty obligations that could inhibit unilateral, plurilateral or multilateral reform; and is assessed, through an independent and transparent analysis, to afford meaningful net economic benefits.**

DFAT Response

7. As noted in DFAT's April 2010 submission to the Productivity Commission, DFAT pursues all available approaches to promote trade liberalisation, including liberalisation of trade and investment barriers in overseas markets and an agenda that facilitates liberalisation of Australia's own trade barriers.

8. The Government's biggest trade policy priority is to secure substantial trade liberalisation on a multilateral basis. Multilateral liberalisation offers the greatest potential trade gains for Australia, and appropriate resources are, and will continue to be, devoted to securing this outcome. This multilateral emphasis remains the case notwithstanding the current slow pace of negotiations in the Doha Round. As a long-standing priority, DFAT also continues to support strongly the role of the Asia Pacific Economic Cooperation (APEC) forum in promoting trade and investment liberalisation and facilitation in the Asia Pacific region.

9. DFAT considers that it remains important to keep all policy options in use by simultaneously maintaining active approaches towards (a) the Doha Round of negotiations; (b) potential avenues for trade liberalisation in APEC and other regional arrangements in the Asia-Pacific; as well as (c) the negotiation of free trade agreements on a bilateral or plurilateral basis.

10. DFAT does not agree that FTAs should be pursued only as a last resort when the "alternatives" of multilateral or plurilateral means "are not practical". On the contrary, Australia's high quality and comprehensive FTAs complement multilateral negotiations. The Australian Government, and the WTO itself, recognise that FTAs can support the multilateral trading system. 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 also 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.

11. DFAT has been an active proponent of unilateral reform, and does not consider that conflict exists between this agenda and FTA negotiations. DFAT is not aware of any instances of reform being held back for the purposes of creating "bargaining coin" (pages 11.13, and 12.2-12.4). Indeed, DFAT considers that Australia's ability to pursue the reduction of barriers in trade agreements – whether bilaterally, plurilaterally or multilaterally – has been strengthened when Australia has itself pursued an ambitious economic reform agenda domestically. In addition to enabling the economy to become more competitive, such reform also provides a valuable demonstration effect: such reforms provide us with credibility to make binding commitments on our trade openness in negotiations. Agreeing to bind such reforms in the context of trade negotiations (including the WTO) provides useful negotiating leverage to help secure Australia's priority trade objectives. Similarly, a strong sense of a domestic reform agenda in an FTA negotiating partner is always a welcome sign and something which Australia seeks to cultivate in our FTA negotiations. A country with a commitment to reform, and an understanding of the role which trade agreements can play in supporting a reform agenda, is more likely to make high quality trade liberalisation commitments in an FTA negotiation.

12. In DFAT's view, our approach to negotiating FTAs has not prejudiced our effectiveness in multilateral negotiations in the Doha Round, but rather has provided us with active options for pursuing Australia's economic interests abroad. Trade negotiations, whether on a multilateral, plurilateral or bilateral basis, typically experience periods of fluctuating activity depending on the positions taken by Australia's negotiating partners and on other circumstances, including the state of the global economy and the timing of electoral

cycles in key trading countries. DFAT is able to prioritise resources to those negotiations that are most active, prospective or critical for Australian interests at any given time.

13. It is important to emphasise that Australia's FTA commitments do not involve discriminatory terms and conditions. While the rights and obligations in a trade agreement such as an FTA, including the tariff commitments or the commitments on services and investment liberalisation, only apply to the Parties to that agreement, there is nothing in WTO-consistent FTAs that precludes the extension of this liberalisation on a Most Favoured Nation (MFN) basis. This is one reason why it is misleading to see FTAs as an alternative to either unilateral reform or multilateral negotiations. Reforms that a country has made in an FTA can, if it wishes, be unilaterally extended to all countries or its MFN extension can be used as negotiating coin in WTO negotiations. In this way an FTA negotiation may provide impetus to domestic consideration of possible reforms, and facilitate the achievement of unilateral reform or the progress of WTO negotiations. It should also be noted that there is a cascading effect in FTA negotiations where market access concessions already agreed in earlier FTAs become a reference point for requesting parties and are often extended to a range of important partner countries through FTA outcomes. The fact that a country has already demonstrated that the sector or product concerned is not so sensitive that it could not be negotiated over in an earlier agreement is a strong argument upon which a market access request can be made.

14. On this point, DFAT notes that the draft report has adopted a definition of trade agreements that focuses on the idea that they "all involve provision of concessional access to the market of other agreement members", and therefore it notes that "they are termed 'preferential trade agreements' (PTAs) in this report" (page 2.2). However, on pages 8.24 and 12.13, and in Box 8.7, the draft report suggests that the original ASEAN Common Effective Preferential Tariff (CEPT) agreement was different to other FTAs and was "preference-light" and a form of open regionalism. It is not clear what the draft report means by the term "preference light" when it refers to the CEPT arrangements, and how the CEPT differed from any WTO-consistent FTA, as WTO-consistent FTAs cannot mandate discrimination and do not prevent unilateral or WTO-negotiated extension to other countries of the liberalisation they contain.

15. Indeed, it is important to note that for about 47 per cent of Australia's tariff lines, our FTAs do not contain any commitments on preferential access – as these lines are subject to tariff-free treatment under our applied MFN tariff. Similarly, for many lines in some of our FTA partners – in the case of Singapore about 99 per cent of tariff lines – our FTAs do not contain any preferential access as the MFN tariff provides for tariff-free treatment. The benefit of the FTAs in these cases (as well as for all other tariff lines subject to commitments) is the binding commitment provided to the FTA parties on the tariff-free treatment for originating product. It is this binding commitment which provides greater certainty to business and through this an improved environment for encouraging both domestic and foreign investment in productive activities, which over time should contribute to economic growth and improved welfare.

16. The same comments can be made on the services and investment commitments in our FTAs. Most of the commitments are bindings between the Parties on policy frameworks that are, generally, applied on a non-discriminatory basis. The key, longer-term benefit, lies in the bindings that guarantee open and non-discriminatory access for Australian service suppliers and investors, rather than in any preferential treatment. While the commitments in FTAs on goods, services and investment may, for some products, or in relation to some services

activities or investments, result in preferential treatment for products and businesses from the Parties, there is no certainty as to the continuation of these preferences as WTO-consistent agreements place no constraint on the ability of a country to extend this more favourable treatment unilaterally, or to other FTA partners, or in WTO negotiations. This underscores the fact that FTAs that are consistent with the WTO rules should also be consistent with good economic policy making and the encouragement of economic growth and improved welfare, both domestically in the countries involved and internationally.

17. An important point which the draft report could usefully address in more detail is the fact that for many WTO Members – and particularly developing country Members – WTO tariff bindings may often be set at very high levels. In the case of many developing countries it is common for their WTO tariff bindings for a majority of tariff lines to be 30 or 40 per cent or even higher, although their applied tariffs may be considerably lower. This means that these countries could increase their levels of tariff protection quite considerably while still complying with WTO obligations. By contrast, high quality FTAs, such as those negotiated by Australia, have delivered high levels of tariff bindings at tariff-free or very low levels, and therefore introduced guarantees of market access which are significantly greater than existing WTO commitments for many countries, and particularly in relation to developing countries.

18. Our FTAs also do not prejudice or preclude future negotiations with other partners, or indeed with the same party. A clear indication can be seen in the fact that Australia is now engaged in negotiations for a Trans Pacific Partnership Agreement (TPP) that includes parties with whom Australia has already negotiated FTAs. Besides Australia, the TPP parties include New Zealand, Singapore, Peru, Chile, Brunei Darussalam, the United States and Vietnam (the latter currently as an associate member). Australia already has FTAs with six of these countries (Singapore, New Zealand, Chile, the United States and, through AANZFTA, Vietnam and Brunei Darussalam). Moreover, many of the other TPP parties also have their own bilateral or plurilateral FTAs with each other, including the Trans-Pacific Strategic Economic Partnership (P4) between New Zealand, Chile, Singapore and Brunei Darussalam. The TPP negotiations will complement these existing bilateral and plurilateral arrangements.

Draft Recommendation 2

The Australian Government should continue to comply with WTO requirements in forming bilateral and regional agreements. Within this framework, the Government should:

- **adopt a more flexible approach to the coverage of bilateral and regional trade agreements and consider less comprehensive, while still WTO-consistent, agreements; and**

- **make greater use of implementation schedules that rely on built-in agendas to promote reductions in barriers to trade and investment.**

DFAT Response

19. Australia's approach to FTA negotiations has been to seek comprehensive, high quality FTAs that conform with WTO requirements for regional trade agreements. This involves approaching negotiations on the basis of seeking a "single undertaking" with high quality commitments, particularly in areas where this is required by WTO obligations. In general terms, the approach has been to seek as much as possible as early as possible, but also

taking account of legitimate development concerns of developing countries and the need, in many cases, for an adjustment period for reform of highly protected sectors in these countries. This comprehensive approach is also an even-handed and non-prejudicial way to ensure our advocacy is undertaken on behalf of all of Australia's diverse range of trade and investment interests in overseas markets, rather than "picking winners". Comprehensive lowering of trade and investment barriers can also lead to new areas of economic activity not predicted by officials or business.

20. The WTO Agreements covering goods and services explicitly allow FTAs as long as they comply with certain conditions. Article XXIV:4 of the General Agreement on Tariffs and Trade (GATT) 1994 clearly explains the objective of WTO-consistent FTAs: "The contracting parties recognize the desirability of increasing freedom of trade, by the development, through voluntary agreements, of closer integration between the economies of the countries party to such agreements. They also recognize that the purpose of a customs union or of a free-trade area should be to facilitate trade between the constituent territories and not to raise barriers to the trade of other contracting parties with such territories."

21. This objective is given force in the GATT 1994 Article XXIV disciplines that prohibit an FTA from resulting in an increase in the tariffs or other regulations of commerce that apply to WTO Members who are not a party to the agreement, and which require the FTA to eliminate tariffs and other restrictive regulations of commerce on substantially all the trade between the parties. DFAT notes that the draft report's outline of the WTO rules on FTAs (Box 4.2) omits reference to the first of these requirements, and would draw attention to the fact that this requirement has been particularly important in preventing any recurrence in the world economy of the type of preferential trade agreement that was common in the 1930s and which contributed to the collapse of world trade during the Great Depression (i.e. trade agreements that created preferences by increasing the barriers faced by trade from non-parties).

22. Article V of the General Agreement on Trade in Services (GATS) sets out the conditions that apply to FTAs liberalizing trade in services. Such an FTA must have substantial sectoral coverage, and provide for national treatment between the Parties in these sectors through the elimination of existing discriminatory measures and/or the prohibition of new or more discriminatory measures. Article V:4 of the GATS further provides that such an agreement "shall be designed to facilitate trade between the parties to the agreement and shall not in respect of any [WTO] Member outside the agreement raise the overall level of barriers to trade in services within the respective sectors or subsectors compared to the level applicable prior to such an agreement."

23. In advocating a less comprehensive, and faster, approach to concluding FTAs, the draft report appears not to take into account important practical considerations that can be critical to the success of FTA negotiations, and particularly to ensuring that they are high quality agreements that promote genuine liberalisation and reform. The reality is that negotiating partner countries most commonly seek to exclude from the ambit of negotiations products and sectors which are sensitive domestically but of commercial importance for trade partners such as Australia. For example, many FTA partners would prefer to exclude from the scope of FTA negotiations agricultural market access of priority interest to Australia. Engaging FTA partner governments (and private sector interests) on these sorts of issues typically takes substantial effort and time. It is precisely because both sides consider the issues at stake to be important that negotiating delays are not easily or quickly overcome.

24. A less-than-comprehensive approach risks reducing the negotiating leverage and the range of possible trade-offs that are critical to achieving a balanced outcome in FTA negotiations, including improved access in sensitive market sectors and products. It runs the risk of reducing the positive impact on domestic economic reform that an FTA can potentially provide. It could also signal, ahead of the start of negotiations, where Australian policy-makers envisaged FTA partner governments would be unlikely to respond completely to Australian requests. Negotiators will typically have a good idea where the most sensitive issues lie for their FTA partners, and where the greatest resistance will be to meeting Australia's priority requests, but the nature of negotiations is that deals can often be done once both sides have had the opportunity to explore fully possible compromise outcomes and where a package of outcomes can be crafted. To limit that possibility before the negotiations start by excluding certain sectors would be to pre-empt the possibility of securing some benefit for Australian exporters that may otherwise have proved possible.

25. A comprehensive approach to sector coverage does not prevent the possibility of some case-by-case differences in specific provisions. Nor does a comprehensive, single-undertaking approach preclude flexibility when and if appropriate in the negotiating process. Compromises and trade-offs are a natural feature of any set of negotiations, and careful judgements must always be made about acceptable outcomes given the circumstances at hand. Key trade-offs will typically involve difficult political judgments and be referred to Ministers for decision. The realities of negotiating FTAs between different governments (and at different phases of their business and political cycles) mean that negotiated outcomes typically include variations in the degree of comprehensiveness and coverage between FTAs concluded by the same parties.

26. Nor does a comprehensive approach to negotiating FTAs preclude other forms of agreement with partner countries where circumstances are appropriate, such as Trade and Investment Framework Agreements (such as the Memorandum of Understanding signed with Colombia in 2009); bilateral Investment Promotion and Protection Agreements (IPPAs); and Mutual Recognition Agreements (MRAs). FTA negotiations can provide an umbrella for these other forms of agreement, such as the negotiation of MRAs.[1]

27. The draft report's recommendation about the use of implementation schedules that rely on built-in agendas to promote reductions in barriers to trade and investment is already reflected in Australia's FTAs. These all contain various built-in agendas that allow for continuing work to promote further liberalisation and reform over time, as well as the scope to move into new areas in response to the needs of today's business community. Many of these FTAs also make use of implementation schedules that allow for, e.g., tariffs to be gradually reduced and eliminated over time where this is an appropriate approach, such as where a sector has been heavily protected or a developing country needs time to facilitate adjustment by resource-constrained producers.

[1] In Australia, most professions set their own qualification, licensing and admission requirements, and pursue various forms of mutual recognition of these requirements with corresponding bodies in other countries. Where professions are regulated, it is often a matter for State and Territory Governments, with regulation taking account of advice from the profession concerned. Nonetheless, governments can play an important role in developing, or supporting the development of, MRAs in respect of some professional or financial services, such as in the Trans-Tasman Mutual Recognition Arrangement. Also relevant in this respect is the Johnson Report entitled *'Australia as a Financial Centre'*, which recommends the development of an Asia Region Funds Passport, where mutual recognition is given to a broad range of funds and asset classes. It recommends that government, particularly ASIC, play a key role in negotiating MRAs.

28. Current examples of built-in agendas for future negotiations include government procurement with Thailand and investment market access in AANZFTA. There has also been ongoing work to conclude an investment protocol under the Closer Economic Relations (CER) arrangements with New Zealand. Australia's FTAs also include mechanisms for institutional review, such as periodic Joint FTA Committee meetings, on the basis that they will be "living agreements" with opportunities for future improvement and advancement. These arrangements for periodic review are also intended to embed deeper relationships and cooperation between Australia and the FTA partner countries. Built-in agendas have a role in a high quality, comprehensive FTA as a means to continue to strengthen and deepen the strong foundations laid by such an FTA. However, the scope to make use of built-in agendas should not be used as an excuse by the parties not to confront difficult areas of reform up-front when the FTA is initially negotiated.

29. In summary, as Australia is typically the demandeur for a more ambitious outcome from its FTA negotiations, to follow the Productivity Commission's draft recommendation would carry the risk of lowering ambition levels in our FTAs. In DFAT's view, the policy most likely to advance Australia's interests from FTA negotiations is to aim to secure comprehensive, single-undertaking agreements that protect and enhance as broad a range of Australian interests as possible.

Draft Recommendation 3

The Australian Government should adopt the composite model for rules to determine origin in merchandise trade as used in AANZFTA, as a basis for rules of origin in future preferential trade agreements. In adopting this broad model:

- **a choice of Regional Value Content and Change in Tariff Classification rules for determining origin should be afforded for each item of merchandise;**
- **the least restrictive variant of each test should be adopted, consistent with preventing trade deflection; and**
- **Australia should seek to negotiate agreement partners' agreement to a waiver to rules of origin requirements that would be applied where the MFN rates in the partner countries are close (that is, the difference between tariff rates is five percentage points or less).**

DFAT Response

30. In response to this draft recommendation, the following information is provided by way of background on DFAT's approach to ROOs in FTA negotiations. Working with other Departments, DFAT's approach in negotiating ROOs has been to seek liberal and flexible outcomes that support the principle of substantial transformation of non-originating materials within the FTA region. The principle of substantial transformation is the internationally accepted approach for determining origin for the purposes of applying tariff commitments in FTAs, or any other tariff commitments that involve the need to distinguish between goods which qualify for such commitments and those which do not. In particular, the principle of substantial transformation is designed to prevent trade deflection and ensure that tariff commitments only apply to goods that result from a genuine economic activity in the FTA region.

31. DFAT notes that important changes have occurred in Australia's approach to ROOs in FTAs in recent years – including the move from the ex-factory cost, value-added approach, to product specific rules based on a change-in-tariff classification (CTC) approach as our preferred model. In our most recently concluded FTA with ASEAN and New Zealand (AANZFTA), Australia agreed to the adoption of a compromise outcome, under which for most products exporters have a choice of using either a regional value content (RVC) or a CTC rule.

32. These changes have reflected both the dynamics of individual negotiations, including the need to take account of the situation and preferences of different negotiating partners, as well as changes in the nature of the Australian and world economies, such as floating exchange rates and the development of globalized supply chains. DFAT considers that it is important that Australia's approach to ROOs should continue to be kept under review in light of: the situation and preferences of new FTA partners; changes in technology and production processes; the potential benefits to business of greater harmonization across FTAs; and broader regional and international work to promote greater commonality and coherence between different FTAs.

33. However, at this time, and based on our experience and advice provided by industry, DFAT believes that the CTC methodology for the most part provides the best means of achieving the outcome of an appropriate set of rules that are liberal and flexible in ensuring the application of the principle of substantial transformation. Where necessary, and for a small proportion of tariff lines, the principle of substantial transformation can be reinforced through the addition of RVC or specific process elements to the CTC requirement. Furthermore, flexibility and useability of the rules can be enhanced by allowing alternative pathways to origin through the use of alternative RVC or specific process rules for individual products, where this is appropriate. However, in most cases, CTC rules provide a simple and unambiguous test of origin, making alternative rules unnecessary.

34. DFAT would note that a work program is just beginning which involves the countries of ASEAN, and the six countries (Australia, China, India, Japan, New Zealand and South Korea) with which ASEAN has regional FTAs. This work program is looking at the ROOs in these FTAs with a view to improve their complementarity and coherence in promoting regional economic integration. One issue that the work program is likely to address is the issue of co-equal rules (or the "composite model" as the term is used in the draft report), as these have been used in many of the ASEAN FTAs.

35. The possible benefits of Australia adopting co-equal ROOs as a preferred model should, in DFAT's view, be kept under review in the light of this work program, as well as on the basis of experience gained in the implementation of AANZFTA. Pending any future decision on this issue, DFAT notes that information received from Australian industry continues to support the use of product specific rules based on the CTC method as Australia's primary method. The decision on the appropriate approach to use in individual FTAs will also need to continue to take account of the negotiating dynamics and situation of each FTA.

36. The draft report recommends that the least restrictive variant of each test should be adopted in the FTA, consistent with preventing trade deflection. This recommendation is consistent with Australian practice. DFAT's objective in ROOs negotiations is to seek a rule which facilitates trade while still ensuring that the good undergoes a substantial transformation. The ROOs used in Australia's FTAs are continually being examined to make

sure that they meet this objective. As with all aspects of an FTA, the ROOs are a result of negotiation and reflect the position of our negotiating partner as well as Australia.

37. DFAT notes that the recommendation also calls for Australia to "seek to negotiate agreement partners' agreement to a waiver to rules of origin requirements that would be applied where the MFN rates in the partner countries are close (that is, the difference between the tariff rates is 5 percentage points or less)". It is not clear to DFAT what this wording means (e.g. a literal reading would suggest that the recommendation applies in cases where Australia's MFN rate is close to – i.e. within 5 percentage points of – the MFN rate of the FTA negotiating partner). However, from the discussion in the body of the report, DFAT assumes that the recommendation is to use this waiver where the difference between the applied MFN rate and the FTA tariff rate of each country is less than 5 per cent (i.e. as most tariffs would be eliminated under an FTA, this waiver would only apply in situations where all the Parties to an FTA had MFN tariffs of 5 per cent or less; ROOs would presumably still be needed for any products for which the difference between the MFN rate and the FTA tariff in any of the Parties exceeded 5 per cent). If this interpretation is correct, the submission does not provide supporting evidence or clearly specify the rational for such a recommendation.

38. The draft recommendation appears to be based on a concern that in cases where the "margin of preference" is low, but compliance with an FTA may involve administrative costs, or costs to meet the substantive ROOs, then the ROOs could discourage use of the FTA for no reason (as trade deflection would not occur anyway). DFAT recognises this concern but would note that even though there may only be a difference of 5 per cent between the applied MFN rate of a country and its FTA tariff, there could still be significant risks of trade deflection and therefore of welfare losses.

39. In particular, even in cases where there is a tariff difference of less than 5 per cent there may still be a reasonable incentive for some traders to seek preferential tariff treatment. In its Research Report on Rules of Origin under the Australia-New Zealand Closer Economic Relations Trade Agreement (2004 page 155-6) the Productivity Commission identifies that Trans-Tasman transport costs can range from 1 per cent for "other vehicles" to 13 per cent for "non-metallic mineral products" depending on the material and the costs associated with transporting the material, and "can vary markedly within 2-digit industries". Even allowing for some compliance and administration costs, these findings support the argument that a tariff difference of 5 per cent may still be sufficient to encourage transhipment. Given the significant risk that the introduction of a waiver could create a welfare loss due to trade deflection, stronger evidence in support of a waiver is required before this approach could be considered.

40. The draft report itself includes the following statement: "For Australian agreements, evidence suggests that preference utilisation rates by firms exporting to Australia for agreements which offer an average margin of preference in the order of 5 per cent are relatively significant, ranging from 70 to 100 per cent" (page 8.12). This would indicate that the draft recommendation for a waiver of the ROOs, if applied to situations where the difference between the MFN and FTA tariffs was 5 per cent, could result in significant levels of trade deflection, and therefore possibly significant welfare losses. The draft report goes on to note that in cases, such as the Singapore Australia FTA (SAFTA), where the difference between the MFN and FTA tariffs is lower than 5 per cent the "uptake of preference is considerably lower and in the order of 30 per cent" (page 8.12). However, a 30 per cent

utilization rate would suggest that even in these cases trade deflection levels, and corresponding welfare losses, could be high.

41. Unless strong evidence could be assembled which provided a solid basis for concluding that the risk was low that the implementation of a waiver of the ROOs requirement would result in trade deflection and consequent welfare losses, DFAT could not support this recommendation. In the first instance, the apparent concern behind the draft recommendation should be addressed by ensuring that the substantive ROOs in FTAs are reasonable (in line with the points above) and through action to keep compliance and administration costs as low as possible. One aspect that the draft report could explore in more detail is whether there are options that could lessen the compliance and administration costs of ROOs in Australia's FTAs. By reducing the compliance and administrative costs associated with access to preferential treatment, utilisation of FTAs could be improved, including in cases where the "margin of preference" might be low. The draft report provides a brief examination of research on compliance and administration costs; however, these studies are based on the ROOs used in various agreements that do not necessarily provide a reliable basis of comparison against which to assess Australia's ROOs. While DFAT acknowledge that there is limited analysis and research on the compliance and implementation of Australia's ROOs, further research would be useful to enhance the design of ROOs requirements.

Draft Recommendation 4

The Australian Government should not include matters in bilateral and regional trade agreements that increase barriers to trade, raise industry costs or affect established social policies without a comprehensive review of the implications and available options for change. It should adopt a cautious approach to:

- **negotiating and including IP protections in agreements, particularly when these involve extensions to current thresholds;**
- **referencing core labour standards in agreements; and**
- **exclusions for audiovisual and cultural services.**

DFAT Response

42. Intellectual property (IP) is an important element in comprehensive bilateral or regional trade agreements, and in the WTO. The inclusion of IP chapters in Australia's FTAs reflects our preference for comprehensive, high quality FTAs and reflects the basic structure of the WTO Agreements.

43. The final report should acknowledge that Australia already takes a cautious approach to IP in FTAs. Comprehensive review of the implications of FTA outcomes, including in relation to IP, is undertaken as part of the Government's processes for approving FTAs (see discussion below under draft recommendation 6). IP is a complex area and the costs and benefits of FTA obligations relating to IP are carefully considered. Australia has sought to negotiate provisions that are consistent with current and emerging international standards, and our existing laws and policy settings. We have tailored our approach to reflect the different interests in each partnership, taking into account the adequacy of IP protection in

FTA partners compared with Australia's appropriate standards of IP protection and recognised international standards.

44. The final report should make clear that Australian industry has real commercial interests in comprehensive IP commitments that promote appropriate standards of IP protection and enforcement in our major trading partners, as the draft report does not appear to acknowledge this point. Accessible, transparent and effective IP protection is important for Australian industry in export markets. As for many "behind the border" issues the economic value of effective IP protection and enforcement is difficult to quantify and less tangible than tariff or subsidy reductions. However, inadequate IP protection and enforcement in export markets is a significant problem that is raised regularly by Australian stakeholders. In many of Australia's trading partners counterfeiting and piracy are prevalent and intellectual property enforcement is ineffective. Australian stakeholders have also raised difficulties relating to application and objections processes for IP rights. IP is an increasingly valuable component of Australia's exported goods and services. Poor standards of IP protection in export markets can significantly affect profits and may affect the viability of Australian companies in those markets.

45. The draft report (Chapter 13) questions whether Australia should push for provisions in future FTAs that expand on existing IP rights and, in particular, that extend the term of copyright. Australia has generally sought standards of IP protection and enforcement in FTAs that are commensurate with existing international standards. DFAT's view is that it may be appropriate to seek higher standards where they are commensurate with our own standards and where there is a commercial benefit for Australia. In relation to the protection of intellectual property, the fact that reforms are of multilateral benefit does not diminish their value for Australian stakeholders.

46. The final report should include a more balanced discussion of the benefits to industry and consumers of IP protection. The draft report (Chapters 10 and 13) focuses on the so-called "net costs" of extending IP protection through FTAs, without adequately reflecting the broader benefits of IP protection, including increased incentives for creation, innovation and investment; additional value added to exported goods and services; and access to technologies, cultural products, and goods and services containing IP. Benefits of carefully considered and targeted IP provisions in an FTA can also include improved accessibility and transparency of IP systems; simplification and/or harmonisation of IP rights registration processes; greater certainty of IP rights; better enforcement; and increased capacity in developing country trading partners through economic cooperation. These benefits allow Australian businesses to better protect and enforce their IP rights in foreign markets.

47. Australia has also adopted a careful approach to the issue of referencing labour standards in FTAs. Recent Government policy has been to explore the inclusion of labour standards issues in FTA negotiations, on a case by case basis. The policy has reflected the widely different negotiating approaches and positions adopted by Australia's FTA partners on the inclusion of labour standards issues in FTAs. Our approach has taken into account the degree to which both sides consider that there is scope for cooperation on the issue.

48. The basic elements that Australia might seek to negotiate on this issue, depending on Government views, have already been outlined in DFAT's initial submission. Those elements include having the FTA parties reaffirm existing multilateral commitments, such as the International Labour Organization's (ILO) Declaration on Fundamental Principles and Rights at Work (1998). The specific labour standards that each country adopts is a matter for its

sovereign, domestic decision-making consistent with international norms, and the provisions in trade agreements seek to reinforce each country's commitment to upholding its own standards. Australia has also supported a cooperative work and research agenda on trade and labour issues undertaken jointly by the ILO and WTO.

49. Consistent with the Productivity Commission's draft recommendation, Australia has also taken a cautious approach regarding exclusions for both audiovisual and cultural services from FTAs. DFAT has long recognised the essential role of creative artists and cultural organisations in articulating the intrinsic values and characteristics of Australian society, and closely consults stakeholders on cultural policy within the context of FTAs. DFAT has taken a case-by-case approach to the inclusion/exclusion of audiovisual and cultural services in its FTAs, based on those stakeholder consultations and social and commercial policy considerations. Although the outcome in each of our FTAs and in our GATS commitments has been carve-outs for Australian cultural industries, the carve-outs have different scope and a different scheduling format depending on the characteristics of the negotiation.[2]

Draft Recommendation 5

The Australian Government should be cognisant of the capacity of legal systems in prospective partner countries to resolve disputes on all relevant aspects emerging from cross border commerce.

- **Where the legal systems of partner countries are relatively underdeveloped, it may be appropriate to refer cases to third party dispute settlement mechanisms.**

- **However, such process should not afford foreign investors in Australia or partner countries with legal protections not available to residents.**

- **Investor-state dispute settlement procedures should be subject to regular review to take into account changing international best practice and the evolving legal systems in partner countries.**

DFAT Response

50. As with issues discussed under draft recommendation 4, DFAT advocates a careful, case by case approach to the inclusion of Investor State Dispute Settlement (ISDS) in Australia's international agreements. All of the bilateral IPPAs and FTAs so far concluded by Australia include ISDS, with the exception of CER and the Australia-US FTA (AUSFTA), but this is without prejudice to the positions taken in current and future negotiations.

51. In each case, a range of factors inform assessments of whether or not to seek the inclusion of ISDS in trade and investment agreements, including: the state of the legal system in the partner country; stakeholder views; precedents and effects on other potential negotiations; the promotion of bilateral investment flows; and other considerations relevant to the bilateral relationship with the partner country.

52. DFAT also wishes to raise a number of technical points in relation to ISDS. The following comments respond to draft recommendation 5 and to the section of the Productivity

[2] As alluded to in the Commission's draft report, the above does not apply to the CER Services Protocol which does not include carve-outs, and was negotiated before the GATS.

Commission's draft report on ISDS, and are intended to provide context and background to inform the Productivity Commission's consideration of ISDS. They do not represent DFAT's official negotiating position on ISDS.

53. The draft report would benefit from placing ISDS mechanisms in their international context. The International Centre for Settlement of Investment Disputes (ICSID) and United Nations Commission on International Trade Law (UNCITRAL) rules provide existing avenues for investors to pursue claims against states (subject to the consent of the state), irrespective of IPPAs and FTAs. FTA and IPPA ISDS provisions therefore build on these existing mechanisms. Importantly, provisions on ISDS in FTAs and IPPAs can be drafted so as to limit vexatious or frivolous claims, by setting out rules on procedure and standing to bring claims (these are more important considerations than the definition of "investment" referred to in the draft report on page 13.19). It may be helpful for the Productivity Commission to examine these provisions; those in our recent FTA with Chile are a useful example.

54. ISDS can only be used by a foreign investor to bring claims for *investment-related* disputes. In an FTA, this is usually limited to claims for a breach of those rights set out in the Investment Chapter (not for those in any other chapter of the FTA). Further, many of the substantive rights that investors may pursue under ISDS in an FTA or IPPA – such as compensation for expropriation or fair and equitable treatment – already exist under customary international law. FTAs and IPPAs therefore reflect these rights.

55. Following from this, it is important to recognise that domestic law and international law operate in separate spheres, but this does not necessarily mean that one offers better treatment than the other. Rights under international agreements, including FTAs and IPPAs, may be enforced under international law, while rights created under domestic law are enforced under domestic law. As a result, Australia's international treaty obligations do not, ordinarily, provide a basis to take action through the Australian legal system. ISDS is therefore a mechanism for enforcing rights under international law (as is state-to-state dispute settlement).

56. So when considering the rights conferred on foreign investors under FTAs and IPPAs vis-à-vis those conferred on domestic investors under domestic law, the key issue is whether one confers better treatment than the other. We assess that, broadly, this is not the case. For example, both domestic and foreign investors in Australia would have rights to compensation in the event of expropriation, whether under Australian domestic law or, for foreign investors, also under an FTA or IPPA, if applicable. The existence of ISDS provisions in FTAs and IPPAs does not change this essential equality in the substantive treatment of foreign and domestic investors.

57. In some instances ISDS may be used to enforce rights that have no relevance to domestic investors. An example is the "transfer" provisions of IPPAs and FTA investment chapters, which provide guarantees to foreign investors that they will be able to remit back to their home country their dividend, interest, royalty and/or other investment income. This is a concern for foreign investors but a non-issue for domestic investors.

58. State-to-state dispute mechanisms contained in FTAs, and not just ISDS, could also potentially be invoked by an FTA partner country on behalf of its investors – and indeed on behalf of its goods exporters and service providers – but domestic investors can naturally not ask the Australian Government to utilise FTA state-to-state dispute settlement provisions

against itself. Again, this reflects the different legal spheres in which domestic investors, on the one hand, and foreign investors covered by an FTA, on the other, are operating in and the different procedural rights available to the foreign investor, relative to the domestic investor, as a consequence of the FTA. Nonetheless, the fact that these different mechanisms are available to foreign and domestic investors respectively does not confer an unwarranted advantage for foreign investors.

59. It is also important to note that the dispute settlement mechanisms and guarantees included in Australia's IPPAs and FTAs do not represent an unreciprocated benefit for foreigners. Australian investors may equally benefit from these provisions in respect of their investments in partner countries. The inclusion of ISDS in international agreements may therefore be part of Australia's offensive strategy for an international agreement.

60. If a decision is made to include ISDS in an international agreement, DFAT and other Departments carefully consider the text of the provisions. This includes the consideration of evolving international jurisprudence and best practice. We note that international arbitration rules, including those set out by the UNCITRAL, are undergoing constant review. The United Nations Conference on Trade and Development (UNCTAD) is also exploring the application of alternative dispute resolution in international investment law and dispute prevention policies. We will continue to monitor these developments and consider their relevance in Australia's ISDS procedures.

61. Finally, DFAT notes that no ISDS cases have been brought against Australia to date. Claims about the outcomes of ISDS cases (for example, as included on page 13.20 of the draft report) should be based on a broad and thorough review of ISDS cases.

Draft Recommendation 6

The Australian Government should institute measures to substantially enhance the scrutiny of the potential impacts and benefits of prospective agreements, particularly those involving preferential arrangements.

- **Before negotiations commence, greater attention should be given to the reasons for seeking to negotiate with a trading partner, the proposed topics for negotiation, potential impacts and benefits of a prospective agreement, expected timeframe, resource requirements, relevant exit strategies where negotiations cannot be concluded within, say, 2 years, and the relative merits and feasibility of alternative strategies, including unilateral and multilateral reform options.**

- **Before an agreement is signed, an independent and transparent assessment of the likely impacts and community-wide benefits of the proposed agreement, commissioned independently of the executive, should be undertaken. The assessment should be made against the text of the agreement and not an overly optimistic scenario. It should take into account any additional administrative and compliance costs and the economic effects of the proposal for reducing barriers to trade and investment and other provisions.**

DFAT Response

62. As noted in paragraph 2 of the introductory comments in this submission, DFAT makes no comments on the draft report's statements about Australia's constitutional

arrangements, or the relationship between the executive and Parliament (Chapter 14). The following comments on draft recommendation 6 simply address a number of factual omissions in Chapter 14 of the draft report, which appear to underlie the recommendations, as well as making some observations on the role of modelling in helping to assess the impacts of trade agreements.

63. The draft recommendation states that "greater attention should be given to the reasons for seeking to negotiate with a trading partner". In fact, Australia's processes for embarking upon FTA negotiations already involve a range of elements. Decisions to embark upon FTA negotiations are "whole-of-government" decisions made by Cabinet. The resource implications; potential costs, benefits, risks; and specific issues that may emerge during the course of negotiations are assessed during the Cabinet process. The Government's practice has been that consideration of whether to embark upon FTA negotiations, and the negotiating mandate, follows wide public consultation associated with the preparation of an FTA feasibility study, including assessment of the economic and broader bilateral relationship with the country in question, and the costs and benefits associated with an FTA.

64. DFAT's public consultation processes for FTAs involve invitations for submissions; meetings in Canberra and state capitals with state governments and participants from the private sector and broader community; as well as ongoing day-to-day engagement with interested parties. DFAT and other Departments undertake a wide range of continuing consultations with industry and other interested groups throughout the process by which an FTA is considered and negotiated. There are also continuing consultation processes with State and Territory Governments, and these governments may engage in their own public consultation processes to inform the input they provide to the Australian Government. Throughout the process of FTA negotiation, Ministers, officials and State and Territory Governments have made use of a wide range of industry and other forums, as well as official websites, to seek to ensure that the community is aware of the negotiations and understands the issues being discussed, and to encourage the provision of any comments or information as inputs for consideration during the negotiations.

65. DFAT does not agree with any suggestion that time limits be placed on negotiations. The time taken to negotiate FTAs – or indeed, to achieve multilateral liberalisation through the Doha Round – is not a matter under the full control of Australian policy makers, but also depends critically on the attitudes and positions of Australia's negotiating partners. Even in circumstances when negotiations appear to have reached an impasse and when further progress might seem impossible over the foreseeable future due to fundamental differences, negotiations can still be kept "on the books" and returned to when prospects improve, reflecting, *inter alia*, evolving commercial and political conditions in the FTA parties. The internal costs associated with keeping options open are minimal, because inactive negotiations do not draw to any significant degree on staffing or financial resources. Where resources are expended in undertaking new rounds of negotiations, this reflects the possibility of further progress being made and the importance of the interests at stake. The fact that some negotiations have been relatively long-running without conclusion so far has not been a source of tension or strain in bilateral relationships, any more than the negotiating process itself introduces matters that the parties will need to resolve amicably between them.

66. The recommendation for "independent assessment …. commissioned independently of the executive" before an agreement is signed appears to be based on the Productivity Commission's view that: "…the assessment of the economic benefits and costs of agreements currently occurs prior to negotiations, as part of the feasibility studies, the results

of which are often used to 'oversell' the benefits likely to come from the actual agreement that is negotiated and signed. It is questionable whether the modelling in them is helpful for assessing the arrangements finally proposed by negotiators" (page XXVI). DFAT notes that Parliament's Joint Standing Committee on Treaties (JSCOT), and other parliamentary committees that have considered Australia's concluded FTAs, have been presented with a range of evidence about FTAs, including economic assessments from government, business, NGOs, research institutes and academics, often putting forward very different views about the likely impacts of those Agreements. Strong views have been put forward in public debate on both the claimed positive and negative impacts of each of the FTAs that Australia has negotiated. DFAT would note that the National Interest Analysis (NIA), and the Regulation Impact Statement (RIS), provided to Parliament on each concluded FTA, do not represent modelling done as part of feasibility studies – or, in some cases, later modelling work – as the primary basis for assessing the negotiated outcomes, as would seem to be implied by some of the observations made in the draft report. In particular, the NIAs and RISs typically emphasise qualitative assessment of the negotiated outcome, including explaining areas where the outcome might be disappointing, but also drawing on quantitative work where this might usefully inform understanding of the possible impacts of the outcome.

67. There are significant practical difficulties with proposals to release negotiated FTAs for purposes of public and independent assessment before the agreement is signed. Under Australian treaty practice, and in accordance with international practice, the details of the FTA package are not released until the FTA has been formally signed. DFAT's view is that to do otherwise could risk creating tensions with the negotiating partner country; damage confidence in Australia's credibility as a negotiating partner; and complicate the process of finalising the FTA. For example, such an approach would allow interest groups within the partner country to seek further changes to the negotiated agreement, and hence cause difficulties in being able to bring the FTA to a final conclusion.

68. DFAT considers that the draft report gives too much weight to the value of modelling in assessing the potential benefits of an FTA. Modelling can provide an indication of the possible quantitative impacts of an FTA on the basis of certain assumptions and particular data sets. Such modelling can be a very useful input both to policy-making processes and to public debate, and DFAT supports and encourages continued work to refine and further develop the sophistication of models in helping understand the possible impacts of trade agreements. However, modelling can never provide a full assessment of a trade agreement as it cannot adequately assess all the impacts of an agreement. Many elements of trade agreements are simply not amenable to quantitative assessment. For example, models generally do not have a means to adequately quantify the impacts of tariff bindings on investment or of provisions disciplining and limiting the use of non-tariff measures. Models can also not adequately address the impact of the many provisions in trade agreements that promote the streamlining of customs procedures, greater transparency and good regulatory practice in domestic regulations, or greater regulatory dialogue and consultation to reduce the impact of non-tariff measures. DFAT considers that, as these are all important elements of trade agreements, any attempt to provide an overall assessment of the possible benefits of such agreements which did not give adequate attention to them, simply on the basis that they were not easily quantifiable, would not provide a sound basis for good policy making or informed public debate.

69. DFAT suggests that the Commission might usefully consider whether steps can be taken to encourage a more informed public debate about the basis for assessing trade

agreements, including both the potential value and the limitations of modelling. DFAT has concerns that the draft report's recommendation for "an independent and transparent assessment of the likely impacts and community-wide benefits of…[a] proposed agreement" might exacerbate the problem by creating unrealistic expectations that there can be a single authoritative assessment of the impact of a trade agreement, and particularly of its quantitative impacts. Quantitative assessments always need to be carefully assessed in the light of the assumptions used. The fact that different models may produce different estimates of the impact of a particular issue – such as a trade agreement – does not mean that one model is necessarily "right" and the other necessarily "wrong", as the two models may be using different assumptions (each of which could well be plausible scenarios of the future). DFAT notes that the focus of the discussion in the report on this issue (pages14.5-14.7) is on modelling. DFAT further notes that the draft report has not identified specific problems with the NIAs or RISs provided to JSCOT or with Australia's regulatory impact statement requirements.

70. The requirement to undertake NIAs and RISs on trade agreements, and the content and form of these documents, is governed, in the case of the former, by Australia's general treaty-making arrangements, which require the preparation and submission to Parliament of an NIA on all treaties, not just trade agreements, and by Australia's best practice regulation requirements. Detailed information for officials' use on Australia's treaty making processes can be found in the treaty officials' handbook "Signed, Sealed and Delivered", produced by DFAT on a whole-of-government basis (contact Treaties Secretariat, DFAT). In addition, the Best Practice Regulation Handbook includes specific advice on the stages when a RIS is required as part of the treaty-making process (Australian Government 2007, *Best Practice Regulation Handbook*, Box 3.6 on page 33, and the recently revised Australian Government 2010, *Best Practice Regulation Handbook,* pages 22-23). A RIS must be prepared by DFAT in consultation with the Office of Best Practice Regulation (OBPR), and the OBPR must formally assess whether the standard of analysis in a RIS is adequate.

Draft Recommendation 7

To enhance transparency and public accountability, the Department of Foreign Affairs and Trade should publish estimates of the expenditure incurred in negotiating bilateral and regional trade agreements and multilateral trade agreements.

DFAT Response

71. In responding to this draft recommendation, DFAT refers to the communication published by the Productivity Commission on page 7.17 of the draft report. As outlined in that communication, trade work is central to DFAT's efforts and *raison d'être,* and DFAT work units across Australia and at overseas posts are engaged in an integrated trade and foreign policy agenda for the Government. As a result, meaningful or accurate cost estimates distinguishing work on trade agreements from other key activities cannot be provided by DFAT. These cost estimates are not available for publication for the same reasons that they are not available in response to the Productivity Commission's specific enquiry.

72. The draft recommendation above also illustrates the tendency in the draft report to treat multilateral, plurilateral and bilateral trade liberalisation as policy "alternatives", whereas in DFAT's view these are complementary and mutually supportive initiatives. The approach has been to push forward on all fronts, to promote trade liberalisation when and wherever progress can be made, and not to artificially rule out any particular trade policy

option. For these reasons too, trade policy and desk officers in DFAT and at overseas posts are continually engaged in work across all of the various trade policy aspects outlined above.

73. DFAT provides detailed performance and financial information in its annual reports, including against the output of “protection and advocacy of Australia's international interests through the provision of policy advice to ministers and overseas diplomatic activity.” Work to advance Australia’s interests through bilateral, regional and multilateral trade negotiations is a major and integral part of that policy output.