
The Parliament of the Commonwealth of Australia
Joint Standing Committee on Treaties

Report 130

Treaty tabled on 14 August 2012

Malaysia – Australia Free Trade Agreement done at Kuala Lumpur on 22 May 2012

October 2012
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Membership of the Committee

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Resolution of Appointment

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report on:

- a) matters arising from treaties and related National Interest Analyses and proposed treaty actions and related Explanatory Statements presented or deemed to be presented to the Parliament;
- b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
 - (i) either House of the Parliament, or
 - (ii) a Minister; and
- c) such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.



List of recommendations

4 Conclusion

Recommendation 1

That prior to commencing negotiations for a new agreement, the Government table in Parliament a document setting out its priorities and objectives including independent analysis of the anticipated costs and benefits of the agreement. Such analysis should be reflected in the National Interest Analysis accompanying the treaty text.

Recommendation 2

That after 24 months of the treaty coming into effect, an independent review of MAFTA be conducted to assess actual outcomes of the treaty against the claimed benefits and potential negative consequences noted in this report. The review should consider the economic, regional, social, cultural, regulatory, labour and environmental impacts. Such a review should serve as a model for future free trade agreements.

Recommendation 3

The Committee supports the *Malaysia-Australia Free Trade Agreement done at Kuala Lumpur on 22 May 2012* and recommends that binding treaty action be taken.

Introduction

Purpose of the report

- 1.1 This report contains the Joint Standing Committee on Treaties' review of the *Malaysia-Australia Free Trade Agreement done at Kuala Lumpur on 22 May 2012* which was tabled in Parliament on 14 August 2012.
- 1.2 The Committee's resolution of appointment empowers it to inquire into any treaty to which Australia has become signatory, on the treaty being tabled in Parliament.
- 1.3 The treaties, and matters arising from them, are evaluated to ensure that ratification is in the national interest, and that unintended or negative effects on Australians will not arise.
- 1.4 Prior to tabling, major treaty actions are subject to a *National Interest Analysis* (NIA), prepared by Government. This document considers arguments for and against the treaty, outlines the treaty obligations and any regulatory or financial implications, and reports the results of consultations undertaken with State and Territory Governments, Federal and State and Territory agencies, and with industry or non-government organisations.
- 1.5 A Regulation Impact Statement (RIS) may accompany the NIA. The RIS provides an account of the regulatory impact of the treaty action where adoption of the treaty will involve a change in the regulatory environment for Australian business. The treaty examined in this report required an RIS.

- 1.6 The Committee takes account of these documents in its examination of the treaty text, in addition to other evidence taken during the inquiry program.
- 1.7 Copies of this treaty and its associated documentation may be obtained from the Committee Secretariat or accessed through the Committee's website at:
<http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jsct/under_review.htm>

Conduct of the Committee's review

- 1.8 The treaty action reviewed in this report was advertised on the Committee's website from the date of tabling. Submissions for this treaty were requested by Friday, 14 September 2012, with extensions available on request.
- 1.9 Invitations were made to all State Premiers, Territory Chief Ministers and to the Presiding Officers of each Parliament to lodge submissions. The Committee also invited submissions from individuals and organisations with an interest in the particular treaty under review.
- 1.10 The Committee examined witnesses on the treaty at a public hearing held in Canberra on Friday 12 October 2012.
- 1.11 A list of witnesses who appeared at the public hearing is at Appendix A.
- 1.12 The transcript of evidence from the public hearing may be obtained from the Committee Secretariat or accessed through the Committee's website under the treaty's tabling date, being:
- **14 August 2012**
- <http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jsct/14august2012/hearings.htm>
- 1.13 Submissions received and their authors are listed at Appendix B.

The Malaysia-Australia Free Trade Agreement – National Interest Analysis

Free Trade Agreements

- 2.1 International agreements regulating trade come in two forms. The first are the multilateral agreements, intended to apply a universal set of rules for trade between nations. There are three major multilateral agreements: the General Agreement on Tariffs and Trade (GATT), which regulates the international trade of goods; the General Agreement on Trade in Services (GATS), which regulates international trade in services; and the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement, which regulates the treatment of intellectual property rights.¹
- 2.2 In general, these three agreements are intended to liberalise trade through individual national commitments to reduce barriers, such as tariffs and quotas, to international trade. The agreements are administered by an international agency, the World Trade Organisation (WTO).²
- 2.3 The second form of international agreement regulating trade is the bilateral or plurilateral free trade agreement or regional trade agreement (referred to as 'free trade agreements' henceforth). These agreements are negotiated between two or more countries and are intended to liberalise

1 World Trade Organisation (WTO), *Understanding the WTO: the Agreements*, <http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm1_e.htm>, accessed 4 September 2012.

2 WTO, *Understanding the WTO: the Agreements*, <http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm1_e.htm>, accessed 4 September 2012.

trade between the signatories by providing them with more favourable access to each other's markets than is available to other countries.³

- 2.4 Negotiation of free trade agreements has increased significantly since the 1990s as a result of the slow negotiation process for the improvement of the three multilateral agreements. As of January 2012, 511 free trade agreements had been notified to the WTO.⁴
- 2.5 The Australian Government has negotiated a number of bilateral and plurilateral free trade agreements, using the agreements as a mechanism to obtain market access for Australian exports to some of Australia's largest trading partners. At the time of writing, Australia has six ratified free trade agreements and eight free trade agreements under negotiation.⁵
- 2.6 The treaty under examination here, the Malaysia-Australia Free Trade Agreement (MAFTA), is the only agreement undergoing domestic approval at present.

Criticism of free trade agreements

- 2.7 While the WTO is in general supportive of free trade agreements, it does express a number of concerns about the impact of these agreements on the freedom of trade generally. For example:
- the WTO points out that, by their very nature, free trade agreements are inherently discriminatory because they build in a systemic advantage to the signatory countries;
 - the net economic impact of free trade agreements on signatory countries depends on the agreement's internal parameters and architecture;
 - the expected benefit of free trade agreements to signatory countries may be undercut by distortions in resource allocations and trade and investment diversion; and

3 WTO, *Regional trade agreements and preferential trade agreements*, <http://www.wto.org/english/tratop_e/region_e/rta_pta_e.htm>, accessed 4 September 2012.

4 WTO, *Regional trade agreements*, <http://www.wto.org/english/tratop_e/region_e/region_e.htm>, accessed 6 September 2012.

5 Department of Foreign Affairs and Trade, *Australia's Trade Agreements*, <<http://www.dfat.gov.au/fta/index.html>>, accessed 25 September 2012.

- overlapping free trade agreements tend to generate a system of coexisting different trade rules in a single country, hampering trade as a result of the costs to exporters of negotiating these coexisting rules.⁶
- 2.8 The Productivity Commission has also been a critic of bilateral and plurilateral free trade agreements. In its Research Report, *Bilateral and Regional Trade Agreements*, released in December 2010, the Productivity Commission made the following observations on Australia's free trade agreements:
- while the theoretical analysis suggested that tariff preferences in free trade agreements would significantly increase trade flows between signatory countries, in reality, the increased trade flows were in part generated by the diversion of trade from other trade partners, resulting in only modest increases in national income;
 - the process for assessing and prioritising free trade agreements lacked transparency and tended to oversell the likely benefits; and
 - other policy options may be more cost effective for Australia.⁷
- 2.9 The Productivity Commission recommended that:
- the economic modelling of free trade agreements should include realistic scenarios and should be overseen by an independent body; and
 - a full and public assessment should be made of each provision of the negotiated outcome.⁸

Australia's trade relationship with Malaysia

- 2.10 According to the National Interest Analysis (NIA), Malaysia is Australia's tenth largest trading partner, and the third largest trading partner in the Association of Southeast Asian Nations (ASEAN). The two way trade between Australia and Malaysia is believed by the Department of Foreign Affairs and Trade to have been A\$16 billion in 2011, or 2.6 per cent of Australia's total trade in goods and services.⁹

6 WTO, *Regional trade agreements: Scope of RTAs*, <http://www.wto.org/english/tratop_e/region_e/scope_rta_e.htm>, accessed 6 September 2012.

7 The Productivity Commission, *Bilateral and Regional Trade Agreements – Research Report*, 2010, p. XX.

8 The Productivity Commission, *Bilateral and Regional Trade Agreements – Research Report*, 2010, p. XX.

9 NIA, para. 4.

- 2.11 Australia exported A\$4.49 billion worth of goods to Malaysia in 2011. Australia's principal exports were crude petroleum, copper, coal and wheat. The value of Malaysia's exports to Australia in 2011 was A\$8.56 billion, and included: crude petroleum; electronic equipment such as computers, monitors, and televisions; and refined petroleum.¹⁰
- 2.12 In relation to trade, Australia's exports to Malaysia in 2011 were valued at A\$1.64 billion, with significant contributions from education and tourism. Australian imports of Malaysian services in 2011 were valued at A\$1.33 billion, including major contributions from transport services and tourism.¹¹
- 2.13 In terms of investment, Malaysians invest significantly more in Australian shares than Australians invest in Malaysian shares. Malaysian investment in Australian shares amounted to A\$13.99 billion in 2011, while the reciprocal figure was A\$5.69 billion.¹²

The Treaty

- 2.14 MAFTA is the latest bilateral free trade agreement with a member of ASEAN. As with the previous bilateral free trade agreements with Thailand and Singapore, this agreement has been made to build upon the ASEAN, Australia and New Zealand Free Trade Area Agreement (AANZFTA), which entered into force on 1 January 2010.¹³
- 2.15 In addition to the AANZFTA and the two extant free trade agreements, Australia also has bilateral investment treaties with Indonesia, Laos, the Philippines and Vietnam.¹⁴
- 2.16 The NIA for MAFTA claims that:

10 Department of Foreign Affairs and Trade, *Malaysia Fact Sheet*, <<http://www.dfat.gov.au/geo/fs/malay.pdf>>, accessed 18 September 2012.

11 Department of Foreign Affairs and Trade, *Malaysia Fact Sheet*, <<http://www.dfat.gov.au/geo/fs/malay.pdf>>, accessed 18 September 2012.

12 Department of Foreign Affairs and Trade, *Malaysia Fact Sheet*, <<http://www.dfat.gov.au/geo/fs/malay.pdf>>, accessed 18 September 2012.

13 *National Interest Analysis* [2012] ATNIA 17, Malaysia-Australia Free Trade Agreement, done at Kuala Lumpur on 22 May 2012, 2012 ATNIF 9, (Hereafter referred to as 'NIA'), para. 2. For further background on AANZFTA, see Joint Standing Committee on Treaties, *Report 102: Review into treaties tabled on 12 and 16 March 2009*, Chapter 2, tabled on 24 June 2009, available at <http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jsc/12march2009/report.htm>.

14 Joint Standing Committee on Treaties, *Report 102: Review into treaties tabled on 12 and 16 March 2009*, para. 2.16.

Entry into force of MAFTA will deliver additional benefits to Australian producers, exporters, consumers and investors and provide a platform for securing further trade and investment liberalisation in the future.¹⁵

- 2.17 The Department of Foreign Affairs and Trade (DFAT) emphasises the benefits of MAFTA as a part of a broader strategy to engage with the ASEAN region:

...MAFTA will enhance the integration of the Australian economy into the region by building on AANZFTA and complementing Australia's two existing bilateral free trade agreements (FTAs) with individual ASEAN countries (Thailand and Singapore). MAFTA will also strengthen Australia's broader bilateral relationship with Malaysia, support Australia's objectives for progressing its AANZFTA built-in liberalisation agenda and, at a regional level, deepen Australia's engagement with the Asia-Pacific.¹⁶

Reasons for Australia to take the proposed treaty action

- 2.18 DFAT argues that MAFTA will provide greater certainty for Australian exporters and investors through the Agreement's commitments to goods and services market access and the temporary movement of skilled personnel.¹⁷
- 2.19 MAFTA is also expected to improve the transparency and predictability of regulatory regimes through consultation and cooperation between the parties.¹⁸ MAFTA contains a range of market access commitments by Malaysia that go beyond those contained in the AANZFTA. MAFTA also includes improvements in regulatory disciplines that will improve decision making transparency, and includes better legal protections for Australian investments in Malaysia.¹⁹

Tariffs

- 2.20 Tariffs are customs duties on imported goods the aim of which is to create a competitive advantage for similar locally produced goods.²⁰

15 NIA, para. 3.

16 NIA, para. 5.

17 NIA, para. 6.

18 NIA, para. 6.

19 NIA, para. 10.

20 WTO, *Tariffs*, <http://www.wto.org/english/tratop_e/tariffs_e/tariffs_e.htm>, accessed 4 September 2012.

2.21 MAFTA is expected to result in tariff reduction and elimination at a rate significantly greater than that agreed in the AANZFTA. The following have been agreed in relation to tariffs:

- Australia will eliminate all tariffs on Malaysian imports on entry into force (this was not scheduled to occur under AANZFTA until 2020);
- Malaysia will not increase tariffs on 99 per cent (based on 2009-11 data) of Australian exports to that country;
- Malaysia will eliminate tariffs at a higher rate and at a faster pace for a range of products than previously agreed under AANZFTA;
- Malaysia will provide tariff free access to 94.8 per cent of tariff lines on MAFTA's entry into force, covering 96.7 per cent of Australia's exports to Malaysia; and
- the number of tariff free lines will increase to 98.6 per cent in 2016, 98.8 per cent in 2020, and 98.9 per cent in 2026.²¹

2.22 In relation to specific exports:

- Malaysia will remove virtually all tariffs on auto parts on entry into force;
- the Malaysian tariff on smaller cars will be removed by 2016;
- 96.4 per cent of iron and steel tariff lines exported to Malaysia will be tariff free by 2016, rising to 100 per cent by 2020;
- virtually all Malaysian tariffs on plastics and chemicals will be removed on MAFTA's entry into force;
- Malaysian tariffs on a range of processed food and manufactured products will be eliminated on MAFTA's entry into force;
- Malaysian tariffs on fruit will be eliminated on MAFTA's entry into force;
- Australian milk exporters will be able to access additional Malaysian quotas, including for higher value products on MAFTA's entry into force; and
- Australian rice exporters will have open access to the Malaysian market from 2023, with the complete elimination of tariffs by 2026.²²

Rules of origin

2.23 When a product is wholly produced in-country, its origin is not in question, but where a good is produced that includes elements that originate in another country, rules of origin are applied to determine

21 NIA, para. 7.

22 NIA, para. 7.

- whether that good is eligible for preferential tariff treatment under the Agreement.²³
- 2.24 MAFTA retains the innovations in the application of rules of origin introduced by the AANZFTA. Under MAFTA, exporters will be able to choose either a Change in Tariff Classification methodology or a Regional Value Content approach to meet the rules of origin test.²⁴
- 2.25 The Change in Tariff Classification Method defines a good that is produced using elements that come from another country as originating in the exporter's country when the production process results in a change in the tariff classification that applies to the good. In other words, the production process results in sufficient change in the good for it to be considered something different under the agreement's classification system.²⁵
- 2.26 The Regional Value Content approach uses an equation to determine the value of the work carried out on a product in the exporter's country as a percentage of the total value of the product. If the percentage is higher than the regional value content applying to that product, the exporter will be able to avail themselves of any preferential tariff treatment available under the free trade agreement.²⁶
- 2.27 In addition to the option of which rule of origin to use, exporters may also choose which of the two applicable agreements, the AANZFTA or MAFTA, to apply to a particular transaction.²⁷
- 2.28 DFAT argues that the choice of tariff rate will not necessarily be only based on the lowest rate, which would result in the selection of MAFTA as the applicable agreement. Exporters may choose a higher tariff rate in the AANZFTA, for example, in order to avail themselves of the benefit of the regional rules of origin it contains.²⁸
- 2.29 Over and above the innovations offered in the AANZFTA, MAFTA additionally permits Australian exporters to issue a 'Declaration of Origin' as either part of a commercial invoice or as a letter under company

23 NIA, para. 8.

24 NIA, para. 8.

25 Australian Customs Service, 2004, *A Guide to Determining the Origin of Goods Under TAFTA using the "Change in Tariff Classification Method"*, para. 6.
<www.customs.gov.au/webdata/resources/files/rothatafta_041104.pdf> accessed 29 October 2012.

26 Department of Foreign Affairs and Trade, *Australia-United States Free Trade Agreement: Chapter Five - Rules of Origin*, undated, <http://www.dfat.gov.au/fta/ausfta/final-text/chapter_5.html>, accessed 29 October 2012.

27 NIA, para. 8.

28 Joint Standing Committee on Treaties, *Report 102: Review into treaties tabled on 12 and 16 March 2009*, para. 2.18.

letterhead. This arrangement replaces the requirement for a third party 'Declaration of Origin' as required under the AANZFTA.²⁹

- 2.30 DFAT stated that Australia's general preference is for the use of 'Declarations of Origin' and that this had been the approach taken with previous free trade agreements, such as the one with Chile.³⁰
- 2.31 Malaysian exporters to Australia will still be required to obtain a third party 'Certificate of Origin'.³¹

Reduction in Malaysian non-tariff measures

- 2.32 MAFTA includes provisions ameliorating a number of Malaysian non-tariff measures that apply to Australian exports. In addition, MAFTA provides for future consultation on non-tariff measures.
- 2.33 Specific provisions in MAFTA in relation to non-tariff measures include:
- in relation to automotive exports, the removal of Malaysian quantitative restrictions on motor vehicle exports from Australia; and
 - in relation to liquid milk exporters, a liberalisation of licencing arrangements allowing Australian exporters to gain access for higher value retail products.³²

Services

- 2.34 In relation to services, MAFTA includes provisions providing greater access to Australians wanting to invest in Malaysian companies providing services. Malaysian investors will benefit from an increase in the Foreign Investment Review Board (FIRB) threshold for specific services below which Malaysians will be able to invest without having to submit to an FIRB assessment. Malaysian investors will also benefit from some specific service sector commitments by Australia.³³
- 2.35 In a number of instances, MAFTA provides better outcomes than those contained in the AANZFTA. DFAT specifically identify the following benefits for Australians wanting to invest in Malaysia:
- Australians will be allowed to own up to 70 per cent of any given Malaysian higher education institution upon MAFTA coming into force, increasing to 100 per cent in 2015;

29 NIA, para. 8.

30 Dr Milton Church, Coordinator, South-East Asia Goods Branch, Free Trade Agreement Division, Department of Foreign Affairs and Trade, *Committee Hansard*, 12 October 2012, p. 13.

31 NIA, para. 8.

32 NIA, para. 9.

33 NIA, para. 11.

- Australians will be permitted 70 per cent ownership in a range of other education services;
- in investment banking and direct insurance, Australians will be permitted to own up to 70 per cent of any given entity;
- Australians will be able to own accounting, auditing, bookkeeping and management consulting services outright;
- Australians will be permitted to own 70 per cent of any given telecommunications entity; and
- majority ownership of 51 per cent will be permitted in taxation services, mining related services, tourism, travel, and research and development related entities.³⁴

2.36 Australia's service commitments to Malaysian investors are as follows:

- the FIRB screening threshold applying to identified services will be increased from \$100m as it currently stands under the AANZFTA to \$244m under MAFTA; and
- sector specific commitments on private hospital services, hospital support services, research and development services, and some construction services.³⁵

Skilled persons

2.37 According to DFAT, MAFTA provides greater access to the Malaysian labour market for Australians with a number of specific skill types. No reciprocal changes will be necessary because Australia already provides the level of access for qualified personnel identified in MAFTA.³⁶

2.38 The improved access for Australians will include:

- an increase in the number of Australian senior managers, business executives and experts who will be allowed to live and work in Malaysia;
- the definition of 'business visitors' has been expanded to include goods sellers and investors – business visitors are entitled to enter Malaysia and stay for a period of 90 days;
- spouses and dependants of Australians working in Malaysia for periods longer than 12 months will be allowed to stay, and sometimes work, in Malaysia;

34 NIA, para. 11.

35 NIA, para. 11.

36 NIA, para. 12.

- Malaysia has committed to a more timely and transparent visa application process, including ensuring that visa applicants are advised of the outcome of their application before they arrive in Malaysia; and
- the provisions for temporary movement of skilled persons will apply to Australian citizens and Australian residents.³⁷

Economic and technical cooperation

2.39 MAFTA also contains commitments for Australia and Malaysia to engage in economic and technical cooperation by identifying specific strategic interests. There are five priority areas identified in MAFTA for such cooperation:

- automotive;
- agriculture;
- tourism;
- clean coal technology; and
- electronic commerce.³⁸

2.40 The arrangements for cooperative projects in these areas are contained in Attachment IV to the NIA for MAFTA, a non-legally binding *Implementing Arrangement for Economic and Technical Cooperation in Agreed Areas*.³⁹

2.41 The objective of the economic and technical cooperation provisions is to:

...provide a strategic framework for existing and future economic cooperation. It covers areas of mutual interest and of benefit to both Australia and Malaysia and the costs of the cooperation projects will be shared. The activities will focus on strengthening existing relationships and building new ones, advancing human resource development, creating new opportunities for trade and investment and contributing to the role of the private sector. The activities will also build on existing cooperation and relationships and enhance bilateral trade.⁴⁰

37 NIA, Attachment III, p. 12, *MAFTA Factsheet: Temporary Movement of Skilled Personnel*.

38 NIA, para. 13.

39 NIA, para. 13.

40 NIA, Attachment III, p. 15, *MAFTA Factsheet: Economic and Technical Cooperation*.

Obligations

- 2.42 By their nature, free trade agreements contain a large number of very specific obligations intended to liberalise trade between the signatory countries.⁴¹
- 2.43 Having said that, and bearing in mind the benefits to Australia detailed above, the bulk of the obligations in relation to MAFTA lie with the Malaysian Government.
- 2.44 Australia's specific obligations will be as follows:
- all Australian tariffs on Malaysian imports will be eliminated on MAFTA's introduction into force;⁴²
 - Australia will permit Australian exporters to produce their own certificates of origin for export to Malaysia;⁴³
 - the establishment of the Malaysia-Australia Automotive Industry Dialogue, intended to improve networking between the industries and identify opportunities for cooperation;⁴⁴
 - a reduction in the FIRB screening threshold for Malaysian investors in identified services; and ⁴⁵
 - sector specific commitments on private hospital services, hospital support services; research and development services, and some construction services.⁴⁶

Costs

- 2.45 According to the NIA, MAFTA will have no net impact on the 2012-13 Budget. In the following financial years, MAFTA will reduce tariff income by A\$80m over the forward estimates.⁴⁷

41 NIA, para. 15.

42 NIA, Regulation Impact Statement, Para. 59.

43 NIA, para. 8.

44 NIA, Regulation Impact Statement, Para. 59.

45 NIA, para. 11.

46 NIA, para. 11.

47 NIA, para. 24.

The Malaysia-Australia Free Trade Agreement: the issues

Introduction

- 3.1 This chapter will review the main issues that were identified through the inquiry process. Evidence presented to the Committee has identified four central issues:
- overlapping treaty commitments;
 - ‘Certificate of Origin’ *vs.* ‘Declaration of Origin’ documentation;
 - the (non) inclusion of environmental and labour standards in MAFTA; and
 - employment outcomes in Australia.

A tale of three treaties: overlapping treaty commitments

- 3.2 MAFTA will, along with the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA), and the still to be completed Trans Pacific Partnership (TPP) agreement, be part of a troika of trade treaties between Australia and Malaysia.
- 3.3 Questions were raised as to how these three treaties would interact and, in particular, which treaty’s provisions would take precedence in trade agreements between both countries.
- 3.4 The Australian Council of Trade Unions (ACTU) raised the question of duplication in their submission and observed that there was a lack of clarity on how these treaties would interact and what the effects would be on Australia’s civil society. The ACTU commented:

The question of duplication and inconsistencies leads to a broader question of strategy with respect to bilateral and regional trade negotiations. Australia already has trading arrangements with Malaysia under the Australia-ASEAN-New Zealand trade agreement. With respect to the TPP, for many negotiating parties it will lead to the second or third trade arrangement with another party to the negotiations. Australia has already negotiated bilateral agreements with Chile, New Zealand, Singapore and the US. Australia also has an agreement with ASEAN which includes Malaysia, Brunei and Vietnam. Therefore if the TPP negotiations are finalised, Australia will have trading arrangements with Malaysia under three trade agreements.

There is no clarity from the Government on how the relationship between these multiple agreements will operate in practice; despite questions being asked by civil society, particularly with respect to the TPP.¹

- 3.5 The Australian Fair Trade and Investment Network (AFTINET) made similar observations regarding the three trade treaties that would apply between Australia and Malaysia. AFTINET commented:

We note that the MAFTA contributes to the “noodle bowl” of confusing overlapping agreements in our region. Australia already has a free trade agreement with New Zealand and the ASEAN countries, including Malaysia. Australia is also currently negotiating the Trans-Pacific Partnership Agreement, (TPPA) which includes Australia, the US, New Zealand, Peru, Chile, Singapore, Malaysia, Brunei, Vietnam, Canada and Mexico. If the TPPA is concluded, the MAFTA will be the third agreement between Australia and Malaysia, and it is unclear what the relationship between the different agreements will be.²

- 3.6 In response to these comments, the Department of Foreign Affairs and Trade (DFAT) responded that all three agreements were designed to be complementary and which agreement is actually utilised will be decided by the industry in question.

These agreements will co-exist. Decisions will need to be taken by the private sector on which of these agreements they wish to operate under. That will depend obviously on what is contained in each of these agreements...

1 ACTU, *Submission 4*, p. 6.

2 Australian Fair Trade and Investment (AFTINET), *Submission 9*, p. 1.

... You have to make an upfront decision. Let us use the example of a widget that has a tariff in the regional FTA [Free Trade Agreement] and an associated rule of origin and then you have the corresponding widget in the bilateral FTA with an associated rule of origin. In the AANZFTA context, it is a regional rule of origin that is not confined to sourcing it from Malaysia [rather] than from other countries, so that gives you a bit more flexibility, but then you may find in the bilateral FTA you have a lower tariff – perhaps a zero tariff as [opposed] to a tariff of 10 per cent – on the widget in the regional FTA, so it is a commercial decision... It gives flexibility to the private sector in the commercial world to decide where and how they wish to operate.

We also, as AFTINET has noted, [are] engaged in other negotiations such as the Trans-Pacific Partnership Agreement negotiations and there that is also pursuing further liberalisation. I have previously heard [Trade Minister] Dr Emerson explain that all these approaches should be viewed as complementary and mutually supportive in trying to achieve good outcomes...

We are seeking to achieve as much consistency and coherence across all these FTAs as possible...³

‘Certificate of Origin’ vs. ‘Declaration of Origin’

- 3.7 One issue raised was a bureaucratic one – ‘Certificate of Origin’ *vs.* ‘Declaration of Origin’⁴ documentation. The NIA explains that for Australian exporters, MAFTA originating status will be based on a written ‘Declaration of Origin’ by the exporter or producer. This is, according to the NIA, a more business-friendly arrangement than the more formal ‘Certificate of Origin’ issued by a third party that is required under

3 Mr Michael Mugliston, Special Negotiator, Free Trade Agreement Division, Department of Foreign Affairs and Trade, *Committee Hansard*, 12 October 2012, p. 6.

4 “A Certificate of Origin is a specific document that identifies goods and contains express **certification by a government authority or other body** that the goods originate in a specific country.” (Emphasis added)

Victorian Employers' Chamber of Commerce and Industry (VECCI) website: <<http://www.vecci.org.au/business-solutions/global/export-documentation>>, accessed 3 October 2012.

In contrast, a ‘Declaration of Origin’ is not necessarily certified by a recognised third party. A further practical comparison between both positions can be found at the ‘World Customs Organisation’ website: <http://www.wcoomd.org/Kyoto_New/Content/body_spank.html>, accessed 3 October 2012.

AANZFTA. 'Certificates of Origin' will still need to be obtained by exporters from Malaysia.⁵

- 3.8 The Australian Chamber of Commerce and Industry (ACCI) is concerned that the use of 'Declaration of Origin' documentation rather than the customarily accepted 'Certificates of Origin' documentation will potentially increase the risk, complexity and cost of doing trade with Malaysia.⁶ ACCI argues:

...that if there is an Australian requirement for export documentation to prove origin under MAFTA, then it should be a standard used jointly. If the international standard of export documentation proving origin is the 'Certificate of Origin', which has not only been chosen by Malaysia for MAFTA, but is recognised by foreign Customs around the world, then it is in the interests of Australian exporters to retain in MAFTA the 'Certificate of Origin'.⁷

- 3.9 Conversely the dairy industry is positive about what it believes to be administrative benefits through streamlining of Rules of Origin declaration processes – i.e. that exported dairy products will be able to claim MAFTA tariff treatment on the basis of a 'Declaration of Origin' completed by the exporter on either the commercial invoice or on a company letter, rather than requiring a 'Certificate of Origin' as required for AANZFTA.⁸

...we are clearly of the opinion that this is a reduction in administrative overhead for exporters of dairy products, and we believe that that, therefore, is an advantage to people who are exporting dairy products to Malaysia because it will reduce the impost of obtaining that 'Certificate of Origin' that needs to be issued by a third party.⁹

- 3.10 DFAT essentially agrees with the dairy industry. The Department explained that its preferred option was the 'Declaration of Origin', as it reduced bureaucratic burdens on business, and was expected to be the accepted and standard method in the future.

...the key point we would make there is that Australia's general preference is for the use of 'Declarations of Origin'... It is what we

5 NIA, para 8.

6 Australian Chamber of Commerce and Industry (ACCI), *Submission 8*, p. 8.

7 Australian Chamber of Commerce and Industry (ACCI), *Submission 8*, p. 5.

8 Australian Dairy Industry Council, ADIC, *Submission 5*.

9 Mr Peter Myers, International Trade Development Manager, Dairy Australia, *Committee Hansard*, 12 October 2012, p. 1.

apply in the Australian system of tariff preferences... It is what we have in our FTA with Chile. And that is why in the MAFTA negotiations that was our preferred approach. The outcome, at least in terms of exports from Australia, reflects Australia's preferred approach...

We accept the reality that AANZFTA does have a 'Certificate of Origin' approach. That was a negotiated outcome. It was not our preferred approach. We saw that as a second-best outcome. But part of that was a reflection of where the ASEANs were at and the reality that they have a rather more bureaucratic approach. But, even within ASEAN, you actually have a movement towards looking at the adoption of 'Declarations of Origin'. Malaysia itself is already participating in a pilot project within ASEAN with Brunei, Singapore and Thailand using 'Declarations of Origin'.

When you look at MAFTA, at the way it is actually crafted, the default position is the use of 'Declarations of Origin'. It has an exception to allow Malaysia to use 'Certificates of Origin', but it is based on the assumption that, in coming years, Malaysia itself will move to the use of 'Declarations of Origin'....

There is an exception there at the moment to allow Malaysia to use 'Certificates of Origin', but it allows for Malaysia in future years to go to a 'Declaration of Origin' approach. That is our expectation, given the fact that it has already participated in a pilot project within ASEAN.¹⁰

- 3.11 DFAT also stated that 'Certificates of Origin' had also caused implementation problems: 'we have experienced far more problems with 'Certificates of origin' than we have with 'Declarations of Origin'.¹¹

Environmental and labour standards

- 3.12 Critics of free-trade agreements frequently cite environmental and labour standards as a subject of concern. Issues such as these are often discussed by economists as being 'externalities'.¹²

10 Dr Milton Church, Coordinator, South-East Asia Goods Branch, Free Trade Agreement Division, Department of Foreign Affairs and Trade, *Committee Hansard*, 12 October 2012, p. 13.

11 Dr Milton Church, Coordinator, South-East Asia Goods Branch, Free Trade Agreement Division, Department of Foreign Affairs and Trade, *Committee Hansard*, 12 October 2012, p. 13.

12 "Externality: An economic side-effect. Externalities are costs or benefits arising from an economic activity that affect somebody other than the people engaged in the economic activity and are not reflected fully in prices. For instance, smoke pumped out by a factory may impose clean-up costs on nearby residents; bees kept to produce honey may pollinate plants belonging

- 3.13 This Committee has already, as part of its review of AANZFTA, recommended that: ‘the Australian Government include consideration of environment protection, protection of human rights and labour standards in all future negotiation mandates for free trade agreements’.¹³ Similarly, the Joint Standing Committee on Foreign Affairs, Defence and Trade did, in its report on Australia’s relationship with ASEAN, recommend:
- ...that human rights, core labour standards, and the environment be pursued in future free trade agreements and, when existing free trade agreements which do not contain such issues are reviewed, these issues should be pursued; and
- ...that when the Department of Foreign Affairs and Trade reports annually to the Parliament under Recommendation 2, progress with regard to human rights, core labour standards, and the environment be included.¹⁴
- 3.14 MAFTA contains three legally binding side letters that form part of the agreement. The first ‘side letter’ is on alcoholic beverages. The remaining two ‘side letters’ on labour standards and the environment confirm both Governments’ commitment to environmental protection and to labour standards as members of the International Labour Organisation and under the *Declaration on Fundamental Principles and Rights to Work* and its follow-up (1998). As both countries are currently involved in negotiations in the Trans Pacific Partnership (TPP), it was agreed that Malaysia and Australia should, in the context of what is agreed to in the TPP,¹⁵ review the inclusion of labour and environment provisions in MAFTA within two years of MAFTA’s entry into force, or as otherwise agreed.¹⁶
- 3.15 The Certified Practising Accountants (CPA) Australia expressed concern over the inclusion of environmental and labour standards in the agreement, arguing that there were already sufficient mechanisms to address these concerns in other international forums.
- CPA Australia [is] concern[ed] over the proposal to incorporate provisions on labour and the environment into MAFTA at some

to a nearby farmer, thus boosting his crop.” See The Economist’s webpage: ‘Economics A-Z terms beginning with E’: <<http://www.economist.com/economics-a-to-z/e#node-21529743>>, accessed 3 October 2012.

13 Joint Standing Committee on Treaties, Report 102, Chapter 2, ‘Agreement Establishing the ASEAN – Australia – New Zealand Free Trade Area, Recommendation 5, p. 16.

14 Joint Standing Committee on Foreign Affairs, Defence and Trade, ‘Inquiry into Australia’s relationship with ASEAN’, June 2009, p. xxii.

15 See ‘Associated correspondence: Letters’ which are also published and part of this agreement: <http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=jsct/14august2012/tor.htm>, accessed 3 October 2012.

16 NIA, para 22.

point in the future. CPA Australia considers there are more appropriate international forums in place where discussions related to labour and the environment can take place. Trade treaties should be singularly focused on facilitating growth in international trade. The introduction of peripheral non-trade issues can only undermine this objective.

Furthermore, where there are genuine concerns over possible environmental impacts arising from international trade, the World Trade Organisation's General Agreement on Tariffs and Trade (GATT) and the General Agreement on Trade in Services (GATS), both of which Australia and Malaysia are signatories to, already provide appropriate and sufficient environmental protections under the General Exceptions provisions. As such, CPA Australia considers that the attempt to introduce labour and environment provisions into Australia's trade treaties is an entirely unwelcome development.¹⁷

- 3.16 As the peak union organisation in Australia, the ACTU disagreed with the CPA Australia's assessment. The ACTU believes that the inclusion of labour laws is a mechanism through which the benefits of such agreements can be fairly distributed and that certain minimum standards should be observed. The ACTU commented:

International labour rights are important for distributing the benefits of trade to workers. It is essential, therefore, that trading partners uphold the fundamental rights of workers – including freedom of association and the right to collectively bargain – because it is consistent with a commitment to ensuring the benefits of trade are fairly shared with workers. Respect for fundamental labour rights is also a responsibility of ILO membership and as signatories to the UN Declaration on Human Rights...

Therefore, it has been the long-held position of the ACTU that all bilateral and regional trade agreements negotiated by Australia include an enforceable labour rights chapter that requires trading partners to adopt and effectively enforce international labour rights. At a minimum, the labour rights chapter should:

- clearly demonstrate that commitment to implement fundamental labour rights, as articulated in core ILO conventions on rights at work, is a fundamental and integrated part of the agreement;
- include a commitment by parties to not weaken but to improve labour rights;

17 Certified Practising Accountants (CPI), *Submission 2*, p. 2.

- provide for this obligation on labour rights to be monitored and enforced, including a role for trade unions; and
- include procedures for alleged breaches of core labour rights and settling disputes.¹⁸

3.17 Similarly, AFTINET also expressed support for the inclusion of labour and environmental standards in the main body of the agreement. This should apply, AFTINET believes, not only to MAFTA but to all trade agreements. AFTINET commented:

The most glaring omission from the MAFTA is the lack of labour and environment chapters...

AFTINET's view is that all trade agreements should contain a labour rights chapter which commits the parties to implement fundamental rights at work as expressed in ILO conventions, includes commitments to improve, not weaken, labour rights, and provides mechanisms for monitoring and enforcement of labour rights, including access to the government-to-government disputes settlement process of the agreement.

Environment chapters should include commitments by the parties to implement relevant United Nations environmental agreements, to improve, not weaken, national environmental protections and include mechanisms for enforcement of environmental protections, including access to government-to-government disputes settlement processes of the agreement...

In the absence of enforceable labour rights and environmental protections, rapid trade liberalisation intensifies competition and can lead to a race to the bottom on labour rights and environmental standards.¹⁹

3.18 DFAT's response to these concerns was to explain that Government policy was that the inclusion of environmental protection and labour standards issues in FTA negotiations was done on a case-by-case basis. Furthermore, the inclusion of these issues as 'side-letters' was already a step forward as Malaysia has not included labour provisions in any of its other trade agreements. Finally, although included as 'side-letters', labour and environmental standards are in no way diminished as they are, like the rest of the agreement, legally binding.

...the government's April 2011 trade policy statement... articulated the rationale behind seeking these provisions in respect of both environment and labour in FTAs and concluded that a

18 ACTU, *Submission 4*, pp. 2-3.

19 Australian Fair Trade and Investment (AFTINET), *Submission 9*, pp. 1 - 2.

case-by-case approach be taken for each FTA under negotiation with the government's general approach applied to the circumstances of each negotiation. What is important to appreciate with Malaysia is there are no labour or environment provisions in AANZFTA. So the concept of MAFTA is AANZFTA-plus and we, consistent with the policy, sought the incorporation of environment and labour as well as government procurement in MAFTA.

We did pursue this but Malaysia pointed out that it has not included labour provisions in any of its other trade agreements, although it did agree a co-operation and dialogue oriented side agreement with New Zealand in 2009. Malaysia then joined the TPP negotiations in October 2010, and then after exploring elements of a possible chapter text and other options such as a side agreement Malaysia concluded that it could not agree to include labour provisions in the MAFTA treaty text at this point in time, because of concerns that it had about possible duplication and conflicting commitments with possible TPP outcomes on those issues. So Malaysia suggested the side letter approach. I should note that the effect of both of those side letters on labour and environment issues is that they are an integral part of the agreement. They are not chapters, but they are legally binding elements of the overall package.²⁰

- 3.19 With regard to the two-year delay until the TPP negotiations are complete, DFAT reassured the Committee that the agreement to re-examine these commitments was not conditional or dependent on other outcomes. DFAT stated:

all participants in the TPP are very committed to pursuing very ambitious and solid outcomes for the TPP. Let me just note that the formulation agreed with Malaysia, as reflected in the side letter, is that we will review the inclusion of labour provisions no later than two years after entry into force of the MAFTA. So it is not conditional on any other development. Within two years we will do it and we will obviously need to take into account developments and deliberations in other fora.²¹

- 3.20 DFAT also argued that the commitments were firm and not vaguely worded:

20 Mr Michael Mugliston, Special Negotiator, Free Trade Agreement Division, Department of Foreign Affairs and Trade, *Committee Hansard*, 12 October 2012, p. 7.

21 Mr Michael Mugliston, Special Negotiator, Free Trade Agreement Division, Department of Foreign Affairs and Trade, *Committee Hansard*, 12 October 2012, p. 7.

[The side-letters] affirm certain commitments that both parties make, both in respect of labour and environment. They are spelt out in the letter. So there are in fact some commitments there affirming both parties' commitments as members of the ILO under the *Declaration on Fundamental Principles and Rights at Work* and its follow-up et cetera. It is spelt out. So we did not keep it to one simple paragraph saying that we are going to review this within two years.²²

- 3.21 The Committee re-iterates its recommendation that labour and environmental standards be included in FTAs and, despite DFAT reassurances, the Committee expects that every effort will be made to include provisions on labour and environmental standards in the main body of FTAs, rather than in 'side-letters'. The Committee also notes the commitment to review MAFTA's labour and environmental provisions in two years' time and anticipates examining the final outcomes.

Employment outcomes in Australia

- 3.22 There has been concern expressed that free trade has played a role in job losses, particularly in manufacturing, and the stagnation of middle-class incomes.
- 3.23 On 29 August 2012, the respected US foreign policy think-tank, the *Council on Foreign Relations*, published an article²³ that indicated there may now be some evidence that supports this argument – at least in the United States during the past decade. Although conceding that 'the evidence is still not conclusive', they cite a series of publications which provide some support for the proposition.²⁴

22 Mr Michael Mugliston, Special Negotiator, Free Trade Agreement Division, Department of Foreign Affairs and Trade, *Committee Hansard*, 12 October 2012, p. 7.

23 'Globalization, Job Loss, and Stagnant Wages: The Evidence Is Changing', <<http://blogs.cfr.org/renewing-america/2012/08/29/globalization-job-loss-and-stagnant-wages-the-evidence-is-changing/>>, accessed 3 October 2012.

24 These include: "The Evolving Structure of the American Economy and the Employment Challenge," <<http://www.cfr.org/industrial-policy/evolving-structure-american-economy-employment-challenge/p24366>>, accessed 3 October 2012.

"The China Syndrome: Local Labor Market Effects of Import Competition in the United States", <<http://economics.mit.edu/files/6613>>, accessed 3 October 2012.

"U.S. Trade and Investment Policy", <<http://www.cfr.org/trade/us-trade-investment-policy/p25737>>, accessed 3 October 2012.

- 3.24 Concerns over the impact of trade agreements on domestic employment are not limited to the United States. In Australia, this too has been a theme in debates over free trade.
- 3.25 In terms of MAFTA, the Federal Chamber of Automotive Industries (FCAI) is concerned about the non-tariff barriers and local content rules that are in place in Malaysia and believes that under the current MAFTA criteria, it is unlikely that Australian built vehicles will be exported to Malaysia. Conversely, the FCAI believes that MAFTA will facilitate a significant increase in Malaysian vehicle imports to Australia.²⁵
- 3.26 The Construction, Forestry, Mining and Energy Union of Australia (CFMEU) expressed concerns about MAFTA and Australian manufacturing employment. The CFMEU considers the Government's analysis of MAFTA to be deficient in terms of the treaty's impact on domestic employment, and stated that job losses were expected in the wood products sector. The CFMEU commented:
- Australian manufacturing jobs are currently being decimated by import competition including products exported from Malaysia. Employment in the timber, wood products, pulp and paper and furniture manufacturing industries has fallen by 54,900 in the last ten years. These job losses have been in the context of tariff reductions. In the next five years employment in these industries is already projected to fall by a further 26,900.
- There is real potential of manufacturing job losses and the loss of diversified capacity in the economy as a result of this agreement according to initial analysis from the CFMEU. The National Interest Analysis (NIA) and Regulation Impact Statement (RIS) tabled in parliament with MAFTA do not adequately consider this or the negative impact on workers, their families and their communities...²⁶
- 3.27 On the issue of automotive employment and the concerns raised by the FCAI, DFAT responded by providing the following context:
- The reality is that at this point in time Malaysia does not have an internationally competitive automotive industry. It is very much an internally focused, highly protected automotive sector. When you look at exports of fully built passenger cars, Malaysia's exports tend to be around 25,000 units a year. When you look at Australia over the last three years – this is even after the global financial crisis and the drop in our exports – you find that we

25 Federated Chamber of Automotive Industries (FCAI), *Submission 7*.

26 CFMEU *Submission 3*, p. 1.

export around 80,000 passenger motor vehicles a year. So we are a significantly bigger exporter of fully built cars than Malaysia is. I am just putting it into perspective here: this is not a case of a big, competitive Malaysian automotive industry.²⁷

- 3.28 DFAT conceded, though, that Australian automotive exports would be dependent on further reforms and social changes:

...if Malaysia continues down that reform path of trying to open up or trying to modernise and make its automotive industry competitive – there will be opportunities for collaboration, including for parts and components for vehicles. I think a lot of it is dependent on Malaysia becoming a more middle-class society. Again, it is about the quality of the cars people buy in Malaysia; that is also an issue. As for the question of whether there will be an opportunity for Australian car exports there, who knows? Certainly there are non-tariff barriers there, particularly on the excise tariffs. But, again, just as you saw in Australia, we would see the pressure for that reform to continue, both through Malaysia's domestic process of opening up and trying to become internationally competitive and also through other free trade agreement negotiations.²⁸

- 3.29 On the broader question of manufacturing employment in Australia and the impact of FTAs, there does not appear to be a clear answer. DFAT responded that it was difficult to analyse the specific impact of FTAs on manufacturing employment as a number of other factors, such as the broader structural shift in the economy towards services and the higher Australian dollar, also influenced manufacturing employment outcomes. DFAT also observed that manufacturing employment had been broadly stable between 2000 – 2008, and that falls in manufacturing employment had coincided with the 2008 – 2009 Global Financial Crisis.²⁹
- 3.30 DFAT pointed to some broader international studies conducted by the Organisation for Economic Co-operation and Development (OECD) which indicated that in open trading economies, manufacturing workers benefitted from higher pay rates when compared to closed economies and that trade plays an independent and positive role in raising incomes.³⁰

27 Dr Milton Church, Coordinator, South-East Asia Goods Branch, Free Trade Agreement Division, Department of Foreign Affairs and Trade, *Committee Hansard*, 12 October 2012, p. 9.

28 Dr Milton Church, Coordinator, South-East Asia Goods Branch, Free Trade Agreement Division, Department of Foreign Affairs and Trade, *Committee Hansard*, 12 October 2012, p. 10.

29 DFAT, *Submission 11*, p. 1.

30 DFAT, *Submission 11*, p. 2.

- 3.31 DFAT did not provide any studies specific to Australia and they noted that unemployment is likely to result when low-skilled workers find it difficult to transition to the new expanding sectors of the economy. The studies showed the importance of complementary policies to support inclusive growth and job creation –macroeconomic policy, a positive business environment, flexible labour market, high quality education, skills training systems and adequate safety nets.³¹

31 DFAT, *Submission 11*, p. 2.

Conclusion

- 4.1 Apart from the bureaucratic issue of 'Certificate of Origin' *vs.* 'Declaration of Origin' documentation, the other issues reviewed in this report have been ongoing issues for both the community and the Committee with regard to free trade treaties (FTAs).
- 4.2 A simple equation that lower trade barriers automatically equals greater prosperity for all is doubtful. Greater prosperity for all is only guaranteed if free trade is accompanied by appropriate complementary policies such as education, infrastructure, financial and macroeconomic policies.¹
- 4.3 The Committee recognises that economic reform brings strains and stresses even if the long-term outcome is a positive one. The United Nations Conference on Trade and Development (UNCTAD) recognised that:

... most of the economic literature considers that trade liberalisation... will generate growth in the short to medium term as the country adjusts to a new allocation of resources more in keeping with its comparative advantage. [However], this process is neither smooth nor automatic. On the contrary, it is expected to create adjustment costs, encompassing a wide variety of potentially disadvantageous short-term outcomes. These outcomes may include a reduction in employment and output, the loss of industry- and firm-specific human capital, and macroeconomic instability arising from balance-of-payments difficulties or reductions in government revenue. The size of the

1 Diana Tussie and Carlos Aggio, 'Economic and social impacts of trade liberalization', in 'Coping with Trade Reforms: A Developing-Country Perspective on the WTO Industrial Tariff Negotiations.' p. 89, <http://www.unctad.info/upload/TAB/docs/TechCooperation/fullreport-version14nov-p106-119.pdf>, accessed 16 October 2012.

adjustment costs depends on the speed with which resources make the transition from one sector to another.²

- 4.4 It is in this context that the Committee makes the following comments on MAFTA.

Negotiation trade-offs

- 4.5 Treaty negotiation is a set of trade-offs between both parties resolved through compromise. It remains important that Australian negotiators provide balanced outcomes when agreements are reached, rather than compromises being made by the Australian negotiators without a meaningful compromise being made by the other party. With regards to MAFTA, this tension is encapsulated by this exchange that occurred at the public hearing:

Mr Mugliston [DFAT]: ...Our [automotive] industry is very keen to have some real access to that market and to at least provide that. They see that as part of the equation of effective collaboration and cooperation. I see this as that we are setting up a dialogue here in the period ahead.

CHAIR: You can have all the discussion and collaboration and cooperation that you like but at the end of the day it seems to me that Australia has very low barriers for the automotive industry and that Malaysia – the example we are discussing here – has very high ones. Is that a fair comment?

Mr Mugliston: Yes, they certainly do, and that is fair comment...³

- 4.6 Similarly, the glacial progress of opening up Malaysia's rice market compared to the already low tariff that exists on automobile imports into Australia was also noted:

CHAIR: When I look at the rice situation that the Malaysian politician can go to their electorate and say, 'We are not going to have any problems in relation to rice for another 10 years' and I noted Dr Church's rosy view about the possibility of the thing happening earlier. Perhaps I am just a more gloomy person and think there is a possibility that an agreement that does not take

2 Diana Tussie and Carlos Aggio, 'Economic and social impacts of trade liberalization', in 'Coping with Trade Reforms: A Developing-Country Perspective on the WTO Industrial Tariff Negotiations.' p. 89, <<http://www.unctad.info/upload/TAB/docs/TechCooperation/fullreport-version14nov-p106-119.pdf>>, accessed 16 October 2012.

3 *Committee Hansard*, 12 October 2012, p. 11.

effect for 10 years can be reneged on by any government, any time in the course of the next 10 years. I look at that and think my Malaysian political equivalent has done me like a dinner. That is how it looks in terms of what arrangements apply to motor vehicle workers compared to the ones applying in the rice industry.⁴

- 4.7 As this issue of trade-offs goes to the heart of employment outcomes in Australia as identified in the previous chapter, the Committee would like to remind Australian negotiators of the practical impact free trade negotiations have on ordinary Australians' lives – particularly with regard to employment.

Analysis of benefits

- 4.8 The National Interest Analysis (NIA) had no analysis on social impacts of MAFTA, and very little tangible financial analysis. The only direct information that was provided was this single paragraph:

There will be no net impact on the Budget from the implementation of MAFTA from 1 January 2013 as the 2012-13 Budget included a provision for the treaty. MAFTA is estimated to reduce tariff revenue by \$80 million over the forward estimates.⁵

- 4.9 Several times in the past, the Committee has asked for and recommended that more tangible analysis be done with regard to free trade treaties. For example, in its review of the 2008 Australia-Chile Free-Trade Agreement (FTA), the Committee recommended that:

...prior to commencing negotiations for bilateral or regional trade agreements, the Government table in Parliament a document setting out its priorities and objectives. The document should include independent assessments of the costs and benefits. Such assessments should consider the economic regional, social, cultural, regulatory and environmental impacts which are expected to arise.⁶

- 4.10 The Committee notes some improvements in transparency around FTA negotiations in recent years. For example, for the Trans-Pacific Partnership currently under negotiation, and for the launch of

4 *Committee Hansard*, 12 October 2012, p. 11.

5 National Interest Analysis (NIA), para. 24.

6 Joint Standing Committee on Treaties, Report 95, Chapter 3, 'The Australia Chile Free-Trade Agreement', p. 35.

negotiations for an Australia-Korea FTA, the Government conducted public consultations on the FTA, published submissions and tabled documents in Parliament outlining the views that emerged during the consultations on the costs and benefits of participation.

- 4.11 While the Committee welcomes these public consultations, and the subsequent statements to Parliament, it still does not receive the detailed independent analysis it has previously requested. Accordingly, the Committee makes the following recommendation:

Recommendation 1

That prior to commencing negotiations for a new agreement, the Government table in Parliament a document setting out its priorities and objectives including independent analysis of the anticipated costs and benefits of the agreement. Such analysis should be reflected in the National Interest Analysis accompanying the treaty text.

- 4.12 The Committee believes that it is appropriate that a review of this treaty occurs in two years' time to examine the various claims made by DFAT on the benefits of the treaty, as well as the various concerns expressed about the potential negative impacts. This review could coincide with the two year review of the labour and environmental standards and should include:
- analysis of the costs and benefits of changes to non-tariff barriers;
 - impact on Australia's automotive industry;
 - impact on the dairy industry;
 - any implications for Australia's phytosanitary regime; and
 - the costs and benefits of transition from 'Certificate of Origin' to 'Declaration of Origin' documentation.

Recommendation 2

That after 24 months of the treaty coming into effect, an independent review of MAFTA be conducted to assess actual outcomes of the treaty against the claimed benefits and potential negative consequences noted in this report. The review should consider the economic, regional, social, cultural, regulatory, labour and environmental impacts. Such a review should serve as a model for future free trade agreements.

Final comments

- 4.13 The Committee recognises that FTAs are part of a broader diplomatic engagement and, apart from the provisions themselves, FTAs can foster better cooperation and understanding between countries.
- 4.14 The Committee also recognises that these agreements are not set in stone and are open to amendments in the future. As DFAT explained:
- I think the other important point to note is the concept of living agreements that we try and strive for. It is not just a case of it all being there but a case of recognising that this is the best we can do at this point in time, but we want to continue to work with the other country to improve on this as we go. That is the general approach.⁷
- 4.15 That being the case, the Committee will be interested to examine the outcomes of the two year review of labour and environmental provisions within MAFTA. The broader policy context of free trade, as outlined earlier in this chapter, is what will help ensure that the benefits of these trade agreements contribute to prosperity throughout the community.
- 4.16 Given that the multilateral Trans Pacific Partnership (TPP) agreement is under negotiation, and that two bilateral FTAs with South Korea and Japan are also progressing,⁸ the Committee asks that the Australian Government negotiators remain mindful of the issues raised in this report, namely:
- the above recommendation, and previous JSCOT recommendations for more detailed analysis of the treaties' economic, social, cultural, regulatory and environmental impacts;

7 Mr Michael Mugliston, Special Negotiator, Free Trade Agreement Division, Department of Foreign Affairs and Trade, *Committee Hansard*, 12 October 2012, p. 12.

8 Mr Michael Mugliston, Special Negotiator, Free Trade Agreement Division, Department of Foreign Affairs and Trade, *Committee Hansard*, 12 October 2012, p. 14.

- labour and environmental standards; and
 - employment outcomes in Australia.
- 4.17 Notwithstanding the concerns raised here, the Committee agrees that the treaty should be ratified and binding treaty action be taken.

Recommendation 3

The Committee supports the *Malaysia-Australia Free Trade Agreement done at Kuala Lumpur on 22 May 2012* and recommends that binding treaty action be taken.

Kelvin Thomson MP

Chair



Dissenting Report—Australian Greens

The Australian Greens do not believe the Malaysia Australia Free Trade Agreement should proceed and note the continuing reluctance of the Government to provide any analysis of the social impacts of free trade agreements.

The Australian Greens are concerned that bilateral and plurilateral free trade agreements are predominantly being used as tools of diplomacy at the expense of the consideration of the economic, social and environmental impacts.

Without a proper independent evaluation process in place it is difficult for the outcomes and impacts of these agreements to be analysed.

This Committee has consistently called for further analysis that takes into account both the economic and social impacts of free trade agreements. The Australian Greens agree with this approach and call for greater transparency of negotiated outcomes, so the implications of free trade agreements can be appropriately debated by the Australian parliament and community.

The Productivity Commission Research report, *Bilateral and Regional Trade Agreements*, released in December 2010 provides an important contribution to this debate and its recommendations about independent evaluation and transparency shouldn't be pushed aside by Governments when considering trade agreements.

The negotiation of trade agreements necessarily involve trade-offs that can have far ranging impacts on individuals who are employed in certain industries and on Australia as a whole. Enhanced transparency of negotiations and independent analysis would allow informed debate about whether these trade-offs are in Australia's interest.



Appendix A – Submissions

- 1 Insurance Council of Australia
- 2 CPA Australia
- 3 Construction Forestry Mining and Energy Union (CFMEU)
- 4 Australian Council of Trade Unions (ACTU)
- 5 Dairy Australia
- 5.1 Dairy Australia
- 6 AutoCRC Ltd
- 7 Federal Chamber of Automotive Industries
- 8 Australian Chamber of Commerce and Industry
- 8.1 Australian Chamber of Commerce and Industry
- 8.2 Australian Chamber of Commerce and Industry
- 9 Australian Fair Trade and Investment Network Ltd (AFTINET)
- 10 Music Council of Australia
- 11 Department of Foreign Affairs and Trade



Appendix B – Witnesses

Friday, 12 October 2012 - Canberra

Australian Dairy Industry Council

Mr Chris Griffin, Chairman

Mr David Losberg, Policy Manager, Australian Dairy Farmers

Mr Charles McElhone, General Manager, Trade and Strategy, Dairy Australia

Mr Peter Myers, International Trade Development Manager, Dairy Australia

Department of Foreign Affairs and Trade

Dr Milton Church, Coordinator, South-East Asia Goods Branch, Free Trade Agreement Division

Ms Jenni McEwin, Executive Officer, South East Asia Goods Branch, Free Trade Division

Ms Jennifer Meehan, Director, Legal, Free Trade Agreement Division

Mr Michael Mugliston, Special Negotiator, Free Trade Agreement Division

