

Government response to Joint Standing Committee on Treaties Report No 102 on the Agreement Establishing the Association of Southeast Asian Nations-Australia-New Zealand Free Trade Area (AANZFTA)

Recommendation 1

The Committee recommends that the Australian Government pursue all possible bilateral and multilateral avenues to secure improved tariff outcomes for the horticulture industry.

Government response

This recommendation is consistent with current Government practice. The Government agrees that improved market access for Australia's horticultural products should continue to be a focus for trade negotiations in free trade agreements (FTAs) and the World Trade Organization. The Government has pursued, and will continue to pursue, improved market access for Australian horticultural products in FTA negotiations. This includes efforts to address both tariff and non-tariff barriers. The Government will also continue to consult closely with the horticulture industry to ensure that FTA negotiations take account of industry priorities and respond to barriers faced by it.

Recommendation 2

The Committee recommends that, in the absence of other measures designed to improve free trade, a free trade agreement negotiated by Australia should not include a tariff outcome on a tariff line that is worse than the existing tariff on that tariff line.

Government response

Recommendations 2 and 3 relate to tariff outcomes in FTAs and the responses to them are complementary and should be considered together.

The Government's objective in FTA tariff negotiations is to secure complete tariff elimination by our negotiating partner(s) in the shortest timeframe possible, with tariffs bound permanently at zero. Where such an outcome is not achievable, the Government seeks to have tariffs eliminated across as many products of priority interest to Australian industry as possible in the shortest timeframe possible, with all tariffs subject to tariff elimination or reduction commitments – with as many tariffs as possible eliminated on entry into force of the FTA or eliminated as soon as possible thereafter.

The normal practice in an FTA negotiation is that Parties make binding commitments to reduce current applied tariff rates (Most Favoured Nation (MFN) rates) from their level at a specific agreed date. This generally ensures that FTA outcomes start from existing tariff levels. However, it is sometimes possible that MFN rates may be adjusted during the negotiation, or after the conclusion of an FTA, by either Australia or the FTA partner, which means that

particular tariff commitments bound in the FTA may be higher than some existing MFN-applied tariffs. For example, this will be the case in AANZFTA following the tariff reductions that Australia will make to some MFN tariffs on 1 January 2010 (i.e. some of Australia's AANZFTA bound tariffs will be higher than the MFN tariffs). However, such cases are generally a temporary phenomenon (e.g. all of Australia's AANZFTA tariffs will eventually be eliminated, so that none will be higher than MFN rates). A base rate that is higher than a country's subsequent MFN-applied tariff rate may be eliminated through staged reductions, and will eventually fall below the existing MFN-applied rate and ultimately be eliminated in the treaty.

A key consideration here is that under an FTA, tariff rates, including phased-in reduction schedules, are bound. This contrasts with a situation where, in the absence of such bindings, there may be significant variations in, and adjustments to, applied MFN rates. Where bound tariff rates in an FTA may be temporarily greater than the current MFN-applied rates it also needs to be recognised that exporters are able to benefit from the lower MFN-applied rate and therefore suffer no practical disadvantage.

Recommendation 3

The Committee recommends that in future free trade agreements, Australia should negotiate for the binding tariff rate to be the lower of either the rate at the time of binding, or the Most Favoured Nation tariff rate at the time the free trade agreement comes into force.

Government response

See response to Recommendation 2 above. The Government will continue to seek the best possible tariff outcomes. Although this approach will normally mean that FTA bound tariffs will not be higher than MFN rates, such a possibility cannot be precluded in some instances for a small number of tariff lines, but would usually be a temporary phenomenon.

FTAs do not abrogate the right of Australian exporters to trade under Most Favoured Nation (MFN) tariff rates. Exporters and their overseas customers can choose whether to have goods assessed under the MFN or FTA tariffs (and depending on whether the good meets the FTA's rules of origin). There is nothing to prevent countries from reducing or eliminating their MFN tariffs at any time, whether unilaterally or through multilateral trade negotiations in the World Trade Organization, and this is encouraged by the Government. Such developments are beneficial for Australian export interests as well as for economic growth.

Recommendation 4

The Committee recommends that the Department of Foreign Affairs and Trade prepare a report for the Committee examining mechanisms to allow negotiators to directly consult with industry representatives during the negotiation process.

Government response

Mechanisms are already in place for the Department of Foreign Affairs and Trade (DFAT), in consultation with other Commonwealth departments and State and Territory governments, to consult with industry representatives in the process of determining Australia's market access objectives for negotiations and during the negotiations themselves. The Government places high value on the importance of close industry input and expertise to inform its approach to trade negotiations. While the negotiations themselves are conducted on a government-to-government basis, industry consultation processes play a vital role in assisting the negotiating process.

This was the case with AANZFTA. Industry groups were consulted on their priority interests to help inform the Government's negotiating position and were regularly briefed on progress in the negotiations. In the concluding stages of the negotiations, key industry stakeholders, including the horticulture industry, were informed on a confidential basis about emerging market access outcomes and the extent to which specific priority interests were likely to be met. Several industry bodies have made public statements indicating their support for the consultative processes followed.

Recommendation 5

The Committee recommends 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.

Government response

The Government will explore the inclusion of environmental protection and labour standards issues in FTA negotiations, on a case by case basis.

Recommendation 6

The Committee supports the Agreement Establishing the ASEAN – Australia – New Zealand Free Trade Area and recommends that binding treaty action be taken.

Government response

Binding treaty action is being undertaken. Subject to completion of necessary legislative amendments by Australia, along with completion of necessary internal processes by New Zealand and at least four ASEAN countries, the AANZFTA will enter into force on 1 January 2010.