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Singapore-Australia Free Trade Agreement

Background

2.1 *The Singapore - Australia Free Trade Agreement done at Singapore on 17 February 2003, and associated Exchange of Notes* (SAFTA) is the first bilateral free trade Agreement (FTA) that Australia has signed since the Australia New Zealand Closer Economic Relations Trade Agreement of 1983.[1] The Prime Ministers of Australia and Singapore agreed to commence negotiations on an FTA at a meeting of the Asia Pacific Economic Cooperation forum on 15 November 2000.

2.2 In 2001-02 Singapore was Australia's seventh largest trading partner. Australian export of goods to Singapore was valued at A$4.9 billion and export of services was valued at A$2.2 billion. Australia had a merchandise trade surplus of almost A$1 billion and a service trade deficit of A$8 million.[2]

> While the Singaporean economy experienced a significant dip in the wake of the East Asian economic crisis, a return to traditionally high levels of growth is predicted. The potential for increased exports of services (particularly financial, telecommunications, legal, educational and professional) to

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1 Stephen Deady, *Transcript of Evidence,* p. 1.

2 Regulation Impact Statement (RIS), p. 1.

> Singapore was identified by a number of the Australian companies consulted during the negotiations for SAFTA.[3]

2.3 The trade in goods between Australia and Singapore is currently very open, however, Australian service exporters face a range of barriers and regulatory conditions that affect their ability to penetrate the Singaporean market.[4]

2.4 SAFTA will liberalise and facilitate trade and investment between Australia and Singapore, and contribute to the on-going efforts of both parties to liberalise their trade relations. At the time of writing Australia is negotiating bilateral FTAs with Thailand and the United States. Since 2002 Singapore has signed FTAs with Japan and New Zealand. With respect to the United States:

> The negotiations on the Agreement…concluded shortly after our own negotiations with Singapore. That agreement with the US has not yet been signed; it is still going through the legal-vetting processes in both Singapore and the US.[5]

2.5 Under SAFTA, each Party will eliminate tariffs on the import of those goods from the other Party that meet the Rules of Origin (ROOs) criteria. Each Party will also grant national treatment and market access to the services, and national treatment to the investments, of the other Party, except where specific measures or individual sectors are reserved.[6]

2.6 The Committee was advised that SAFTA also contains specific commitments on intellectual property protection, customs procedures, electronic commerce, arrangements for the acceptance of the equivalence of mandatory requirements, competition policy, government procurement, business travel and education cooperation that will further facilitate trade and investment.[7]

2.7 As the first FTA signed by Australia for twenty years and in light of the current negotiations of an FTA with Thailand, DFAT claimed that SAFTA provides:

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

4 RIS, p. 1.

5 Stephen Deady, *Transcript of Evidence*, p. 3. The committee has since been advised by the United States (US) Embassy that the Agreement has been signed by the President and at the time of writing, is awaiting ratification.

6 NIA, paras. 3, 10.

7 NIA, para. 4.

> a very good template for further bilateral free trade agreements that may be negotiated between Australia and other countries in the Asia-Pacific region.[8]

The inquiry process

2.8 As with the three other proposed treaty actions discussed in this report, SAFTA was advertised in *The Australian* newspaper on 19 March 2003. The Committee also wrote to a wide range of interested parties, inviting submissions. These parties are listed at Appendix F. Of the 30 submissions which were received in relation to the review of Treaties tabled in March, 28 concerned SAFTA. The first public hearing was held on 24 March. Issues that arose from submissions received subsequent to that date were collated and presented to the Department of Foreign Affairs and Trade for comment on 3 June. The responses, received on 10 June, were authorised as Submission 3.1 to the inquiry. A further public hearing was held on 16 June to receive further evidence on those issues.[9]

2.9 While the Committee is aware that there are significant concerns in the Australian community as a result of this Agreement, especially given its widely accepted status as a 'template' treaty for future free trade Agreements, it believes that the range of issues dealt with in this report should answer most concerns effectively, and that concerns about any future Agreement should be considered by assessing each proposed FTA on its own merit.

Outline of Chapter

2.10 Initially the Chapter will consider trade liberalisation issues in general before examining each Chapter of the Agreement in turn. The dispute resolution mechanisms and the review process will then be discussed. The Committee has a long-standing interest in issues concerning consultation processes for treaty actions agreed to by Australia, and has sought the views of States and Territories to provide a balanced understanding of the impacts that SAFTA will have beyond the Commonwealth sphere.

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8 Stephen Deady, *Transcript of Evidence*, p. 2.

9 The Committee acknowledges the efforts made by the Department of Foreign Affairs and Trade (DFAT) to respond in a timely fashion on each occasion that information has been requested.

2.11 A general discussion of costs and benefits of both the goods and services elements of the treaty will then be provided, in order to assess the relative merits of the Agreement.

Bilateral and multilateral trade liberalisation

2.12 The Department of Foreign Affairs and Trade (DFAT) claimed that bilateral FTAs such as SAFTA can reinforce and extend multilateral efforts to trade liberalisation under World Trade Organization (WTO) rules.

2.13 Addressing the policy issue of the efficacy of multilateral and bilateral approaches to achieving trade liberalisation, DFAT affirmed Australia's:

> broad approach to trade policy has been for many years the pursuit of multilateral liberalisation, strong support for the multilateral negotiations, very strong support for APEC and pursuit of regional liberalisation in those areas, and that remains fundamental.[10]

2.14 However, DFAT cited the problems of the WTO Ministerial Conference in Seattle (November and December 1999) as indicative of the difficulties associated with achieving multilateral trade liberalisation, and stated that:

> in order to ensure the prosecution of the interests of Australian industry and exporters, we would be aggressively pursuing opportunities wherever they arose. That included a move to looking at bilateral [FTAs], where they could deliver benefits to Australia in a shorter time frame, with countries that would pursue them in ways that would be truly comprehensive and liberalising and would reinforce the multilateral rules.[11]

2.15 Emphasising Australia's commitment to negotiating bilateral FTAs that complement and progress multilateral trade liberalisation, DFAT advised that:

> The Australian government was open to looking at bilateral [FTAs] with Japan and China … However, neither of those

10 Stephen Deady, *Transcript of Evidence,* p. 5.

11 Stephen Deady, *Transcript of Evidence,* p. 5.

> countries is really prepared at this point in time to embrace the full comprehensiveness required … to be compatible, in our view, with WTO rules.[12]

2.16 The Committee notes the failure of the WTO's Doha round of talks to meet its deadline of 31 March 2003 as further evidence that Australia should not rely solely on multilateral trade liberalisation and that, when opportunities arise, fully comprehensive bilateral FTAs that serve the national interest should be pursued.

Flexibility of bilateral agreements

2.17 An example of how a bilateral agreement such as SAFTA can promote the liberalisation of trade beyond extant multilateral commitments can be found in the Agreement's prohibition of tariffs on trade in agricultural goods between the parties.

2.18 DFAT acknowledged that neither party actually provides export subsidies to agriculture.[13] Nevertheless, SAFTA reinforces Australia's international stance on comprehensive trade liberalisation and particularly the trade in agricultural goods.

Purpose as a template treaty

2.19 A further function of the agreement to prohibit tariffs on trade in agricultural goods refers to SAFTA's role as a template treaty. It signals Australia's intentions to other countries in the Asia-Pacific region that may be candidates for bilateral FTAs. SAFTA:

> could give a strong message to the region about the possible benefits and the shape of [other] FTAs but also reinforce both Singapore and Australia's very strong support for the multilateral system to genuinely open economies…[14]

Features of the Agreement

2.20 The Regulation Impact Statement provided by the Department of Foreign Affairs, Defence and Trade states that the Chapter headings

12 Stephen Deady, *Transcript of Evidence*, p. 6.
13 Stephen Deady, *Transcript of Evidence*, p. 9.
14 Stephen Deady, *Transcript of Evidence*, p. 3.

in SAFTA 'give an indication of the issues that were the focus of the negotiations'.[15]

2.21 The Committee understands that the primary benefit to Australia from SAFTA will flow from the liberalisation of trade in services between the parties.

2.22 National treatment and market access obligations will not apply to Australian States and Territories until the first review of SAFTA, at which time reservations covering the States and Territories may be incorporated into the Annexes of the Agreement. The impact of SAFTA on State and Territory governments will be discussed later in the Chapter.

Trade in goods

2.23 Chapter 2 of SAFTA obliges parties to:

- eliminate all customs duties on goods originating in the territory of the other party that meet the rule of origin requirements (discussed below);
- prohibit export subsidies on all goods, including agricultural goods;
- establish practices in anti-dumping cases such as setting the time frame in determining the volume of dumped imports, and notification requirements; and
- not take WTO safeguard measures against each other.

2.24 The Chapter also contains standard provisions, on customs valuation and non-tariff barriers for example, which the Committee was advised are standard FTA articles and which reflect established WTO rules. There are also standard security and general exceptions, for example for measures 'necessary to protect human, animal or plant life or health'.[16]

Rules of origin

2.25 SAFTA specifies rules of origin at Chapter 3. Rules of origin (ROOs) determine the criteria under which imports into Australia and Singapore qualify for preferential tariff treatment under SAFTA.

15 RIS, p. 4.

16 From *Annex 2: Obligations*, tabled with the NIA and Treaty text, p. 1.

2.26 The Committee was advised that, for most products, origin is conferred where the local content represents at least 50 per cent of the ex-factory cost of production.

2.27 Annex 2D of SAFTA lists around 100 items (mainly electrical and electronic goods) that require a local content of 30 per cent to achieve origin status.[17] In addition, Australia agreed that products subject to Tariff Concession Orders would also be allowed a 30 per cent local content to achieve origin status.[18]

2.28 The Committee was advised that the rules of origin in SAFTA are based on the Australia New Zealand Closer Economic Relations Agreement (ANZCERTA) formula model, although the 30 per cent rule of origin provisions are not part of that Agreement.

2.29 DFAT stated that Australian industry was particularly concerned that the rules of origin provisions of SAFTA were adequate to ensure the exclusion from treaty benefits of products that did not originate from Singapore.

Accumulation

2.30 Under SAFTA, local content may be calculated on the basis of accumulation, which allows for the manufacturing process in one country to be interrupted by offshore processing as long as the product remains in the control of an individual manufacturer before and after the offshore processing. Accumulation applies to all products except textiles, clothing and footwear, passenger motor vehicles and jewellery products; a list of designated products is at Annex 2C of the Agreement:[19]

> What we have done for Singapore is that, if 25 per cent was value added in Singapore to begin with, then 50 per cent was added in one of the Indonesian islands and a further 25 per

17 Stephen Deady, *Transcript of Evidence,* p. 9.

18 Tariff Concession Orders are granted to importers of goods for which there is no local substitute.

19 *Annex 2: Obligations*, tabled with the NIA and Treaty text, p. 1. According to the RIS, p. 8: 'The textiles, clothing and footwear and passenger motor vehicle sectors were excluded from the accumulation rule, since it was considered inappropriate to offer ROOs concessions to Singapore in these relatively highly protected Australian sectors. The jewellery sector was also excluded from the accumulation rule because of concerns that jewellery made outside Singapore would qualify as Singaporean in origin if made from high-value Australian / Singaporean precious metals.'

> cent was added at the end, that would meet the 50 per cent test for Singapore.[20]

Impact on Australian manufacturing industries

2.31 The Australian Council of Trade Unions (ACTU), in its submission, expressed concern that the accumulation rule with regard to outward processing would mean that goods manufactured in states with low-cost labour resulting from lack of core labour standards would be imported without tariffs under SAFTA:

> the goods of many Singaporean companies are manufactured in part in Indonesia, and other offshore processing zones, where labour is cheap and adherence to labour standards questionable.[21]

2.32 The ACTU suggested that a review of the 30 per cent rule be conducted in this context, recommending that:

> the 50 per cent content rule should be at least maintained in bilateral agreements to which Australia is a party, subject to a review of its adequacy in the context of significant use of offshore processing in cheap labour countries.[22]

2.33 The Committee was advised that the impact of granting 30 per cent on certain electrical and electronic products was examined in conjunction with Australian industry, and that:

> As the products subject to Tariff Concession Orders are deemed to be not made in Australia, the impact on Australian industry of the 30 per cent rule on TCO products … would be a beneficial one of having access to imported inputs at lower costs.[23]

2.34 DFAT advised the Committee that, taking into account that the rule allowed only the accumulation of value added in Singapore and not in any third country, the measure did not represent any substantial concerns in terms of additional competition from Singapore for the products listed and that the rule would not have any substantial additional adverse affects on Australian industry.

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20 Stephen Deady, *Transcript of Evidence*, p. 10.

21 Australian Council of Trade Unions (ACTU), *Submission 21*, p. 2.

22 ACTU, *Submission 21*, p. 2.

23 DFAT, *Submission 3.1*, p. 10.

2.35 DFAT in its second submission advised that the 30 per cent rule in SAFTA was negotiated in the context of the Agreement with Singapore, recognising the 'special circumstances of Singaporean manufacturing'[24] and in response to the particular circumstances of Singapore industry, and that it would not necessarily be part of the Government's other FTA negotiations.[25]

2.36 The Committee was also advised in relation to rules of origin negotiations in other FTAs that the Government's position:

> is being developed in very close consultation with interested industry sectors, taking into account analysis of the potential impact of rules under consideration.[26]

2.37 The Committee was advised that, in making these assessments, DFAT took account of the compliance provisions that were incorporated in SAFTA, discussed below, to ensure that the rules of origin are strictly observed.

Certification and compliance

2.38 DFAT outlined the dual certification regime agreed to by the Parties for goods to claim origin status, to ensure that they are being applied properly by each country. Firstly, the onus is on the exporter to certify that goods meet the required conditions. Secondly, the exporter must obtain a certificate of origin issued by a government agency in Singapore.[27] Certificates of origin are valid for a two year period and must accompany each shipment.

2.39 Australian authorities may request documentation supporting the certificate of origin if they are not satisfied that goods exported from Singapore meet rules of origin requirements.[28]

2.40 In contrast to SAFTA, the United States (US)-Singapore FTA provides that:

> claims by an importer for preferential treatment under the Agreement be based on the importer's knowledge that the good qualifies as an originating good, or be based on information in the importer's possession that the good

24 RIS, p. 8.
25 DFAT, *Submission 3.1*, p. 11.
26 DFAT, *Submission 3.1*, p. 11.
27 Richard Bush, *Transcript of Evidence*, p. 10.
28 Richard Bush, *Transcript of Evidence*, p. 11.

> qualifies as an originating good. The importer must submit, on request, a statement setting forth the reasons that the good qualifies as an originating good, including pertinent cost and manufacturing information.[29]

2.41 DFAT advised that the US-Singapore FTA, unlike SAFTA, has no requirement for a second certificate of origin.[30]

2.42 The Committee was interested in the negotiations on the ROOs to apply under the proposed Australia-US FTA. DFAT advised that a final outcome has not been reached and negotiations are continuing.

> The US has proposed a product specific approach (along similar lines to the system used in its other FTAs) whereas Australia has proposed the ANZCERTA formula model.[31]

2.43 The Committee was also advised that an extensive process of consultations with relevant industry sectors with respect to options and their potential impact is being undertaken by DFAT in collaboration with other government departments.[32]

Customs procedures

2.44 Chapter 4 of SAFTA commits parties to:

- provide each other with information that assists in the investigation and prevention of customs law infringements;
- work towards having electronic means for all its customs reporting requirements as soon as practicable ('paperless trading');
- provide electronic systems that support business applications between each customs administration and its trading community; and
- share best practices and to use and develop risk management techniques.[33]

29 DFAT, *Submission 3,* p. 1.

30 Richard Bush, *Transcript of Evidence,* p. 10.

31 DFAT, *Submission 3.1,* p. 11.

32 DFAT, *Submission 3.1,* pp. 11-12.

33 From *Annex 2: Obligations,* tabled with the NIA and Treaty text, p. 2.

Technical regulations and sanitary and phytosanitary measures

2.45 Under Article 10 of Chapter 5, Parties shall conclude as appropriate sectoral annexes providing for arrangements for the acceptance of the equivalence of mandatory requirements for sanitary and phytosanitary protection.[34]

2.46 The Committee understands that this Chapter builds on the *Mutual Recognition Agreement on Conformity Assessment between Australia and Singapore (2001)*. The Committee also understands that this Chapter commits the Parties to endeavour to develop a work program and mechanism for cooperative activities in the areas on technical assistance and capacity building to address plant, animal and public health and food safety issues of mutual interest.[35]

Government procurement

2.47 Chapter 6 of SAFTA describes conditions of access to Australian and Singaporean government procurement markets. It obliges each Party to provide suppliers of the other Party treatment no less favourable than treatment afforded domestic suppliers in procurement by a specified list of agencies (listed at Annexes 3A and 3B).

2.48 The Committee was advised that Australia's listed agencies comprise Commonwealth agencies covered by the *Financial Management and Accountability Act 1997*. Singapore has listed the agencies covered in its membership obligations under the WTO Agreement on Government Procurement (GPA).

2.49 Chapter 6 includes:

- requirements for transparent tendering procedures, including non-discriminatory, timely and transparent access to an administrative or judiciary body to hear or review complaints of alleged breaches of its laws and practices in relation to government procurement;
- the protection of confidential information and intellectual property supplied in the course of tendering for contracts; and
- the exemption of procurement policies in relation to industry development including measures to assist small and medium enterprises and the promotion of opportunities for indigenous people.

34 NIA, para. 25.

35 From *Annex 2: Obligations*, tabled with the NIA and Treaty text, p. 2.

2.50 The RIS states that various types of procurement, for example overseas development assistance, are excluded from SAFTA, and that:

> exceptions exist, *inter alia*, for defence equipment, environmental measures, and the use of government procurement for industry development purposes, including measures to assist small-to-medium-sized enterprises (SMEs). The TPNs [Third Party Notes] note that such SME assistance measures include those currently listed in the *Commonwealth Procurement Guidelines (Guidelines)*. In essence, the Agreement does not require any change to the *Guidelines*, as the *Guidelines* are based on the value-for-money principle of which non-discrimination is an implicit part.[36]

Trade in services

2.51 The Committee understands that the substantive obligations in Chapter 7 of SAFTA are largely based on provisions of the WTO General Agreement on Trade in Services (GATS) but it contains strengthened disciplines in some areas.[37] SAFTA achieves an improved market environment for Australian exporters of services to Singapore by providing them with national treatment and improved market access.

2.52 The Committee understands that the market access obligation prohibits six forms of limitation on market access (e.g., limitations on the number of service suppliers or the total value of services transactions or assets).[38] National treatment measures require that each party extend conditions no less favourable to services and service providers of the other party than it does to its domestic services and service providers. Improved market access is achieved through the prohibition of limits on market access such as limits on the number of service providers and total values of services, transactions or assets. Some gains are listed in the table, provided by DFAT. The impact on States and Territories will be discussed separately.

36 RIS, p. 15.

37 From *Annex 2: Obligations*, tabled with the NIA and Treaty text, p. 3.

38 From *Annex 2: Obligations*, tabled with the NIA and Treaty text, p. 3.

A GATS-plus Agreement: the 'negative list' approach

2.53 As the scope of the market access and national treatment obligations is wider than under the GATS, DFAT describes SAFTA as a 'GATS-plus' agreement.[39] One key way in which SAFTA provides a more liberal trade regime than GATS is the adoption of a negative rather than a positive list approach in designating services that are subject to the terms of the Agreement.

2.54 A positive list approach lists all sectors that would be subject to the terms of an agreement. The negative list approach excludes listed sectors and includes all others. The RIS explains that:

> this approach has a liberalising and transparent thrust in that all exceptions must be specifically reserved, or they are deemed to be liberalised.[40]

2.55 DFAT opined the advantages of a negative list approach over a positive list approach:

> you could have exactly the same outcome in terms of actual commitments [regardless of the] approach but one of the pluses of even that outcome [under a negative list approach] would be much greater transparency from the country going through and developing a negative list.[41]

2.56 Sectors reserved by Australia and Singapore are listed at Annexes 4-I(A), 4-I(B), 4-II(A) and 4-II(B) of the Agreement. Annex 4-I to the FTA:

> represents a standstill commitment, meaning that a Party will be able to maintain measures listed there that do not comply with the market access and / or national treatment obligations, but it will not be able to increase the trade restrictiveness of these measures.'[42]

2.57 Sectors listed under Annex 2 are excepted from the terms of the treaty, allowing 'sectoral carve-outs', where Parties retain the right to make them more inconsistent with agreed free trade provisions.[43]

2.58 DFAT noted that in implementing a negative list approach SAFTA provided a greater degree of trade liberalisation than the positive list

39 Stephen Deady, *Transcript of Evidence*, p. 2.

40 RIS, p. 10.

41 Stephen Deady, *Transcript of Evidence*, p. 5.

42 From *Annex 2: Obligations*, tabled with the NIA and Treaty text, p. 3.

43 Stephen Deady, *Transcript of Evidence*, pp. 6-7.

approaches adopted in FTAs that Singapore had agreed with Japan and New Zealand. The negative list approach adopted in SAFTA is consistent with the terms of the FTA between Singapore and the United States.[44]

2.59 The RIS states that:

> SAFTA respects the rights of governments to adopt domestic regulation affecting trade in services, but contains enhanced provisions on transparency and the processes for adopting such regulations, reflecting proposals which Australia has put forward in the WTO service negotiations.[45]

2.60 Other similarities with the GATS noted by the Committee include:

- a provision allowing for the modification of the annexes of the reservations, for example to allow the introduction of more trade restrictive measures, as long as the overall balance of each Party's commitments is maintained by agreed compensatory adjustments to the reservations;
- respect for the right of governments to adopt domestic regulation affecting trade in services, but requiring those regulations to be 'administered in a reasonable, objective and impartial manner'[46];
- provisions to ensure that monopoly service suppliers do not act inconsistently with the obligations of the Parties; and
- general and security provisions:

> to ensure that the Chapter does not prevent governments from being able to adopt measures necessary for important public policy objectives such as protection of human, animal and plant life and health.[47]

2.61 The Committee also notes that there is a review of commitment provision that requires Parties to consider amending their reservations annexes, in order to extend to the other Party any benefits it gives to non-Parties in other agreements or any unilateral liberalisation it undertakes. Through this provision, additional

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44 Stephen Deady, *Transcript of Evidence*, p. 4.

45 RIS, p. 11.

46 From *Annex 2: Obligations*, tabled with the NIA and Treaty text, p. 3.

47 From *Annex 2: Obligations*, tabled with the NIA and Treaty text, p. 4.

liberalisation that the Parties adopt either unilaterally or in the context of other FTAs should be assured.[48]

2.62 The Committee received several submissions and form letter-style correspondence which were critical of the 'negative list' model for services and investment in free trade agreements.[49] The Committee does not accept the assertion of the Australian Fair Trade and Investment Network that the negative list 'has been decisively rejected by the community as it can lead to unintentional outcomes and undue restrictions on current and future government policies' and considers that on balance, the transparency created by having listed reservations in SAFTA is appropriate.

Provision of services

2.63 Several submissions raised concerns about definitions of 'commercial' and what 'public services' are excluded from the Agreement. The Australian Fair Trade and Investment Network, in its submission, criticised an unclear definition of 'public service':

> The health, education and postal sectors provide examples of public services being provided partially by private providers in Australia.[50]

2.64 SAFTA follows the same approach as used in the GATS of excluding services 'supplied in the exercise of government authority within the territory of each respective Party' from the coverage of the commitments in the services chapter. It also follows the GATS in defining these services to mean 'any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers'.[51]

2.65 DFAT advised that:

> Most services supplied by public entities in areas such as the health, education and postal sectors would fall within these definitions. However, whether a particular service provided in one of these areas fell within the scope of the definition of a service supplied in the exercise of government authority would need to be determined on a case-by-case basis.[52]

48 From *Annex 2: Obligations*, tabled with the NIA and Treaty text, p. 3.

49 E.g. Australian Fair Trade and Investment Network (AFTINET), *Submission 9*, p. 5.

50 AFTINET, *Submission 9*, p. 6.

51 DFAT, *Submission 3.1*, p. 12.

52 DFAT, *Submission 3.1*, p. 12.

2.66 The Committee understands that these definitions are used to ensure that obligations under the services chapter do not affect the delivery of public services aimed at achieving important public policy objectives, while giving some protection to the obligations from being undermined through the use of public entities to provide services that are either really commercial services or are in competition with other service suppliers. DFAT advised that:

> The latter consideration can be an important issue when Australian service suppliers are competing in countries where there is significantly greater public intervention or ownership than is the case in Australia.[53]

2.67 DFAT explained that:

> The obligations of the services chapter will only apply to that part of the economy that involves the provision of services on a commercial or a competitive basis. In Australia, as in most other countries, sectors such as health, education and postal/courier services, involve a mix of both services provided on a commercial/competitive basis and services provided on a non-commercial/non-competitive basis and this mix can change over time. For this reason the services chapter of SAFTA does not exclude particular sectors – such as health or education – from its scope, but a particular type of service in any sector, i.e. services provided in the exercise of government authority.[54]

2.68 The Committee was advised that in cases where a service that falls within the scope of the services chapter is provided by a public entity, it has been possible to remove Annex 4 reservations to give cover to any measures which do not comply with the market access and national treatment obligations of the Chapter.[55]

Investment

2.69 Chapter 8 of SAFTA covers both the pre-establishment and post-establishment stages of investment and includes provision on the protection of investors against expropriation and on compensation for losses.[56] The Committee understands that:

53 DFAT, *Submission 3.1*, p. 12.

54 DFAT, *Submission 3.1*, p. 12-13.

55 DFAT, *Submission 3.1*, p. 13.

56 From *Annex 2: Obligations*, tabled with the NIA and Treaty text, p. 4.

> These obligations require a standard of treatment of Singapore investors and their investments which is no higher than that which one would generally expect these investors, and Australian investors, to enjoy under Australia's domestic legal requirements and current policy framework.[57]

2.70 Chapter 8 of SAFTA requires each Party to permit all funds of an investor of the other Party related to an investment in its territory to be transferred freely and without undue delay. The Chapter allows exceptions in cases relating to, for example, bankruptcy, criminal offences and compulsory saving schemes. The Chapter also prohibits expropriation of an investment except when taken on a non-discriminatory basis, for a public purpose, in accordance with due process of law and is accompanied by prompt, adequate and effective compensation equivalent to the fair market value. The Committee notes that:

> reflecting Singapore's sensitivity, the expropriation of land is subject to a weaker discipline requiring that such appropriation be for a purpose, and that compensation be paid, in accordance with the relevant domestic law.[58]

2.71 The Committee understands that, as in Chapter 7, specific reservations have been made to the national treatment obligation through 'negative listing' of measures in Annex 4-I of the FTA or sectors, sub-sectors or activities in Annex 4-II. These annexes are subject to similar modification and review provisions as those in Chapter 7.

2.72 The Chapter also provides for an investor-state dispute settlement procedure, such that where an investor alleges that a Party has breached one of its obligations under the Chapter in a way that causes loss or damage may be referred for settlement. Dispute resolution procedures are discussed later in this Chapter.

Financial services

2.73 Although financial services are substantially dealt with in the chapters on Trades in Services (Chapter 7) and Investment (Chapter 8), Chapter 9 contains additional provisions that reflect the importance of adequate regulation of this sector. These provisions

57 DFAT, *Submission 3.1*, p. 7.

58 From *Annex 2: Obligations*, tabled with the NIA and Treaty text, p. 4.

recognise the right of parties to regulate for prudential reasons, and draw on specific WTO provisions relating to the GATS.[59]

2.74 The Committee was advised that Parties are required to ensure that regulatory measures do not discriminate against providers of the other party, should not be more burdensome than necessary and should not be a disguised restriction to trade.

2.75 The Chapter includes a provision which prohibits the Parties from preventing the transfer, including electronically, or processing of financial information where this is necessary for the conduct of ordinary business of a financial service provider. DFAT advised that this provision is taken from the WTO understanding on Commitments in Financial Services, in which Australia, but not Singapore, is a participant.[60]

2.76 DFAT advised that:

> In relation to financial services, Singapore … is fairly liberal when it comes to investment banking or merchant banking, and quite a range of international banks, including Australian banks, are involved there … In relation to full banking services, full retail banking, it is quite restricted and we have no additional benefits from this Agreement.[61]

2.77 However, full retail banking:

> was not an area where Australian banks said they wanted to go into Singapore … It is just too competitive a market.[62]

2.78 In the area of wholesale banking, which involves the provision of banking services to financial institutions, Singapore has committed to lifting a quota restriction on the number of licences within four years of the entry into force of SAFTA as well as greater transparency of its regulatory regime.[63]

2.79 DFAT stated that if Singapore:

59 From *Annex 2: Obligations*, tabled with the NIA and Treaty text, p. 5.

60 From *Annex 2: Obligations*, tabled with the NIA and Treaty text, p. 5.

61 Milton Churche, *Transcript of Evidence*, p. 16.

62 Milton Churche, *Transcript of Evidence*, p. 16.

63 Milton Churche, *Transcript of Evidence*, p. 16.

> reached a better deal with the US on lifting the quota for wholesale banking licences – that that deal [will] be extended to Australia.[64]

Telecommunication services

2.80 Requirements under Chapter 10 of SAFTA include that:

- all service providers of the other Party have access to and use of any public telecommunications network or service offered in its territory or across its borders in a timely fashion and on reasonable, transparent and non-discriminatory terms;
- Parties maintain competitive safeguards including ensuring that major suppliers provide interconnection on timely, cost based and non-discriminatory terms;
- interconnection rates be determined by negotiation;
- decisions in interconnection disputes are transparent;[65]
- service providers with major supplier status (such as Telstra) provide access to telecommunications networks on an unbundled basis, physical co-location of equipment and resale of services;
- Parties facilitate the involvement of providers of public telecommunications networks and services from the other party in the development of industry standards, and where appropriate, the regulation of the telecommunications industry; and
- regulators aim to resolve interconnection disputes within 180 days of referral, and in complex cases where resolutions may take longer than 180 days, to provide interim determinations where necessary.

Movement of business people

2.81 This Chapter sets out commitments for facilitating temporary entry for business people engaged in bilateral trade and investment. Under the Chapter, each Party agrees to:

- provide entry to business visitors from the other party for up to three months (currently Australia grants three months stay to

64 Milton Churche, *Transcript of Evidence*, p. 16.

65 The Committee notes that several provisions in this Chapter are similar or identical to the commitments by both Parties under the Fourth Protocol of General Agreement on Trade in Services (GATS).

Singaporean visitors; Australian visitors to Singapore are granted one month's initial stay);

- grant the spouses and dependents of long-term business visitors from the other party the right to work as managers, executives, specialists or office administrators (Australia currently affords those rights);
- process applications for immigration formalities expeditiously;
- not allow the initiation of dispute settlement procedures in relation to a refusal to grant temporary entry unless the matter involves a pattern of practice or the natural persons affected have exhausted all domestic remedies regarding the matter; and
- not require labour market testing or similar procedures as a condition for temporary entry.

2.82 Singapore has undertaken to allow Australian inter-corporate transferees to Singapore residential rights for an initial period of two years. Australia has undertaken to allow their Singaporean counterparts an initial period of four years residence in Australia, and these periods are extendable for a total of 14 years.[66]

Competition policy

2.83 Chapter 12 of SAFTA obliges each party to promote competition by addressing anti-competitive practices in its territory. Parties are required to apply competition principles and regulatory measures in a non-discriminatory, transparent and fair manner, including taking reasonable measures to ensure that government-owned businesses do not receive any competitive advantages in their business activities as a result of being government-owned.

2.84 Each party has agreed to consult with the other on measures and means for the elimination of anti-competitive practices affecting bilateral trade or investment. The parties have undertaken to conduct formal consultations once a generic competition law comes into effect in Singapore.

2.85 The ACTU, in its submission, refers to the lower costs of finance available to government-owned businesses due to their access to government guarantees, and expresses concern that a competitive advantage might be available on these grounds. The Committee

66 From *Annex 2: Obligations*, tabled with the NIA and Treaty text, p. 7.

understands that this issue is addressed by the Intergovernmental Competition Principles Agreement (CPA), concluded by the Commonwealth, States and Territories in 1995. Under clause 3(4) of the CPA, the parties are required to impose debt guarantee fees on government business enterprises directed towards offsetting the competitive advantages provided by government guarantees. Clause 7 of the CPA extends this obligation to local government.[67]

2.86 The Committee notes that dispute settlement provisions of SAFTA will not apply to this Chapter.[68]

Intellectual property

2.87 Chapter 13 of SAFTA obliges the parties to cooperate with one another with a view to eliminating trade in goods that infringe intellectual property rights. Intellectual property rights include electronic copies of works, sound recordings and cinematographic films.

2.88 The parties undertake:

- on receipt of complaints or information to take measures to prevent the export of goods that infringe copyright or trade marks;
- to notify the other party of contact points;
- to exchange information between relevant agencies and policy dialogue on initiatives for the enforcement of intellectual property rights in multilateral and regional forums;
- to exchange information and material on programs pertaining to intellectual property rights education and awareness and to the commercialisation of intellectual property and to develop contacts and cooperation between their respective government agencies, educational institutions and other organisations; and
- to accede or ratify the World Intellectual Property Organisation Copyright Treaty and its Performances and Phonograms Treaty within four years of the entry into force of SAFTA subject to the completion of domestic requirements in each party.

2.89 DFAT commented that SAFTA 'certainly strengthens … [intellectual property] significantly.'[69]

67 DFAT, *Submission 3.1*, p. 13.

68 From *Annex 2: Obligations*, tabled with the NIA and Treaty text, p. 8.

Electronic commerce

2.90 Key provisions of Chapter 14 of SAFTA oblige the Parties to:

- maintain zero customs duties on electronic transmissions between the Parties;
- maintain domestic legal frameworks that minimise the regulatory burden on electronic commerce;
- support industry-led development of electronic commerce and provide protection for consumers using electronic commerce that is at least equivalent to consumers of other forms of commerce; and
- make publicly available electronic versions of all existing publicly available versions of trade administration documents by 2005.

Education cooperation

2.91 Chapter 15 of SAFTA provides a framework for the Parties to encourage cooperation between their educational institutions in a number of areas including technical education and vocational training, distance education and teacher training. It commits the governments of Australia and Singapore to consider exchanges of teachers, researchers and students and the development of collaborative projects.[70]

2.92 It contains an obligation that each Party is obliged to allow its scholarships for overseas studies to be tenable at universities in the territory of the other Party.

Qualifications in law

2.93 Annex 4-III(II) of SAFTA provides for an increase in the number Australian universities that may provide qualifications to a citizen or permanent resident of Singapore allowing them to practice law in Singapore.

2.94 Prior to the entry into force of SAFTA, Singapore recognised law degrees from four Australian universities:

- Monash University;
- the University of Melbourne;

69 Stephen Deady, *Transcript of Evidence*, p. 21.

70 *Annex 2: Obligations*, tabled with the NIA and Treaty text, p. 9.

- the University of New South Wales; and
- the University of Sydney.

2.95 SAFTA adds four universities to this list:

- the Australian National University;
- Flinders University;
- the University of Queensland; and
- the University of Western Australia.[71]

2.96 DFAT informed the Committee that Australia commenced negotiations assuming the equal merit of degrees from all Australian law schools. The achievement of the recognition of qualifications from an additional four law schools represents an initial in-road to Singapore's very restrictive approach in this area.[72]

2.97 The Committee was advised that the process of selecting the four institutions proposed for recognition was overseen by the Attorney-General's Department, which invited Australian law schools to indicate their interest in being so recognised.[73] Because the four extant law schools were all in Sydney or Melbourne:

> one key consideration was … some sort of geographical representation of all Australia.[74]

2.98 The recognition of Australian degrees in law has been identified as a key area for the first review of the terms of the treaty that will be conducted twelve months after the entry into force of SAFTA.[75]

2.99 In comparison with Singapore's agreement to recognise qualifications from eight Australian law schools, DFAT informed the Committee that the United States, which formerly had no recognised law schools, has secured the recognition of qualifications from four institutions under the US-Singapore FTA.[76]

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71 Milton Churche, *Transcript of Evidence*, p. 18.
72 Milton Churche, *Transcript of Evidence*, p. 15.
73 Milton Churche, *Transcript of Evidence*, p. 18.
74 Milton Churche, *Transcript of Evidence*, p. 19.
75 Milton Churche, *Transcript of Evidence*, p. 19.
76 Stephen Deady, *Transcript of Evidence*, p. 6.

Dispute settlement

2.100 This Chapter provides for a dispute resolution mechanism that is intended to support the overall functioning of the Agreement, on the basis of simplicity, efficiency, timeliness and fairness, emphasising the reliance on consultative mechanisms for the resolution of disputes. [77]

2.101 Similar types of investor-state dispute resolution processes to that contained in the investment chapter of SAFTA are to be found in the nineteen Investment Promotion and Protection Agreements (IPPAs) that have entered into force for Australia. The Committee was advised that DFAT is not aware of any formal dispute settlement procedures initiated pursuant to these Agreements, nor were specific or detailed concerns raised about the provisions on investor-state dispute settlement during the consultation processes on the negotiation of SAFTA.[78]

2.102 The dispute resolution mechanisms in the treaty are the cause of considerable debate in the community and the Committee considered that they were worthy of more consideration.

2.103 The Chapter provides for the appointment of an arbitral tribunal at the request of a party where consultations have failed to settle a dispute. The tribunal will consist of three members, one each appointed by Australia and Singapore and a third, to be decided by the two initial appointees, to act as Chair. Members and the Chair of the arbitral tribunal cannot be nationals of either party.

2.104 The Committee understands that the investor-state dispute settlement provisions included in SAFTA contain a number of important safeguards against their abuse:

> They can only be invoked against Australia in cases where a Singapore investor alleges that Australia has breached an obligation under the investment chapter of the Agreement which caused loss or damage to the investor or its investment.[79]

2.105 The Committee was advised that, in the first instance, the Parties to the dispute would have to seek resolution through consultation and negotiation. If resolution does not occur within six months, either

77 From *Annex 2: Obligations*, tabled with the NIA and Treaty text, p. 9.

78 DFAT, *Submission 3.1*, p. 7.

79 DFAT, *Submission 3.1*, p. 4.

party to the dispute may refer it to one of three fora: the courts or administrative tribunals of the disputing Party; the International Centre for Settlement of Investment Disputes (ICSID) for conciliation or arbitration; or arbitration under the rules of the United Nations Commission on International Trade Law (UNCITRAL).[80]

2.106 The Committee notes that the provision cannot be invoked if the dispute has already been submitted to Australia's courts or administrative tribunals. If an investor chose to submit the dispute to either ICSID or UNCITRAL, it would have to provide written notice waiving its right to initiate or continue any proceedings before either of the other two dispute settlement fora (including Australia's domestic courts or administrative tribunals).[81]

> In addition, the submission of the dispute to ICSID or UNCITRAL must take place within three years of the time at which the investor became aware, or should reasonably have become aware, of a breach of an obligation under the investment chapter causing loss or damage to the investor or its investment.[82]

2.107 Several submissions received by the Committee referred to disputes under the North Atlantic Free Trade Agreement (NAFTA), and the potential for dispute measures to make Australia vulnerable to complaints by investors in Singapore. In answer to these concerns, DFAT provided the following comment, which was accepted and authorised for publication as Submission 3.2 to the Committee's inquiry:

> it is important to emphasise that while there are some commonalities between NAFTA and SAFTA, in that both provide mechanisms allowing investor-state settlement of disputes, there are also significant differences… the focus of the public debate about NAFTA has generally been on the substantive provisions that can be invoked in investor-state dispute settlement, rather on the actual investor-state dispute settlement mechanism. It is these substantive provisions that determine the extent to which a state might be subject to challenge by investors through the investor-state dispute settlement mechanism.

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80 DFAT, *Submission 3.1*, p. 4.

81 DFAT, *Submission 3.1*, p. 4.

82 DFAT, *Submission 3.1*, p. 4.

One way in which the investor-state dispute settlement mechanism in SAFTA differs from that in NAFTA is the fact that the latter contains detailed, Agreement-specific, provisions on the procedural aspects of the dispute settlement mechanism. SAFTA relies on the multilaterally-agreed procedures followed by the International Centre for Settlement of Investment Disputes (ICSID) and the arbitration rules of the United Nations Commission on International Trade Law (UNCITRAL) rather than prescribing detailed procedures specific to the Agreement.

There are general similarities between the investor-state dispute settlement mechanisms in SAFTA and NAFTA in relation to:

- the fact that they can only be invoked in cases where an investor alleges that a Party has breached an obligation under the investment chapter which causes loss or damage to the investor or its investment;
- the requirement that the dispute must be submitted to conciliation or arbitration within three years of the time at which the disputing investor became aware, or should reasonably have become aware, of a breach of an obligation causing loss or damage to the investor or its investment; and
- the requirement that the investor resorting to international arbitration must waive its right to initiate or continue any proceedings before domestic courts or administrative tribunals in relation to the matter under dispute.

These points of similarities are ones which place careful limits on the scope of the investor-state dispute settlement mechanisms and provide protection against their abuse.

A Party to SAFTA would only be vulnerable to a successful challenge under the investor-state dispute settlement provisions if it had breached its treaty obligations under the investment chapter of the Agreement. In such a situation the other Party would also be successful in a challenge using the state-to-state dispute settlement provisions. The investor-state dispute settlement provisions create the possibility for an investor of either Party to directly resort to international arbitration rather than relying on its Government to pursue the issue. However, Government measures are not vulnerable to challenge under the investor-state dispute provisions if they are not also vulnerable to challenge under the state-to-

state dispute settlement provisions…the dispute settlement provisions in SAFTA provide no basis for concluding that a government measure in compliance with Australia's treaty obligations could be subject to a successful challenge.

In relation to the substantive provisions of SAFTA and NAFTA, there are both similarities and differences. One difference is in the treatment of expropriation in both SAFTA and NAFTA. In NAFTA the expropriation article (Article 1110, para 1) begins:

'No Party may directly or indirectly nationalize or expropriate an investment of an investor of another Party in its territory or take a measure tantamount to nationalization or expropriation of such an investment ('expropriation')…'

There has been concern expressed that this wording has led to some confusion as it seems to suggest that there are three types of expropriation, i.e. direct, indirect, and measures tantamount to nationalization or expropriation of such an investment. This confusion has led to some uncertainty as to the types of measures that could be subject to the expropriation article in NAFTA. By contrast, the expropriation article in the investment chapter of SAFTA (Article 9, para 1, of Chapter 8) begins:

'Neither Party shall nationalise, expropriate or subject to measures having effect equivalent to nationalisation or expropriation (hereinafter referred to as 'expropriation')…'

This formulation makes clear that the distinction being drawn is between direct expropriation and measures having effect equivalent to expropriation (i.e. indirect expropriation). This distinction is common in bilateral investment treaties, including Australia's, and it appears that the NAFTA Parties were intending to make the same distinction in their Article 1110 but the wording they adopted does not convey this unambiguously. It is notable that in its recent treaty practice the United States has moved to a formulation similar to that used by Australia in its treaties rather than to that used in NAFTA.

Given that there are a range of differences as well as similarities between SAFTA and NAFTA in relation to both the investor-state dispute settlement mechanisms and the substantive provisions of the two Agreements, it would be

misleading to assume that concerns that have been raised about NAFTA would necessarily have direct relevance to SAFTA.

Final provisions

2.108 Chapter 17 contains provisions concerning the overall operation and institutional aspect of the Agreement. The Committee was advised that the language 'is identical to equivalent "federal clauses" in the General Agreement on Tariffs and Trade (GATT) and GATS.'[83] This Chapter contains provisions for termination of the Agreement as well as accession by third parties in terms to be agreed by the Parties.[84] It describes the review process for the treaty and the mechanism for entering into force. The Agreement will enter into force when diplomatic notes, confirming that each Party has completed their respective procedures, are exchanged.[85]

Review of provisions

2.109 Chapter 17 of SAFTA provides for a review of its terms one year after its entry into force and biennially thereafter. A number of understandings between the Parties about the operation of SAFTA and topics to be taken up at the first review are recorded in the text of the Third Person Notes (TPNs) that are to be exchanged at the time of entry into force. Other issues identified for review are included in the treaty itself.[86] Information on items identified was provided by DFAT as Submission 3, and is reproduced below.

83 From *Annex 2: Obligations*, tabled with the NIA and Treaty text, p. 10.

84 From *Annex 2: Obligations*, tabled with the NIA and Treaty text, p. 10.

85 NIA, para. 2.

86 DFAT, *Submission 3,* p. 2.

Issues identified within SAFTA

i. As per Article 6 of Chapter 7 (Trade in Services), the Market Access and National Treatment obligations of this chapter will not apply to measures maintained by the Parties at the regional level until the first review. Article 6 of Chapter 8 (Investment) provides for a similar transition period for regional governments with respect to the National Treatment obligation of this chapter. (Regional governments in this context include State and Territory Governments in Australia.)
Accordingly, at the first review, Australia will incorporate into the annexes to these two chapters (Annex 4-I(A) and Annex 4-II(A)) additional reservations for non-conforming measures applied at the State and Territory levels. This process of incorporation is subject to consultations between the Parties which may involve adjustments to the existing annexes of reservations to preserve the "overall balance of benefits" under the Agreement.

ii. As per Article 22 of Chapter 7 (Trade in Services), the Parties will review on-going work towards an Open Skies Agreement at the first review of SAFTA [see Paragraph 2.146 of this Chapter].

iii. As per Article 18 of Chapter 6 (Government Procurement), at the first review and at subsequent reviews of SAFTA, the Parties will update, where appropriate, the lists of entities covered by the chapter (as set out in Annex 3 A (for Australia) and Annex 3B (for Singapore)). They will also consider extending the scope of this chapter by adding entities to the Annexes (including, in the case of Australia, by encouraging States and Territories to list their entities at the first review).

Issues to be recorded in the exchange of Third Person Notes

i. The Parties shall consider the inclusion in Chapter 8 (Investment), of a provision relating to performance requirements. Negotiation of such a provision will use as a guide the illustrative list in the WTO Agreement on Trade-Related Investment Measures or similar provisions in other international agreements.

ii. The Parties shall consider the inclusion in Chapter 8 (Investment), of a provision relating to 'taxation measures as expropriation". The negotiating text on this provision at the conclusion of SAFTA negotiations will be used as the basis for future discussion.

iii. The Parties will consider the incorporation of commitments on non-discriminatory treatment of "digital products" and consider the application of such commitments to the procurement practices of entities covered by Chapter 6 (Government Procurement).

iv. At the initiation of either Party, the Parties will review the scope and operation of Article 9.8 (Resolution of Interconnection Disputes) of Chapter 10 (Telecommunications Services) within six months of the passage of any laws relating to the interconnection dispute resolution process in Australia.

v. Singapore will consider Australia's request to add a further two Australian universities to the eight recognised law degrees (provided for under SAFTA) for admission as qualified lawyers in Singapore (Annex 4-IH, Part **I.B).** Singapore will also review the stipulation in Annex 4-III that only those graduates from these universities ranked in the highest 30 per cent will be regarded as qualified persons.

vi. The Parties will review the use of measures covered by Article 16 (Industry Development) of Chapter 6 (Government Procurement), in the **light** of the objectives of the Chapter, and consult on ways of addressing any concerns raised by either Party.

Source Department of Foreign Affairs and Trade, Submission 3, pp.2-3.

2.110 The Committee was advised that any changes to SAFTA as a result of future reviews would be submitted for review by Joint Standing Committee on Treaties (JSCOT), under current treaty-making arrangements.

2.111 The Committee understands that issues concerning the review have particular implications for State and Territory governments. These will be discussed separately, later in the Chapter.

Reservations

2.112 In response to concerns raised in submissions, DFAT clarified that the reservations contained in Annexes 4-I(A) and 4-II(A) of the Agreement apply to Australia as a Party to SAFTA and cover all levels of government unless otherwise qualified:

> there will not be separate reservations for the Commonwealth Government, on the one hand, and the States and Territories, on the other.[87]
>
> For example, the Annex 4-II(A) reservations state that "Australia reserves the right to adopt or maintain any measure with respect to" the sectors, sub-sectors or activities specified in those reservations. These Annex 4-II(A) reservations, which provide flexibility both to maintain existing non-conforming measures and to introduce new ones, would cover measures relating to the specified sectors, sub-sectors or activities, whether taken by the Commonwealth Government, State and Territory Governments, or local governments. In the case of the Annex 4-I(A) reservations, which involve a binding on the level of discrimination or restrictiveness of existing measures, the existing measures need to be described. This would normally involve identifying the jurisdiction applying the measure, whether at the Commonwealth level or particular States and Territories.
>
> The services and investment chapters of SAFTA include a transitional provision under which certain key obligations of

87 DFAT, *Submission 3.1,* p. 6.

> these chapters will not apply to measures maintained by State and Territory Governments until modifications or additions are made to the lists of reservations contained in Annex 4 at the time of the first review of the Agreement. In some cases the first review of the Agreement will involve the incorporation of new reservations in Australia's list of reservations in Annex 4, while in other cases existing reservations may need to be redrafted to ensure they adequately cover all levels of government.
>
> In some cases, there may be some overlap between Annex 4-I(A) and Annex 4-II(A) reservations. In these cases, Australia would need to ensure compliance with both reservations, i.e. the broader carve-out of the Annex 4-II(A) reservation, allowing the introduction of more restrictive measures, could not be applied in a manner which undermined the Annex 4-I(A) reservation binding the level of restrictiveness of the existing measures covered by the latter.[88]

Cultural reservations

2.113 The Committee was pleased to receive submissions from the Australian Film Commission (AFC), the Media, Arts and Entertainment Alliance (MEAA), and the Australian Coalition for Cultural Diversity (ACCD). The Committee notes the general concerns about FTAs that were raised, and that they are similar to those raised in other submissions to the inquiry. However, the Committee notes with interest that, in relation to the specific issue of cultural reservations under the SAFTA, all submissions from these bodies were strongly in favour.

2.114 The AFC in its submission points out that 'while free trade is an essential objective so too is the ability of nations to enact cultural policy.'[89] The submission states that:

> SAFTA provides a model for the treatment of culture in trade agreements and represents, in our view, a new international standard … this represents one of the most comprehensive cultural reservations in any trade agreement so far negotiated

88 DFAT, *Submission 3.1,* p. 6.

89 Australian Film Commission (AFC), *Submission 16,* p. 2.

> and should be a model for the negotiation of the USA-Australia trade agreement.[90]

2.115 The MEAA notes in its submission that the government's ability to regulate foreign ownership of the media has also been protected in SAFTA.[91] It also comments that:

> The decision to exclude content from the commitments made in respect of e-commerce is far-sighted and supported by the Alliance.[92]

2.116 The ACCD in its submission notes that:

> SAFTA contains the basic elements needed to protect Australia's cultural industries – the reservation is comprehensive, it is technology neutral, it operates regardless of the delivery platform utilised and contains no standstill provisions.[93]

2.117 The Committee notes that the MEAA and the ACCD also commented on the 'extensive consultation' that was undertaken by DFAT with the cultural industries, and 'commends the Government on negotiating an agreement that embeds its social and cultural objectives in the context of trade.'[94] The ACCD states that its members are:

> gratified that the concerns of industry have been acknowledged and accommodated in the drafting of the Agreement.[95]

Treaty costs and benefits

2.118 An Access Economics study commissioned by DFAT on the costs and benefits of an FTA with Singapore was unable to give precise overall quantitative estimates of the likely impact of such an FTA at the macroeconomic level.[96] The most important impact of SAFTA for the Australian economy will result from liberalisation of those areas where Australian firms still face restrictions, namely the service

90 AFC, *Submission 16*, pp. 2-3.
91 Media Entertainment and Arts Alliance (MEAA), *Submission 17*, p. 2.
92 MEAA, *Submission 17*, p. 2.
93 Australian Coalition for Cultural Diversity (ACCD), *Submission 22*, p. 2.
94 MEAA, *Submission 17*, p. 3.
95 ACCD, *Submission 22*, p. 2.
96 RIS, p. 6.

sector; however, due to the paucity of reliable trade data for services, econometric estimates of the likely growth in Australian service exports resulting from the SAFTA would be unreliable.[97]

2.119 The Committee understands that gains from the SAFTA are not likely to have a heavy impact on macroeconomic aggregates such as GDP, employment or net exports because Singapore, though wealthy, is a relatively small economy (with a population of just over 4 million) and its bilateral trade relationship with Australia is already well-developed.[98]

Goods

2.120 Treasury has estimated that the financial cost of SAFTA to the Commonwealth Government will amount to $130 million over 4 years ($30 million a year in 2003-04 and 2004-05, growing to $35 million a year in 2005-06 and 2006-07). This estimate is based on the expected loss of tariff revenue from imports from Singapore, which are assumed to grow steadily over time in line with the domestic economy.

2.121 The estimates do not take account of the scope for additional lost tariff revenue that could arise if imports from Singapore displaced imports from other countries. The estimates do not include figures on the potential economic growth that SAFTA may generate and any additional taxation revenue occurring from that growth.[99]

2.122 Treasury cautioned that its costing does not take into account possible changes in market behaviour. For instance, there may be a greater loss to Commonwealth revenue than estimated if there an increase in cheaper imports from Singapore displaces imports from other countries that are subject to a tariff. This loss could be balanced however, by a potential decrease in the loss because increased economic growth (from cheaper Singaporean imports) may result in additional taxation revenue to the Government.[100]

2.123 The Committee notes that the costs of the processes of verification of rules of origin are not available. The RIS states that the Australian

97 RIS, p. 6.
98 RIS, pp. 6-7.
99 NIA, para. 16.
100 NIA, para. 16.

Customs Service is unable to 'predict what resources will be needed to verify origin'.[101]

2.124 Following the implementation of SAFTA, Australian beer and stout producers will have duty free access to Singapore, but all other Australian products already have such access.[102]

2.125 The RIS states that as 86 per cent of Australia's imports from Singapore already enter Australia duty free and most of the remainder enter at relatively low rates, the adjustment effects on Australian industry from removing the remaining tariffs are likely to be small.

2.126 The RIS states that costs of trading goods should be reduced by promotion of paperless trading and improvement in visa arrangements for both short and long-term business visitors and residents.

2.127 The Committee also understands that the provisions on mandatory technical regulations have the potential to reduce costs of complying with each other's regime in the sectors that will be covered in Annexes. Annexes are under negotiations on food products and horticultural goods.[103]

2.128 The RIS states that these cost reductions will:

> allow Australian exporters to become more competitive in the Singaporean market. Similarly, they may make imports from Singapore cheaper, creating increased competition for Australian producers of like goods, while allowing for more efficient production for Australian manufacturing firms using such goods as inputs.[104]

Services

2.129 The RIS states that the most significant gains from SAFTA for Australian service providers:

101 RIS, p. 14.
102 RIS, p. 7.
103 RIS, p. 9.
104 RIS, p. 9.

> are in the financial and legal service sectors, along with positive outcomes for education, environmental services and professional services (such as architects and engineers).[105]

2.130 The RIS states further that:

> SAFTA binds Singapore's current – and, in many cases, recently-liberalised – regulatory regime in a number of important service sectors. Thus, Singapore will not be able to introduce more restrictive measures in these areas, at least with respect to Australian service suppliers.[106]

105 RIS, p. 10.

106 RIS, p. 10.

Table	Gains for Australia's Service Providers
	■ Restrictions on the number of wholesale **banking licenses** to be eased over time
	■ More certain, and enhanced operating environment for **financial service** suppliers
	■ Conditions eased on establishment of joint ventures involving Australian **law firms**
	■ Number of Australian **law degrees** recognised in Singapore doubled from 4 to 8
	■ Improved commitments on **residency requirements** for Australian professionals
	■ Mutual recognition Agreements between **architects** and **engineers** under way
	■ National treatment and market access commitments for Australian **education** providers
	■ Singapore Government overseas **scholarships** tenable at Australian universities
	■ The **environmental services** sector will be largely open to Australian businesses
	■ Open market access and national treatment for a range of other **service sectors**
	■ **Spouses** of business people can work as managers, specialists, office administrators

Source *Regulation Impact Statement, p. 11.*

2.131 The Committee was advised that Access Economics adopted a survey approach to obtain estimates of the impact an FTA would have on particular service sectors, which, while incomplete (e.g. telecommunications firms were unwilling to give any estimates for reasons of commercial confidentiality), suggest that the gains from SAFTA are likely to be substantial for some service sectors and firms.[107] The report found benefits:

107 Access Economics, *The Costs and Benefits of a Free Trade Agreement with Singapore*, Canberra, 2001. Available at: http://www.dfat.gov.au/trade/negotiations/aussing_fta_cost_benefit_study.html

> in the order of $8 million to $20 million for financial services – perhaps as much as $50 or $60 million. In education, the figure was an increase in exports of around $50 million.[108]

2.132 DFAT stated that SAFTA would provide a wide range of opportunities to small and medium sized providers of services. SAFTA would reduce the costs of establishing businesses in Singapore. In some cases a local presence in Singapore would not be required, enabling service providers to operate out of Australia.[109]

2.133 The Committee notes that SAFTA does include binding commitments beyond existing WTO obligations and that the Commonwealth Government's flexibility in adopting new regulations will be limited in some areas in the future. For example:

> SAFTA preserves our screening process for foreign investment (through the Foreign Investment Review Board), but binds the current thresholds for triggering prior approval of investment proposals. This is similar to commitments Australia has already made in the OECD. SAFTA also binds the current limits on foreign ownership of Telstra, Qantas and other Australian international airlines. Hence, after entry into force of SAFTA, the Commonwealth Government will not be able to revise upward these thresholds and limits without adequately compensating Singapore as per the terms of SAFTA. Such compensation would normally be made by undertaking, with Singapore's consent, a new additional commitment under SAFTA, possibly in an entirely different sector.[110]

2.134 DFAT acknowledged that:

> we now need to talk to Australian industry in a different way, to explain the Agreement, to encourage Australian industry to look at SAFTA and see what opportunities it does generate for them as we go forward, and we will be doing that with Austrade and others.[111]

2.135 The Agreement also has indirect benefits in the areas of mutual recognition agreements.

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108 Stephen Deady, *Transcript of Evidence*, p. 8.

109 Stephen Deady, *Transcript of Evidence*, p. 8.

110 RIS, p. 15.

111 Stephen Deady, *Transcript of Evid*ence, p. 20.

Mutual recognition agreements

2.136 DFAT drew the attention of the Committee to indirect benefits to Australia that followed from negotiating SAFTA. One of these was the progress of mutual recognition agreements. The Committee was advised that the provision reflects the fact that recognition of qualifications and registration procedures can act as barriers to professionals practicing in the other Party.[112]

2.137 The National Association of Testing Authorities will be a designated authority under SAFTA, and notes one of the benefits of the Market Research Analysis (MRA) referring to the electrical products manufacturing industry:

> The MRA will ensure that testing of electrical products conducted in NATA accredited and designated laboratories is accepted by the Singapore authorities. Up until now these authorities have not been prepared to accept the test reports on the basis of their NATA accreditation.
>
> In addition to providing easier access to the Singapore market for Australian goods in the sectors included in the MRA, the treaty will provide a valuable precedent for future conformity assessment related Agreements Australia wishes to pursue.[113]

2.138 The Committee was advised that recognition of professional qualifications is covered in the SAFTA through Article 23 of Chapter 7. This Article obliges Parties to 'encourage their relevant competent bodies to enter into negotiations on recognition of professional qualifications and/or registration procedures with a view to the achievement of early outcomes.'

2.139 DFAT informed the Committee that, in response to the interest of the architecture and engineering professions in negotiating MRAs with their Singapore counterparts, the Government used the negotiations for SAFTA to gain the cooperation of Singapore in initiating meetings between the relevant professional bodies.[114] The Committee was advised by DFAT that, to date, more progress has been achieved in developing an MRA on architecture than in relation to engineering:

> We understand the architects are very close to finalising [an] Agreement. The engineers are still making some progress …

112 Milton Church, *Transcript of Evidence,* pp. 14, 15 and 19.

113 National Association of Testing Authorities (NATA), *Submission 2,* p. 1.

114 DFAT, *Submission 3.1,* p. 10.

> there are certainly opportunities under the Agreement in the whole range of professional services … to look at developing these mutual recognition Agreements.[115]

2.140 Submission 13 from the Institution of Engineers, Australia, while recognising positive outcomes including eased residency and visa requirements in SAFTA for Australian professionals, raises concerns about the negotiation of an MRA with counterpart bodies in Singapore. The submission suggests that government support is needed to advance the process and expresses regret that this was not achieved by the proposed Agreement:

> Without strong backing from the Australian government it seems unlikely that the status quo will change. SAFTA managed to deal with some of the recognition problems facing legal professionals. However, it is unfortunate that the same was not attempted for engineers.[116]

2.141 The submission suggests that the Asia Pacific Economic Corporation (APEC) Engineer Register should be used as a best practice MRA and that the issue should be revisited during the first review of the Treaty.

> The restrictions placed by the PEB on the recognition of Australian engineering qualifications have eroded the perceived benefits that SAFTA would bring via the export of educational services. The Institution would suggest that the Australian government has underestimated the potential of non-tariff barriers, like the non-recognition of qualifications by the PEB, to undermine the perceived benefits of SAFTA in the educational services area.[117]

2.142 At the public hearing on 16 June, Mr Stephen Deady gave the Committee an update on progress made in this area:

> We used the opportunity of the FTA, on a number of occasions, in talking to our Singaporean colleagues to encourage them to speak to their professional body in Singapore to encourage this process. We understand that there has been some further good progress made in this area, but I do not believe there has yet been a sign off on the mutual recognition arrangements.[118]

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115 Milton Churche, *Transcript of Evidence*, p. 15.

116 The Institute of Engineers, *Submission 13*, p. 2.

117 The Institute of Engineers *Submission 13*, p. 5.

118 Stephen Deady, *Transcript of Evidence*, 16 June 2003, p. 40.

2.143 The Committee was advised that:

> the Government is continuing to provide support to the efforts to negotiate an MRA on engineering and SAFTA, including its first review, will provide an important vehicle to move these efforts forward.[119]

2.144 While the general question of qualifications is recognised in the treaty and has been addressed above, the Committee believes that the issue of mutual recognition of qualifications and standards must be given greater focus.

2.145 In the Committee's view, the 'standards' issue will become increasingly important to the economy of the future. Greater emphasis should be placed on harmonisation of standards such as those relating to professional qualifications, accounting standards, electronic interchange, the Internet, port regulations, the rules on privacy and telecommunications standards to facilitate flow of information between treaty partners.

Air services

2.146 The Committee was advised that the Agreement has benefits in air services, in that in Article 22 of Chapter 7 (Trade in Services), both Parties agree to work towards a separate Open Skies Air Services Agreement.[120]

2.147 According to the RIS, rights in relation to air transport and services directly related to the exercise of those rights were a major issue not covered in the negotiations. Separate negotiations for an 'open skies' agreement between Australia and Singapore were already underway before SAFTA negotiations commenced, and these negotiations were kept separate from SAFTA, in order not to complicate the SAFTA talks.[121]

2.148 A further indirect benefit arising from treaty negotiations claimed by DFAT was the achievement of air side access at Changi airport. Mr Stephen Deady stated:

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119 DFAT, *Submission 3.1*, p. 28.

120 NIA, para. 24.

121 RIS, p. 5.

> I am not saying that that came about as a result of the FTA, but the fact that we have a dialogue going with Singapore in this important area helped in that process.[122]

Impact of SAFTA on States and Territories

2.149 The Committee was advised that the Chapter on Trade in Services will be the most significant for State and Territory governments, and the Chapter on Investment is also directly relevant to them. As stated at paragraph 2.22, State and Territory governments have until the first review of SAFTA, one year after its entry into force, to incorporate measures into its lists of reservations. DFAT advised that, at this time, reservations covering the States and Territories may be incorporated in recognition of the time required for consultation with, and within, the States and Territories to enable them to review all areas of relevant legislation and regulation before reservations affecting them are negotiated.[123]

2.150 Article 3 and 4 of Chapter 7 (Trade in Services) will apply after the first 12 months to measures affecting trade in services maintained at the State and Territory levels. At this time, article 3 of Chapter 8 (Investment) will apply to measures affecting investment maintained at the State and Territory levels.[124]

2.151 Several submissions received by the Committee expressed concern at the impact of the proposed SAFTA on State and Territory governments to regulate services. The Committee received, as attachments to a submission from Stephen Deady, correspondence between Mr Terry Moran, Head of the Premier's Department in Victoria and Mr Ashton Calvert, Secretary of the Department of Foreign Affairs and Trade. An extract from Mr Moran's letter of 10 February 2003 states:

> NAFTA has been used to undermine US local and state sovereignty and control, and to give foreign investors better treatment than local businesses. While it is not a foregone conclusion that the ASFTA will create identical scenarios to those that have arisen under the NAFTA, the broad

122 Stephen Deady, *Transcript of Evidence*, p. 20.

123 NIA, para. 17.

124 Under Article 6 of Chapter 8. See NIA, para. 23.

> implications of the investor-Party dispute settlement provisions for Australian States and Territories need to be given detailed consideration, and should not be underestimated.
>
> Safeguards need to be put in place to ensure that Australian States and Territories' abilities to regulate are suitably protected from inappropriate challenges from foreign investors under the ASFTA. Further, it should also be ensured that States and Territories are specifically given standing to participate in the resolution of any dispute involving their constitutional responsibilities.[125]

Mr Moran indicated that his letter was to be copied to the heads of Central Agencies in the other States and Territories.

2.152 Mr Ashton Calvert, in his response of 7 March 2003, provided the following information to Mr Moran:

> In relation to the Investor-State dispute settlement provisions included in SAFTA, I would note that these contain a number of important safeguards against their abuse. They can only be invoked against Australia in cases where a Singapore investor alleges that we have breached an obligation under the Investment Chapter of the Agreement which caused loss or damage to the investor or its investment. Initially, the parties to the dispute would have to seek to resolve it by consultation and negotiation. If this does not resolve the dispute within six months, either party to the dispute may refer it to one of three fora: the courts or administrative tribunals of the disputing Party; the International Centre for Settlement of Investment Disputes (ICSID) for conciliation or arbitration; or arbitration under the rules of the United Nations Commission on International Trade Law (UNCITRAL).
>
> If the dispute has already been submitted to Australia's courts or administrative tribunals, then this provision could not be invoked. Furthermore, if an investor chose to submit the dispute to either ICSID or UNCITRAL, it would have to provide written notice waiving its right to initiate or continue any proceedings before either of the other two dispute settlement fora (including Australia's domestic courts or administrative tribunals). In addition, the submission of the

125 Stephen Deady, *Submission 29.*

> dispute to ICSID or UNCITRAL must take place within three years of the time at which the investor became aware, or should reasonably have become aware, of a breach of an obligation under the Investment Chapter causing loss or damage to the investor or its investment.
>
> In the event that these dispute settlement provisions were to be invoked in relation to the actions of a State or Territory Government, then that Government would be fully involved in Australia's handling of the dispute.[126]

In this response Mr Calvert stated that his letter would be copied to all States and Territories.

2.153 The Committee understands that no further correspondence was received by DFAT from the Premier's Office in Victoria and therefore assumes that no further questions were raised with DFAT on the matter, although a submission was received from the Victorian Government, enclosing a summary of concerns. However, the covering letter from the Hon Steve Bracks MP stated that Victoria has no objections to the proposed treaty being brought into force through ratification.[127] Neither the South Australian Government nor the Tasmanian Government expressed any concerns with the proposed Agreement in their submissions to the Committee.[128]

2.154 The Committee was advised that, in the event that these dispute settlement provisions were to be invoked in relation to the actions of a State or Territory Government, then that Government would be fully involved in Australia's handling of the dispute, and that

> The investor-state dispute settlement provisions of SAFTA can only be invoked in relation to the obligations of the investment chapter of the Agreement. They cannot be invoked in relation to the obligations of other chapters, such as the services chapter.[129]

126 Stephen Deady, *Submission 29.*

127 Victorian Government, *Submission 26.*

128 South Australian Government, *Submission 30;* Tasmanian Government, *Submission 24.*

129 DFAT, *Submission 3.1,* p. 5.

Impact on Local Governments

2.155 Several submissions received by the Committee raised concerns about the impact on local government, and the lack of consultation with local government.

2.156 The Committee understands that the provisions of SAFTA apply to all levels of government in Australia, including local government, although DFAT advised that most provisions would have little direct impact on the activities of local government, which is 'similar to the situation with other comparable treaties such as the World Trade Organization (WTO) Agreements'.[130] The Committee was also advised that:

> the provisions of SAFTA that have most relevance to local government, i.e. the services and investment chapters, provide for a carve-out of all existing measures applied by this level of government that may be inconsistent with the national treatment and market access obligations of these chapters. This means that SAFTA will not require any changes to measures applied at the local government level.[131]

2.157 DFAT also advised that local government, together with other levels of government, will benefit from general exceptions provisions of the services and investment chapters:

> which allow the adoption of measures otherwise inconsistent with these chapters to achieve important public policy objectives, subject to compliance with certain safeguards against the abuse of these provisions. Local government measures will also be covered by the Annex 4-(II)(A) reservations, which will provide Australian governments with the flexibility to both maintain existing non-conforming measures, and introduce new ones, for the sectors, sub-sectors and activities specified.[132]

Consultation with States and Territories

2.158 In addition to the correspondence referred to in paragraphs 2.151 – 2.153 and formal consultation mechanisms, the Committee was advised that:

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130 DFAT, *Submission 3.1*, p. 2.

131 DFAT, *Submission 3.1*, p. 2.

132 DFAT, *Submission 3.1*, pp. 2-3.

> DFAT has conducted SAFTA-specific consultations with the States and Territories involving both the Departments of Premier and Cabinet and those agencies responsible for trade issues … [and] will continue this consultation process in the lead-up to the first review of SAFTA as well as to deal with continuing implementation issues related to the Agreement.[133]

2.159 The Committee was advised that State and Territory governments were consulted throughout the SAFTA negotiations through meetings in capital cities, joint meetings in Canberra and through other forums such as the National Trade Consultations (NTC), a two-tiered high level consultative process between the Commonwealth, State and Territory Governments on trade and investment issues generally.[134] DFAT advised that this consultation was given priority:

> given the potential implications of commitments under the services, investment and government procurement chapters of the Agreement for their regulatory regimes, as well as their interest in supporting local industry and exporters in identifying opportunities that could be pursued in the negotiations.[135]

2.160 The Committee understands that the Government intends to continue to consult very closely with the States and Territories in the process of developing and negotiating lists of reservations to the commitments in relation to the services and investment chapters.[136] The Committee is pleased to note DFAT's recognition of the important roles that State and Territory governments play in providing an additional avenue to convey any community concerns, as well as carrying responsibility for local government.[137]

2.161 The Committee was advised that, in recognition of the involvement of State and Territory governments in the implementation of SAFTA, and the concerns of those governments that adequate consultation take place, meetings across several tiers have occurred and are planned for the future. DFAT advised that:

> In addition to meetings at officials' level … the Minister for Trade chairs a Ministerial meeting twice a year in different

133 DFAT, *Submission 3.1*, pp. 5-6.
134 DFAT, *Submission 3.1*, p. 5.
135 DFAT, *Submission 3.1*, p. 1.
136 NIA, para. 18.
137 DFAT, *Submission 3.1*, p. 1.

> cities with State and Territory Ministers who have responsibility for trade issues. Additional issue-specific meetings and ad hoc teleconferences may be held as necessary.[138]

2.162 The Queensland Government stated in its submission that:

> A mechanism for ongoing consultation with State Governments during the life of the Agreement needs to be formalised. Such a mechanism could address - issues arising from the biennial reviews; measures to achieve an overall balance of restrictions under the Agreement where amendments are required to a non-conforming State or Territory measure; and any concerns in relation to the operation of the investor-Party dispute settlement mechanism. The Treaties Council, comprising Commonwealth, State and Territory Heads of Government, provides an appropriate forum.[139]

2.163 The Committee recognises the role of the Standing Committee on Treaties (SCOT), which consists of senior Commonwealth and State and Territory officers. SCOT meets at least twice a year, and identifies and discusses treaties and other international instruments of sensitivity and importance to the States and Territories, thereby monitoring and reporting on implications for those governments.[140] The Committee was advised that SAFTA was discussed at meetings of the SCOT on 28 May and 13 November 2002, and 28 May 2003. The Committee accepts the view of DFAT that 'any amendments to SAFTA arising, for example, from the biennial review process could also be considered by SCOT.'[141]

2.164 DFAT advised that the Commonwealth government, at the SCOT meeting of 28 May 2003, undertook to examine options that would make the consultative process more effective.

> Central among these could be a change to the process of agenda-setting for SCOT – for example, by providing the States and Territories a 'key issues brief' on possible agenda items three months ahead of SCOT meetings. This would allow the State and Territory central agencies to liaise with

138 DFAT, *Submission 3.1*, p. 25.

139 Queensland Government, *Submission 25*, p. 4.

140 DFAT, *Submission 3.1*, p. 5.

141 DFAT, *Submission 3.1*, p. 5.

> their respective line areas to identify priorities and provide feed back to the Commonwealth on the key issues brief.[142]

2.165 The Committee considers that the ongoing consultation process outlined by DFAT in written submissions and at the public hearing on 24 March ought effectively alleviate the concerns of State and Territory governments that their involvement be sought and any issues that might arise with SAFTA would be able to be addressed.

Consultation with local government

2.166 Further to paragraph 2.155 above, the Committee was advised that the Commonwealth Government did not specifically consult with local government during the negotiation of SAFTA. DFAT advised that such consultation will be undertaken with local government in the lead-up to the first review of SAFTA, in order to explain the provisions and the impact of the extension of the Agreement's coverage to State and Territory measures considered by SCOT.

2.167 The Committee notes the increasing significance of local government as an important mechanism for service delivery in local communities and is concerned at the failure of the consultation process to address their potential concerns in this context.

Consultation

2.168 The Committee was advised that the process of consultations undertaken by the Government in relation to SAFTA was guided primarily by the need to keep potentially interested stakeholders as fully informed as possible throughout the course of negotiations:

> In particular, consultations focused on peak bodies, sectoral industry associations or individual companies whose members might have an interest in the Singapore market or whose interests might be affected by any changes under consideration in the negotiations.[143]

2.169 Despite concerns raised in some submissions about the lack or inadequacy of consultations during the negotiation phase of SAFTA, the Committee understands that, in addition to industry and

142 DFAT, *Submission 3.1*, p. 5.

143 DFAT, *Submission 3.1*, p. 1. A comprehensive summary of the consultations on SAFTA can be found at Annex 1 to the NIA, tabled with the Treaty on 4 March 2003.

government stakeholders, DFAT held meetings with non-governmental and union groups interested in the negotiations, including at consultations with the Australian Fair Trade and Investment network in February 2002.

2.170 DFAT advised the Committee that SAFTA was also discussed at meetings of trade consultative groups convened by the Minister for Trade, such as the WTO Advisory Group and the Trade Policy Advisory Group, which include representatives of prominent non-government organisations and academic experts.

2.171 The Committee was advised that the Government is pursuing a similar approach to consultations on other trade negotiations. The Department advised that:

> the ambit of consultations with non-government and community groups in relation to trade negotiations is influenced by the interest expressed by particular groups in relevant issues, as well as the extent to which issues of interest to them emerge in public debate. In principle, the Department is available at any time to discuss individual negotiations and related issues with interested groups. The much higher degree of public interest in issues surrounding the AUSFTA negotiations, and the more far-reaching implications of the issues emerging in public debate, has meant that the Department has held a much wider range of organised consultations on the AUSFTA than was the case with SAFTA.[144]

2.172 As discussed at paragraph 2.109, several chapters of SAFTA contain provision for consultation and review of specific provisions. The Third Party Notes that will be exchanged at the time of entry into force also include Agreement on the review of certain of the provisions of SAFTA.

2.173 Ms Rosie Wagstaff acknowledged that the Commonwealth may have consulted with industry bodies in the course of negotiating the terms of SAFTA:

> Groups other than business and industry bodies are affected by this Agreement, and should have input into the process of their negotiation and review, especially since many

144 DFAT, *Submission 3.1*, p. 2.

government services and policies will be affected by the review.[145]

2.174 While the Committee was pleased to learn that DFAT intends to hold ongoing consultations with stakeholders and interested organisations in the lead up to the review of the SAFTA, it considers that the opportunity for members of the public to express concerns and views about the efficacy of the Agreement would be in the longer-term interest where strong community concerns exist about trade agreements.

Recommendation 1

That, in recognition of the concerns held by members of the Australian public and non-government organisations, there be an opportunity for greater public involvement, specifically including local government, in the consultation process leading up to the first review of SAFTA.

Other Issues

Impact on Australian sovereignty

2.175 A number of submissions received by the Committee expressed concerns about the potential of SAFTA, and FTAs in general, to limit the future actions of Australian governments. Of particular concern was the negative list approach adopted in SAFTA that subjects all sectors not reserved to the terms of the treaty.

2.176 The Committee does not agree that FTAs impose limitations on sovereignty – they are, in fact, instances of the exercise of sovereignty. Under Articles 6 and 7 of Chapter 17 future Australian governments may amend or terminate the Agreement.

2.177 The provision of biennial reviews enables the Australian government to add additional sectors to the reserved lists provided at Annexes 4-I(A) and 4-II(A).

145 Rosie Wagstaff, *Submission 4*, p. 1.

Labour rights and environmental standards

2.178 Some submissions, including from the ACTU, the Australian Manufacturing Workers' Union (AMWU) and the Victorian Greens, raised concerns about the lack of provisions on labour rights or environmental standards.

2.179 The Committee was advised that Australia and Singapore did not include chapters on labour and the environment 'as neither country considered that provisions of that kind would be appropriate or necessary for this Agreement.'[146] The Committee recognises that future FTAs may have different requirements.

Conclusions

2.180 The Committee considers that the main advantages for Australia under SAFTA appear to be increased transparency and predictability for service providers; and decreased input costs for industry using components from Singapore as a result of the reduction of tariffs.

2.181 The Committee supports instruments that advance international trade liberalisation, in principle, but believes that each should be judged on its own merits. Caution should be exercised at the possibility of Parties circumventing free trade principles through hidden subsidies. In this case, trade in goods between Australia and Singapore is substantially unencumbered and the controversial issues that may exist in future FTAs negotiated by Australia do not loom so large in this Agreement.

2.182 Although the loss to Commonwealth revenue appears to amount to a considerable sum, DFAT contended that when Singapore's position as Australia's seventh largest trading partner for 2001-02 is taken into account 'the annual tariff loss is actually low.'[147]

2.183 The removal of tariffs on Singapore imports to Australia should improve the competitive position of Australian manufacturing industry by allowing access to duty free industrial inputs.[148] An improved competitive position for industry:

146 DFAT, *Submission 3.1*, p. 14.

147 Stephen Deady, *Transcript of Evidence*, p. 12.

148 RIS, p. 8.

> would lead to higher levels of activity, higher economic growth [and] higher employment.[149]

2.184 SAFTA should also benefit Australian exporters of goods to Singapore through:

> the provisions on mandatory technical regulations [that] establish a framework for determining equivalence of Australian and Singapore standards and have the potential to reduce the costs of complying with each other's regime … This will build on the existing *Mutual Recognition Agreement on Conformity Assessment between the Government of Australia and the Government of Singapore,* [done in 2001].[150]

Introduction of legislation before the Committee has considered the proposed treaty action

2.185 For Australia to fulfil its obligations under SAFTA, the Customs Tariff Act 1995 and the Customs Act 1901 will need to be amended to incorporate the preferential tariff rates that will apply to goods imported from Singapore under SAFTA.[151]

2.186 The Committee notes that where enabling legislation is required for compliance with a proposed treaty action, it is normally stated in the National Interest Analysis. While legislation to implement the provisions of the SAFTA is noted in the NIA, there was no indication of when it would be introduced. Many submissions noted that no legislation relating to SAFTA should have been introduced or passed by the Parliament until after the review was completed. The legislation was introduced into the House of Representatives on 15 May 2003.

2.187 When specifically questioned about this, DFAT has stated that the relevant legislation was introduced into Parliament in order to be in a position to bring SAFTA into force at an early date, after the Government has had an opportunity to consider the Committee's report:

> The provisions of the two Bills implementing the tariff reductions under SAFTA will only commence on the day on which SAFTA enters into force. SAFTA will only enter into

149 Stephen Deady, *Transcript of Evidence,* p. 8.

150 RIS, p. 9.

151 NIA, para. 14.

> force when the Governments of Australia and Singapore take action to enter the treaty into force (by exchange of diplomatic notes) once they have completed their respective procedures to enable that to happen. For Australia, that includes completion of JSCOT's report on the treaty, and consideration of the report by the Government. The relevant legislative provisions will not have any effect before then.[152]

2.188 The Committee understands that the Government view is that having legislation introduced at the earliest possible time will:

> allow Australian business and industry to avail itself of the provisions of SAFTA at the earliest practical opportunity

and that:

> there is substantial interest in the business community, and our Singapore partners are also keen to move ahead.[153]

2.189 The Committee is concerned that the practice of introducing enabling legislation prior to the completion of the Committee's review could undermine the workings of the Committee. DFAT's statement that:

> it is not unusual for relevant legislation to be introduced to the Parliament before JSCOT has completed its review of a proposed treaty action.[154]

gives the Committee cause for concern should a precedent be set. The Committee also notes statements made in a meeting of Senate Estimates for the Foreign Affairs, Defence and Trade Portfolio on 3 June 2003 (extract produced as follows):

Senator Cook: *So they have been enacted on the presumption that the parliament will do the will of the executive and make the legislative changes?*

Mr Varghese: *That is normal treaty practice in Australia, as I am sure you would be aware.*

Senator Cook: *Yes, I am aware.*

Mr Varghese: *Before we ratify a treaty, in many cases it requires the implementing legislation.*

Senator Cook: *Yes, I am aware of that. But we have a treaties committee in the parliament. In the presentation you have made, no account was made of*

152 DFAT, *Submission 3.1*, p. 3.

153 DFAT, *Submission 3.1*, p. 3.

154 DFAT, *Submission 3.1*, p. 3.

what the treaties committee of the parliament might say about the treaty. What standing would the recommendations of the committee then have?

Mr Deady: *The full treaty making processes will be gone through by the government before notification to the Singapore government to bring it into action. The legislative changes could be made, and the JSCOT process, as I understand it, could certainly be continuing after legislation was passed. That has happened in the past, as I also understand it, in relation to other treaties.*

Senator Cook: *Which is an elegant way of saying that the treaties committee can offer commentary but it cannot vary or change any element of the treaty.*

Mr Deady: *That is correct, yes.*

This exchange confirms that the Committee's concern is warranted. The Committee notes the Department's admission that the introduction of legislation prior to the Committee's report has occurred on previous occasions:

> for example, in 2002 with legislation to implement Australia's obligations under both the Protocol amending the Australia-US Double Taxation Agreement and the International Convention for the Suppression of the Financing of Terrorism.[155]

2.190 The committee is of the view that existing legislation should not be introduced, without notice or reasons. The introduction of legislation prior to the Committee's final report is not conducive to the proper functioning of the Committee's process. This issue is further discussed at the end of Chapter 3, where again the Committee was presented with this circumstance. The Committee will write to all Ministers, drawing their attention to these concerns.

2.191 In conclusion, the Committee concurs with the views expressed in the Regulation Impact Statement, that:

> SAFTA creates a more liberal, transparent and predictable environment for Australian service exporters and investors in the Singaporean market. All this effectively reduced the risk of doing business in, and with, Singapore, and should lead to

155 DFAT, *Submission 3.1*, pp. 3-4.

increased service exports and investment by Australian providers in one of East Asia's most advanced economies.[156]

Recommendation 2

The Committee supports the Singapore-Australia Free Trade Agreement, and recommends that binding treaty action be taken.

156 RIS, p. 11.