

Australia-Thailand Free Trade Agreement

Introduction

- 3.1 The proposed Australia-Thailand Free Trade Agreement (TAFTA, which will also be referred to as ‘the Agreement’) will liberalise and facilitate trade and investment between the Parties.
- 3.2 Chapter 1 of the Agreement determines that the primary objectives of the Agreement are to
- liberalise trade in goods and services and create favourable conditions for trade and investment
 - build upon the countries’ World Trade Organization (WTO) commitments and to support trade liberalisation and facilitation in the Asia-Pacific Economic Cooperation forum (APEC)
 - establish a program of cooperative activities.¹
- 3.3 In addition to the core trade liberalisation commitments on goods and services, TAFTA includes provisions concerning the protection of intellectual property, customs procedures, electronic commerce, competition policy and government procurement.²

Background

- 3.4 The Committee understands that TAFTA would be Thailand’s first comprehensive free trade agreement with a developed economy, and Australia’s second free trade agreement with an Association of Southeast

1 Regulation Impact Statement (RIS), Annex 2, ‘Australian Obligations’, p. 5.

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

Asian Nations (ASEAN) member nation. In 2003, Thailand was Australia's fourteenth largest export destination with two-way trade valued at \$A 5.9 billion.³

- 3.5 The Agreement reflects Australia's broader regional trade and economic interests. As the National Interest Analysis (NIA) states

The conclusion of a substantive and comprehensive FTA with Thailand will signal strong support for multilateral, regional and bilateral initiatives, help create an open global and regional trading environment and promote strength and stability in the region. The deal establishes a platform for Australia to work towards greater economic integration with the second-largest economy in South East Asia.⁴

- 3.6 Economic linkages between the two countries to date have been hampered by Thailand's high trade restrictions and barriers.⁵ The NIA identifies the most significant feature of the Agreement to be that it will eliminate all tariff barriers and tariff rate quotas on imports of merchandise from Australia that meet the Rules of Origin (ROOs) criteria, either upon entry into force or through a phased reduction. All tariffs will be reduced to zero by 2020, with the majority eliminated by 2010.⁶ Detailed information on tariff reductions is contained in Annex 2 of the Agreement.

- 3.7 Australia's Chief Negotiator, Mr Justin Brown from the Department of Foreign Affairs and Trade (DFAT), advised the Committee that

The agreement would result in the complete liberalisation over time of two-way trade in goods between the two countries, and the liberalisation of services, trade and investment conditions. The agreement would also create improved conditions for broad commercial and regulatory cooperation between the two countries.⁷

- 3.8 This Chapter will briefly examine the substantive parts of the Agreement, and will discuss the key issues raised in the evidence before the Committee.

3 NIA, para. 6.

4 NIA, para. 7.

5 NIA, para. 6.

6 NIA, para. 11.

7 Mr Justin Brown, *Transcript of Evidence*, 26 July 2004, p. 21.

Impact of the Agreement

Trade in goods

- 3.9 The NIA notes numerous direct benefits expected to occur as a result of implementation of the Agreement
- Over half of all Thailand's current tariffs on imports from Australia will be eliminated, with tariffs on over three-quarters of Australia's current exports to Thailand eliminated immediately upon entry into force
 - All Thai tariffs not immediately eliminated will be reduced when the Agreement enters into force. Almost all tariffs will be completely eliminated by 2010, and the remainder eliminated after that year
 - Tariffs on large passenger vehicles, which are currently at 80 per cent, will be eliminated upon entry into force
 - By 2010, Thailand will eliminate its tariffs on almost all industrial goods. Current tariffs are at 30 per cent
 - Thailand will eliminate its current high tariffs on agricultural products and processed foods
 - Upon entry into force, Thailand will eliminate tariffs on wheat, barley, rye and oats, in addition to its tariff and tariff quota on rice
 - Thailand will immediately eliminate current tariffs on infant formula, lactose, casein and milk albumin, and phase the tariffs on butter fat, milkfood, yoghurt, dairy spreads and ice cream to zero in 2010
 - Thailand will phase the 32 per cent current tariff on sheep meat to zero in 2010
 - Thailand will phase tariffs on most fresh fruits and vegetables (most current rates at 33 or 42 per cent) to zero in 2010
 - Sugar exports from Australia will gain immediate additional access, expanding by 10 per cent annually with tariff and quota free access to occur in 2020
 - Thailand has guaranteed more liberalisation of its services markets in a range of sectors.⁸

Trade in services and investment

- 3.10 The NIA also outlines benefits to be achieved in services and investment
- Under the Agreement, there is a commitment to further liberalise two-way services trade within three years of entry into force. An associated

8 NIA, para. 8.

exchange of letters outlines priorities for discussion in the review of commitments (financial and telecommunications services, and conditions applying to Australian business people visiting Thailand)

- Australians will be granted visas and work permits for up to five years for intra-corporate transferees and three years for contractual services suppliers, provided that they have ongoing employment and comply with Thai laws. The number of documents required for work permits and renewals of work permits will be reduced
- The Agreement incorporates provisions on investment protection which guarantee a range of rights of Australian direct investors in Thailand, including the right to transfer their funds freely.⁹

3.11 Mr Brown stated that

While not of the same magnitude as the tariff commitments in the agreement, there are also a number of important improvements provided for Australian services exporters and investors in the Thai market. In particular, Thailand will relax a number of its restrictive conditions relating to visas and work permits for Australian businesspeople. The agreement will also guarantee non-discriminatory treatment of Australian investment in Thailand. Thailand's minority foreign equity limits have been lifted in a number of sectors of importance to Australian industry—notably in mining, some distribution, management consultancy and tourism services.¹⁰

Economic impact

3.12 The NIA states that although the Agreement will bring significant economic gains for some sectors, it will not have a large overall impact on the Australian economy

[the Agreement's] impact on Australia's macroeconomic aggregates such as GDP, employment or net exports is not expected to be large (estimated by the Centre for International Economics [CIE] at \$US 2.4 billion over the first 20 years of operation). This is because Australia already has a relatively open economy, leaving room for few expected efficiency gains as a result of this FTA.¹¹

9 NIA, para. 8.

10 Mr Justin Brown, *Transcript of Evidence*, 26 July 2004, p. 21.

11 NIA, para. 9.

3.13 However, the Committee notes that the Agreement may have some negative impacts. A submission received by the Australian Manufacturing Workers' Union (AMWU) stated that

In 2003 Australia had a merchandise trade deficit with Thailand of \$1,342 million. The AMWU notes that even according to the CIE Report (which the Government is using to support the agreement), both Australia's trade deficit with Thailand and Australia's overall trade deficit will rise as a result of the entering the proposed agreement.¹²

TAFTA as a mechanism to further regional and multilateral trade

3.14 The Regulation Impact Statement (RIS) states that the Agreement aims to 'add momentum to Australia's regional and multilateral trade liberalising efforts'.¹³

3.15 The NIA states that

implementation of the FTA will also enhance Australia's broader trade, economic and security interests in the region. A substantive and comprehensive FTA between the two countries will signal strong support for multilateral, regional and bilateral initiatives, help create an open global and regional trading environment and promote strength and stability in the region.¹⁴

3.16 In a submission to the Committee, the Ford Motor Company of Australia agreed that the Agreement would further regional trade, stating that

Ford Australia...believes this agreement, which follows on [from the] earlier free trade agreement with Singapore, will not only provide Australian producers with improved access to a very significant ASEAN automotive market, but could also expedite enhanced access to other ASEAN markets.¹⁵

And

Firstly, the agreement, together with the proposed Australia-US free trade agreement and Australia-China economic framework study can help "energise" the broader multi-lateral trade

12 Australian Manufacturing Workers' Union (AMWU), *Submission*, p. 8.

13 RIS, p. 2.

14 NIA, para. 10.

15 Ford Motor Company of Australia Limited, *Submission*, p. 1.

liberalisation process through such forums as the World Trade Organisation. Interestingly, there have recently been indications of a broader ASEAN interest in enhanced trade opportunities with Australia.¹⁶

- 3.17 However, the Australian Council of Trade Unions (ACTU) argued that trade agreement negotiations with Thailand and Singapore might have contributed to the recent invitation from ASEAN that Australia and New Zealand attend the summit in Laos later this year, but their contribution is outweighed by the change in political leadership in Malaysia. The ACTU doubts the multilateral significance of this agreement.¹⁷

Trade in goods

General provisions

National Treatment

- 3.18 The Agreement includes an obligation for each Party to extend national treatment to the goods of the other Party. Under this obligation, goods imported from the other country must be treated no less favourably than the same or similarly produced domestic goods after passage through customs.¹⁸

Anti-dumping

- 3.19 The Agreement prescribes that both countries must follow WTO anti-dumping rules and procedures. Article 206 of the Agreement outlines certain agreed practices to be used in determining the volume of dumped imports in investigations and reviews.¹⁹

Subsidies and counter-veiling measures

- 3.20 The WTO obligations of the Parties relating to subsidies and counter-veiling measures are confirmed by the Agreement.²⁰

16 Ford Motor Company of Australia Limited, *Submission*, p. 2.

17 Australian Council of Trade Unions (ACTU), *Submission*, p. 1.

18 RIS, Annex 2, 'Australian Obligations', p. 5.

19 RIS, Annex 2, 'Australian Obligations', p. 6.

20 RIS, Annex 2, 'Australian Obligations', p. 6.

Agricultural export subsidies

- 3.21 The Parties commit to work towards the elimination of agricultural export subsidies in the WTO. The Agreement provides for bilateral consultations on policies which may affect trade in food or agricultural products. Both countries agree not to introduce or maintain any agricultural export subsidy on goods exported to the other.²¹

Safeguards

- 3.22 The Safeguards Chapter of the Agreement provides a mechanism for protecting industries from injury arising from a rapid increase in imports during the transition period where tariffs are being phased to zero. Special safeguard measures are also included for a number of agricultural products.²²
- 3.23 The operation of the safeguard provisions was outlined to the Committee by Mr Brown
- the Agreement includes a range of safeguard provisions which allow for the temporary withdrawal of tariff preferences on specific products. There are two specific categories of safeguard action under the terms of the agreement: transitional safeguards, which are available subject to injury being demonstrated; and so-called special safeguards, which are volume triggered and which apply to around 50 agriculture and fisheries products.²³
- 3.24 Mr Brown stated that the transitional safeguards
- enable firms that believe they are being damaged by imports as a result of the tariff preference being provided to Thailand to seek recourse and to seek an increase in the tariff back to the MFN rate if damage can be demonstrated.²⁴
- 3.25 The special volume-triggered safeguards are available for some agricultural and fisheries products. These measures apply to industries where there is already high penetration by Thai imports, such as canned tuna and canned pineapple.²⁵

TCF industry

- 3.26 The Council of Textile and Fashion Industries of Australia Limited (TFIA) made a submission to the Committee, commenting on the safeguard

21 RIS, Annex 2, 'Australian Obligations', p. 6.

22 RIS, Annex 2, 'Australian Obligations', p. 9.

23 Mr Justin Brown, *Transcript of Evidence*, 26 July 2004, p. 21.

24 Mr Justin Brown, *Transcript of Evidence*, 26 July 2004, p. 24.

25 Mr Justin Brown, *Transcript of Evidence*, 26 July 2004, p. 23.

provisions as they apply to the textiles, clothing and footwear (TCF) industry. The TFIA noted that their members saw the inclusion of adequate safeguards to address the special needs of the TCF industry as a key part of the Agreement.²⁶

3.27 The TFIA advised the Committee that it had recommended to the Government that, among other things, the Agreement incorporate a specific TCF safeguard mechanism, including an automatic 'snap-back' provision, triggered by a quantitative measure that would be in place for up to 200 days and would have a lower threshold test than those found in FTAs to which the United States is a Party. Additionally, the TCF requested involvement in the implementation of the mechanism.²⁷

3.28 The Committee notes the TFIA's statement that

In comparing the text of the agreement with these [recommended] conditions the most notable difference is the absence of a distinct TCF safeguard provision such as that existing for certain agricultural products. A separate safeguard chapter for TCF products is by no means unprecedented. Both the United States-Singapore and Australia-United States Free Trade Agreements include TCF specific safeguards. These safeguards allow for the same mechanisms as standard safeguards but generally limit compensation to only TCF chapters of the tariff code or have particular trigger mechanisms that allow the special safeguard to be applied.²⁸

3.29 However, the TFIA goes on to state that the lack of specific safeguard and snap-back mechanisms have been addressed through Article 505, which

allows provisional safeguard measures to be applied subject to a preliminary determination that there exists clear evidence that increased imports of an originating good from the other Party due to the reduction or elimination of a duty under the agreement have caused or are threatening to cause serious damage ... The inclusion of this 200-day provisional safeguard enhances the ability of this arrangement to address the industry's concerns on the application of safeguards.²⁹

3.30 Although the TFIA notes the benefit of these provisions, the Committee acknowledges the TFIA's request that

26 Council of Textiles and Fashion Industries of Australia Limited (TFIA), *Submission*, p. 3.

27 TFIA, *Submission*, p. 3.

28 TFIA, *Submission*, p. 3.

29 TFIA, *Submission*, pp. 3-4.

the Committee reviews the need to include a specific chapter on TCF safeguards and as to whether the current safeguards text provides sufficient protection for Australian TCF and other manufacturers. Additionally the Committee must assess whether the language covers a sufficiently wide number of actions or activities that enact the safeguard.³⁰

Non-tariff measures

3.31 Under the Agreement, neither country will take measures to restrict bilateral imports or exports, except where permitted by WTO rules or by other provisions in the Agreement. Non-tariff measures in these circumstances must be transparent and must not be aimed at creating unnecessary obstacles to trade.³¹

Technical barriers to trade

3.32 The Committee is aware that, as tariffs are lowered or eliminated, non-tariff measures may continue to be used to frustrate trade. The Technical Barriers to Trade (TBT) Chapter of the Agreement addresses this by affirming the Parties' rights under the WTO TBT Agreement and also includes a commitment to promote the harmonisation of technical regulations.

3.33 The Chapter encourages both Parties to consider recognising the others' technical standards as equivalent to their own where they fulfil the objectives of that Party's own standards. Further, it makes provision for conformity assessment procedures to be made compatible to the greatest extent practicable, and provides for bilateral cooperation on standards issues and establishes contact points for that purpose.³²

Industry outcomes

Horticultural products

3.34 The Committee notes the opinion of Horticulture Australia Limited (HAL) that

On balance the Australia Thailand FTA outcome is viewed as mixed for horticulture. The outcomes provide a basis for the development of horticultural produce trade with Thailand which strengthens over time as the trade is fully liberalised. These

30 TFIA, *Submission*, p. 4.

31 RIS, Annex 2, 'Australian Obligations', p. 6.

32 RIS, Annex 2, 'Australian Obligations', p. 12.

outcomes are superior to the 'pre-FTA' case. Also through these outcomes market access is likely to be achieved sooner than it could be achieved under the Doha Round, where agreement on an approach to market access has been one of the most difficult issues.³³

- 3.35 However, HAL notes that 'the overall balance in horticultural exports is strongly in Thailand's favour'.³⁴

Thai commitments

- 3.36 According to HAL, few horticultural items of significance to the Australian industry achieve immediate free trade upon the Agreement's entry into force. However, within 5 years of entry into force, Thai tariffs will be eliminated on approximately 50 per cent of the value of currently traded fresh produce (A\$ 5.4 million) and 30 per cent of the value of currently traded processed produce (A\$ 1.9 million). Remaining tariffs will be phased to zero by 2010, with the final tariff (on fresh potatoes) eliminated in 2020.³⁵
- 3.37 The Committee notes that HAL believes that these tariff reductions give Australia a competitive advantage over other exporting countries without trade liberalisation agreements with Thailand. However, they do not necessarily offer such advantage in comparison with reductions negotiated by Thailand in agreements with other countries. HAL refers particularly to Thailand's recent agreement with China, under which tariff reductions are 'significantly above' those contained in this Agreement, particularly in some product categories which are significant in terms of both Australian and Chinese exports to Thailand and which have been labelled as sensitive in this Agreement (including mandarins and fresh grapes).³⁶
- 3.38 HAL expressed to the Committee the views of the horticultural industries on these tariff reductions and the safeguard measures in place for Thai sensitive items

several horticultural industries feel that these FTA outcomes could have been improved, particularly major horticultural industries which are prominent in exports into Thailand and are faced with safeguards or TRQ...In the case of four key items namely mandarins, table grapes and prepared/preserved potatoes, these

33 Horticulture Australia Limited (HAL), *Submission*, p. 2.

34 HAL, *Submission*, p. 4.

35 HAL, *Submission*, p. 2.

36 HAL, *Submission*, p. 2.

safeguards apply very restrictive volume trigger levels which on low volumes will, by reversing the tariff reduction, negate any reduction in tariff for a particular calendar year. In the case of fresh potatoes a restrictive TRQ applies.³⁷

- 3.39 However, HAL does concede that the outcome on horticultural imports, although disappointing, is understandable, given that Thai tariff rates on many agrifoods currently range from 30 to 50 per cent, whereas Australian tariffs are currently either zero or five per cent. HAL states that ‘given this picture, it may not be expected that the Thais would move to a zero regime on the same timetable as Australia’.³⁸ Further, HAL suggests that the outcome reflects possible consideration of Thailand’s status as a developing country.³⁹

Australian commitments

- 3.40 The Committee notes HAL’s view that ‘the tariff outcomes for horticulture access in to each of Thailand and Australia from the other are far from equally balanced’.⁴⁰ Whereas Thai tariffs remain in some product categories until 2020, Australian tariffs will be immediately eliminated upon entry into force of the Agreement.⁴¹
- 3.41 According to HAL, this will cause detriment to certain Australian horticultural industries, which are expected to experience a downside from the loss of the 5 per cent import tariff.⁴²

Special safeguard measures

- 3.42 The Agreement provides for the introduction of special safeguard measures to be imposed where the volume of imports for a sensitive good exceeds the determined trigger. Under these provisions, the importing country may then increase the duty rate to the current most favoured nation (MFN) rate or base rate (whichever is lower) for the remainder of the calendar year.⁴³
- 3.43 Thailand has specified six sensitive items (mandarins, table grapes, both frozen or fresh prepared or preserved potatoes and fresh potatoes). Tariffs on four of these items are to be reduced over 10 years. Fresh and seed

37 HAL, *Submission*, p. 2.

38 HAL, *Submission*, p. 5.

39 HAL, *Submission*, p. 5.

40 HAL, *Submission*, p. 5.

41 HAL, *Submission*, p. 5.

42 HAL, *Submission*, p. 2.

43 HAL, *Submission*, pp. 5-6.

potatoes will face tariff restriction quotas until 2020.⁴⁴ Special safeguard measures will apply to these sensitive items.

- 3.44 Australian sensitive items are pineapples (prepared or preserved, either canned or not canned) and pineapple juice (unfermented and not containing added spirit). Tariffs on these items are reduced immediately upon the Agreement's entry into force, although Australia will be able to access the special safeguards until the end of 2008. In the event of a trigger, Australia may reinstate MFN tariff rate of 5 per cent.⁴⁵

Dairy

- 3.45 For dairy products and margarine, current Thai tariffs range from five to 216 per cent. There are also very strict tariffs on milk powder. Dairy is a significant export product for Australia, with total exports of \$1.9 billion in 2003, \$64 million of this going to Thailand.⁴⁶

- 3.46 The RIS states that

On the basis of Australian production capacity and the competitive advantage the FTA will provide to Australia in the Thai market, exports to Thailand of ... certain dairy products (including casein, lactose and infant formula) would appear to have the potential to expand from entry into force of the FTA. In the medium term, tariffs subject to phasing arrangements will fall to an extent which will give Australian exporters significantly enhanced opportunities.⁴⁷

- 3.47 The Committee notes the dairy industry's support for the Agreement. As outlined in a submission from the Australian Dairy Industry Council, the Agreement

provides immediate free trade from the day of entry into force for a number of valuable dairy export tariff lines—especially highly processed items such as milk protein concentrates, casein, lactose and infant formula. It also provides up-front down payments for all other dairy items and ultimate free trade in all dairy products.⁴⁸

- 3.48 However, the industry expressed some disappointment over the time-frame for liberalisation of items such as cheese and skim milk powder. Given that such items are sensitive to Thailand, tariffs will be reduced, but

44 HAL, *Submission*, p. 6.

45 HAL, *Submission*, p. 7.

46 RIS, p. 6.

47 RIS, pp. 6-7.

48 Australian Dairy Industry Council, *Submission*, p. 1.

not completely eliminated until 2025 in the case of skim milk powder.⁴⁹ The Committee is disappointed that whilst Thailand had agreed in Bogor in 1994 to reduce tariffs for some dairy items by 2020 yet the Agreement states that the tariffs will not be eliminated until 2025.

- 3.49 Of particular concern to the dairy industry is the potential for Thailand to utilise the Agreement's safeguard provisions in a manner detrimental to the Australian industry

We are concerned that the methods the Thais choose to trigger special safeguards (on such items as cheese and butter) and the way they manage the quotas (on skim milk powder and liquid milk and cream) will be crucial in determining the real value of the trade agreement to the Australian dairy industry. In this regard, we will be working closely with the Australian Government in the coming months to ensure that appropriate measures are put in place to safe guard our rights in these areas.⁵⁰

- 3.50 The Committee notes, however, that on balance the dairy industry supports the Agreement, stating that

Notwithstanding our medium term concerns, the Agreement will provide us with an important competitive advantage in this growing dairy market. We strongly endorse the proposal for the Australian Government to ratify this treaty.⁵¹

Manufacturing

- 3.51 Thai tariffs on manufactures currently range to 20 per cent for metals, and up to 30 per cent for other manufactures.⁵² Under the Agreement, Thailand will reduce these tariffs, and will achieve complete elimination by 2010.⁵³

- 3.52 According to the RIS, lower prices as a result of tariff reductions will allow Australian exporters to become more competitive in the Thai market. In addition, the lowering of Australian tariffs will increase competition for Australian manufacturers, but will also allow for more efficient production for those firms using Thai inputs.⁵⁴ However, the RIS notes that, according to economic modelling undertaken by the Centre for International Economics (CIE), the manufacturing sector in Australia will

49 Australian Dairy Industry Council, *Submission*, p. 1.

50 Australian Dairy Industry Council, *Submission*, p. 1.

51 Australian Dairy Industry Council, *Submission*, p. 1.

52 RIS, p. 1.

53 RIS, pp. 7-8.

54 RIS, p. 8.

enjoy the largest relative increase in production, amounting to an additional \$US 78 million in 2025 for durable goods, and \$US 127 for non-durable goods.⁵⁵

3.53 The RIS acknowledges that as Thailand has competitive strengths in the automotive and TCF industries, the Agreement is likely to impact upon Australian industry, particularly in Victoria and South Australia where there are large auto and TCF industries. These industries will be discussed in detail below.

3.54 The Committee notes the statement in the RIS that

Australian manufacturers in all states of a wide range of products...have expressed interest in exporting to Thailand for the first time under the FTA. The expected benefits do not necessarily show up in economic modelling, which focuses on the overall impact on the Australian economy, but the level of interest shown in the FTA since the conclusion of negotiation suggests that a wide range of exporters expect to be able to take significant advantage of the new opportunities the FTA will provide, in many cases in relation to products where Thai tariffs have been so high that no exports have taken place at all.⁵⁶

3.55 Under the Agreement, Australia has committed to eliminate all tariffs by 2010.⁵⁷ Specific arrangements for the automotive, TCF and plastics and chemicals industries will be discussed below.

3.56 The ACTU is critical of the fact that the CIE modelling does not estimate the impact of the Agreement on particular manufacturing subsectors.⁵⁸ Further, in regard to the tariff reductions, the ACTU states that

given the difficulties experienced by manufacturing in Australia and the importance of retaining policy options for a strategy to maintain and expand a high value added domestic manufacturing sector, the Commonwealth should not negotiate new free trade agreements that lock-in phase-downs of tariffs to zero. In the absence of such agreements, the Commonwealth is able to delay or amend, if appropriate for the purposes of domestic manufacturing policy, the scheduled reduction in automotive and TCF tariffs.⁵⁹

55 RIS, p. 8.

56 RIS, p. 10.

57 RIS, Annex 2, 'Australian Obligations, p. 20.

58 ACTU, *Submission*, p. 2.

59 ACTU, *Submission*, p. 3.

3.57 Similarly, the Australian Manufacturing Workers' Union (AMWU) expressed concerns to the Committee that the tariff reductions would be to the detriment of the Australian industry. Commenting on Australia's current trade deficit in manufactured products, the AMWU noted that

While Thailand has a large global trade surplus in elaborately transformed manufactures, Australia has a global trade deficit in elaborately transformed manufactures.

Given the extent and timing of tariff reductions in the ATFTA⁶⁰, it would appear that the agreement is likely to exacerbate the trend of Australia importing elaborately transformed manufactures and exporting primary products. The AMWU believes therefore that the ATFTA will contribute to the deindustrialisation or 'pastoralisation' of the Australian economy.⁶¹

3.58 Several submissions to the Committee expressed concern that the Agreement would affect employment, particularly among regional workers in the TCF and automotive industries.⁶² Dr Bill Lloyd-Smith stated that

An issue of major concern is the huge difference in wage structures between Australia and Thailand. It should be obvious to everyone that many Australian companies have moved offshore in order to take advantage of substantially lower wage costs in developing countries. It should be obvious to you that many Australians employed in local industries will probably lose their jobs.⁶³

Automotive industry

Outcomes

3.59 Australia's obligations under the Agreement include the immediate elimination of current tariffs on all passenger motor vehicles (PMVs), off-road vehicles, goods vehicles and other commercial vehicles of Thai origin. Current tariffs are 15 per cent for passenger vehicles (legislated to fall to 10 per cent on 1 January 2005) and 5 per cent for other vehicles.

3.60 The Committee notes that Thailand has made substantial commitments in regards to tariff eliminations on automotive vehicles and products. Upon entry into force of the Agreement, Thailand will eliminate its tariffs on

60 TAFTA is referred to as ATFTA in some submissions.

61 Australian Manufacturing Workers' Union (AMWU), *Submission*, p. 7.

62 Australian Fair Trade and Investment Network (AFTINET), *Submission*, p. 5; Dr Bill Lloyd-Smith, *Submission*, pp. 2-3.

63 Dr Bill Lloyd-Smith, *Submission*, p. 2.

large PMVs, which are currently at 80 per cent. The tariffs on other PMVs will be reduced from 80 per cent to 30 per cent, and will then be phased down to zero by 2010.⁶⁴

Economic benefits

3.61 The benefits to be gained from tariff reductions under the Agreement were highlighted for the Committee by Holden Australia's description of current tariff structures

Australia has been operating within a tariff structure far lower than many of its neighbours for some time, and in Holden's view, the agreement offers significant benefits for Australian automotive exporters. Thailand has maintained a relatively prohibitive structure of automotive tariffs of up to 80 per cent for vehicles and 42 per cent for components. This compares with Australia's 15 per cent tariff, which will reduce to 10 per cent in 2005. The reduction of tariffs for exports to Thailand affords opportunities for Holden and other Australian carmakers and component manufacturers to build a critical mass of production, which will be important in ensuring the ongoing viability of the industry in Australia.⁶⁵

3.62 The Committee notes analysis in the RIS suggesting that differences in comparative advantage between the Australian and Thai industries

mean that the FTA can be expected to lead to new bilateral trade flows, but in the short term this will probably represent a modest increase only in Australia's total imports.⁶⁶

The RIS attributes this outcome to the following factors

- import penetration of the Australian automobile market is already relatively high at 70 per cent (60 per cent for passenger motor vehicles)
- Thailand exports small and medium PMVs and light trucks to Australia and does not compete directly in the large-car market which is still dominated by Australian-made cars
- any cost to the Australian automotive and auto parts industry would be offset by the benefits from increased exports to Thailand following the elimination of the high tariffs (up to 80 per cent). The Thai market for large PMVs is currently quite small (about 5000 units per year), but could be expected to expand under an FTA in response to more competitive pricing. While it is possible that automotive manufacturers in Australia

64 RIS, Annex 2, 'Australian Obligations', p. 9.

65 Holden Australia, *Submission 12*, p. 1.

66 RIS, Annex 2, 'Australian Obligations', p. 9.

will source some of their parts from Thailand, the FTA also creates scope for Australian automotive parts manufacturers to increase sales by taking a larger share of the Thai automotive components market.⁶⁷

3.63 However, the Committee notes the RIS' conclusion that 'the automotive industry expects exports benefiting from the FTA to be modest initially, but to rise gradually'.⁶⁸

3.64 The Ford Motor Company of Australia advised the Committee of the benefits of the Agreement for vehicle sales

Australia's new bi-lateral trade agreements have the potential to boost the Australian economy. Australia has enjoyed two successive years of record new vehicle sales with these high sales levels carrying over into 2004. A stronger and more competitive economy has the potential to boost these new vehicle sales even further.⁶⁹

3.65 Ford Motor Company notes that there is a significant trade disparity between Australia and Thailand, that

is well illustrated by automotive export/import statistics between Australia and Thailand. In 2003, for example, automotive exports from Australia to Thailand totalled \$30.75 million. However, automotive imports from Thailand were worth more than \$1.06 billion. This significant import trade largely consisted of light pick-up trucks. The significance of this trade is such that in recent years Thailand has overtaken more established automotive supply source countries like South Korea to become Australia's fourth largest motor vehicle and parts supplier.⁷⁰

3.66 The Federal Chamber of Automotive Industries (FCAI) also commented on this disparity, stating that whilst imports from Thailand had risen

the overall level of Australian automotive exports is negligible and, if anything, has declined in recent years. Until 2001, Australia was exporting a modest quantity of medium-sized cars in 'completely knocked down' (CKD) form. However, in the past couple of years, this trade has been supplanted by an expansion in the capacity of Thai domestic industry.⁷¹

67 RIS, Annex 2, 'Australian Obligations', pp. 9-10.

68 RIS, Annex 2, 'Australian Obligations', p. 10.

69 Ford Motor Company of Australia Limited, *Submission*, p. 2.

70 Ford Motor Company of Australia Limited, *Submission*, p. 1.

71 Federal Chamber of Automotive Industries (FCAI), *Submission*, p. 2.

3.67 Ford noted the potential for the Agreement to address the current trade deficit

Ford Australia believes the proposed free trade agreement will potentially provide an opportunity for the Australian automotive industry to overcome, at least in part, the present 34:1 trade deficit it has with Thailand...Where tariffs are not immediately removed, the agreement importantly provides a timetable for their removal. In doing so, the free trade agreement provides for total free automotive trade between the two countries by 2010.⁷²

3.68 Holden Australia also made a submission in support of the Agreement, noting its already substantial trade with Thailand and stating that

In Holden's view, the most significant outcome of the agreement has been the immediate elimination of Thailand's 80% tariff on large passenger motor vehicles and we commend the Government's efforts to achieve this end result. As mentioned, Holden has commenced a low volume export program to Thailand and we expect the TAFTA will enable that program to become much larger in future years. In addition, the reduction and removal of Australia's import duties on automotive goods will also provide cost savings to Holden for the vehicles and components that we import from Thailand.⁷³

3.69 Mr Peter Sturrock of the FCAI informed the Committee of the extent of benefits to the automotive industry under the Agreement

Whilst it has been frequently observed that the Australian and Thai automotive industries offer a degree of complementarity, it is also clear that this has not been fully reflected in the growth of two-way trade in automotive products. In large part, this can be attributed to the extent of tariff and non-tariff barriers which, until now, Australian exporters have faced in securing access to the Thai market.

The proposed FTA offers Australian exporters significant opportunities for improved access to the Thai market as a result of the reduction and removal of tariffs on automotive components and vehicles.⁷⁴

3.70 Despite these opportunities, the FCAI noted that

72 Ford Motor Company of Australia Limited, *Submission*, p. 1.

73 Holden Australia, *Submission*, p. 2.

74 Mr Peter Sturrock, *Transcript of Evidence*, 26 July 2004, pp. 33-34.

The one major area of disappointment for us relates to the treatment of passenger cars with an engine capacity of less than 3,000 ccs. For these vehicles, the existing tariff of 80 per cent will not be fully eliminated on entry into force. Rather, it will be reduced to 30 per cent initially and then progressively reduced to zero by 2010.⁷⁵

3.71 However, the FCAI assured the Committee of its support for the Agreement

FCAI believes that, on balance, the proposed agreement between Australia and Thailand is consistent with Australia's broad trade policy objectives and does secure reciprocal market access gains for Australian exporters⁷⁶

And

The proposed FTA offers Australian exporters significant opportunities for improved access to the Thai market as a result of the reduction and removal of tariffs on automotive components and vehicles.⁷⁷

3.72 In response to a question from the Committee, Mr Sturrock advised that all four of the vehicle manufacturers in Australia have expressed support for the Agreement, but noted that

it does affect the different companies in differing ways, given their individual business plans. But fundamentally there has been firm support for it since its inception and early discussion, and we have been pleased with the range of discussions we have had with trade officials in its development to this point.⁷⁸

3.73 However, Mr Sturrock noted that

some vehicle importers who do not currently source product from Thailand have expressed reservations about the competitive advantage that some of their competitors may secure as a result of the preferential tariff according to imports from Thailand.⁷⁹

3.74 Ford addressed the effect of increased competition in its submission to the Committee

Ford Australia acknowledges the reductions of tariffs on Thai-sourced vehicles and components imported into Australia under

75 Mr Peter Sturrock, *Transcript of Evidence*, 26 July 2004, p. 34.

76 FCAI, *Submission*, p. 1.

77 FCAI, *Submission*, p. 2.

78 Mr Peter Sturrock, *Transcript of Evidence*, 26 July 2004, p. 36.

79 Mr Peter Sturrock, *Transcript of Evidence*, 26 July 2004, p. 34.

the free trade agreement are likely to result in some additional competitive challenges. However, most of the relevant vehicle tariffs in the case of Thailand are already no more than 5%. Furthermore, Ford Australia has a proven track record of developing award-winning vehicles within a flexible and cost effective manufacturing environment. As such, the company believes it is well-placed to meet new trade challenges while also looking for opportunities that will come from the opening of the Thai market.⁸⁰

- 3.75 The RIS states that, although the Thai market for large passenger vehicles is currently quite small, it is expected to expand under the FTA.⁸¹ Mr Sturrock advised the Committee that

with the Thai economy continuing to grow and improve, we do expect that there will be greater opportunities in that semi-luxury and luxury segment of the market. It is limited, as you said, in volume, but it is attractive to Australian manufacturers because it is a style of vehicle that we build. With the luxury versions of Holden Commodore and Ford Falcon et cetera, we see an opportunity there. There may be other models further down the track, but we see an opportunity to supply the luxury versions ... These are the obvious alternatives to some of the luxury vehicles that are sold in the Thai market. The European brands tend to dominate and be predominantly visible in the luxury segment of the Thai market.⁸²

Complementary automotive industries

- 3.76 The Committee heard that the respective product focus of the Thai and Australian automotive industries is complementary, in that Australia focuses upon medium/large passenger cars, while Thailand concentrates on small passenger cars and pick-up trucks.⁸³

- 3.77 The Committee notes the view of Holden Australia that

In view of the strength in both markets and the opportunities afforded to complement the products within these markets,

80 Ford Motor Company of Australia Limited, *Submission*, p. 2.

81 RIS, p. 10.

82 Mr Peter Sturrock, *Transcript of Evidence*, 26 July 2004, pp. 38-39.

83 Ford Motor Company of Australia Limited, *Submission*, p. 2; Holden Australia, *Submission*, p. 2.

Holden anticipates that the free trade agreement could increase two-way trade between our countries.⁸⁴

Non-tariff barriers to trade

3.78 Although the Agreement offers substantial benefits to the Australian automotive industry through the reduction of tariffs, the Committee acknowledges the importance of the removal of non-tariff barriers to trade, and notes the Ford Motor Company's statement that

It is also important the free trade agreement can provide the basis for an on-going focus on relevant non-tariff barriers and a clear administration of rules of origin.⁸⁵

3.79 Mr Sturrock advised the Committee that

while the concessions achieved in the agreement significantly reduce the existing tariff barriers faced by Australian automotive exporters, other obstacles do remain. In particular, Thailand continues to levy significant domestic excise taxes on vehicles at varying rates based on engine capacity. Given that most Australian cars are in the upper medium and large size range, future exports of such vehicles to Thailand will continue to incur excise at rates of 41 to 48 per cent. By comparison, excise on passenger cars with smaller engine capacities and light commercial vehicles is levied at lower rates—35 per cent and three to 18 per cent respectively.⁸⁶

Parts and components

3.80 Australia will reduce its tariffs on 98 per cent of the 146 tariff items covering automotive parts and components that are currently at 10 per cent or 15 per cent. These will be reduced to five per cent upon entry into force of the Agreement, and will then be eliminated in 2010. Both Thailand and Australia will eliminate tariffs on the remaining two per cent of these items upon entry into force.⁸⁷

3.81 All Australian tariffs on automotive parts and components that are currently at five per cent or below will be eliminated upon the Agreement's entry into force.⁸⁸

3.82 The AMWU has expressed concern about the impact of the ATFTA on the auto components industry in Australia, stating that

84 Holden Australia, *Submission*, p. 2.

85 Ford Motor Company of Australia Limited, *Submission*, p. 1.

86 Mr Peter Sturrock, *Transcript of Evidence*, 26 July 2004, p. 34.

87 RIS, p. 9.

88 RIS, Annex 2, 'Australian Obligations', p. 20.

The windscreen manufacturer Pilkington, has already announced the reduction of its workforce because of the loss of a 70 year old contract with Holden. The contract was lost due to increased import competition arising out of the Australia - Thailand free trade agreement.⁸⁹

- 3.83 The RIS acknowledges that while no parts manufacturers have opposed the elimination of tariffs by 2010, some have expressed mixed views on the benefits of the Agreement.⁹⁰ It further states that the concerns of parts manufacturers have been addressed through phase-in periods for tariff reductions on sensitive items.⁹¹
- 3.84 The Committee did not receive comment from any parts manufacturers nor from the Federation of Automotive Parts Manufacturers.

Textiles, clothing, footwear

- 3.85 The Committee is aware that, as stated in the RIS, the TCF industries are among Australia's most tariff-sensitive sectors. In reflection of this, TCF tariffs levels are currently up to 25 per cent (due to reduce to a maximum of 17.5 per cent in 2005). Under the Agreement, Australia will phase its tariffs on most TCF products to zero by 2010, with an initial tariff preference margin of five per cent. For 239 product lines with current tariffs of 25 per cent, the tariff will be phased to zero in 2015.⁹²

- 3.86 The RIS states that

In 2002, Thailand accounted for only 1.3 per cent of all Australia's clothing imports and 2.8 per cent of its textile imports. The relatively small tariff preference Australia has provided to Thailand would appear to make it unlikely that increased imports from Thailand would have any impact on domestic TCF products. The most likely scenario is that any increase in Thai exports would displace imports from other sources, including China. In addition, the FTA incorporates safeguards provisions to protect against damaging surges in imports resulting from the reduction or elimination of tariffs.⁹³

- 3.87 The Committee notes the comments of the Victorian Government that the Agreement will place pressure on the TCF industry, and that despite the phase-down of tariff reductions, the industry will 'nevertheless face

89 AMWU, *Submission*, p. 7.

90 RIS, p. 10.

91 RIS, p. 15.

92 RIS, p. 8.

93 RIS, pp. 8-9.

increased import competition from Thailand'.⁹⁴ The submission comments that this Agreement is one of a number of factors that, according to the Victorian Government, will negatively impact the TCF industry in Victoria.⁹⁵ The Government states that economic modelling estimates that these factors will affect employment in the TCF industry, a situation that would be exacerbated by the Agreement

The reduction and eventual elimination of TCF tariffs under the ATFTA could increase both the size and immediacy of job losses. On these grounds, it is critical that the Commonwealth Government put in place appropriate adjustment mechanisms to assist employees displaced by the further restructuring of the TCF industry.⁹⁶

3.88 However, the RIS states that although some industry members have claimed that the Agreement will impact production and result in job losses, the tariff commitments 'largely reflect those proposed by Australia's TCF sector during the negotiations'.⁹⁷

3.89 The TFIA provided comment to the Committee on the Agreement

The TFIA believes the agreement will have some benefit to the industry but the true extent will depend upon the pace of Thailand removing non-tariff barriers as well as tariffs.⁹⁸

3.90 The Agreement's Safeguards and Rules of Origin (ROOs) provisions as they apply to the TCF industry are discussed in those sections of this Chapter.

Plastics and chemicals

3.91 Australia will maintain current tariffs of five per cent on 71 plastics and chemical items until 2008, when these will be eliminated. The 71 items are those identified as sensitive.⁹⁹ Tariffs on other items will be eliminated upon the Agreement's entry into force.¹⁰⁰

3.92 The RIS states that the Plastics and Chemicals Industries Association of Australia expressed concern over tariff reductions throughout the negotiations. According to the RIS, phase-in periods on sensitive items

94 Victorian Government, *Submission*, p. 2.

95 Victorian Government, *Submission*, p. 3.

96 Victorian Government, *Submission*, p. 3.

97 RIS, p. 8.

98 TFIA, *Submission*, p. 1.

99 RIS, p. 10.

100 RIS, p. 10.

were negotiated in order to allow the industry to adjust to increased competition.¹⁰¹

Rules of origin

3.93 Under Article 402 of the Agreement, originating goods of a country are those that are either

- wholly produced in the country
- produced in the country wholly from originating materials, or
- produced in the country wholly or partly from non-originating materials.¹⁰²

3.94 In order for goods containing third country input to qualify as originating goods, the input must have undergone a specified change in tariff classification as a result of production processes occurring in the territory of either party. This approach to the determination of origin is known as 'change in tariff classification' (CTC).¹⁰³ The required change for specific products is set out in Annex 4.1 of the Agreement.

3.95 For certain products (including textiles, clothing and footwear and machinery), the good being exported must meet a further test of origin: it must contain a defined level of local content as a proportion of the overall value of the good.¹⁰⁴

3.96 The FCAI outlined the operation of the ROOs

In most instances there is a requirement that items have undergone a change in tariff classification from one heading, or related group of tariff headings, to a different heading. For some items, the agreement also provides that origin may be conferred if a minimum level of 'regional value content' (RVC) calculated on the basis of the 'transaction' (or adjusted 'FOB') value of the final product, using a build-down method (i.e. the value of non-originating materials is subtracted from the adjusted FOB value of the item).¹⁰⁵

3.97 According to Dr Simon Twisk from DFAT, the regional value content rule

101 RIS, p. 15.

102 RIS, Annex 2, 'Australian Obligations', p. 7.

103 RIS, Annex 2, 'Australian Obligations', p. 7.

104 RIS, Annex 2, 'Australian Obligations', p. 8.

105 FCAI, *Submission*, p. 4.

Involves 55 per cent regional value content requirement with, however, up to 25 per cent of that being able to be based on materials obtained from other developing countries. This was in reflection of Thailand's position that they would be unable to source materials domestically or from Australia in order to meet a higher content requirement.¹⁰⁶

- 3.98 The ROOs for the Agreement also include provisions for supplementary issues to be considered in determining the origin of a good.¹⁰⁷
- 3.99 Goods originating from one Party will not qualify for a tariff preference under the ROOs if they undergo further production in a third country prior to importation into the other Party.¹⁰⁸
- 3.100 The ROOs provisions of the Agreement are largely similar to those adopted in the AUSFTA, but differ from those of the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA).
- 3.101 The RIS states that the adoption of rules largely identical to those in the AUSFTA address industry concerns over the variation of ROOs systems in preferential trade agreements. The Committee agrees that limiting the number of systems applicable under various agreements eases the burden of compliance on industry.¹⁰⁹
- 3.102 The Committee notes that
- The TFIA's largest concern remains the potential for trans-shipment to occur through the agreement. While the relatively small tariff preference provided to Thai products may not see a large increase in Thai exports, the TFIA strongly pushed for adequate Rules of Origin (RoO) and safeguards to be included in the agreement. Such inclusions would ensure that trans-shipment remained difficult. The TFIA has some doubts over the extent to which the RoO and safeguards will do this.¹¹⁰
- 3.103 In regard to the issue of trans-shipment, the RIS states that
- It was not possible to agree with Thailand during the negotiations on a level of local content that Australian industry considered adequate to prevent trans-shipment of goods through Thailand from other countries. Against this background, the Government decided to adopt the approach that would be used in the

106 Dr Simon Twisk, *Transcript of Evidence*, 26 July 2004, p. 30.

107 RIS, Annex 2, 'Australian Obligations', p. 8.

108 RIS, Annex 2, 'Australian Obligations', p. 8.

109 RIS, p. 11.

110 TFIA, *Submission*, pp. 1-2.

Australia-United States Free Trade Agreement... This approach has the benefit of being closely linked to production processes, making it easier for exporters in both countries to understand and apply.¹¹¹

3.104 As noted to the Committee by Mr John Arndell from the Australian Customs Service

There is also the requirement that companies that are going to be trading with each other have to be registered. Exporters have to go through a registration process. They also have to go through a certificate of origin process to ensure that the goods qualify, that they meet the applicable rule of origin and therefore qualify for preference into the other country as well.¹¹²

3.105 The Committee notes comments by the AMWU that the ROOs are 'insufficient to ensure that only products which are substantially produced in Australia or Thailand obtain concessional treatment under the agreement'.¹¹³ The AMWU also stated that there is a degree of arbitrariness in the tariff treatment of products under the change in tariff classification approach¹¹⁴

Merely because a good may have changed (or may have not changed) tariff classification in a country does not mean that a product was (or was not) substantially produced in that country. The AMWU is not satisfied that the additional requirements attached to some products will be sufficient to remedy this problem. Regional content value requirements of between 40 and 45% would appear to be inadequate. Why should a product [which] undergoes 60% of its manufacture in another country be considered to be a product manufactured in Thailand?¹¹⁵

Industry-specific application of the ROOs

Textiles, clothing and footwear industry

3.106 The Committee notes that under TAFTA, the ROO applying to textiles significantly differs from its AUSFTA equivalent. In contrast to AUSFTA's 'yarn forward' rule, TAFTA uses a simpler CTC requirement with an RVC of 55 per cent. At least 30 per cent of the RVC must be sourced from either

111 RIS, p. 11.

112 Mr John Arndell, *Transcript of Evidence*, 26 July 2004, p. 30.

113 AMWU, *Submission*, p. 12.

114 AMWU, *Submission*, p. 12.

115 AMWU, *Submission*, p. 12.

Thailand or Australia, and the remaining 25 per cent may be sourced from a developing country, but must still undergo the same change in classification required for non-originating inputs.¹¹⁶

3.107 In explaining the operation of the TCF ROOs, and how they differed from those in the AUSFTA, Dr Twisk stated

For textiles and clothing in the US FTA there is what is called a yarn or fibre forward rule which effectively requires the materials right from the earliest stage of production to have been obtained from within the parties to that FTA. It would be pretty much impossible to meet a rule like that between, say, Australia and Thailand, given the reliance on importing materials that the industries in both countries would have. A rule like that would not allow trade to occur under the FTA. In fact, that type of rule was not one that was, I understand, favoured by the Australian industry in the US context. As I understand it, the product specific rules that we have used for the Thai FTA come from an Australian proposal which was initially prepared in the context of the US FTA through consultations with industry et cetera.¹¹⁷

3.108 However, the TFIA contradicted this statement in its submission, stating that

While the TFIA compromised from its original position on RoO — those applying under the Australia-New Zealand Closer Economic Relations Trade Agreement — to a CTC measure with a RVC of 55%, its at no time proposed nor agreed to the addition of developing country content in the origin calculation for Thai TCF products. The TFIA remains disappointed that such a decision was made and as such objects to its inclusion.¹¹⁸

3.109 The Committee notes comments in the RIS that

This ROO offers the Thai textiles and clothing industry the scope to maintain its current sourcing and production practices and to export to Australia under the FTA, which was a high priority for the Thai Government in the negotiations. However, given the size of the tariff preference that Australia has offered to Thailand in this sector under the FTA ... the ROO is unlikely to lead to any noticeable increase in imports in the first five to ten years after implementation.¹¹⁹

116 RIS, p. 12.

117 Dr Simon Twisk, *Transcript of Evidence*, 26 July 2004, p. 30.

118 TFIA, *Submission*, p. 2.

119 RIS, p. 12.

- 3.110 However, in its submission to the Committee, the TFIA expressly disagrees with this statement, commenting that
- for many TCF products the cost structures are such that even a small tariff preference would be enough to see a substantial increase in exports from a country.
- More importantly the TFIA would also question how much benefit it provides for Thailand as in many cases it will put value add outside of the Thai TCF industry. The Australia-Thailand Free Trade Agreement is meant to aid Australia and Thailand yet through these RoO many other countries will receive additional benefit from the agreement.¹²⁰
- 3.111 The TFIA argues that the rules effectively benefit countries that Australia does not have a bilateral trade agreement with vis-à-vis those with which it does.¹²¹
- 3.112 Further, the Committee notes the submission of the TFIA that
- This rule effectively allows TCF products from Thailand to enter under the preferential tariff rate where they have only 30% Thai content and 70% non-Thai or non-Australian content. The TFIA believes that this exposes the agreement to possible trans-shipment and may lead to increased imports.¹²²

Auto industry

- 3.113 For the automotive sector, the ROO requires the product to have undergone a change in tariff classification, and to have met the specified RVC, which varies between products. The specified RVC must be made entirely of Thai product.¹²³
- 3.114 Mr McKellar presented to the Committee the views of the automotive industry on the TAFTA ROOs
- Under this agreement, for most automotive products the minimum regional value content threshold is set at 40 per cent. This is a requirement that all current Australian manufactured vehicles would have very little difficulty in complying with. From that point of view, I think Australian industry is quite comfortable that there is no difficulty in meeting the threshold set in the rules of origin under this agreement...If anything, I think Australian

120 TFIA, *Submission*, p. 2.

121 TFIA, *Submission*, p. 2.

122 TFIA, *Submission*, p. 2.

123 RIS, p. 12.

industry from a defensive standpoint would have been more comfortable with a slightly higher figure.¹²⁴

3.115 The Committee also notes the comments of Holden Australia

As mentioned, the negotiations with Thailand have resulted in the adoption of a price-based methodology for determining regional value content. While Holden has been supportive of the alternative cost-based methodology due to the greater transparency in outcomes, we appreciate that for developing countries this methodology may be difficult to adopt.¹²⁵

Sanitary and Phytosanitary (SPS) measures

3.116 The Agreement reaffirms that decisions affecting quarantine and food safety will continue to be made on the basis of existing procedures, including scientific assessment of risk. The Parties' existing rights and obligations under the WTO Agreement on Sanitary and Phytosanitary Measures are affirmed.

3.117 DFAT's RIS Annex 2 states that

nothing in the Chapter undermines the right of either country to determine the level of protection it considers appropriate. The two countries have agreed to enhance consultation and cooperation on SPS issues to improve understanding of each country's measures and regulatory systems, and to work together to improve efficiencies in quarantine operations and associated regulatory processes. They will also cooperate internationally in these areas. An Expert Group will be established for this purpose, and will supplement the existing Joint Working Group on Agriculture.¹²⁶

3.118 The Australian Chicken Meat Federation (ACMF) has expressed a number of concerns to the Committee regarding the operation of the SPS Chapter. The ACMF outlined for the Committee the threat that imported chicken meat product from Thailand presents to the Australian industry

Thailand has numerous exotic strains of avian diseases — most notably at the present time highly pathogenic Avian Influenza (Asian Bird Flu) — from which Australia is free. More recently

124 Mr Andrew McKellar, *Transcript of Evidence*, 26 July 2004, p. 35.

125 Holden Australia Ltd, *Submission*, p. 3.

126 RIS, Annex 2, 'Australian Obligations', p. 11.

there has been an outbreak of virulent Newcastle disease in Thailand.

Relaxation of Australia's strict, quarantine protection would result in a flood of low cost subsidised chicken meat imports from the world's major exporters, including Thailand, which could not only devastate the Australian industry and its environment with exotic diseases, but also result in huge economic costs.¹²⁷

- 3.119 Of particular concern to the ACMF is the possibility that because of the unique WTO "MFN" principles governing SPS and quarantine, Chapter 6 of the TAFTA will have to be extended to all countries ...Chapter 6 when extended multilaterally will significantly change Australia's quarantine regime and the justifiable biosecurity protection on which Australian industries have relied.¹²⁸

3.120 Further

ACMF is concerned that Chapter 6 of the TAFTA establishes new mechanisms and consultation arrangements on quarantine, including the establishment of an Expert Group on SPS supplementing a Joint Working Group on Agriculture, which will allow Thailand - through the back door - to continue its campaign to break down Australia's quarantine regime on chicken meat, and by-pass Australia's existing IRA processes.¹²⁹

3.121 ACMF also notes that

Australia provides in the TAFTA a significant new relaxation in its control over quarantine by agreeing not to ban trade on the breach of SPS and food standards by another country but only to investigate and remedy the particular shipment in question while trade continues. This appears to be a fundamental change to Australia's existing strict quarantine control.¹³⁰

3.122 Further concerns expressed by the ACMF include

- that there is no obligation for industry consultation on the work program of the Expert Group¹³¹

127 Australian Chicken Meat Federation (ACMF), *Submission*, p. 1.

128 ACMF, *Submission*, p. 2.

129 ACMF, *Submission*, p. 2.

130 ACMF, *Submission*, pp. 2-3.

131 ACMF, *Submission*, p. 3.

- that the SPS Chapter does not exclude retrospective application to Australia's existing quarantine Protocols, and IRAs already underway¹³²

3.123 The Committee acknowledges the concerns of the ACMF, but is satisfied by DFAT's statement that

there is nothing in this agreement that would compromise Australia's SPS quarantine regime. As I said in my opening statement, the chapter in the agreement on sanitary and phytosanitary measures essentially reiterates both countries' commitments under the WTO agreement. It does establish an officials-level committee to regularise the contacts between the relevant authorities in both countries on these issues. But is clear from the chapter and from the terms of reference for that committee that the science based approach to quarantine in both countries remains the overall guiding principle.

Therefore, we continue to maintain the position that there is no way in an FTA that countries can somehow or other create a preferential scientific track for FTA partners. It is simply not possible and it is inconsistent with the WTO agreement.¹³³

Trade in services

3.124 The Committee notes that the Services provisions of the Agreement take a positive-list approach, similar to that in the General Agreement on Trade in Services (GATS), whereby those services to which the Services Chapter applies are listed definitively. This differs to the negative-list approach of the AUSFTA.

3.125 The Services provisions do not apply to subsidies or grants provided for the supply or consumption of a service or in relation to an investment, or to services supplied in the exercise of government authority, or to government procurement or measures affecting individuals of one Party seeking access to the other for employment purposes. The right of Parties to regulate services in their territories is preserved under the Agreement.¹³⁴

3.126 The Services Chapter applies to all modes for the supply of services and is based on the GATS. The Chapter incorporates those GATS provisions

132 ACMF, *Submission*, p. 3

133 Mr Justin Brown, *Transcript of Evidence*, 26 July 2004, p. 28.

134 RIS, Annex 2, 'Australian Obligations', pp. 12-13.

relating to domestic regulation, monopoly service providers, financial services, air services and telecommunications. It also provides for the cooperation of relevant bodies in each country in developing arrangements for the recognition of professional or educational qualifications granted in the other country. The Chapter provides for enhanced cooperation in a range of areas, in addition to specific commitments for liberalisation relating to market access and national treatment. Where a country extends better access to a third country, the other country may request that such treatment also be extended to it, but there is no obligation to do so under the Agreement.¹³⁵

3.127 The Committee notes that the Australian Fair Trade and Investment Network (AFTINET) and the ACTU both supported the 'positive list' approach of the Services provisions.¹³⁶ However, AFTINET stated that

TAFTA contains the same flawed definition of "public services" used in the GATS agreement...Article 803 clause 2 of TAFTA provides that the services chapter shall not apply to 'a service supplied in the exercise of governmental authority... which means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers'...Ambiguity arises about which services are covered by this exemption because in Australia, as in many other countries, public and private services are provided side by side. This includes education, health, water, prisons, telecommunications, energy and many more.¹³⁷

3.128 Although acknowledging DFAT assurances that public services will not be caught under this definition, AFTINET asserts that public services should be 'formally and unambiguously exempted from trade agreements, including TAFTA'.¹³⁸

3.129 The ACTU submission alleges that, according to 'officials of DFAT', the consistency with GATS commitments is 'Thailand's policy, and falls short of Australia's ambitions for the services sector and the Services Chapter of the agreement'.¹³⁹

3.130 Further, the ACTU expressed concern that

Australia's services sector commitments may be altered as a result of the second round of negotiations prescribed by Articles 812.1.

135 RIS, Annex 2, 'Australian Obligations', p. 13.

136 AFTINET, *Submission*, p. 6; ACTU, *Submission*, p. 1.

137 AFTINET, *Submission*, p. 7.

138 AFTINET, *Submission*, p. 7.

139 ACTU, *Submission*, p. 1.

The ACTU cannot be comfortable with the ATFTA outcome on services until this second stage process is completed.¹⁴⁰

3.131 The Committee inquired into the reason for the statement in the NIA that the TAFTA includes 'binding commitments that go beyond Australia's existing WTO obligations and limit the Government's flexibility in adopting new regulations in some areas in the future.'¹⁴¹ Mr Brown responded that there are

some differences between the commitments we have made to Thailand and those that are currently bound by Australia in the WTO as part of the Uruguay Round package. The approach we took with Thailand was to essentially bind the services offer that has been tabled as part of the current Doha Round of negotiations ... So what this sentence is saying is that the commitments we have made as part of the TAFTA do go beyond our Uruguay Round commitments but, very importantly, they are essentially identical to those commitments that we have tabled as a conditional offer as part of the Doha Round.¹⁴²

3.132 Further to this, he stated that the commitments in the Agreement, although essentially the same as those made in the Doha Round

do exceed in a number of respects the commitments made 10 years ago in the Uruguay Round. The difference between the two is simply that more sectors have been added ... Very importantly, the commitment that we have made to Thailand is, again, a so-called standstill commitment. It does not represent any undertakings by Australia to liberalise or to roll back existing levels of regulation. The differences are essentially that, as part of our final range of commitments to Thailand, some sectors and subsectors have been added that were not included in our Uruguay Round commitments on services.¹⁴³

3.133 Mr Brown highlighted particularly

the commitments we have made in relation to Thai massage services and Thai chef cooking services, which were particular issues of interest to the Thai government and which do not form part of our multilateral commitments at the moment.¹⁴⁴

140 ACTU, *Submission*, p. 1.

141 NIA, para. 14.

142 Mr Justin Brown, *Transcript of Evidence*, 26 July 2004, p. 27.

143 Mr Justin Brown, *Transcript of Evidence*, 26 July 2004, p. 31.

144 Mr Justin Brown, *Transcript of Evidence*, 26 July 2004, p. 27.

Investment

- 3.134 The Committee notes that the Investment Chapter includes commitments to liberalise investment in non-services sectors, but that these commitments do not apply to subsidies or grants or to government procurement.¹⁴⁵
- 3.135 The Chapter includes provisions concerning the national treatment of investors of the other Party (with exceptions) and the protection of investments, including an agreement not to expropriate investments made by investors of the other Party except for a public purpose, on a non-discriminatory basis, and with compensation. Investors may transfer funds freely, except where the other Party is facing difficulties in balance of payments or external finances.¹⁴⁶

Investment dispute resolution

- 3.136 The Investment Chapter of the Agreement provides for a dispute resolution process for disputes arising under the Chapter. These provisions allow an investor of one country to directly challenge the other country in either the other country's courts or in an international arbitral tribunal with the power to make binding decisions. The RIS states that this provision is 'designed to give additional protection to Australian investors in Thailand.'¹⁴⁷
- 3.137 The Committee notes that this dispute settlement arrangement differs from that of the AUSFTA, which allows investors of one country to challenge the other country in that country's courts, but not in an international arbitral tribunal.
- 3.138 The Committee received submissions expressing concern that the inclusion of an investor-state dispute mechanism
- gives investors significantly increased rights to directly bring challenges to laws and policies of the other country. These disputes are arbitrated by panels of trade law experts, although the questions raised by them frequently impact on public policy questions. The dispute panels are not open to the public, unlike the domestic court processes of a country...AFTINET has consistently opposed this process, as it gives corporations

145 RIS, Annex 2, 'Australian Obligations', p. 13.

146 RIS, Annex 2, 'Australian Obligations', p. 14.

147 RIS, Annex 2, 'Australian Obligations', p. 14.

unreasonable legal powers to challenge government law and policy.¹⁴⁸

3.139 However, in relation to the statement that the dispute panel would not be open to the public, the Committee notes comments by Mr Stephen Bouwhuis of the Attorney-General's Department that the tribunal would make public its decision, including the reasons for that decision, which would be widely available through legal journals and law reports and on the Internet.¹⁴⁹

3.140 Further, the Committee notes comments by Mr Bouwhuis in response to AFTINET's claim that the provisions would give corporations 'unreasonable legal powers to challenge government law and policy'

Investor-state provisions have been common in all of the investment agreements which Australia has entered into...They are also a common feature of the some 2,000 bilateral investment treaties concluded worldwide. They basically provide investors with an alternative to relying on domestic courts where there is some sort of question about the procedures in the domestic courts. Generally, it is common to include these sorts of provisions when a developed state is concluding an agreement with a developing state...To date, there has not been a single action brought against Australia under any of those 19 investment agreements or under the Singapore-Australia free trade agreement, which contains similar provisions. I think the kinds of comments made in some of the submissions are perhaps a little overstated in relation to investor-state provisions generally.¹⁵⁰

3.141 In response to a question from the Committee regarding the decision-making process of an arbitral tribunal set up to review a dispute, Mr Bouwhuis advised the Committee that the tribunal

would look primarily at the provisions of the agreement and any kind of clarifying statements the government has put out with regard to the agreement. They may have regard to general international law and there may be cases which they take into account. That would be fairly common practice...They would look at the body of jurisprudence which may exist in relation to the various articles. I should stress that, primarily, they would be looking at the text of the agreement and the kinds of comments

148 AFTINET, *Submission*, p. 8. Similar concerns were also expressed by the ACTU, *Submission*, p. 2 and the Australian Conservation Foundation (ACF), *Submission*, p. 2.

149 Mr Stephen Bouwhuis, *Transcript of Evidence*, 26 July 2004, p. 26.

150 Mr Stephen Bouwhuis, *Transcript of Evidence*, 26 July 2004, pp. 26-27.

which governments have put out interpreting those various provisions.¹⁵¹

- 3.142 The Committee acknowledges those concerns expressed in submissions, but is assured by the response provided by the Attorney-General's Department.

Temporary movement of business people

- 3.143 The Agreement makes provision for the temporary entry of intra-corporate transferees, contractual service suppliers and business visitors. These provisions permit 90 days for business visitors and longer periods for intra-corporate transferees and contractual service suppliers. Entrance for longer periods is permitted in accordance with the commitments in Annex 8 to the Agreement. Applications for immigration will be processed expeditiously and will be transparent. Thailand will notify Australia of its documentary requirements for application for temporary entry, which are simplified under the Agreement. The Agreement does in no way affect the rights of either country to regulate immigration.¹⁵²

Electronic Commerce

- 3.144 The Electronic Commerce Chapter of the Agreement contains provisions to ensure that trade conducted electronically between Australia and Thailand remains free. The two countries have agreed to work together to promote electronic commerce. Both countries have agreed to maintain the current practice in not imposing customs duties on electronic transmissions between the two countries. The Chapter's provisions detail the aims of the Parties in relation to domestic regulation, electronic authentication, the protection of customers and personal data and paperless trading.¹⁵³

Competition policy

- 3.145 In the Competition Policy Chapter, the Parties affirm that they will facilitate trade and investment through the promotion of competition and

151 Mr Stephen Bouwhuis, *Transcript of Evidence*, 26 July 2004, p. 25.

152 RIS, Annex 2, 'Australian Obligations', pp. 14-15.

153 RIS, Annex 2, 'Australian Obligations', p. 15.

the curtailment of anti-competitive practices. The Parties will cooperate on competition law enforcement.¹⁵⁴

Intellectual Property

3.146 The Agreement's Intellectual Property Chapter aims to increase benefits from trade and investment by protecting and enforcing intellectual property rights. The Parties affirm the provisions of the WTO Agreements on Trade Related Aspects of Intellectual Property (TRIPS) and other relevant multilateral agreements. The Parties agree to take measures to prevent the export of goods that infringe copyright or trade marks, and will cooperate to eliminate trade in goods that infringe intellectual property rights, and to increase awareness of intellectual property rights.¹⁵⁵

Government Procurement

3.147 The Chapter establishes that a bilateral working group of officials are to report within 12 months of the Agreement's entry into force on the scope for commencing negotiations aimed at developing rules, procedures and transparency standards to be applied in the conduct of government procurement. Pending this, the Parties agree to apply transparency, value for money, open and effective competition, fair dealing, accountability and due process and non-discrimination in their procurement procedures. The Chapter also provides for the exchange of information on relevant laws and policies.¹⁵⁶

3.148 The Committee notes the statement by the Queensland Government that no commitments will be made on government procurement except to consider in the first twelve months of the CERFTA whether to enter into negotiations on government procurement. As any agreement of this nature would have significant implications for Queensland I look forward to the opportunity for Queensland to be consulted on, and provide input into, any future discussions regarding government procurement arrangements.¹⁵⁷

154 RIS, Annex 2, 'Australian Obligations', p. 16.

155 RIS, Annex 2, 'Australian Obligations', p. 16.

156 RIS, Annex 2, 'Australian Obligations', p. 17.

157 Queensland Government, *Submission 10.1*, p. 1.

General exceptions

3.149 There are a number of general exceptions that will apply to the Agreement. These relate to the General and Security Exceptions of GATT Articles XX, XXI, and GATS XIV and XIV bis. The Agreement will not require the disclosure of confidential information contrary to the public interest or legitimate commercial interests. The Parties are allowed flexibility under the Agreement in facing serious balance of payments or other external financial difficulties. Neither Party is prevented from taking action to protect investors, depositors, policy holders or others owed a fiduciary duty by a service supplier, nor to ensure the integrity and stability of its financial system. The Agreement only imposes rights or obligations with respect to taxation measures where there is a corresponding right or obligation under the WTO Agreement or in relation to the expropriation of assets. Where there is an inconsistency between the Agreement and the 1989 double tax agreement between the Parties, the tax agreement will prevail.¹⁵⁸

Institutional Provisions

3.150 A Free Trade Agreement Joint Commission (FTA Joint Commission) is established to ensure the proper implementation of the Agreement and to periodically review the economic relationship and partnership between the Parties. The FTA Joint Commission will meet within one year of the Agreement's entry into force and then again each year, or as otherwise agreed. There will also be general review of the operation of the Agreement at ministerial level within five years of entry into force and at least once every subsequent five years.¹⁵⁹

3.151 Mr Brown advised the Committee that these provisions are intended to provide opportunities to revisit and review various parts of the agreement as circumstances change. These reflect the intention of both countries that the agreement should not be static and that modification should be considered where that would be consistent with the aim of the agreement to boost trade and investment linkages.¹⁶⁰

158 RIS, Annex 2, 'Australian Obligations', p. 18.

159 RIS, Annex 2, 'Australian Obligations', p. 19.

160 Mr Justin Brown, *Transcript of Evidence*, 26 July 2004, p. 22.

Dispute resolution

- 3.152 Under the Agreement, dispute resolution is to occur through a 'fair, transparent, timely and effective procedure'.¹⁶¹ Any disputes occurring between the Parties are to be resolved firstly through consultations. Where these fail, disputes may be referred to an arbitral tribunal. The tribunal is to consist of three members, one appointed by each Party, and the third (the Chair) appointed by the two members.¹⁶²
- 3.153 The dispute settlement provisions of the Agreement do not apply to the SPS chapter. Disputes arising over SPS issues will be determined by WTO provisions. The dispute settlement procedure is also not applicable to chapters where the provisions do not confer specific rights.¹⁶³
- 3.154 Dispute resolution provisions concerning disputes that arise under the Investment Chapter of the Agreement have been considered at Paragraph 3.139 of this report.

Environment and labour

- 3.155 The Committee notes that criticisms have been levelled at the TAFTA because, unlike the AUSFTA, it does not contain specific provisions on labour or the environment.¹⁶⁴
- 3.156 The Committee notes the concerns expressed in submissions over Thailand's labour record, particularly in the TCF industry.¹⁶⁵ In reference to a report prepared by the International Confederation of Free Trade Unions (ICFTU) for the WTO General Council, the ACTU stated that

According to the ICFTU report, Thailand has ratified only four of the eight core ILO [International Labor Organisation] labour conventions. Thailand has not ratified the Conventions on the Right to Organise and Collective Bargaining, Freedom of Association, Discrimination, and Minimum Age. The Report provides examples of problem with Thai labour law, restrictions on the right to organise, conditions in the garment industry, the prevalence of forced labour and child labour, exploitation of

161 RIS, Annex 2, 'Australian Obligations', p. 19.

162 RIS, Annex 2, 'Australian Obligations', p. 19.

163 RIS, Annex 2, 'Australian Obligations', p. 19.

164 ACF, *Submission*, p. 1; AFTINET, *Submission*, p. 8; ACTU, *Submission*, p. 3.

165 ACTU, *Submission*, p. 3; AFTINET, *Submission*, p. 8; AMWU, *Submission*, p. 9; The Uniting Church in Australia, *Submission*, pp. 1-2.

migrant workers, and punitive actions by employers to prevent the establishment of unions in their premises.¹⁶⁶

3.157 It was stated that, given these conditions, the failure to include provisions on labour is ‘particularly damaging’¹⁶⁷ and may ‘further entrench human rights abuses’¹⁶⁸.

3.158 The Australian Conservation Foundation (ACF) states that the omission of labour and environment provisions

underscores the federal government’s continual failure to acknowledge any link between the pursuit of trade liberalisation, on the one hand, and the many issues surrounding sustainable development on the other. This omission is particularly troubling when one considers that the FTA has been negotiated with Thailand, a developing country with numerous environmental and social problems.¹⁶⁹

3.159 In response to a question from the Committee as to why such provisions were not included, Mr Brown stated

this agreement is very much modelled on the Singapore example, which as you can see excludes any provisions chapters on environment and labour. It is Australian government policy in relation to this particular FTA not to include chapters on environment and labour.¹⁷⁰

3.160 The Committee also requested comment on the impact the Agreement would have on labour conditions and environmental degradation in Thailand, given that provisions on these matters were excluded. Mr Brown replied

As to your question on the impact on labour standards and environmental standards and performance in Thailand of the exclusion of those from this agreement, I guess that opens up the question as to how effective trade leverage might be in improving those standards. Frankly, it is not something which I am very well qualified to comment on. Opinions vary. In the United States, for example, there is a view that they can act as a valuable mechanism for improving labour and environmental standards. The Australian government’s position, particularly in relation to

166 ACTU, *Submission*, p. 3.

167 AMWU, *Submission*, p. 9.

168 The Uniting Church in Australia, *Submission*, pp. 1-2.

169 ACF, *Submission*, p. 6.

170 Mr Justin Brown, *Transcript of Evidence*, 26 July 2004, p. 29.

developing country FTA partners, is that they are counterproductive and would, in many respects, compromise some of our other core objectives in these agreements. As to their overall impact, in terms of our limited economic power with countries such as Thailand, they are some of the factors that have driven, or have been reflected in, the government's policy not to pursue these kinds of provisions in FTAs with developing countries.¹⁷¹

- 3.161 Mr Brown also assured the Committee that it was expected that, over time, Thailand would take on additional labour and environmental commitments

Thailand aspires to developed country status, so I think, over time, it is reasonable to assume that it will begin to take on commitments not only in the trade field but also in the environment and labour field which reflect those aspirations. But that will be a process that will take some time. We are seeing some progress in Thailand. There has certainly been an enhanced determination by the current Thai government to improve its performance in this area as a result of a lot of criticism that you have just referred to. At the moment, though, I think it is fair to say that their domestic regulatory regime is not yet at developed country standard, but it is improving, and Australia is working with Thailand, both bilaterally and in multilateral agreements, to try to continue that improvement.¹⁷²

Environmental effects of the Agreement

- 3.162 The Committee notes concerns that the potential environmental impacts of the Agreement, for both Australia and Thailand, have not been assessed in either the NIA or the RIS.¹⁷³
- 3.163 In its submission to the Committee the ACF expressed concern that the TAFTA threatens Australia's existing environmental laws and fetters Australian governments seeking to legislate to protect the environment or act on other matters important to Australia's economic and social welfare.¹⁷⁴

171 Mr Justin Brown, *Transcript of Evidence*, 26 July 2004, p. 29.

172 Mr Justin Brown, *Transcript of Evidence*, 26 July 2004, pp. 29-30.

173 ACF, *Submission*, pp. 1 and 8.

174 ACF, *Submission*, p. 1.

- 3.164 The ACF argues that this can occur under the Investment Chapter of the Agreement, where an investor challenges the laws of a country in regard to regulation or expropriation of an investment.¹⁷⁵ The ACF is also concerned that the services provisions of the Agreement liberalise services such as construction and engineering, environmental (waste management and biodiversity and landscape), tourism services and transport services, which could result in a negative impact on the environment.¹⁷⁶

Developing country

- 3.165 The Committee notes that the Minister for Foreign Affairs has listed Thailand as a developing country for the purposes of Australian overseas aid.¹⁷⁷ The Committee received a submission from AFTINET which states that

the RIS and NIA do not address the issue of how Australia's approach to these negotiations fits within Australia's foreign policy objectives regarding developing countries.¹⁷⁸

The submission then states AusAID's objective as 'advancing Australia's interests by assisting developing countries to reduce poverty and achieve sustainable development'.¹⁷⁹

- 3.166 AFTINET goes on to state that

It is notable that there is no discussion in the DFAT and Ministerial documents of how this trade agreement will promote or otherwise affect these development goals. Accordingly, it is difficult to know whether the goals are more than mere rhetoric when it comes to trade negotiations with developing countries.¹⁸⁰

- 3.167 The Committee questioned DFAT over the consistency of its approach to trade and development matters. In response to this, Mr Brown stated:

I might preface my answer by pointing out that the Thai government is very keen to promote Thailand as a developed

¹⁷⁵ ACF, *Submission*, pp. 2-3.

¹⁷⁶ ACF, *Submission*, p. 5.

¹⁷⁷ List of Developing Countries as Declared by the Minister for Foreign Affairs, <<http://www.ausaid.gov.au/ngos/display.cfm?sectionref=2789411849>> (accessed 27 August 2004).

¹⁷⁸ AFTINET, *Submission*, p. 3.

¹⁷⁹ Australian Agency for International Development (AusAID), *AusAID Strategic Plan: Improving effectiveness in a changing environment*, Canberra, 2001, cited in AFTINET, *Submission*, p. 3.

¹⁸⁰ AFTINET, *Submission*, p. 3.

country in the future and that Prime Minister Thaksin has spoken about his desire for OECD membership and for terminating all aid flows. Be that as it may, at the moment Thailand is a developing country and it is treated as such by Australia...all free trade agreements are different and certainly this agreement in many respects is very different to the agreements we have concluded with Singapore and the United States. Those differences reflect the fact that Thailand is a developing country and it has capacity constraints and other factors which do not enable it to reach the same degree of commitment¹⁸¹

3.168 Mr Brown then explained how these constraints influenced Australia's approach to negotiations

we have set some boundaries, some markers, which in our view are not negotiable, such as comprehensive liberalisation of trade flows. But in other respects there is flexibility in the FTA model to take account of the developing country status of the partner...there is scope in the agreement to make allowances where the developing country partner has some concerns or issues for which they feel they need some consideration.¹⁸²

3.169 Mr Brown noted that, in comparison to Agreements with the United States and Singapore, allowances were made for Thailand's developing country status in provisions such as those for intellectual property, government procurement, and in the tariff phasing arrangements.¹⁸³

Entry into force

3.170 The TAFTA will enter into force 30 days after both Parties provide written notice that their internal processes for entry into force have been fulfilled. The NIA states that entry into force is expected to occur at the beginning of 2005.¹⁸⁴

3.171 The Committee notes that Thailand requires only administrative, rather than legislative action for implementation of the Agreement, and that this process is currently well advanced.¹⁸⁵

181 Mr Justin Brown, *Transcript of Evidence*, 26 July 2004, p. 28.

182 Mr Justin Brown, *Transcript of Evidence*, 26 July 2004, p. 28.

183 Mr Justin Brown, *Transcript of Evidence*, 26 July 2004, p. 28.

184 NIA, para. 2.

185 Mr Justin Brown, *Transcript of Evidence*, 26 July 2004, p. 23.

Implementation

- 3.172 Implementation of the Agreement will require amendment to the *Customs Tariff Act 1995* and the *Customs Act 1901* to incorporate the preferential tariff rates that will apply to goods imported from Thailand under the Agreement. Amendments to these Acts may also be required to implement the Agreement's provisions on safeguards.¹⁸⁶
- 3.173 The Committee notes that the Customs Amendment (Thailand-Australia Free Trade Agreement Implementation) Bill 2004 and the Customs Tariff Amendment (Thailand-Australia Free Trade Agreement Implementation) Bill 2004 were presented to the House of Representatives on 11 August 2004 but lapsed with the dissolution of the House of Representatives on 31 August 2004. Both bills were reintroduced to the House on 17 November 2004 and were passed by the Senate without amendment on 18 November 2004.

Costs

- 3.174 The NIA states that, according to estimates undertaken by the Treasury, the financial cost of the Agreement to the Commonwealth Government will be \$45 million in 2004/05, \$90 million in both 2005/05 and 2006/07 and \$110 million in 2007/08.¹⁸⁷
- 3.175 These estimates are based upon the expected loss of tariff revenue from imports from Thailand, and include assumptions that the Agreement will enter into force on 1 January 2005 and that imports from Thailand would grow steadily over time in line with the domestic economy. The estimates do not account for additional lost tariff revenue that could arise if imports from Thailand displaced imports from other countries. However, estimates also do not account for the potential economic growth that the Agreement may generate, or for any additional taxation revenue that may result from such growth.¹⁸⁸

186 NIA, para. 12.

187 NIA, para. 15.

188 NIA, para. 15.

State and Territory Governments

3.176 According to the NIA, the Agreement ‘will not have a substantial impact on the States and Territories’, and no change will be required to State or Territory legislation.¹⁸⁹

3.177 The Victorian Government outlined for the Committee the benefits it expected to receive from the Agreement

Victorian industry stands to gain from increased export opportunities, particularly the automotive, agriculture (particularly dairy, beef and cereals) wine, confectionery, energy and aluminium industries. While there are no substantive gains in services, the ATFTA will provide opportunities for services liberalisation in the medium term (especially in education and flexibility in the movement of business people). The ATFTA will also provide for increased investment flows as a result of Australian firms gaining the ability to take-up majority equity participation in a range of sectors, including mining.¹⁹⁰

3.178 The Queensland Government also expects benefits as a result of the Agreement

Thailand has traditionally been a difficult market for many Queensland exporters to access because of high average tariffs and very high tariff peaks in products of interest to Queensland companies. I am optimistic that the proposed agreement will make a range of Queensland products more competitive in the growing Thai market.¹⁹¹

3.179 However, both the Queensland and Victorian Governments noted concerns over the impact of the Agreement, with the Queensland Government submitting that

reductions in some Thai tariffs, particularly on a range of agricultural products, will occur over long phase-in periods, yet the removal of the majority of Australian tariffs on Thai imports will occur from entry into force. It is therefore likely that some industry sectors would be at risk of being negatively affected by this agreement¹⁹²

189 NIA, para. 16.

190 Victorian Government, *Submission*, p. 2.

191 Queensland Government, *Submission 10.1*, p. 1.

192 Queensland Government, *Submission 10.1*, p. 1.

and the Victoria Government stating

The Victorian Government supports in principle the ATFTA and recognises the potential flow-on benefits for the Victorian economy. An effective ATFTA will increase trade and investment with Thailand and improve economic links generally. However, while some Victorian industry sectors stand to gain from increased export opportunities, the ATFTA is likely to negatively impact on Victoria's Textiles, Clothing and Footwear (TCF) industry.¹⁹³

Consultation with State and Territory Governments

3.180 The NIA states that

The States and Territories were consulted throughout the negotiations through meetings in capitals, joint meetings in Canberra and through other forums such as the National Trade Consultations.¹⁹⁴

3.181 The Victorian Government agreed that

Over the course of the ATFTA negotiations, the Commonwealth Government consulted with the Victorian Government and was aware of its key concerns regarding a potential ATFTA.¹⁹⁵

3.182 The ACT Government has stated that it has no objection to Australia taking binding treaty action in relation to the Agreement, but expressed concern that

Although the consultation annex of the National Interest Analysis on TAFTA states that consultation with States and Territories was a 'high priority during the negotiations', it should be understood that the level of consultation on this agreement was much less substantial than that undertaken in relation to both the Australia-Singapore Free Trade Agreement and Australia-United States Free Trade Agreement (AUSFTA).¹⁹⁶

3.183 In response to questions from the Committee regarding the level of consultation, Mr Brown stated

We consulted with the state and territory governments throughout the negotiations and none of the other state and territory governments have raised these kinds of concerns...An important

193 Victorian Government, *Submission*, p. 1.

194 NIA, para. 16.

195 Victorian Government, *Submission*, p. 1.

196 ACT Government, *Submission*, p. 1.

difference between the Singapore FTA and the Thai FTA is that, in respect of Singapore, many of the consultations with the states and territories were over issues such as government procurement and services. In that case a negative list approach was taken and therefore the potential implications for state and territory regulatory flexibility were quite significant. In this case, those concerns simply do not arise. The substance, if you like, of the negotiations was not as relevant to the states and territories. I can only assume that the reservations or concerns that have been raised by the ACT government reflect a misunderstanding of the differences between the two agreements and perhaps they have not yet studied the fine print on government procurement and services in TAFTA as yet.¹⁹⁷

Consultations

- 3.184 The consultation process for the Agreement involved ‘extensive consultations’ with peak industry bodies and a limited number of individual companies. The NIA states that

Meetings were held in most states, as well as in Canberra. In addition, information was posted on the website, and updates on the progress of the negotiations were emailed to contacts on a regular basis.¹⁹⁸

- 3.185 Ms Kathy Klugman of DFAT outlined for the Committee DFAT’s post-negotiation consultation process

Our department has been working in close cooperation with Austrade. We have drawn on the Australian Ambassador to Thailand, whom we brought out for these purposes. We have been undertaking a series of joint presentations. All the capital cities have now been done. The turnout from business has been quite strong...We are taking that process and expanding it over September to key regional centres outside the capital cities.¹⁹⁹

- 3.186 The Committee heard concerns in relation to the lack of consultations undertaken with community organisations and unions. AFTINET states

The RIS makes extensive mention of DFAT’s efforts to ascertain the views of industry bodies and manufacturers throughout the

197 Mr Justin Brown, *Transcript of Evidence*, 26 July 2004, p. 31.

198 NIA, para. 17.

199 Ms Kathy Klugman, *Transcript of Evidence*, 26 July 2004, p. 31.

negotiations. It is important to recognise that workers also have legitimate interests in negotiations such as these, and that their representative bodies should be entitled to an equal level of consultation. There is little mention within the RIS of efforts made by DFAT to consult with unions during or after the negotiations regarding the impacts of the agreement.²⁰⁰

3.187 The AMWU made similar comments

The AMWU strongly submits that the consultation process for the ATFTA was inadequate. No non-business community organisations or unions appear to have been consulted on the contents of the agreement. Despite representing the interests of tens of thousands of members in the automotive sector - one of the most sensitive sectors dealt with in the agreement - the AMWU was not approached in relation to the proposed reductions of assistance to the automotive sector.²⁰¹

3.188 The Committee acknowledges that no mention is made of consultations with any union or community groups. However, the Committee notes that according to the RIS, the DFAT consultation process commenced with a call for public submissions,²⁰² and that according to information provided by DFAT at the request of the Committee, no unions or community groups are listed as having made a submission to DFAT.²⁰³

Future treaty action

3.189 The Agreement requires regular review. An initial review will take place within one year of entry into force, and annually thereafter. Certain provisions also require consultation and review. Amendment of the Agreement is subject to the normal Australian treaty process.²⁰⁴

200 AFTINET, *Submission 6*, p. 5.

201 AMWU, *Submission 8*, p. 3.

202 RIS, Annex 1, p. 1.

203 Department of Foreign Affairs and Trade, *Submission 14*.

204 NIA, para. 20.

Recommendation

Recommendation 2

The Committee supports the *Australia-Thailand Free Trade Agreement* and Associated Exchanges of Letters and recommends that binding treaty action be taken.