

Australia's Free Trade Agreements

Background

- 2.1 Australia currently has nine free trade agreements (FTAs) with trading partners. In addition, Australia recently signed a FTA with China (ChAFTA) which is yet to enter into force.¹
- 2.2 The FTAs address issues such as:
- tariff rates and quotas for goods;
 - rules of origin;
 - trade in services and investments;
 - intellectual property;
 - government procurement; and
 - frameworks to settle issues arising post-agreement.²
- 2.3 After a FTA enters into force, exporters and importers are required to fulfil regulatory and biosecurity requirements if goods and services may legally move across borders. Where these requirements impede or prevent trade they act as non-tariff barriers to trade.
- 2.4 Non-tariff barriers are varied and can include³:
- adherence to particular standards;
 - technical mandated requirements such as those affecting packaging, marketing, labelling, process or production method;

1 Department of Foreign Affairs and Trade (DFAT), *Submission 28*, p. 5.

2 Productivity Commission, *Exhibit 3a: Bilateral and Regional Trade Agreements*, p. 56.

3 The World Trade Organisation (WTO) state that 'there is no official definition [of non-tariff barriers] but, in general terms, it refers to any measure other than a tariff which protects domestic industry'. See: WTO, 'A simple guide - NAMA Negotiations', https://www.wto.org/english/tratop_e/markacc_e/nama_negotiations_e.htm, viewed 3 September 2015.

- sanitary and phytosanitary⁴ (SPS) requirements to prevent the spread of pests and diseases; and
 - recognition and accreditation of qualifications.⁵
- 2.5 There may also be economic circumstances and cultural differences that make goods and services uncompetitive in the final market destination, and therefore impede market access.

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- 2.6 Australia's current FTAs are:
- Australia–New Zealand Closer Economic Relations Trade Agreement;
 - Singapore–Australia Free Trade Agreement;
 - Thailand–Australia Free Trade Agreement;
 - Australia–United States Free Trade Agreement;
 - Australia–Chile Free Trade Agreement;
 - ASEAN–Australia–New Zealand Free Trade Agreement; and
 - Malaysia–Australia Free Trade Agreement.⁶
- 2.7 The Australian Government has also recently signed FTAs with Korea (signed 8 April 2014, entered into force 12 December 2014⁷), Japan (signed 8 July 2014, entered into force 15 January 2015⁸), and China (signed 17 June 2015, not yet entered into force⁹). These FTAs are not covered in this section as they are not a primary focus of this Inquiry.

4 Sanitary and Phytosanitary requirements are measures to protect human, animal or plant health from the spread of pests, diseases, contaminants and toxins. Examples of these measures include: quarantine procedures; regulations on production methods; testing, inspection, and approval procedures; and packaging requirements related to food safety. See: WTO, 'The WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement)', https://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm, viewed 3 September 2015.

5 Productivity Commission, *Exhibit 3a: Bilateral and Regional Trade Agreements*, p. 71; WTO, 'Annex 1: Terms and their Definitions for the Purpose of this Agreement' in *Agreement on Technical Barriers to Trade*, n.d., pp 15–16.

6 DFAT, *Submission 28*, p. 6.

7 DFAT, 'Korea–Australia Free Trade Agreement', <http://dfat.gov.au/trade/agreements/kafta/news/Pages/default.aspx>, viewed 3 September 2015.

8 DFAT, 'Japan–Australia Economic Partnership Agreement', <http://dfat.gov.au/trade/agreements/jaepa/Pages/japan-australia-economic-partnership-agreement.aspx>, viewed 3 September 2015.

9 DFAT, China–Australia Free Trade Agreement, <http://dfat.gov.au/trade/agreements/chafta/news/Pages/news.aspx>, viewed 3 September 2015.

Australia-New Zealand Closer Economic Relations Trade Agreement

Date signed	23 March 1983
Date of entry into force	1 January 1983 ¹⁰
Impacts on goods trade	All tariffs on goods were phased out by 1 July 1990.
Impacts on services and investment	Free trade in services with the exception of some services subject to government regulation prior to the agreement. A person registered to practice an occupation in one country can legally practice that occupation in the other country.
Other key features	A common market for government tendering. Freedom of travel between two countries for citizens. Harmonisation of food standards.

Source Department of Foreign Affairs and Trade¹¹

- 2.8 Australia and New Zealand first signed a trade agreement in 1922 and then strengthened the agreement in 1933 and 1966.¹²
- 2.9 The Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA), signed in 1983, was Australia's first comprehensive free trade agreement.¹³ The Department of Foreign Affairs and Trade (DFAT) reported that the World Trade Organisation (WTO) has described ANZCERTA as 'among the world's most comprehensive, effective and multilaterally compatible free trade agreements'.¹⁴
- 2.10 The ANZCERTA was strengthened with the inclusion of the Services Protocol in 1989 and the Investment Protocol in 2013.¹⁵ The DFAT noted that the Services Protocol allowed 'most services to be traded free of restrictions across the Tasman'.¹⁶
- 2.11 New Zealand is Australia's top export market in terms of the number of businesses exporting and the number of transactions taking place, but is only Australia's sixth largest export destination in terms of total value. This suggests that a disproportionate number of smaller businesses export to New Zealand,¹⁷ which may in part be due to the regulatory

10 A Heads of Government Agreement enabled the agreement to enter into force before the treaty was officially signed.

11 DFAT, *Closer Economic Relations: Background Guide to the Australia New Zealand Economic Relationship*, Canberra, February 1997.

12 DFAT, 'ANZCERTA - its genesis and the present', <http://dfat.gov.au/trade/agreements/anzcerta/pages/anzcerta-its-genesis-and-the-present.aspx>, viewed 4 August 2015.

13 Joint Standing Committee on Foreign Affairs Defence and Trade, *Review of Australia-New Zealand Trade and Investment Relations*, p. 1.

14 DFAT, 'ANZCERTA - its genesis and the present', <http://dfat.gov.au/trade/agreements/anzcerta/pages/anzcerta-its-genesis-and-the-present.aspx>, viewed 4 August 2015.

15 DFAT, *Submission 28*, July 2015, p. 6.

16 DFAT, 'ANZCERTA - its genesis and the present', <http://dfat.gov.au/trade/agreements/anzcerta/pages/anzcerta-its-genesis-and-the-present.aspx>, viewed 3 September 2015.

17 Business Council of Australia (BCA), *Submission 31*, p. 8.

harmonisation and integration between Australia and New Zealand. An example is the regulation by Food Standards Australia New Zealand (FSANZ) of food standards across both nations effectively creating a single regulatory environment.¹⁸

Singapore-Australia Free Trade Agreement

Date signed	17 February 2003
Date of entry into force	28 July 2003
Impacts on goods trade	All tariffs on goods removed.
Impacts on services and investment	National treatment for education services. Easing of restrictions in the financial services and banking sectors. Greater recognition of qualifications in legal services, architecture and engineering.
Other key features	Relaxation of visa restrictions for long term business residents and their spouses.

Source Department of Foreign Affairs and Trade¹⁹

- 2.12 The Singapore-Australia Free Trade Agreement (SAFTA) removed all tariffs on the trade of goods. Most Australian exporters, however, were able to access Singapore's markets, tariff free, prior to the agreement.²⁰
- 2.13 The Productivity Commission identified the key outcomes of SAFTA as the easing of residency requirements for professionals, the removal of quantitative restrictions (such as on the number of wholesale bank licenses), and the development of a framework for mutual recognition of professional qualifications.²¹
- 2.14 Restrictions on market access were removed on some service industries. The treatment of education services allowed Australian universities to establish campuses in Singapore.²²

18 BCA, *Submission 31*, p. 8.

19 DFAT, 'Singapore-Australia Free Trade Agreement: Summary of key outcomes for Australia', <http://dfat.gov.au/trade/agreements/safta/Pages/singapore-australia-free-trade-agreement.aspx>, viewed 4 August 2015.

20 Productivity Commission, *Exhibit 3a: Bilateral and Regional Trade Agreements*, Canberra, November 2010, p. 66.

21 Productivity Commission, *Exhibit 3a: Bilateral and Regional Trade Agreements*, p. 74.

22 DFAT, 'Singapore-Australia Free Trade Agreement: Summary of key outcomes for Australia', <http://dfat.gov.au/trade/agreements/safta/Pages/singapore-australia-free-trade-agreement.aspx>, viewed 4 August 2015.

Thailand-Australia Free Trade Agreement

Date signed	5 July 2004 ²³
Date of entry into force	1 January 2005
Impacts on goods trade	94 per cent of tariffs removed by 2010.
Impacts on services and investment	Full Australian ownership of construction and management consulting services, and majority Australian ownership of mining operations, education institutions and hotels and restaurants permitted. Business visas extended from one year to three years for new positions and five years for people transferring within the same business
Other key features	Removal or reduction of agricultural quotas.

Source Department of Foreign Affairs and Trade²⁴

- 2.15 Prior to the introduction of the Thailand-Australia Free Trade Agreement (TAFTA) almost 80 per cent of Australian exports to Thailand were subject to high tariffs.²⁵
- 2.16 The TAFTA has comprehensive coverage of the trade in goods between the two countries. For Australian exports to Thailand a phased in approach was taken with 94 per cent of tariffs removed by 2010 and the remainder (apart from milk) expected to be removed by 2020.²⁶
- 2.17 On entry into force TAFTA reduced the tariffs for Australian automotive exports to Thailand. Soon after TAFTA entered into force, however, Thailand restructured their motor vehicles excise tax so that the tax rate escalated with engine size. This change consequently reduced the potential benefits of TAFTA for Australian vehicle exporters.²⁷

23 Parliament of Australia, Customs Tariff Agreement Amendment (Thailand-Australia Free Trade Agreement Implementation) Bill 2004 (Cth), Canberra, November 2014.

24 DFAT, 'Key outcomes of the Thailand-Australia Free Trade Agreement', <http://dfat.gov.au/trade/agreements/tafta/Pages/key-outcomes-of-the-thailand-australia-free-trade-agreement.aspx>, viewed 4 August 2015.

25 Priestley, M., 'Australia's Free Trade Agreements', Parliamentary Library, <http://www.aph.gov.au/Library/pubs/BN/2008-09/AustFreeTradeAgreements.htm>, viewed 4 August 2015.

26 DFAT, 'Key outcomes of the Thailand-Australia Free Trade Agreement', <http://dfat.gov.au/trade/agreements/tafta/Pages/key-outcomes-of-the-thailand-australia-free-trade-agreement.aspx>, viewed 4 August 2015.

27 Productivity Commission, *Exhibit 3a: Bilateral and Regional Trade Agreements*, p. 81.

Australia-United States Free Trade Agreement

Date signed	18 May 2004 ²⁸
Date of entry into force	1 January 2005
Impacts on goods trade	97 per cent of manufacturing tariffs removed on entry into force with the remaining tariffs phased out by 2015. Two-thirds of agricultural lines became tariff free. Quotas for Australian dairy increased and in-quota tariffs removed.
Impacts on services and investment	National treatment for service industries ensures service exporters receive the same treatment as domestic service industries. Minimum threshold for review by the Foreign Investment Review Board for United States of America (US) investment into Australia raised to \$1.078 billion.
Other key features	Extension of IP rights in Australia to 70 years after death of author. Australian business gains access to US Government procurement market valued at US\$535 billion per annum (2011). Australia 'carves out' majority of broadcasting and audio-visual industries and maintains right to use Pharmaceutical Benefits Scheme to regulate access to medicine.

Source Department of Foreign Affairs and Trade²⁹

- 2.18 At the time of signing, the Australia-United States Free Trade Agreement (AUSFTA) was Australia's largest and most significant FTA. The US is Australia's third largest two-way trading partner.³⁰
- 2.19 The percentage of Australian exports that enter into the United States of America (US) duty free has increased from 44.8 per cent in the three calendar years prior to AUSFTA (2002-04) to 88.8 per cent in 2012-14.³¹
- 2.20 The AUSFTA provided the Australian meat industry significantly increased duty free access to the US market. In 2004, 84 per cent of Australian beef and over 90 per cent of Australian sheep and goat meat entering the US incurred a tariff. In 2014, less than one per cent of these products were subject to tariffs.³²
- 2.21 Historically the US has set the global floor price for grinding beef. The US places a quota on the amount of beef it imports and this 'US beef quota distorted the whole Australian beef industry'. The increased Australian

28 The Hon. Mark Vaile, MP, 'Speech: Signing of the Australia-United States Free Trade Agreement', 18 May 2004, http://trademinister.gov.au/speeches/2004/040518_usfta.html, viewed 6 August 2015.

29 DFAT, 'Australia-United States FTA', <http://dfat.gov.au/trade/agreements/ausfta/Pages/australia-united-states-fta.aspx>, viewed 6 August 2015.

30 DFAT, 'United States of America Country Brief', <http://dfat.gov.au/geo/united-states-of-america/Pages/united-states-of-america-country-brief.aspx>, viewed 6 August 2015.

31 DFAT, *Submission 28*, p. 34.

32 DFAT, *Submission 28*, p. 10.

beef quota through AUSFTA (70 000 tonnes over 18 years) has had the effect of removing quota controls and opened the US market.³³

- 2.22 The quota for Australian sugar was not increased as a result of AUSFTA. Australia has been seeking increased access to the US sugar market for 'the last 40 to 50 years' but that was not achieved through AUSFTA.³⁴

Australia-Chile Free Trade Agreement

Date signed	30 July 2008
Date of entry into force	6 March 2009
Impacts on goods trade	Over 90 per cent of goods traded (in both directions) became tariff free on entry into force. All remaining tariffs (excluding sugar) removed by 2015.
Impacts on services and investment	Most services industries provided national treatment and most-favoured-nation treatment. Investment liberalised but companies must have minimum numbers of local board members and Chile requires companies with over twenty staff members to have at least 85 per cent Chilean employees.
Other key features	Access to long-term extendable business visas and right to work visas for spouses. Each country provides access to government procurement and tendering processes.

Source Department of Foreign Affairs and Trade³⁵

- 2.23 The Australia-Chile Free Trade Agreement (ACIFTA) is Australia's only FTA with a South American nation. Anecdotally, ACIFTA appears to have increased Australian business interest in South America with many Australian companies establishing business hubs for their broader South American operations.³⁶
- 2.24 The ACIFTA included national treatment and dispute settlement provisions that have encouraged greater investment by Australian mining companies in Chile. There are currently 25 Australian mining companies operating in Chile.³⁷

33 Australian Meat Industry Council (AMIC), *Submission 27*, p. 14.

34 Joint Standing Committee on Treaties, *Report 61: Australia-United States Free Trade Agreement*, p. 102

35 DFAT, 'Australia-Chile FTA', <http://dfat.gov.au/trade/agreements/acifta/Pages/australia-chile-fta.aspx>, viewed 6 August 2015.

36 DFAT, *Submission 28*, p. 33.

37 Minerals Council of Australia (MCA), *Submission 20*, p. 11.

ASEAN-Australia-New Zealand Free Trade Agreement

Date signed	27 February 2009
Date of entry into force	1 January 2010 ³⁸
Impacts on goods trade	96 per cent of Australian goods exports to the region to be tariff free by 2020.
Impacts on services and investment	Binding of existing levels of access for service industries. Some increased protections for investments.
Other key features	Regional Rules of Origin allow greater integration in manufacturing supply chains.

Source Department of Foreign Affairs and Trade³⁹

- 2.25 The ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA) is Australia's only multi-lateral FTA. The agreement covers a population of over 650 million people with a combined country GDP in 2013 of over US\$4 trillion.⁴⁰
- 2.26 The Association of Southeast Asian Nations (ASEAN) consists of ten countries and under AANZFTA each country has different timeframes for reducing tariffs. Developing countries are provided more time to implement tariff removals with many tariffs not required to be removed until 2020.⁴¹
- 2.27 The commitments in the services sector were much more modest than in the goods sector reflecting the lack of internal integration in the services sector within ASEAN.⁴²
- 2.28 Systems for administering copyright regulations are relatively undeveloped in a number of ASEAN nations. As a result, AANZFTA has

38 AANZFTA entered into force later for Thailand (March 2010), Laos (January 2011), Cambodia (January 2011), and Indonesia (January 2012).

39 DFAT, 'ASEAN-Australia-New Zealand Free Trade Agreement', <http://dfat.gov.au/trade/agreements/aanzfta/Pages/asean-australia-new-zealand-free-trade-agreement.aspx>, viewed 6 August 2015.

40 DFAT, 'ASEAN-Australia-New Zealand Free Trade Agreement', <http://dfat.gov.au/trade/agreements/aanzfta/Pages/asean-australia-new-zealand-free-trade-agreement.aspx>, viewed 6 August 2015.

41 DFAT, 'ASEAN-Australia-New Zealand Free Trade Agreement', <http://dfat.gov.au/trade/agreements/aanzfta/Pages/asean-australia-new-zealand-free-trade-agreement.aspx>, viewed 6 August 2015.

42 DFAT, 'Overview and key outcomes of the ASEAN-Australia-New Zealand Free Trade Agreement', <http://dfat.gov.au/trade/agreements/aanzfta/Pages/overview-and-key-outcomes-of-the-asean-australia-new-zealand-free-trade-agreement.aspx>, viewed 3 September 2015.

encouraged greater regional cooperation on copyright issues with the aim of enhancing and harmonising copyright regulations across the region.⁴³

Malaysia-Australia Free Trade Agreement

Date signed	22 May 2012
Date of entry into force	1 January 2013
Impacts on goods trade	99 per cent of Australian goods exported into Malaysia will be duty free by 2017. Rice excluded from the agreement until 2023.
Impacts on services and investment	Ownership restrictions on a range of service industries operating in Malaysia removed or reduced.
Other key features	Australian exporters can use 'Declaration of Origin' system to avoid need for third-party certification of a good's origin.

Source Department of Foreign Affairs and Trade⁴⁴

2.29 When the Malaysia-Australia Free Trade Agreement (MAFTA) was signed, Malaysia and Australia were already FTA partners through membership of AANZFTA. The MAFTA, however, 'built on the commitments made by both countries in the [AANZFTA]'.⁴⁵

2.30 The introduction of MAFTA significantly relaxed ownership restrictions on service providers working in Malaysia. From 2015, Australian companies were permitted 100 per cent ownership of higher education, accounting and auditing, and management consultancy service providers operating in Malaysia. Under MAFTA, financial and telecommunication services could be 70 per cent Australian owned.⁴⁶

Negotiating Free Trade Agreements

Agency Responsibilities During and After Negotiations

2.31 The DFAT is the responsible agency for negotiating FTAs on behalf of the Australian Government. In undertaking negotiations DFAT consults widely with other government agencies to ensure a whole-of-government approach to trade negotiations. For example, The Department of Industry

43 Mr Scot Morris, Director International, Australasian Performing Rights Association Ltd and Australasian Mechanical Copyright Owners Society, *Committee Hansard*, Sydney, 28 July 2015, pp 2, 5.

44 DFAT, 'Malaysia-Australia Free Trade Agreement', <http://dfat.gov.au/trade/agreements/mafta/Pages/malaysia-australia-fta.aspx>, viewed 6 August 2015.

45 DFAT, 'MAFTA Outcomes at a Glance', <http://dfat.gov.au/trade/agreements/mafta/Pages/mafta-outcomes-at-a-glance.aspx>, viewed 3 September 2015.

46 DFAT, 'MAFTA Outcomes at a Glance', <http://dfat.gov.au/trade/agreements/mafta/Pages/mafta-outcomes-at-a-glance.aspx>, viewed 6 August 2015.

and Science (DIS) provides technical advice to DFAT on issues such as tariff reduction transition arrangements, market access issues and rules of origin.⁴⁷

- 2.32 During FTA negotiations, Government agencies consult with industry groups to identify key market opportunities, potential or actual trade barriers, and possible negotiating positions.⁴⁸
- 2.33 Free trade agreement negotiations will often establish institutional arrangements for ongoing dialogue after an agreement has entered into force. These arrangements assist with the implementation of the FTA and seek to resolve any issues that may arise. For example, AANZFTA established a FTA committee that meets annually and a series of subcommittees that consider specific sectors covered by AANZFTA.⁴⁹
- 2.34 The Department of Agriculture (DoA) undertakes negotiations with all of Australia's trading partners on market access issues such as biosecurity and phytosanitary (SPS) protocols. Negotiations are prioritised based on the sectors and markets that could provide the most potential benefit to Australian exporters.⁵⁰
- 2.35 On 4 July 2015 additional funding of \$30.8 million over four years was provided for DoA to address technical barriers in overseas markets. This included the addition of five additional agricultural counsellors, who would be based in key overseas markets, tasked to address access to market issues.⁵¹

Consistency Between Agreements and World Trade Organisation Regulations

- 2.36 Bilateral agreements, in comparison to multilateral agreements, can lead to a divergence of regulations for issues such as market access and also in determining the origin of goods. As the number of FTAs grows so does the difficulty business faces in understanding the differing regulatory settings in each agreement.⁵²

47 Mr Paul Trotman, General Manager, Trade and International Branch, Department of Industry and Science (DIS), *Committee Hansard*, Canberra, 21 July 2015, p. 9.

48 Mr Paul Trotman, DIS, *Committee Hansard*, Canberra, 21 July 2015, p. 9.

49 Mr Michael Mugliston, Special Negotiator, Free Trade Agreement Division, DFAT, *Committee Hansard*, Canberra, 21 July 2015, p. 5.

50 Ms Jo Evans, Deputy Secretary, Department of Agriculture (DoA), *Committee Hansard*, Canberra, 21 July 2015, p. 15.

51 Ms Jo Evans, DoA, *Committee Hansard*, Canberra, 21 July 2015, p. 15; Commonwealth of Australia, *Agricultural Competitiveness White Paper*, Canberra, 2015, p.122.

52 Mr Bryan Clark, Chief Executive Officer, Australian Chamber of Commerce and Industry (ACCI), *Committee Hansard*, Canberra, 21 July 2015, p. 21.

- 2.37 The DFAT advised that whilst it aimed to develop the 'simplest and most business-friendly'⁵³ rules possible, consistency across agreements was not always possible. The DFAT stated:
- ... Australia is negotiating with different trading partners who themselves have different systems and processes. Compromise positions must be reached. A one size fits all approach to FTAs is not practical.⁵⁴
- 2.38 The Australian Chamber of Commerce and Industry (ACCI) was concerned with regulatory inconsistency across Australia's FTAs. The ACCI recommended that the terms of the WTO Trade Facilitation Agreement should be applied to all Australian FTAs.⁵⁵
- 2.39 Conversely, the DFAT stated that the WTO Trade Facilitation Agreement:
- ... provides for developing countries essentially to opt in or out of different parts of the agreement. To that extent [the WTO Trade Facilitation Agreement has] a lower level of ambition than many of the FTAs we have with developing country partners.⁵⁶

Features of Free Trade Agreements

Rules of Origin and Certificates of Origin

- 2.40 The establishment of rules determining the origin of goods and services is a requirement of any FTA. The rules prevent companies from importing products from a third country and then exporting them under the preferential conditions of a FTA.
- 2.41 Certificates of Origin are documents issued by government authorised bodies to certify the origin of a product. The Certificate of Origin also includes information on the 'implementation of anti-dumping procedures, tariff concessions, trade finance outcomes and assessing the value of the goods'. In Australia Certificates of Origin are issued by ACCI (and its state chambers) and the Australian Industry Group (Ai Group).⁵⁷ Certificates of Origin are considered in more detail in section 2.98–2.102.

53 Ms Frances Lisson, First Assistant Secretary, Free Trade Agreement Division, DFAT, *Committee Hansard*, Canberra, 21 July 2015, p. 2.

54 DFAT, *Submission 28*, p. 13.

55 ACCI, *Submission 21*, p. 8.

56 Mr Justin Brown, First Assistant Secretary, Office of Trade Negotiations, DFAT, *Committee Hansard*, Canberra, 21 July 2015, p. 7.

57 ACCI, *Submission 21.1*, pp 1-2.

Rules of Origin for Goods

- 2.42 In Australia's FTAs the most commonly used approach to designate the origin of a product is a change of tariff classification (CTC) test. This test is based on the classification of a product under the Harmonized Commodity Description and Coding System (HS).⁵⁸ If processes undertaken in a country transform a product to the extent that the HS code used to classify the product changes then the product is deemed to have originated in that country.⁵⁹
- 2.43 All products can be described with HS Codes at 2-digit, 4-digit, 6-digit or 8-digit level. Additional digits represent greater specificity in the description of the product.⁶⁰
- 2.44 An alternative approach to determining the origin of a good is the regional value content (RVC) test. In this test a good is deemed to have originated in a country if it contains a specific proportion of locally produced inputs.⁶¹
- 2.45 The SAFTA is Australia's only FTA that uses a consistent method of determining the origin of a good. In this case a RVC test is applied to all products.⁶²
- 2.46 In Australia's other FTAs, a mix of CTC and RVC tests is used and HS codes are applied at different digit levels for different products. The Productivity Commission stated that, 'the application of approaches varies between products within agreements and, for individual products, between agreements'.⁶³
- 2.47 The complexity and diversity of regulations can make it difficult for exporting businesses to classify their products. The Ai Group stated that

58 The World Customs Organisation Harmonized Commodity Description and Coding System is a multipurpose international product classification system whereby about 5000 commodity groups are each identified by six digit codes. World Customs Organisation, *What is the Harmonized System (HS)?* www.wcoomd.org/en/topics/nomenclature/overview/what-is-the-harmonized-system.aspx viewed 5 August 2015.

59 Productivity Commission, *Exhibit 3: Trade & Assistance Review 2013-14'*, Canberra, June 2015, p. 64.

60 For example, the 2-digit code 08 refers to 'Edible fruit and nuts; peel of citrus fruit or melons'; 0808 refers to 'Apples, pears and quinces, fresh'; 0808:10 refers to 'Fresh Apples'; 0808:10.04 refers to 'Fresh Granny Smith'. See: Australian Bureau of Statistics, '5489.0 - International Merchandise Trade, Australia, Concepts, Sources and Methods', <http://www.abs.gov.au/ausstats/abs@.nsf/0/8DF2F05EE6BCF565CA256A5B001BD78A>, Canberra, May 2001, viewed 21 August 2015.

61 Productivity Commission, *Exhibit 3: Trade & Assistance Review 2013-14'*, p. 64.

62 Productivity Commission, *Exhibit 3: Trade & Assistance Review 2013-14'*, p. 65.

63 Productivity Commission, *Exhibit 3: Trade & Assistance Review 2013-14'*, p. 63.

'very few exporters know what the HS code for their product is, or where to find it'.⁶⁴

- 2.48 The Australian Border Force assists importing businesses by providing 'advance rulings' on the appropriate HS code to use when importing a product. The DIS suggested that consideration be given to extending this service to exporters.⁶⁵
- 2.49 The Export Council of Australia (ECA) favoured liberalisation in the area of rules of origin. The ECA advocated adopting a consistent approach to technical issues that avoided specific provisions for particular countries.⁶⁶

Rules of Origin for Services and Investment

- 2.50 Rules of Origin for the service industry and for investments (often referred to as 'denial of benefits') are used to deny companies from non-partner countries access to the preferential trade benefits in the FTA.
- 2.51 Australia's FTAs have used a relatively consistent rule requiring companies to have 'substantial business operations' within a partner country if they are to benefit from the FTA.⁶⁷

Investor-State Dispute Settlement

- 2.52 Investor-State Dispute Settlement (ISDS) provisions are designed to provide a mechanism for resolving disputes between an investor in one FTA party and the government of another FTA party. This would usually involve the dispute being taken to a third-party tribunal.⁶⁸ Six of Australia's signed FTAs include an ISDS provision, these being the FTAs with Singapore, Thailand, Chile, ASEAN and New Zealand, Korea, and China. The FTAs with Malaysia, New Zealand, Japan and the US do not include an ISDS provision.⁶⁹
- 2.53 The ISDS provisions were initially included in trade agreements as a means of protecting companies from expropriation of their assets when they invested in countries without well-established legal systems. Over time, however, ISDS clauses have been included in agreements between countries with mature legal systems.⁷⁰

64 Australian Industry Group (Ai Group), *Submission 17*, p. 3.

65 Mr Paul Trotman, DIS, *Committee Hansard*, Canberra, 21 July 2015, p. 13.

66 Export Council of Australia (ECA), *Submission 15*, p. 10.

67 Productivity Commission, *Exhibit 3: Trade & Assistance Review 2013-14'*, p. 67.

68 Productivity Commission, *Exhibit 3: Trade & Assistance Review 2013-14'*, p. 77.

69 Productivity Commission, *Exhibit 3: Trade & Assistance Review 2013-14'*, p. 80.

70 Mr Paul Gretton, Assistant Commissioner, Productivity Commission, *Committee Hansard*, Canberra, 21 July 2015, p. 35.

- 2.54 The number of ISDS cases worldwide has been gradually rising with 42 new cases initiated in 2014. To date Australia has been subject to one claim from Phillip Morris in relation to Australia's plain packaging tobacco laws.⁷¹

Entry Barriers to Overseas Markets

- 2.55 A FTA is just one step in liberalising trade between signatory countries. The DFAT stated that besides focusing on tariff elimination and addressing some non-tariff barriers:
- ... there will always be a range of other factors that impact on market access and trade. These can include quarantine or standards issues, labelling or other product requirements or customs arrangements as well as currency fluctuations. FTAs cannot in themselves remove all these impediments.⁷²
- 2.56 The Australian Meat Industry Council (AMIC) suggested that as tariffs fall following the introduction of a FTA, 'developing countries turn increasingly to non-tariff trade barriers as the last resort mechanism for controlling imports.'⁷³
- 2.57 The DIS, however, did not consider that Australia's FTA partners were increasing non-tariff barriers to stifle the intent of the FTA. The DIS suggested that the focus has shifted towards non-tariff measures due to the relative decline in global tariffs resulting from WTO and unilateral tariff reduction.⁷⁴
- 2.58 A country's economic situation can also be a factor. The Ai Group drew attention to a G20 leaders meeting in 2008 concerning the Global Financial Crisis where a statement had been made in support of maintaining the principles of free trade. A World Bank study had found, however, that within three months, '17 of the 20 economies had implemented behind-the-border non-tariff measures to inhibit access to their markets.'⁷⁵

71 Productivity Commission, *Exhibit 3: Trade & Assistance Review 2013-14*, p. 77.

72 DFAT, *Submission 28*, p. 14.

73 AMIC, *Submission 27*, p. 11.

74 DIS, *Submission 22.1*, p. 2.

75 Mr Innis Willox, Chief Executive, Australian Industry Group (Ai Group), *Committee Hansard*, Canberra, 21 July 2015, p. 28.

Non-Tariff Barriers

Standards

- 2.59 The DIS stated that a principle adopted by the Australian Government was that 'where appropriate, international standards should always be adopted.'⁷⁶ Where possible, FTA chapters which dealt with non-tariff barriers and non-tariff measures would be 'WTO plus or, at a minimum ... WTO consistent.'⁷⁷ The DIS also commented that generally Australia would always use the latest version of the World Customs Organisation harmonised system codes, and expected trading partners to use the same codes when they entered into FTAs with Australia.⁷⁸
- 2.60 The DIS cautioned, however, that an international standard was not always 'the best way forward for Australian industry.' Standards Australia and its counterpart in New Zealand developed standards for use within Australia and New Zealand, and there were:
- ... a wide number of standards that are very much unique to Australia and New Zealand, whether it be because of climatic conditions or the particular industries that we have a natural competitive market advantage in.⁷⁹
- 2.61 The DIS emphasised that Australia would 'never implement standards that are used or designed as a non-tariff barrier.'⁸⁰
- 2.62 Some Australian standards are not accepted by overseas countries. For example, FSANZ has approved irradiation treatment for a number of fruits and vegetables destined for human consumption,⁸¹ but only, Malaysia,⁸² Indonesia, Thailand and the US⁸³ have accepted this as a possible SPS treatment.
- 2.63 The AMIC observed, however, that developing countries were seeking a greater level of independence and moving away from a reliance on other countries' standards. The AMIC stated:

76 Mr Paul Trotman, DIS, *Committee Hansard*, Canberra, 21 July 2015, p. 11.

77 Mr Paul Trotman, DIS, *Committee Hansard*, Canberra, 21 July 2015, p. 14.

78 Mr Paul Trotman, DIS, *Committee Hansard*, Canberra, 21 July 2015, p. 13.

79 Mr Paul Trotman, DIS, *Committee Hansard*, Canberra, 21 July 2015, p. 11.

80 Mr Paul Trotman, DIS, *Committee Hansard*, Canberra, 21 July 2015, p. 12.

81 Mr Tim Reid, Managing Director, Reid Fruits, *Committee Hansard*, Sydney, 28 July 2015, p. 24.

82 Mr David Minnis, Chairman, Australian Horticultural Exporters Association (AHEA), *Committee Hansard*, Melbourne, 27 July 2015, p. 4.

83 Mr Simon Boughey, Chief Executive Officer, Cherry Growers Australia (CGA), *Committee Hansard*, Melbourne, 27 July 2015, p. 18.

Where in the past they would have accepted a US standard, today they issue their own individual requirements in response to tariff liberalisation requiring individual negotiations and agreements.⁸⁴

- 2.64 The AMIC further stated that ACIFTA had provided the opportunity to develop a memorandum of understanding with Chile on beef grading and that the 'the removal of the six per cent import tariff would have had little impact without the removal of such a technical trade barrier.'⁸⁵
- 2.65 Reid Fruits provided a second example of an internal overseas standard affecting Australian imports. Japan had not accepted data showing the absence of fruit fly⁸⁶ in Tasmania because the data did not meet Japan's testing standards. This had delayed the importation of cherries to Japan by two years while additional data was been gathered. The successful entry of cherries into the Japanese market, which Reid Fruits considered the 'most difficult to deal with in terms of quarantine market access', however, paved the way for entry into other countries.⁸⁷
- 2.66 The Winemakers' Federation of Australia (WFA) advised that Australia was currently engaged on its behalf with the Codex Committee on Food Additives. At issue was an argument concerning food additives with the European Union (EU) concerning the setting of 'numerical limits based on quality'. While the wine industry could accommodate such limits, as a matter of principle, it was arguing that limits should be based on food safety rather than quality. This had resulted in a delay of two years for Codex approval. The WFA's view was that the EU was attempting to 'export European regulation.'⁸⁸
- 2.67 Grain Growers expressed concern regarding recent announcements by Korea and Japan that they intended 'to operate positive lists for chemical maximum residue levels rather than [use] the internationally recognised Codex.'⁸⁹
- 2.68 Australia has for some time adopted a strategic approach to standards. The DIS stated that the Australian Government was aware of WTO

84 Mr David Larkin, Chairman, AMIC, *Committee Hansard*, Sydney, 28 July 2015, p. 36.

85 Mr David Larkin, AMIC, *Committee Hansard*, Sydney, 28 July 2015, p. 36.

86 Australia has two types of fruit fly; the Mediterranean Fruit Fly which is located in south-west Western Australia and the Queensland Fruit Fly which is located in parts of the Northern Territory, Queensland, New South Wales and Victoria. There are three horticultural regions of mainland Australia which are considered Pest Free Areas; these are Riverina (NSW), Riverland (SA) and Sunraysia (Vic). All of Tasmania is a Pest Free Zone for fruit fly. CGA, *Submission 6.1*, pp 5-6.

87 Mr Tim Reid, Reid Fruits, *Committee Hansard*, Sydney, 28 July 2015, pp 23-24.

88 Mr Anthony Battaglione, General Manager, Strategy and International Affairs, Winemakers' Federation of Australia (WFA), *Committee Hansard*, Melbourne, 27 July 2015, p. 28.

89 Grain Growers, *Submission 25*, p. 3.

commentary that standards and conformity assessment procedures may be behind the increase in non-tariff barriers. The Government's response was to support Standards Australia and the National Association of Testing Authorities in representing Australia in the International Organisation for Standardisation and the WTO and its various committees. The aim was 'to ensure that countries [were] not introducing these non-tariff barriers under the radar.'⁹⁰

- 2.69 The Minerals Council of Australia (MCA) stated that Australia has adopted this strategic approach to standards since the early 1990s through the work of the Asia-Pacific Economic Cooperation (APEC) organisation. The MCA stated:

APEC has done a lot of work on standards and conformance issues. ... No one wanted an APEC standard; people wanted one that promoted countries' adoption of international standards where that was appropriate ... For a long time this was dominated by Europe and we as a region were takers. As the economic importance of the Pacific and Asia has grown ... so has the ability of the Asia-Pacific, probably helped along by the fact that these accreditation and standards bodies have been meeting three, four or five times a year for nearly 25 years.⁹¹

- 2.70 An example was provided by WFA which drew attention to FSANZ leading work in APEC on maximum residue levels in wine grapes and mangoes. The aim was to 'develop systems among all the APEC economies so that they can approve import tolerances.' The value of this work was that these systems would apply to all foods.⁹²

Sanitary and Phytosanitary Issues

- 2.71 The SPS requirements of importing jurisdictions were identified as potential barriers preventing Australian exporters from fully utilising the opportunities provided by FTAs.
- 2.72 The basic rights of WTO members to protect themselves from pests and diseases is set out in *The WTO Agreement on the Application of Sanitary and Phytosanitary Measures*. The agreement states that these SPS measures should be based on scientific principles and only applied to protect human, animal or plant life or health. The agreement states that:

Members have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant

90 Mr Paul Trotman, DIS, *Committee Hansard*, Canberra, 21 July 2015, pp 13–14.

91 Mr Brendan Pearson, Chief Executive, MCA, *Committee Hansard*, Canberra, 21 July 2015, p. 42.

92 Mr Anthony Battaglione, WFA, *Committee Hansard*, Melbourne, 27 July 2015, p. 24.

life or health, provided that such measures are not inconsistent with the provisions of this Agreement.

Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence ...⁹³

The Import Risk Assessment Process

- 2.73 Apple and Pear Australia Ltd (APAL) acknowledged the WTO agreement,⁹⁴ but emphasised the importance of evaluations being conducted 'on a transparent basis, using import risk assessments that are backed by science'.⁹⁵ The APAL also stated that FTAs were 'worth little if market access is denied or compromised by uncommercial or unworkable phytosanitary methods'; that these restrictions constituted trade inhibitors; and that FTAs were 'irrelevant where access is denied'.⁹⁶
- 2.74 The APAL described the import risk assessment process for Australian exports entering foreign markets. The Australian Government approaches an overseas jurisdiction, seeking to export a product. The overseas jurisdiction then initiates an import risk assessment and determines the appropriate level of SPS protection. The overseas jurisdiction then devises a protocol that outlines how the SPS concerns will be addressed. The DoA then works with Australian industry to ensure that products prepared for export meet the protocol.⁹⁷
- 2.75 The DoA stated that Australia undertook similar processes to ensure that SPS concerns were addressed before allowing a product to be imported into Australia.⁹⁸
- 2.76 Several witnesses expressed concern about the timeliness of import risk assessments.
- 2.77 The APAL stated that mainland Australian apples were currently going through the Chinese import risk assessment process. The APAL stated that the applications to approve market entry for mainland Australian apples and nectarines were both lodged in 2006. While the process for

93 WTO, *The WTO Agreement on the Application of Sanitary and Phytosanitary Measures*, Article 2: Basic Rights and Obligations, https://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm, viewed 6 August 2015.

94 Apple and Pear Australia Limited (APAL), *Submission 1*, p. 1.

95 Ms Annie Farrow, Industry Services Manager, Apple and Pear Australia Limited (APAL), *Committee Hansard*, Melbourne, 27 July 2015, p. 8.

96 APAL, *Submission 1*, p. 2.

97 Ms Annie Farrow, APAL, *Committee Hansard*, Melbourne, 27 July 2015, pp 8-9.

98 Ms Jo Evans, DoA, *Committee Hansard*, Canberra, 21 July 2015, p. 17.

approving nectarines was now being finalised, apples were only just entering the information gathering stage after nine years.⁹⁹

- 2.78 The process currently being undertaken to seek access for mainland Australian cherries into South Korea, was outlined by Cherry Growers Australia (CGA) The company stated that the current pest risk analysis had been underway for 16 months, and was at stage three of a nine stage process.¹⁰⁰
- 2.79 AUSVEG stated there was a lack of market access for Australian vegetable growers into South Korea, observing that there were 'no (or unworkable) phytosanitary protocols for Australian cauliflower, broccoli, beans, lettuce, pumpkins, celery and capsicum', and that there was also a 'near-blanket lack of access for vegetables to the Chinese market'. AUSVEG commented that 'market access to China should not offer substantial bureaucratic or regulatory hurdles' and that 'products which do not require any further work by organisations to meet phytosanitary protocols, such as carrots, should be prioritised for market access negotiations as they are fast and simple to negotiate.'¹⁰¹

Recognition of Mainland Australian Pest Free Areas

- 2.80 Australia is home to two fruit fly species with pest significance – the Mediterranean fruit fly in the west and the Queensland fruit fly which is in the eastern States. Tasmania and South Australia do not have these fruit flies.¹⁰²
- 2.81 The Australian Horticultural Exporters Association (AHEA) stated that Malaysia, Indonesia and Hong Kong were the only jurisdictions that permitted airfreight of mainland Australian fresh fruit and vegetables¹⁰³ and that China did not accept mainland Australian fruit as free of fruit fly.¹⁰⁴
- 2.82 Citrus Australia reported that China's non-recognition of South Australia's fruit fly pest free area was a 'stringent quarantine [barrier] ... adding costs and prohibiting ... trade'. This had led to South Australian fruit being sent to Melbourne via Shepparton for cold treatment, adding a cost of 'several thousand dollars to each container' before exportation.¹⁰⁵

99 Ms Annie Farrow, APAL, *Committee Hansard*, Melbourne, 27 July 2015, p. 9.

100 Mr Andrew Smith, President, CGA, *Committee Hansard*, Melbourne, 27 July 2015, p. 16.

101 AUSVEG, *Submission 4*, p. 4.

102 Mr David Minnis, AHEA, *Committee Hansard*, Melbourne, 27 July 2015, p. 1.

103 Ms Michelle Christoe, Executive Director, AHEA, *Committee Hansard*, Melbourne, 27 July 2015, p. 1.

104 Mr David Minnis, AHEA, *Committee Hansard*, Melbourne, 27 July 2015, p. 1.

105 Citrus Australia, *Submission 19*, p. 9.

- 2.83 Reid Fruits drew attention to the delay in gaining approval from the Japanese authorities for its cherries to enter the Japanese market.¹⁰⁶ Reid Fruits and the CGA also stated that mainland cherry growers were placed at a disadvantage by the quarantine protocols of importing countries. These protocols required the use of cold storage to remove the risk of the fruit containing live fruit fly larvae. Cold storage, which required cherries to be stored for 'up to 20 days at temperatures below two degrees', constituted a 'quality destroying' protocol.¹⁰⁷
- 2.84 The AHEA added that while these treatments reduced the quality of the fresh commodities, they were also costly in terms of supervision, and the involvement of the Australian Quarantine and Inspection Service. Further, the time-consuming nature of cold treatment removed Australia's geographic competitive advantage. The AHEA stated:
- ... cold treatment ... by and large ... is by sea freight. As soon as we are pushed into sea freight, we are taking three weeks to get to the market. We are no earlier than Chile. We have lost our marketing advantage.¹⁰⁸
- 2.85 The requirement for cold storage as an SPS treatment negates a clear competitive advantage enjoyed by Australia because it restricts the use of airfreight. The AHEA stated:
- It is our proximity to Asia. It is the ability to achieve overnight deliveries to meet market demand or fill market gaps. However, we need to negotiate agreements to support this. This means airfreight access.¹⁰⁹
- 2.86 The absence of cherry import regulations into Hong Kong, contrasts with the SPS requirements of the Chinese market. The CGA stated that 'over many years, many commodities had gone through Hong Kong and they have obviously found their way through to mainland China. So, if they were going to have the problems [with fruit fly], then you would think that they would be evident now.'¹¹⁰

106 Mr Tim Reid, Reid Fruits, *Committee Hansard*, Sydney, 28 July 2015, p. 23.

107 Mr Tim Reid, Reid Fruits, *Committee Hansard*, Sydney, 28 July 2015, p. 19; Mr Andrew Smith, CGA, *Committee Hansard*, Melbourne, 27 July 2015, p. 20-21.

108 Mr David Minnis, AHEA, *Committee Hansard*, Melbourne, 27 July 2015, p. 2.

109 AHEA, *Submission 7*, p. 5.

110 Mr Andrew Smith, CGA, *Committee Hansard*, Melbourne, 27 July 2015, p. 21.

Addressing Sanitary and Phytosanitary Concerns

- 2.87 The APAL suggested that joint initiatives between Australian industries and the Australian Government would be required to speed up the import risk assessment process.¹¹¹
- 2.88 The AFGC supported this view, observing that there were 'signs of increasing sophistication and complexity of barriers' and that a 'coordinated, resourced and focussed effort by the Australian government and industry' would be required to address non-tariff barriers.¹¹²
- 2.89 The APAL commented that the 'four by four' process, in which Australia and China would trade off assessments of commodities to import:
- ... would let their apples in – we did that in 2010 – and they let our table grapes in. Tick. We are now looking at their peaches; they did our cherries. Tick. They are now looking at our nectarines. That was the only way you could manage it; because a whole lot of the Australian horticultural industries also want to get into China, our government needs to manage that process.¹¹³
- 2.90 The DoA stated that all jurisdictions, including Australia, had a finite amount of resources to devote to requests for access, and that jurisdictions had to prioritise products to go through the assessment process.¹¹⁴
- 2.91 The APAL stated that the Government could consider providing capacity building assistance to a number of Asian countries. This would build links and capacity in biosecurity and protocol development which could speed up biosecurity assessments.¹¹⁵
- 2.92 Addressing the issue of cold treatment to prevent the transfer of fruit fly larvae, Reid Fruits stated that irradiation of fresh fruit would achieve the same objective as cold treatment without harming the fruit. Reid Fruits stated:
- Irradiation can be conducted without reducing the temperature of the fruit, and it can be done over a period of about 12 or 20 hours. You can put a semitrailer load of fruit through an irradiation plant and keep it cold all the way through. ... it is far better in terms of any residue or risk of residue that may have come from fumigation with methyl bromide, and it does not destroy the quality like cold treatment.¹¹⁶

111 APAL, *Submission 1*, p. 2.

112 AFGC, *Submission 8*, p. 5.

113 Ms Annie Farrow, APAL, *Committee Hansard*, Melbourne, 27 July 2015, p. 9.

114 Ms Jo Evans, DoA, *Committee Hansard*, Canberra, 21 July 2015, p. 17.

115 APAL, *Submission 1*, p. 4.

116 Mr Tim Reid, Reid Fruits, *Committee Hansard*, Sydney, 28 July 2015, p. 24.

- 2.93 The CGA also expressed support for the introduction of irradiation to prevent the transfer of fruit fly larvae.¹¹⁷

Other Non-Tariff Barriers

Product Labelling and Packaging Dates

- 2.94 The AFGC reported that labelling was a wide-ranging issue, encompassing: nutrition labelling, halal certification, origin labelling, and nutrition panels, and that these constituted regulatory costs, which 'feed into the overall cost competitiveness of our sector'.¹¹⁸ The industry often dealt with this issue by using an 'over sticker' to meet the requirements of the importing jurisdiction.¹¹⁹
- 2.95 The AHEA observed that after TAFTA was ratified, Thailand required packing dates to be included with all fresh produce.¹²⁰ As a result, 'exporters can fail transfer certificates in moving goods from the farm to inspection, as they often do not have matching packing dates.' The Thai Department of Agriculture would not inspect goods with dates that did not match.¹²¹
- 2.96 The AHEA also stated that Malaysia had introduced 'archaic' labelling requirements, particularly around citrus. The requirement that labelling needed to be in two languages (English and Malaysian), added an additional cost to the exporter.¹²²
- 2.97 The AMIC also identified similar bilingual labelling requirements in South Korea which would not accept a product labelled with any languages other than English and Korean.¹²³ The AMIC suggested the rationale was to prevent product entering from a third market.¹²⁴

Country of Origin Requirements

- 2.98 The AHEA stated that while self-certification of country of origin was permitted under the Japanese and Korean FTAs, it should be negotiated across all countries with self-certification adopted as a norm.¹²⁵

117 Mr Andrew Smith, CGA, *Committee Hansard*, Melbourne, 27 July 2015, p. 19.

118 Mr Gary Dawson, Chief Executive Officer, AFGC, *Committee Hansard*, Canberra, 21 July 2015, p. 46.

119 Mr Michael Rogers, Manager, Agribusiness Forum, AFGC, *Committee Hansard*, Canberra 21 July 2015, p. 47.

120 Mr David Minnis, AHEA, *Committee Hansard*, Melbourne, 27 July 2015, p. 6.

121 AHEA, *Submission 7*, p. 3.

122 AHEA, *Submission 7*, p. 2.

123 Mr David Larkin, AMIC, *Committee Hansard*, Sydney, 28 July 2015, p. 41.

124 Mr David Larkin, AMIC, *Committee Hansard*, Sydney, 28 July 2015, p. 41.

125 AHEA, *Submission 7*, p. 4.

- 2.99 The AHEA stated that certificates of origin for fruit and vegetables were:
- ...of no use whatsoever, because it is signed by a person who does not see the product, who has no idea what I am shipping but who signs a bit of paper that I have to have to get into a country. An AQIS Inspector ... also signs a phytosanitary certificate which verifies the goods and where they came from; so what we have got in that instance is paperwork duplication.¹²⁶
- 2.100 The Ai Group and ACCI are the two organisations authorised to issue Certificates of Origin to exporters (the ACCI delegates this function to state chambers). The Ai Group and ACCI differed over whether it should be mandatory for Certificates of Origin to be provided by third parties. The Ai Group stated:
- AI Group has long been in favour of providing companies with the option of self-declaration to determine origin, not mandate Certificates of Origin certified by a third party. As an organisation authorised to issue Certificates of Origin for preferential agreements Ai Group is able to witness firsthand the administrative stress and time pressures that the mandatory regime puts on companies, particularly SMEs.¹²⁷
- 2.101 In contrast, ACCI recommended that the current regime be preserved. The ACCI commented that the globally established certificate of origin system facilitated trade, because it was accepted, trusted, reduced costs for exporters, and provided exporters with legal defences when difficulties arose at borders.¹²⁸
- 2.102 The Victorian Employers Chamber of Commerce and Industry (VECCI) also supported the continuation of the current Certificate of Origin scheme. The VECCI stated:
- A self-certification system would rely on a robust capacity for verification by the customs or revenue authorities of the importing countries. Therefore, if there is no or only a low likelihood that origin certificates will be verified, there is little incentive for business to comply with the origin requirements. False certificates would be common and the original purpose of the rules of origin would be undermined ... Complex language within the free trade agreements makes it difficult for businesses to understand their

126 Mr David Minnis, AHEA, *Committee Hansard*, Melbourne, 27 July 2015, p. 3.

127 Ai Group, *Submission 17*, p. 4.

128 ACCI, *Submission 21.1*, p. 2.

obligations, which could lead to non-compliance and false certifications under a self-certification system.¹²⁹

Recognition of Qualifications and Accreditation

- 2.103 Universities Australia identified recognition of qualifications and accreditation as a potential barrier to trade, stating that 'increased recognition by government and professional accreditation bodies of Australian qualifications' could improve Australia's competitiveness in education, training and research.¹³⁰
- 2.104 The recognition of qualifications and accreditation in overseas jurisdictions, however, has been identified as a non-tariff barrier, especially in the areas of accounting, financial services and law.

Accounting Services

- 2.105 The Institute of Public Accountants (IPA) stated that it had been active in Malaysia, increasing its presence and building its membership base. The IPA had been unsuccessful in seeking to have the Malaysian Institute of Accountants (Malaysia's accounting accreditation body) accredit IPA-accredited accountants for work in Malaysia. The passage of the Malaysia-Australia FTA had prompted the IPA to seek advice from DFAT as to whether the FTA could be enforced to progress the accreditation issue, and it was now expected that accreditation would be agreed to.¹³¹
- 2.106 In contrast, the IPA noted that Malaysian accountants did not have trouble being accredited in Australia provided they met educational requirements such as in the areas of commercial law and the tax law. In addition, there was, in fact, no legislative requirement for an accountant operating in Australia to be a member of an accounting body.¹³²

Financial Services

- 2.107 The Financial Services Council (FSC) stated that the financial services industry was 'neither a major source of export income nor is Australia recognised as a major financial centre with export capability.' This was despite the financial services industry's 'scale, sophistication and record of innovation and delivery of quality outcomes to clients'.¹³³
- 2.108 The FSC stated that the FTA process in Australia had not focussed on 'implementation to ensure market access commitments are actually made

129 Victorian Employers Chamber of Commerce and Industry, *Submission 34*, p. 2.

130 Universities Australia, *Submission 5*, p. 1.

131 Ms Vicki Stylianou, Executive General Manager, Advocacy and Technical, Institute of Public Accountants (IPA), *Committee Hansard*, Melbourne, 27 July 2015, p. 41.

132 Ms Vicki Stylianou, IPA, *Committee Hansard*, Melbourne, 27 July 2015, p. 43.

133 Financial Services Council (FSC), *Submission 9*, p. 3.

available to Australian firms'.¹³⁴ The FSC added that involving regulators in FTA negotiations would 'enable implementation and consequently the development of mutual recognition agreements'.¹³⁵

2.109 The FSC drew attention to the Hong Kong-Australia 2008 Declaration and stated that 'while at first glance the Declaration seemed to remove barriers, the finer detail created considerable barriers to entry.'¹³⁶ The FSC considered an ideal mutual recognition framework would be one:

... where a fund is approved and fully compliant in its local jurisdiction, it should be fully recognised in the corresponding jurisdiction. In other words, if it's good enough for the [Australian Securities and Investment Commission], it should be good enough for the [Securities and Futures Commission of Hong Kong].¹³⁷

2.110 The FSC praised the financial services sections of the Korean and Japanese FTAs, but stated 'many of the previous commitments in financial services have never been implemented or established within Australia so they can actually be used'. The FSC stated that this was because there was no agency responsible for implementation of the agreements.¹³⁸

2.111 The FSC also provided evidence of other barriers affecting the Australian wealth management industry in Japan and Thailand, two markets it considered representative of the region. These barriers included:

- Limits on foreign investment – caps on foreign equity participation, [Foreign Direct Investment] approvals.
- Nationality requirements – limits on foreign participation for boards of directors and voting shares;
- Local presence requirements – local establishment and incorporation requirements;
- Minimum capital requirements;
- Licensing and approval procedures – compliance with domestic licensing criteria and conditions;
- Restrictions on scope of service – controls on the type of service or investment permitted, form of delivery and marketing activities in the local market;
- Controls on outsourcing of core and support functions;
- Lack of transparency in procedural decision making for licensing and approvals, and;
- Advantages to government entities competing in the market.¹³⁹

134 FSC, *Submission 9*, p. 4.

135 FSC, *Submission 9*, p. 6.

136 FSC, *Submission 9*, p. 8.

137 FSC, *Submission 9*, p. 9.

138 FSC, *Submission 9*, p. 7.

139 FSC, *Submission 9*, p. 11.

Legal Services

2.112 The ECA advised that, historically, it had been difficult for Australian lawyers to work in other jurisdictions. The ECA stated, however, that SAFTA had led to an 'increased recognition of Australian educational qualifications and professional standards'. There were also 'improvements with respect to services' under the Japan-Australia FTA and the Korea-Australia FTA. Further, the ECA stated that services were 'at the forefront of a lot of negotiators' attention' in negotiations with China.¹⁴⁰

Economic Factors

Currency Exchange Rates

2.113 The Ai Group reported that its members had indicated that an Australian dollar exchange rate against the US dollar of between 78c and 82c was the point at which Australian goods became 'competitive particularly against imports but also in accessing various markets.' Exchange rate stability was also important.¹⁴¹ The Ai Group added that a low Australian dollar was encouraging the move to onshore component production and stated:

What we have seen is that a lot of businesses, if they are not wholly offshored, are bringing in inputs or component parts to manufacture here. That swing in the dollar has also made it harder ... to bring in imported product ...

From the perspective of a lower dollar ... they will then go sourcing locally because it is a more competitive proposition ...

When the dollar was high, they shifted away. They now have to swing back, and that takes time. That is why you do not get that immediate upturn.¹⁴²

2.114 The AHEA commented that the drop in the Australian dollar was worth between four and five dollars per box of citrus.¹⁴³

2.115 Exchange rate changes are not isolated to Australia. The APAL drew attention to the impact on the exchange rates of Australia's competitors and stated:

Whilst the Australian dollar has come down against the US dollar, so have the 18 currencies of the countries that we trade with. So are we any cheaper against South Africa? No. Are we any cheaper against Chile? No. Yes, it is helpful, but you have to put it in the

140 Mr Andrew Hudson, ECA, *Committee Hansard*, Sydney, 28 July 2015, p. 14.

141 Mr Innis Willox, Ai Group, *Committee Hansard*, Canberra, 21 July 2015, pp 27-28.

142 Mr Innis Willox, Ai Group, *Committee Hansard*, Canberra, 21 July 2015, p. 28.

143 Mr David Minnis, AHEA, *Committee Hansard*, Melbourne, 27 July 2015, p. 7.

broader perspective. Everyone has dropped, so it is really not that helpful.¹⁴⁴

- 2.116 The ANZ Banking Group (ANZ) did not emphasise the effect of exchange rates as a driver for regional trade. The ANZ commented that more important factors affecting trade were; a growing middle class in the region and the nature of products they bought; trade and investment flows; and natural linkages.¹⁴⁵

Cost of Production

- 2.117 The AFGC suggested that production costs in Australia are amongst the highest in the world.¹⁴⁶ The AFGC advocated that the FTAs with Malaysia and Thailand reduced tariffs and have allowed Australian product to move from the high price point end of the market to the mid-price point.¹⁴⁷
- 2.118 Exporting industries will always be under pressure to become more productive. The APAL stated that the productivity of apple production in Australia was increasing significantly with a proportional reduction in the labour cost component. The APAL stated:
- We were 25 tonnes a hectare of apple production 12 years ago; today we are 40 tonnes a hectare, but my exporters are 100 tonnes a hectare. ... At the moment [labour cost] is probably close to 33 per cent of our costs of production at the farm gate. When you get to 100 tonnes it is down to 20 percent ...¹⁴⁸
- 2.119 The introduction of improved orchard management would enable apples to be harvested robotically in about 5 to 10 years.¹⁴⁹

Cost of Transport

- 2.120 The cost of transporting goods to overseas markets can have a significant impact on trade competitiveness. The AHEA stated that Australia enjoyed air freight rates to Asia of less than one dollar a kilogram. This was because airlines were repositioning to Asia to pick up high yielding exports destined for Europe and North America.¹⁵⁰

144 Mr John Dollisson, Chief Executive Officer, Apple and Pear Australia Ltd (APAL), *Committee Hansard*, Melbourne, 27 July 2015, p. 8.

145 Mr Graham Hodges, Deputy Chief Executive Officer, ANZ Banking Group, *Committee Hansard*, Sydney, 28 July 2015, p. 35.

146 Mr Gary Dawson, AFGC, *Committee Hansard*, Canberra, 21 July 2015, p. 44.

147 Mr Michael Rogers, AFGC, *Committee Hansard*, Canberra, 21 July 2015, p. 46.

148 Mr John Dollisson, APAL, *Committee Hansard*, Melbourne, 27 July 2015, p. 13.

149 Mr John Dollisson, APAL, *Committee Hansard*, Melbourne, 27 July 2015, p. 13.

150 Mr David Minnis, AHEA, *Committee Hansard*, Melbourne, 27 July 2015, p. 5.

- 2.121 The AHEA also commented that sea freight rates to the US for horticultural produce were quite expensive because they were determined by the rates for meat. In response, citrus growers had collectively negotiated a discount rate with the shipping company ANL.¹⁵¹
- 2.122 The APAL also drew attention to the high cost of sea freight across Bass Strait commenting that this was a source of frustration for Tasmanian growers. The APAL stated that it was more expensive to ship cargo from Tasmania to Melbourne than from Melbourne to China.¹⁵² Reid Fruits indicated there may be some relief forthcoming because from 2016, the Tasmanian Freight Equalisation Scheme was going to apply to goods exported as sea freight. The company added, however, that during consultation with the Department of Infrastructure and Regional Development it had appeared that the department had not considered the possibility that goods might leave Australia as air freight rather than by sea.¹⁵³
- 2.123 The AMIC also raised the high cost for transporting cattle to processing plants across State borders. Efficiency of operations was affected by the different loading rules for the road transport of cattle in Queensland and New South Wales.¹⁵⁴

Supply Chain Infrastructure

- 2.124 The infrastructure in overseas markets can be critical to successfully exporting fresh fruit and vegetables. The CGA commented on the lack of cold storage in India:
- ... you do not want your containers of cherries left on the tarmac at Mumbai airport for three or four hours in the heat, because that will just destroy them. It is the cold supply chain that is the big issue.¹⁵⁵
- 2.125 AUSVEG agreed, stating that once fresh product entered a foreign market control could be lost and that it 'does not take much of a temperature shift in a container for a perishable product to go bad before it lands at its final destination.'¹⁵⁶

151 Mr David Minnis, AHEA, *Committee Hansard*, Melbourne, 27 July 2015, p. 4.

152 Mr John Dollisson, APAL, *Committee Hansard*, Melbourne, 27 July 2015, p. 13.

153 Mr Tim Reid, Reid Fruits, *Committee Hansard*, Sydney, 28 July 2015, p. 26.

154 Mr David Larkin, AMIC, *Committee Hansard*, Sydney, 28 July 2015, pp 38-39.

155 Mr Simon Boughey, CGA, *Committee Hansard*, Melbourne, 27 July 2015, p. 20.

156 Mr Michael Coote, National Manager, Export Development, AUSVEG, *Committee Hansard*, Melbourne, 27 July 2015, p. 33.

Cultural Factors

- 2.126 The APAL advised that relationship building was important in Asia.¹⁵⁷ Reid Fruits agreed,¹⁵⁸ and added that the company had been a very small player in the Korean market before the Korea-Australia FTA, but this market presence had enabled it to expand into the market after the FTA was signed. Reid Fruits was now turning its attention to countries where Australia was contemplating negotiating a FTA.¹⁵⁹
- 2.127 The ANZBG stated it was important to be active in visiting the region and in understanding the activities which needed to be undertaken and the way business was conducted.¹⁶⁰ The Australian Tourism Export Council also commented that an understanding of the local social media was important.¹⁶¹
- 2.128 The APAL advised that it was working with growers from the Punjab, India to explore opportunities for trade with India. Connections through cricket could also provide leverage.¹⁶²
- 2.129 Different cultures have different tastes. The APAL noted that sugar levels and firmness were important for the acceptance of citrus in Asian markets and it was encouraging growers to measure and monitor sugar levels and to not pick fruit too early.¹⁶³ The AMIC drew attention to the premium price paid for offal in Asia, and Chinese demand for lamb flap and lamb breast.¹⁶⁴
- 2.130 AUSVEG stated there was 'an increasingly high demand for Australian organic produce' in China, and that in Hong Kong produce with an Australian organic certification sold at a 40 per cent higher price than produce without a certification. Organic growers were only a small proportion of the Australian industry, but a number were becoming active exporters.¹⁶⁵ The AMIC observed that in North America organic product was regarded as safer and healthier and that the market was becoming

157 Mr John Dollisson, APAL, *Committee Hansard*, Melbourne, 27 July 2015, p. 9.

158 Mr Tim Reid, Reid Fruits, *Committee Hansard*, Sydney, 28 July 2015, p. 20.

159 Ms Lucy Gregg, Marketing and Business Development Manager, Reid Fruits, *Committee Hansard*, Sydney, 28 July 2015, p. 21.

160 Mr Graham Hodges, ANZ Banking Group, *Committee Hansard*, Sydney, 28 July 2015, p. 31.

161 Ms Anna Taylor, National Manager, Membership and Policy, Australian Tourism Export Council, *Committee Hansard*, Sydney, 28 July 2015, p. 51.

162 Mr John Dollisson, APAL, *Committee Hansard*, Melbourne, 27 July 2015, p. 14.

163 Mr David Minnis, AHEA, *Committee Hansard*, Melbourne, 27 July 2015, p. 7.

164 Mr David Larkin, AMIC, *Committee Hansard*, Sydney, 28 July 2015, p. 43.

165 Mr Michael Coote, AUSVEG, *Committee Hansard*, Melbourne, 27 July 2015, p. 33.

crowded 'with organic, natural, hormone-free and antibiotic residue free.'¹⁶⁶

- 2.131 Regarding imports to Australia, APAL commented that fresh Chinese apples were not 'to the taste profile of Australian consumers.' The amount of Chinese apples imported into Australia, however, in the form of juice concentrate was in fact almost equivalent to Australia's production of fresh apples.¹⁶⁷

Concluding Comment

- 2.132 In view of the impasse over the WTO Doha Round, there will continue to be an emphasis on bilateral FTAs. As a trading nation Australia must continue to develop FTAs with its trading partners to reduce tariffs and increase quotas for Australian goods, and open up opportunities for the export sector of the Australian economy.
- 2.133 The Committee supports the framework Australia has adopted for negotiating FTAs. The DFAT, with support from other Commonwealth agencies, is best placed to take the lead role in negotiating these agreements. The Committee provides further comment on the FTA negotiating process in Chapter 4.
- 2.134 The increasing number of FTAs Australia has signed introduces complexity for Australian businesses, especially those that export to a number of Australia's FTA partners. The Committee supports Australian Government efforts to harmonise Australia's FTAs when appropriate. Australian engagement with international standards bodies is a sound strategy for harmonising standards used in FTAs, and also assisting in ensuring that international standards are compatible with Australian standards.
- 2.135 The Committee has received contrasting evidence concerning the certification of the origin of goods exported from Australia. Self-certification by exporters is allowed in the FTAs with Malaysia, Korea, and Japan and in 'certain specified circumstances' in the ChAFTA.¹⁶⁸ Some witnesses argued that self-certification should be included in future FTAs, while others argued for the retention of third party certification. The Committee has not come to a view as to the merits of self-certification

166 Mr David Larkin, AMIC, *Committee Hansard*, Sydney, 28 July 2015, p. 42.

167 Ms Annie Farrow, APAL, *Committee Hansard*, Melbourne, 27 July 2015, p. 12.

168 DFAT, 'ChAFTA Summary of Chapters and Annexes' <http://dfat.gov.au/trade/agreements/chafta/fact-sheets/Pages/chafta-summary-of-chapters-and-annexes.aspx#chapter-3>, accessed 2 September 2015.

versus third-party certification. It is a business decision and the risk of non-compliance and its consequence must be balanced against the savings and timeliness achieved through self-certification.

- 2.136 Australia has a well developed financial services industry, yet the sector has received limited direct benefit from FTAs. The Committee agrees with the FSC that Australian regulators should be involved in FTA negotiations to facilitate Australian companies benefiting from the FTA and subsequent development of mutual recognition agreements.
- 2.137 Australia's FTAs do not necessarily guarantee market access to the partner country. Overcoming hurdles to market access is an ongoing issue. All countries have a duty to protect their environment and population from the introduction of pests and diseases; to maintain the quality and integrity of businesses and professionals seeking to operate in their country; and to regulate sensitive areas of their economy.
- 2.138 The Committee commends the ongoing efforts of DoA to negotiate SPS protocols with Australia's trading partners. The Committee notes that negotiators are addressing a wide range of issues for a wide range of products. Progress can be slow which concerns some exporters. Recent additional funding to DoA should in part address their concerns.
- 2.139 Unfortunately, some overseas SPS protocols requirements appear not to be based on science. An important issue is the lack of recognition by some countries of the fruit fly-free status of particular regions of mainland Australia. The Committee believes Australia should continue to seek acceptance of the fruit fly free status of parts of mainland Australia where this is an issue in current and future FTAs.
- 2.140 Successful businesses seek productivity gains, but some costs, however, are beyond a business' control. Tasmania has a natural advantage in being fruit fly free, but is geographically disadvantaged with limited air and sea freight services. The Committee supports the proposed inclusion of exported goods in the Tasmanian Freight Equalisation Scheme, but considers all exported goods should benefit from the change irrespective of whether they are destined for export markets via air or sea.

Recommendations

Recommendation 1

- 2.141 The Committee recommends that the Department of Foreign Affairs and Trade should include financial services regulators in free trade negotiations to boost the opportunities for Australia's financial services sector.

Recommendation 2

- 2.142 The Committee recommends that the Department of Agriculture should continue negotiating with trading partners to gain acceptance of the fruit fly-free status of particular regions of mainland Australia in free trade agreements where this is an issue.

Recommendation 3

- 2.143 The Committee recommends that proposed changes to the Tasmanian Freight Equalisation Scheme include all exported goods whether destined for export via air or sea.