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JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS,  
DEFENCE AND TRADE

FOREIGN AFFAIRS SUBCOMMITTEE

**Reference: Australia's relationship with ASEAN**

MONDAY, 16 MARCH 2009

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**JOINT STANDING COMMITTEE  
ON FOREIGN AFFAIRS, DEFENCE AND TRADE**

**Foreign Affairs Subcommittee**

**Monday, 16 March 2009**

**Members:** Senator Forshaw (*Chair*), Mr Hawker (*Deputy Chair*), Senators Bishop, Ferguson, Fifield, Furner, Hanson-Young, Johnston, Ludlam, Moore, O'Brien, Payne, and Trood and Mr Baldwin, Mr Bevis, Ms Julie Bishop, Mr Danby, Ms Annette Ellis, Mr Gibbons, Ms Grierson, Mr Hale, Mr Macfarlane, Mrs Markus, Mr Murphy, Mr Oakeshott, Ms Parke, Ms Rea, Mr Ripoll, Mr Robert, Mr Ruddock, Ms Saffin, Mr Scott, Mr Kelvin Thomson and Ms Vamvakinou

**Sub-committee members:** Mr Danby (*Chair*), Senators Bishop, Ferguson, Fifield, Forshaw (*Ex officio*), Ludlam, Moore, O'Brien, Payne and Trood and Mr Bevis, Ms Julie Bishop, Ms Annette Ellis, Ms Grierson, Mr Hale, Mr Hawker, Mrs Markus, Mr Macfarlane, Ms Parke, Mr Robert, Mr Ruddock, Mr Scott, Mr Kelvin Thomson and Ms Vamvakinou

**Members in attendance:** Senator Forshaw, Senator Moore, Senator Trood, Mr Bevis, Ms Julie Bishop, Mr Danby, Ms Annette Ellis, Ms Parke, Mr Ruddock

**Terms of reference for the inquiry:**

To inquire into and report on:

Opportunities for expanding Australia's relationship with the countries of ASEAN, with particular attention to:

- opportunities to improve Australia's involvement in ASEAN;
- opportunities to enhance regional security through Australian involvement;
- free trade agreements with individual ASEAN countries;
- opportunities to enhance the regional economy;
- opportunities to improve cultural links; and
- the impact of global warming on the region.

**WITNESSES**

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<b>WOOLCOTT, Mr Peter, First Assistant Secretary and Head, South-East Asia Division, Department of Foreign Affairs and Trade.....</b>	<b>1</b>



**Subcommittee met at 11.11 am**

**BURROWS, Mr Danny, Executive Officer, Free Trade Agreement Unit, Department of Foreign Affairs and Trade**

**CHURCHE, Dr Milton, Coordinator, Goods and Government Procurement, Free Trade Agreement Unit, Department of Foreign Affairs and Trade**

**LARKIN, Mr John , Deputy Head, Asia Trade Task Force, Department of Foreign Affairs and Trade**

**MUGLISTON, Mr Michael, Head, Asia Trade Task Force, Department of Foreign Affairs and Trade**

**WARD, Mr Tim, Executive Officer, Free Trade Agreement Unit, Department of Foreign Affairs and Trade**

**WOOLCOTT, Mr Peter, First Assistant Secretary and Head, South-East Asia Division, Department of Foreign Affairs and Trade**

**BORTHWICK, Ms Octavia, Assistant Director-General, Asia Regional Branch, Australian Agency for International Development**

**KEATING, Mr Craig Douglas, Deputy Director, East Asia Regional Section, Asia Regional Branch, Asia Division, Australian Agency for International Development**

**WILSON, Mr Michael, Assistant Director-General, Asia Bilateral Branch, Asia Division, Australian Agency for International Development**

**MOIGNARD, Mr Michael Stanley, General Manager, Government and Communications, Australian Trade Commission**

**CHAIR (Mr Danby)**—I declare open this public hearing into Australia's relationship with ASEAN. As I am sure the officials from the department know, this is part of the inquiry that the Foreign Affairs Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade is holding into Australia's relationship with ASEAN. Today we are going to focus on the recently released agreement establishing the ASEAN-Australia-New Zealand Free Trade Area. We will consider a variety of themes, and there will be a number of members who will be joining us, including the opposition spokeswoman on foreign affairs, Julie Bishop, who has now joined the committee. The themes we will look at will be the implications for trade, increased opportunities for cooperation, better regulatory arrangements and new avenues through which to resolve differences that may arise.

Our witnesses from the department today have already appeared before us on key issues, including the automotive trade between Australia and Thailand under the bilateral free trade agreement with that country. They advised also on the status of bilateral agreements that were already established or in the making. At that stage, the department advised the subcommittee on the anticipated character and significance of the ASEAN-Australia-New Zealand free trade

agreement. The department suggested that it would be a platform fostering other agreements and providing a range of options for the Australian government and for Australian exporters to the region.

Today, with the final text of the FTA released, we are able to take these matters further and to get a better grasp of the agreement's significance for Australia and for ASEAN as a whole. It is likely the agreement will be important in years to come, as it provides a basis for significantly liberalised conditions for trade, for assistance between countries and for better standards of governance and redress in relation to regional trade. Also of interest to the committee are the FTA's place within plans to achieve a higher level of integration across the region and likely interactions between the agreement and the global financial crisis. These are likely to have a significant impact on Australia, and all of this underscores the importance of the hearing today.

On behalf of the committee, I welcome all the representatives from the Department of Foreign Affairs and Trade. We prefer you to give evidence in public, but if there is anything that you wish to say that is private, we can consider closing the hearing. Do you have an opening statement?

**Mr Woolcott**—Thank you, Mr Chair. I will ask Michael Mugliston, who is head of the Asia Trade Task Force to make an opening statement in relation to AANZFTA.

**Mr Mugliston**—As you have already noted, Mr Chairman, on 27 February 2009 in Thailand, Mr Crean, along with his counterparts from the 10 members of ASEAN and New Zealand, signed the agreement establishing the ASEAN-Australia-New Zealand Free Trade Area—AANZFTA. The full text of the AANZFTA package, including the text and schedules of the agreement, plus the associated documents and letters, is available on the Department of Foreign Affairs and Trade website. The DFAT website also contains a guide to the agreement, prepared by Australian government officials, which outlines the obligations contained in AANZFTA, and is intended to provide general background information to the AANZFTA. AANZFTA is expected to be tabled in parliament today, along with the national interest analysis and regulation impact statement. These two documents will then be available soon through the Australian treaties database.

ASEAN, Australia and New Zealand have a combined population of some 600 million people, with an estimated GDP of \$3.2 trillion dollars. Our trade with the ASEAN region exceeds our trade with Japan, China or the United States. AANZFTA is the first multi-country FTA that Australia has signed. AANZFTA is the largest free trade agreement Australia has signed, covering 21 per cent of Australia's trade in goods and services—valued at \$103 billion in the 2007-08 financial year.

AANZFTA is the most comprehensive trade deal that ASEAN has negotiated. Australia stands to gain from this agreement across many sectors, including exports of industrial goods, agricultural products and services. Through this FTA, Australia has achieved significant tariff elimination over time, from the more developed ASEAN member countries and Vietnam, on between 90 and 100 per cent of tariff lines covering 96 per cent of current Australian exports to the region. Australian primary producers stand to benefit from this improved access to developing South-East Asian markets, many of which have a growing appetite for high quality Australian produce.

In addition to the reduction and elimination of tariffs over time, AANZFTA immediately binds the 2005 applied tariff rates. For most tariff lines, the WTO tariff bindings of ASEAN countries are considerably higher than applied tariff rates. The immediate binding of the 2005 applied tariff rates for all but a few tariff lines affords Australian exporters to ASEAN markets certainty of continued access to these markets and additional opportunities over time as tariffs are reduced and, in most cases, eliminated.

Mr Chairman, as you noted in your introductory remarks, negotiations on automotive tariffs were tough. Australia will eliminate tariffs on passenger motor vehicles for all ASEAN nations. But the phase-out arrangements for tariffs on vehicles manufactured in Indonesia, Malaysia and Thailand will be slower, as Australia demanded reciprocal arrangements with those countries. AANZFTA will achieve significant tariff cuts on automotive parts and components. Makers of automotive parts will now have greater opportunities to participate in automotive global supply chains through AANZFTA's regional rules of origin. Other manufactured products, resource based products and agricultural products will all see extensive tariff reductions and elimination.

Exclusions from tariff commitments have been kept to a minimum, and generally do not exceed one per cent of a country's national tariff lines. Australia has also secured a good outcome on services, increasing certainty for Australia's services exporters, including through services commitments across a range of sectors, such as professional services, education, financial services and telecommunications.

On investment, AANZFTA will create greater transparency and certainty for Australian investors in the region. It establishes a regime of investment protections; including an investor-state dispute resolution mechanism. AANZFTA includes useful commitments in other trade-related areas, such as intellectual property, as well as an economic cooperation component to provide technical assistance and capacity building to developing ASEAN countries—to assist in implementation of the FTA. This cooperation is an integral part of the FTA and Australia has committed to provide up to \$20 million in funding for worthwhile projects over a five-year period.

In addition to the market access gains from the FTA, AANZFTA provides a platform for Australia's ongoing engagement with ASEAN that will help to ensure that Australia's competitiveness in the region is not undermined. AANZFTA is a forward-looking FTA with built-in agendas and review mechanisms in areas such as non-tariff measures, rules of origin, services and investment, which are aimed at having AANZFTA's commitments expand and deepen over time, in line with the development of the ASEAN economic community.

My final point is that AANZFTA will enter into force on or after 1 July 2009, provided that Australia, New Zealand and at least four ASEAN member countries have notified each other of completion of their internal requirements.

**CHAIR**—Thank you very much for that overview. I was going to use the Chairman's privilege of asking the first question, but I welcome our Chairman of the Joint Committee, who has to leave soon for other duties.

**Senator FORSHAW**—I am happy for you to still lead off, Chair. I have to get my head around this, but I certainly have a question.

**CHAIR**—I will begin with the hard issue that you identified in your presentation. Given our negative experiences with the Thai free trade agreement—the automotive industry in particular, the disparity in auto exports to Australia from Thailand and the lack of progress there—you talked about reciprocal arrangements that will be entered into once the notification process takes place and the treaty comes into existence. What are some of those new arrangements that will hopefully obviate some of the problems we have had to date?

**Mr Mugliston**—What I am referring to, in terms of the reciprocal elements, is in respect of our tariff commitments. I am referring specifically to the annex on tariff commitments—Australia’s tariff schedule. In that schedule, we have effectively provided for differentiation with respect to the timing or the phasing of the elimination commitment. We have committed to giving our ASEAN negotiating partners zero duties—that is, tariff elimination—on entry into force of the AANZFTA. That is for all ASEAN countries except three: Indonesia, Malaysia and Thailand. In those cases we have made reciprocal commitments. I can go into detail if you wish, but I will use the example of small passenger vehicles and Indonesia. Indonesia has committed to eliminate tariffs on those vehicles in 2019. Therefore, we will not eliminate tariffs on imports from Indonesia on similar small-sized motor vehicles until 2019. In our tariff schedule we have corresponding schedules for Malaysia and Thailand, which are therefore based on reciprocity.

**CHAIR**—That is very interesting. How does this treaty in Thailand in this area affect what has already happened? I understand your point about Indonesia and 2019—it does not become operative until we both move to that era. But what happens with Thailand?

**Mr Mugliston**—Thailand, under AANZFTA, is not eliminating its passenger motor vehicle tariffs until 2020, while under TAFTA—our bilateral FTA—we will achieve tariff elimination in 2010. In the bilateral FTA, Thailand has agreed to eliminate all of its tariffs on PMV imports from Australia in 2010, but it is 2020 in the case of the AANZFTA. This is a disappointment because what it means is that the delay in its tariff elimination in AANZFTA will prevent both countries from gaining the full benefits of the regional rules of origin—that is, the greater supply integration through the regional FTA. You will have TAFTA continuing to function as a distinct, separate agreement and AANZFTA—side by side, if you wish, with the WTO and other agreements. What it means is that exporters will have to choose which agreement they are going to operate under. There is a set of tariff commitments and associated rules of origin that apply in both those agreements.

**CHAIR**—Would somebody like to continue on with that?

**Senator FORSHAW**—I want to sort of follow on, but not so much on the issue of the Thailand agreement. I think a lot of the concerns have been raised about automotives and textiles. What are the implications of AANZFTA for pursuing further bilateral FTAs with other countries within ASEAN and, if there are any, beyond that? We have been in talks with the Chinese, and people talk about India. But how do you see us going forward? Does it assist? Does it mean that future bilateral agreements with some of the ASEAN nations are not necessarily of a high priority, given you have got AANZFTA? It may relate to policy, I suppose, and therefore you may be ambivalent about answering it, but I am just interested to see where it may head.

**Mr Mugliston**—Essentially what we have is a situation where we had concluded bilateral FTAs already—there is the longstanding one with New Zealand. Let's put that aside, that is fine. But I understand where you are coming from. I think, in terms of—

**Senator FORSHAW**—We have got Thailand.

**Mr Mugliston**—And Singapore. And we are also negotiating a bilateral FTA with Malaysia that we were doing in parallel with this AANZFTA negotiation. But then we took the decision, both Australia and Malaysia, to actually put that aside for the moment while we concentrated on concluding the AANZFTA agreement. And then ministers took the decision—Mr Crean and his counterpart—last October in KL that we would reactivate and reinvigorate the bilateral negotiations now with Malaysia, and we have done that. We also have—and Mr Woolcott's division is responsible for this—a feasibility study that has been recently completed with Indonesia. That is on the feasibility of an Australia-Indonesia bilateral FTA, which is currently under consideration by the government.

To answer your question about the relationship between AANZFTA and bilateral FTAs, the way that we are looking at it is at AANZFTA as establishing a baseline. This is what has been possible for us to negotiate with ASEAN and New Zealand collectively, recognising that we are dealing with an extremely diverse region in ASEAN, with three least-developed countries there included. What we have achieved is a substantial outcome on tariff reductions and elimination commitments, a future agenda on non-tariff measures with that collective group, and the establishment of a set of commitments on services investment in these other areas. It represents as far as ASEAN has been able to go at this point in time.

In looking at the question about what value-added could a bilateral FTA have with other individual members of ASEAN, it is possible perhaps to look at acceleration of tariff reduction and elimination commitments. It is possible also then to look at how much further a country may be prepared to go in the other sectors such as services investment—recognising the more developed status of some of these countries. That is the general approach. You also wanted to ask a broader question?

**Senator FORSHAW**—No, I think you have answered it. I know it is a matter for the future, but I was also wondering what the view would be of some of the ASEAN nations who may have been more disposed to seek to negotiate, or been prepared to talk about, an FTA. In other words, would you see—we would hope not—that this would dissuade a country within ASEAN that may otherwise be willing to commence discussions on a bilateral FTA? Might it be said: 'Well, we've got this agreement now, so we do not need to necessarily go down that path as quickly as we might otherwise have done'?

**Mr Mugliston**—Obviously it is for each country to make that determination.

**Senator FORSHAW**—Yes, I appreciate that. I know it is a difficult question.

**Mr Mugliston**—A very important element here, in terms of the AANZFTA, is that a major driver of all this is to support ASEAN's own economic integration. I also make the point, that we have talked about before, that ASEAN is committed to establishing an ASEAN economic community by 2015. The decision taken in the negotiation of AANZFTA was very deliberate—

that we are not going to undertake a general review of the agreement until 2016. We are supporting the ASEAN internal process here but, in the interim, if there are countries that are interested in going faster and further with this on a bilateral basis that does not preclude it.

**Mr Woolcott**—With regard to Indonesia, a couple of weeks ago we had a trade ministers' meeting in Sydney with Mari Pengestu and Mr Crean. There they received the FTA feasibility study, which had been done jointly by us and Indonesian officials, and there was considerable interest by the Indonesians in pursuing an FTA with Australia despite the AANZFTA arrangements that we signed. They see that as 'AANZFTA plus' and also going particularly to capacity building, which is something they are particularly interested in working on with us. But there has been no diminution in terms of their interest in pursuing a bilateral FTA with us because of the AANZFTA agreement.

**Ms PARKE**—Burma continues to pose problems for ASEAN in a political sense. What are the economic consequences of Burma's membership of the FTA?

**Mr Woolcott**—As a general policy, we do not encourage or discourage trade investment with Burma. We do not actually have economic sanctions on Burma. What we do have are targeted financial sanctions on key elements of the regime's leadership, its business cronies and elements of its family. We also have travel restrictions. But we do not have economic sanctions on Burma. I might let Mr Mugliston talk a bit more about how we handle Burma in the context of AANZFTA.

**Mr Mugliston**—I am sorry, Ms Parke; do you want to know the trade impact of this?

**Ms PARKE**—Yes.

**Mr Mugliston**—The short answer to your question is that at this particular point in time it is very negligible given our trade with Burma. Looking at the latest statistics for the financial year 2007-08—and I am now just talking about merchandise trade, goods trade—imports from Burma were valued at \$20 million and exports were valued at \$29 million, so \$49 million is the total goods trade. Services statistics are more difficult to get at this time. A very small volume of trade is taking place there, I would imagine. But what is important is that we are looking at almost \$81 billion worth of trade with ASEAN, so it represents a very small percentage of trade.

**Ms PARKE**—We are not proposing, as a government, to try to increase that proportion with Burma.

**Mr Mugliston**—No. Our engagement with Burma on trade issues takes place in the context of our trade relationship with ASEAN. We have concluded a comprehensive FTA with the 10 countries of ASEAN. Burma is a member of ASEAN, so we have therefore concluded an FTA with Burma. Burma has a tariff schedule, a services schedule and an MMP schedule, but there is no policy of encouraging businesses to seize any opportunities there, given that we have made very clear to Burma that our trade and investment interests are very limited and constrained by the lack of progress in democratic and economic reforms in Burma.

**Senator TROOD**—Mr Mugliston, we are obliged, under the terms of the agreement, to extend the obligations under the agreement to Burma, as we are to every other member of

ASEAN. Is that not the case? It may be that we might discourage Australian enterprises from trading with Burma but, if there were to be an initiative from Burma, taking advantage of the agreement, under the terms of the agreement we would be obliged to comply; would we not?

**Mr Mugliston**—Yes; that is correct.

**Senator TROOD**—Is there a potential that the Burmese government might choose to take advantage of the agreement as a means of expanding its trade contacts with Australia and New Zealand?

**Mr Mugliston**—I have to think about that one in the sense—

**Senator TROOD**—I am happy for you cogitate on it.

**Mr Mugliston**—I am thinking about our contact with Burma in the context of the negotiations of AANZFTA, which was a four-year endeavour. It is fair to characterise the bilateral contact as minimal and very limited. They were not a major player in the negotiations; it is as simple as that. Given the challenges that that country faces, there are a lot of issues for it to confront before it can contemplate exporting—

**Senator TROOD**—I see that it may well be a remote dimension of the whole agreement and perhaps a relatively trivial part of the overall trade relationship. I am seeking to understand more fully the impact of the agreement between our country and the various ASEAN countries, and that seems to me to be an issue that needs some attention.

**Mr Mugliston**—My colleagues have just mentioned to me that there is also the WTO angle. Burma is a member of the WTO as well. It is not specific to this answer, although I recognise and accept that your question is directed to this particular agreement. I would also note that, as a least developed country, Burma already has and enjoys duty free and quota free access to the Australian market in terms of the previous policy decisions taken. They are one of the parties to AANZFTA and our scheduling commitments apply to the other parties of the AANZFTA.

**Senator TROOD**—The agreement will come into existence once it is ratified, obviously, by ourselves, but how many ASEAN countries will be required to ratify it?

**Mr Mugliston**—At least four.

**Senator TROOD**—And you are confident that that will happen relatively quickly?

**Mr Mugliston**—As you would appreciate, this is now subject to internal domestic processes in each country, including Australia. The indications that we have got are that people are seeking to move as fast as possible, with their own internal processes, to complete their ratification as soon as possible. The general experience has been with their other FTAs that they have moved within a reasonable period, recognising that some countries tend to take a bit longer than others, of course. But there is a very strong political commitment there to having this agreement enter into force as soon as possible. You do not enjoy the benefits of it until you have ratified it.

**Senator TROOD**—That entirely rational observation may bear less force in the context of the particular politics that apply in each of the countries where, in one way or another, there may be a measure of instability. I am thinking of Thailand, for example, where there is clearly uncertainty about the situation at the moment. The question is: can we be confident that we are going to meet the expected deadline for the start-up of the agreement, on the basis of the ratifications we need?

**Mr Mugliston**—The target date is 1 July 2009. At the time, it was expected that this FTA would have been signed in December last year but, as you know, the meeting was postponed precisely for reasons that you just mentioned—in respect of domestic developments in Thailand. Therefore, it is now a case of whether we are going to get sufficient critical mass to meet that timeline. Of course, there is an issue with our own processes, given that we are tabling—or it is expected to be tabled—today, and then there is another parliamentary committee that will be examining it, and we have to go through that process.

**CHAIR**—It is the Treaties Committee.

**Mr Mugliston**—Yes, the Joint Standing Committee on Treaties. They have their own processes, and it is therefore subject to our own parliamentary consideration timelines.

**Senator TROOD**—Senator Forshaw was making a point about the difference between the ASEAN free trade agreement and the individual, or the bilateral, free agreements. The issue that seems to me to arise there, apart from those that he drew attention to, is the problem—and I would like clarity to know how difficult or challenging a problem it is—of businesses in Australia having to make choices between the different kinds of agreements under which they operate. It seems to me that if we are talking about free trade, then the last thing business needs is the need to make choices between different kinds of agreements, most of which are very long, very complicated and complex. Far from assisting free trade, this seems to me to raise the question about whether or not it is going to vastly complicate free trade. At a theoretical trade level, I can see the force of the argument about free trade, but at a shop level, if you will, or an enterprise level, where companies are going now to have to work their way through complicated agreements to make choices, is the difference between the two so great that this is a potential problem? Or do you think that is not a particular difficulty they will face?

**Mr Mugliston**—I would suggest that it is not a particular difficulty and I will explain why. You are right, it is another choice that is being presented to industry; it is another opportunity. If we focus on tariffs, in our case our tariff schedule has over 6,000 tariff lines and in the case of Indonesia it is probably over 10,000 tariff lines. What tends to happen, and we have had this already in feedback from some industry players, is that they have looked at the website and the tariff schedule. The whole agreement when you add up the annexes and the rest is under 6,000 pages so I accept your point there is a lot of text there.

**Senator TROOD**—It would be nice if it were under 1,000 of course.

**Mr Mugliston**—But a lot of it is tariff schedules. It is all consistent, standard nomenclature with tariff schedules. At the end of the day, it is the widget exporter that is very focused on one, two or a handful of tariff lines and that is the area of interest. What they would be looking at is the associated rule of origin that applies under AANZFTA and then the bilateral. Then they

would make the commercial decision whether this other choice or option in fact represents a more commercially favourable option to pursue.

**Senator TROOD**—I see. Will they be able to look to the department for assistance in this respect? Are you looking to the need to improve the administrative support that is available in relation to these agreements to assist these businesses?

**Mr Mugliston**—We are and this is clear on the website. There are contact details there for anyone who wishes to follow up. In fact the feedback that we have received to date actually suggests that the tariff schedules are user-friendly. People are able to follow them relatively easily and they are familiar with tariff schedules. It is transparent. We did put a lot of emphasis in the verification process on seeking to ensure high-quality schedules that industry could understand.

**Senator TROOD**—You made the point that this agreement feeds into ASEAN's internal processes of integration and their movement towards a common market by I think 2015. The thing that strikes me about the progress, if I can use that term, within ASEAN towards free trade is that it has been relatively easy to make progress on tariff issues. The individual countries have lowered their tariffs quite considerably over a period of time. That is not the problem. I must say I am not particularly optimistic about the speed with which they are going to move towards the economic community. It is precisely because the tariff stuff is easy relatively, but the non-tariff stuff is not easy and there has been relatively little progress within ASEAN on the non-tariff issues. The question is: is that an analysis with which you agree and, secondly, how difficult is it going to be to deal with non-tariff issues in relation to the agreement?

**Mr Mugliston**—I would disagree with you on one point that you made in suggesting that tariff negotiations or the tariff part was easy! It is not. I can assure you that we have spent a lot of time negotiating the tariff outcome. It was not easy.

**Senator TROOD**—Easier.

**Mr Mugliston**—Okay. To answer your question, first of all in terms of what the ASEAN countries have committed to, they have committed to establishing an ASEAN economic community by 2015. That is aimed at bringing down barriers to goods, services, skilled labour and capital to create a single market in the region. That is what those countries are committed to achieving. In respect of our particular FTA with ASEAN and New Zealand, as I made clear earlier, our main focus has been on the tariff side of the equation and we recognise that is only a part. What is important when you actually look at the agreement and the objectives in chapter 1 is that it makes it very clear. One of the objectives is to progressively liberalise and facilitate trade in goods through inter alia progressive elimination of tariffs and non-tariff barriers.

I agree with you completely, of course, that the non-tariff measures issue is a very difficult one. But AANZFTA does incorporate WTO disciplines applying to non-tariff measures; however, it was not possible to negotiate any additional disciplines on non-tariff measures as part of the AANZFTA outcome at this particular point in time. We mentioned this at our previous public hearing and discussed this in terms of one of the relevant articles in the agreement on non-tariff measures containing this commitment to review non-tariff measures within two years of entry into force of the agreement, 'with a view to considering the scope for additional means'

to increase trade between the parties. To answer your question, I think ASEAN countries themselves would recognise this is an issue they are grappling with internally. Here is an opportunity to also engage with us, as part of this process, because you have got to ensure that such measures are effectively addressed in order to determine the long-term success of the AANZFTA in facilitating our trade within ASEAN.

**Senator TROOD**—I do not discount the challenge of doing this, but it seems to me that ASEAN, ever since 1967, has a long record of signing up to things, agreements—most of which we would all agree are desirable objectives politically, socially and economically—but when it comes to the hard work of actually making progress on some of those commitments, particularly with regard to non-tariff activity, internally within ASEAN the progress has been disappointing. The progress has been made on SEF, for example, over a period of time, seems to me to be rather slow. The record is not entirely encouraging. You are right that you have got to get them to sign up, to ratify the agreement, but it seems to me a lot of hard work is going to be required to make progress on the non-tariff issues in the future.

**Mr Mugliston**—Very briefly on that, all I would note is that if we just look at the tariff outcome, what we have secured from ASEAN is an outcome here where they have gone further than they have in any other agreement with other countries.

**Senator TROOD**—I just ask you what your assessment is of the likely impact of the financial crisis on the agreement. There has been some rather disturbing commentary from the region with regard to this, where the Indonesian government, for example, has instructed local government officials to buy local products as a result of the impact of the financial crisis. And the Malaysian Prime Minister has said that protection is quite ‘normal’ as a dimension of trying to deal with the challenges that financial crisis imposes on a government. Can you give us your best assessment as to the impact of the current financial crisis on the likely implementation of the agreement?

**Mr Mugliston**—The context in which we are looking at this today is different to when we were talking about this at our last public hearing in September. Given the gravity of the global financial crisis, clearly most countries in the region, if not all, are under a lot of domestic pressure. We are following developments, as we are internally in Australia, in terms of domestic industry calls, et cetera. My answer has two points. First of all, you talk about some of the government procurement practices and directives. It was one of our objectives in this agreement to have government procurement covered in the FTA. Australia and New Zealand sought to achieve that. In the end, we were unsuccessful. Government procurement is not covered in this FTA, at this point in time.

**Senator TROOD**—The Indonesian observation to government officials to buy local is not inconsistent with the agreement undertaken?

**Mr Woolcott**—There is a lot of media speculation on that. There has actually been no edict relating to buying local products at this stage. I think it is a matter which is swirling around in the Indonesian system and there is some thinking about this, but at the moment it is essentially media speculation. The Indonesian government has not yet issued any proclamation or edicts in relation to buying local products.

**CHAIR**—Not kite flying from the Indonesian government?

**Mr Woolcott**—There may be an element of kite flying from parts of the Indonesian government.

**Senator TROOD**—I think, Mr Mugliston, you were up to point 2.

**Mr Mugliston**—Just in respect of point 1, government procurement is, of course, a very significant area of economic activity. We also saw it as important in terms of contributing to the governance objectives as well. However, at the end of the day, we were not able to get that outcome largely because ASEAN's own internal arrangements do not cover this. They regard government procurement as a matter of national sovereignty and it is therefore not subject to their internal agreements. It is not covered. That was one of the major hurdles we encountered in that particular area.

My second point is in respect of tariff outcomes. A lot of our trade with ASEAN—exports—now takes place at very low tariffs, whether it is zero or at five per cent. One of the big advantages now with this outcome is that we have locked this into the 2005 applied tariff rates. We have bindings there. They cannot increase those tariffs, under this agreement, to their WTO bindings, which are well, well above that in some cases.

**Mr RUDDOCK**—I wanted to move on to the area that we started to talk about—the trade in services provisions. It is an area which I have been interested in, particularly in relation to Singapore and Malaysia. I note in relation to the matter of trade in legal services, for instance, is says that domestic regulation in relation to qualifications, which is an important matter in restricting access to the provision of services, will be:

... not more burdensome than necessary to ensure the quality of the service;

Whatever that means. When I looked at it you were going along with words like:

... each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.

It just seemed to me on reading these provisions that I would not expect in relation to the provision of legal services that that would have any impact whatsoever in terms of the restrictive practices of both Singapore and Malaysia, which are the two countries with a common law tradition that we might expect to be able to offer services to Australian enterprises seeking advice on those jurisdictions. I could not see that it would make any change. I noticed also that they had provisions here for committees. I thought that was interesting. I do not know how you are intending to use these committees in relation to services, but there will be a services committee:

The Services Committee shall conclude the discussions referred to in Paragraph 2(a) to (c) within five years of entry into force of this Agreement ...

So we are looking at a fairly long-term capacity to be able to influence these matters through discussions in a services committee. We put it off for about five years. Is that how I should read it? It is on page 105, 91 and 92.

**Mr Mugliston**—I will get my colleague to comment on the detail.

**Mr RUDDOCK**—I just want you to know that I am going to be watching this very closely.

**Mr Mugliston**—I know you have a keen interest in this area, Mr Ruddock. I will get my colleague Mr Larkin to comment specifically on Singapore and Malaysia. But let me just address a couple of general points. The problem that we have now generally in terms of services is that ASEAN has not done that much in terms of their own internal arrangements on liberalising services trade within ASEAN. You have the ASEAN Framework Agreement on Services, which is a very incremental process—but it is still progressive liberalisation. They have a policy, the so-called ASEAN-first policy, but they are not prepared with an external partner to go beyond what they are committed to internally within an ASEAN agreement, so that has acted as a constraint. Getting back to the earlier discussion we had about the relationship between bilaterals, we are then, therefore, presented with the only other option, of saying, ‘Okay, if we want to secure improvements here we’ve got to go bilateral.’ Because, at the end of the day, some of these countries have problems extending more liberal access to their ASEAN colleagues in circumstances where they are not necessarily getting reciprocal arrangements. So it has been a very difficult area of negotiation within ASEAN.

You referred to some general principles here about concepts of reasonableness et cetera. You are a lawyer; I think you understand they are normative concepts that do have a certain meaning in a legal document. They do represent enhancements to the WTO GATS disciplines that will continue to be a work in progress, but it gives us something to engage with, including in the context of this committee on trade and services.

Your other point was on this inbuilt agenda, if you like. The approach taken on services is to recognise we are really going to be looking at periodic negotiations to improve services commitments, and in fact what is provided for here is for this to be undertaken within three years of the AANZFTA entering into force.

**Mr RUDDOCK**—I thought it said five years.

**Mr Mugliston**—Sorry. Yes, it will conclude within five years. You then undertake this review. But I will ask Mr Larkin to focus specifically on those additional points.

**Mr Larkin**—In relation to Singapore and Malaysia, it is true that Australia was not able to obtain any improvements on the existing WTO situation with regard to legal services in Malaysia, nor were we able to improve on current SAFTA levels of commitment in relation to Singapore on legal services. I think your observation is correct that the legal services profession is a very sensitive area for ASEAN because it is a profession in ASEAN countries that is very defensive. In the case of Malaysia, they have a citizenship requirement to practise law. The Philippines is another example where the practice of law is reserved solely for Filipino nationals. It is an area of strong export interest for the Australian services sector, and we will continue to use the built-in agenda to review commitments three years after they enter into force to pursue our interests. Over the long term, as with other services sectors, as ASEAN progressively liberalises we hope to be well positioned to harvest improved commitments into the AANZFTA agreement.

You mentioned the particular regulatory disciplines about administering domestic regulation or measures in an impartial, non-discriminatory manner. That language actually replicates existing WTO language under the General Agreement on Trade in Services. There are other areas in the services chapter where we were able to secure improvements in the WTO language, particularly in relation to licensing procedures and so on, but I readily acknowledge that. That presumes that a foreign supply can get a licence and practise in the market, and so it may be less relevant for legal services than some other areas.

**Mr RUDDOCK**—I assume from my reading of chapter 9 that there is no additional enlargement of migration provisions other than, reading article 2, that contractual service providers will be able, presumably, to get visas for their own employees if they win a contract to provide a facility here. Presumably, that means that if you want a contract to build an abattoir or something then you will be able to introduce all your own workers to install it.

**Mr Mugliston**—It is subject to your specific commitments and your movement of natural persons schedule, which is then annexed to the agreement. I will ask Mr Larkin to respond.

**Mr Larkin**—If your question is directed at Australia's commitments in this area, Australia's movement of natural persons schedule does make a commitment on contractual service suppliers. These are defined as persons with trade, technical and professional skills. The commitment is framed such that this contractual service supplier has to have won a contract in Australia, and entry and stay is subject to employer sponsorship requirements.

**Mr RUDDOCK**—Could that work for Australian lawyers in Singapore or Malaysia?

**Mr Larkin**—In the case of Singapore, it did not make any commitments on contractual service suppliers. In the case of Malaysia, they did make some commitments on contractual service suppliers, but they are limited to the education sector. In that regard, they would apply perhaps to lecturers in law, but not legal practitioners as such.

**Mr RUDDOCK**—To get some of the benefits in the tariff areas, we sort of traded off access to service provision? Is that how I should read it? It is certainly how I have read some other free trade agreements.

**Mr Mugliston**—No. This is very much a positive list approach in that there are very specific commitments that one makes on the temporary movement of natural persons. Australian services suppliers—and this was a big issue identified by not just lawyers but domestic stakeholders—want to facilitate easier access to these markets. This would be in terms of the ability of investors, goods sellers, and service suppliers to have temporary entry and stay in another country to explore business opportunities and negotiate and then enter into contracts. In fact, we have very keen interest in securing these sorts of commitments. A lot of stakeholders made the point to us that they experienced delays in obtaining entry visas or other permits, had difficulties in obtaining relevant forms or documents and experienced a lack of transparency in decision making. In terms of our own service suppliers these are the points that we are seeking to address. Similarly, as Mr Larkin has already outlined, what we have then committed to in the movement of natural persons is pretty much modelled on our approach in the WTO, except that where we have gone further now, in terms of this temporary movement of natural persons, is that in the architecture of the WTO it is confined only to service suppliers in terms of the GATS. Whereas

what we have here under this agreement is a separate schedule which is not limited to service suppliers; it can also cover investors and goods sellers. That does reflect our domestic regime.

**Ms JULIE BISHOP**—I apologise if this has been covered. I want to follow up from Mr Ruddock's comments about legal services, and we can take that to apply to accounting, financial, and the like, but let us just use legal services. There is a Singapore free trade agreement and now there is this ASEAN free trade agreement. Under the Singapore free trade agreement, what is the current status of foreign law firms practising law in Singapore? And how would that work with this ASEAN free trade agreement? Would there be other requirements, different requirements, and what is going to happen country by country? I ask that in the context of noting recently the US-South Korea Free Trade Agreement—where the national assembly in South Korea passed legislation to enable foreign law firms to practise in South Korea as a result of the free trade agreement. What is our position under the Singaporean free trade agreement and how will that work with this ASEAN position?

**Mr Mugliston**—We are just consulting here—

**Ms JULIE BISHOP**—A demarcation dispute.

**Mr Mugliston**—Well, there is no dispute, but we had this discussion earlier with Senator Forshaw, I think it was, that raised this question on the relationship between AANZFTA, the regional FTA, and bilateral agreements. We are referring here to agreements we have already concluded as well as any future possible other bilaterals we might be doing. On the very specific issues you have raised regarding legal services, my colleague Mr Woolcott's division is in fact responsible for implementation of SAFTA, that bilateral agreement, which does contain a built-in agenda in terms of ongoing negotiations. I am not across the detail of it personally but I do know that legal services is a major issue that we are continuing to engage the Singaporeans on bilaterally under SAFTA. In terms of AANZFTA, the approach, quite frankly, was reasonably modest in terms of the commitments that we obtained from ASEAN countries in respect of professional services commitments. But the specific commitments we got are valued by some stakeholders. It is a bit patchy, so you have to go through the individual schedules. Legal services was not a sector that was out in front of others in professional services. It tends to be a very difficult internal one.

**Ms JULIE BISHOP**—What was out in front: financial services?

**Mr Mugliston**—In terms of other sectors, education and construction and these sorts of sectors. Regarding where we are at at the moment with SAFTA, I will pass it over to Mr Woolcott.

**Mr Woolcott**—We held discussions with the Singaporean delegation that came here last month under SAFTA as part of the review process. Those negotiations are continuing and I will probably go to Singapore in another month or so to try and ramp up the discussions in relation to this review process. Legal services features quite prominently in what we want from the Singaporeans. They have moved a little bit. The Rajah commission reported last year and it set out a range of reforms to the Singaporean legal system. It recognised that Singapore is short of lawyers and also set in process a number of reforms that Singapore embarked on. One of them, for example, is the establishment of qualified law firm ventures, which allows essentially foreign

law companies to set up and run legal practices in Singapore, including the employment of Singaporean lawyers as part of their law firm.

**Ms JULIE BISHOP**—Practising Singaporean law?

**Mr Woolcott**—No, not Singaporean law, but allowing them to actually employ Singaporean lawyers, which had been not allowed up until that point. Tendering for what you might call qualifying law firm venture licences went out and a number of Australian law firms did apply for them, but in the end they selected only four firms and they are essentially very large, multilateral US and UK law firms. Obviously, there is some interest in the Australian law firms in getting a QLV licence should there be another round of these licences in future. That is something which is a matter for discussion. There is also the issue of joint law ventures, which raises a number of issues regarding, first, the ability to practise Singaporean law in what areas and the ability to employ Singaporean lawyers by foreign JLV schemes. There are two Australian law firms with JLV licences and they are of course interested in what they can get out of any discussions or negotiations we have with Singapore on the JLV scheme.

We are also looking in terms of legal education for some movement from the Singaporeans. The Singaporeans recognise a number of law schools in Australia as being qualified to produce lawyers who then are certified to practise in Singapore. We are looking to expand that list by a number of law schools. There is also a quota system. Singaporean lawyers have to graduate within the top 30 per cent of any law class in an Australia university. That contrasts with the US and UK quotas, which are slightly more expansive than that. So again we are looking at negotiating with the Singaporean some improvements.

It is in a state of flux at the moment. Singapore is not a closed shop; there are many Australian lawyers practising there. But there are significant constraints on what they can do and we are in the process of negotiating, through the SAFTA review process, what results we can obtain.

**CHAIR**—Just for the public record, could you state what SAFTA is.

**Mr Woolcott**—The Singapore-Australia Free Trade Agreement.

**Ms JULIE BISHOP**—The next part of my question was: how does what is proposed under this free trade agreement fit with SAFTA? I apologise if you went through this before, but perhaps you could answer in the context of legal services.

**Mr Mugliston**—In terms of the Singapore-Australia FTA, that clearly is the set of commitments that applies only to Australia under the bilateral FTA. What we have in AANZFTA is the set of commitments that applies to all the other 11 parties. Generally speaking—there is no exception to this—the bilateral goes beyond what is in the AANZFTA. It is WTO-plus, but then you have to examine what the WTO-plus elements are, and that is where we have to get into the detail of the schedule to identify the particular sectors.

**Ms JULIE BISHOP**—So you do not achieve as much as you might in a bilateral but you achieve more than WTO.

**Mr Mugliston**—Yes. In fact, what we have been able to secure in terms of the AANZFTA outcome were improvements to what the countries had offered in the WTO Doha Round negotiations. So it is a concept of harvesting that now, because those WTO negotiations are continuing to go on, of course.

**Ms ANNETTE ELLIS**—I want to ask a question in relation to the environment; I am not sure to whom it should go. Although the agreement contains exceptions to free trade where environment matters are concerned, in general the environment appears to be peripheral to the main focus of the agreement. Does the agreement offer any mechanisms for an integrated approach to economic and environmental objectives?

**CHAIR**—I am sorry it is a difficult one, but it is worth asking.

**Mr Mugliston**—Nothing is easy, Mr Chairman. Let me answer the question first of all by referring you, Ms Ellis, to the preamble. There is acknowledgement and there is confidence, that this agreement will support sustainable economic development. I mentioned earlier that we had some very difficult discussions in the negotiations on government procurement and there was an outcome that basically resulted in it not been covered in the AANZFTA. It was similar on environment. The process we had in the negotiations was clearly that officials meet, you have negotiating rounds, but then you report to ministers. Ministers met, generally speaking, in August of each year—2005, 2006, 2007 and 2008—as well as a couple more meetings last year. It was actually at the August 2007 meeting of trade ministers from ASEAN, Australia and New Zealand that it was decided that labour and environment provisions would not be included in the AANZFTA. That reflected the firm opposition by ASEAN members to negotiate such provisions under AANZFTA. The focus was on negotiating a comprehensive FTA. We have a comprehensive FTA. There has been a lot of debate on what should or should not be covered in an FTA, and this is the first time that Australia has agreed to include economic cooperation as an element in an FTA, which was not our position at the start of the negotiations.

**Ms ANNETTE ELLIS**—Can you expand on that a little bit, particularly in relation to the environment angle, given the words in the preamble. They are honourable words and I am not for one moment disputing that they do have some import in being there. But to what degree do you believe there will be any ability for us to go back to those words, should there be a wish to do so? An environmental element is not strictly within the agreement, but if an environmental question of some import arises between Australia and ASEAN generally or one of the ASEAN nations in particular, where do we stand? It is very noble to have it in a preamble, but what else might it be able to do?

**Mr Mugliston**—It depends. What we have established is a mechanism to provide for our ongoing engagement with ASEAN.

**Ms ANNETTE ELLIS**—I do not dispute that.

**Mr Mugliston**—For example, we have established an FTA joint committee. Senior officials meet and of course they report to ministers. They are free to discuss a whole range of issues of relevance or interest. Some in fact reflect legally binding obligations in the FTA. There will be other issues. Quite frankly, I would expect there would be further discussions on non-tariff measures and any problems that countries may be encountering or exporters may be

experiencing in trading and seeking to get benefit from the FTA. That is part of the process. That does not preclude people from raising other issues. I should also note, as I mentioned earlier, that there is a provision that will require us to undertake a general review of the whole FTA in 2016.

**CHAIR**—Your answer is a perfect lead-in to my question. If a signatory breaches this agreement, what kinds of sanctions are available for Australia in circumstances where it is other than for ‘clear threat to their domestic economy’? I have a second question, which I will come back to because I feel I am here representing Mr McFarlane on Thailand. So I shall have to be a bore and come back to that, too.

**Mr Mugliston**—I understand your question is on the point regarding dispute settlement. I will ask my colleague Dr Church to respond. He will be more succinct than I would be on this point.

**Dr Church**—The agreement does have a dispute settlement chapter. It is very much modelled on what we have in the WTO. It has a process for initial consultations between affected parties that have a particular concern over an issue, and that can be followed by establishment of a tribunal to hear a matter. In addition to that dispute settlement chapter, a lot of the other chapters of the agreement have individual consultation provisions. So if a particular issue came up—for example, in the context of the chapter on trading goods or the chapter on services—there are provisions in those individual chapters for consultations between the parties. It has always been the approach, both from the WTO and in other trade agreements like these free trade agreements, to try to resolve issues. Most issues are in fact resolved through consultation between the parties.

**CHAIR**—Are there any sanctions, apart from the establishment of tribunals and consultations according to individual schedules?

**Dr Church**—Similar to the process in the WTO, if you have a situation in which a tribunal finds that a party is in breach of its obligations under the agreement, there is scope to have compensation and retaliation. There is also review process to make sure that a party is abiding by the findings of a tribunal. So it is very similar to the sorts of processes you have in the WTO. It is a process of continuing consultation and examination by the parties to ensure compliance.

**CHAIR**—I will come back to the Thai free trade agreement. I do not want to go back to the discussion we had at the previous committee about the non-tariff difficulties we have with Thai auto exports, but I want to get clear, from the first answer that you gave to me, what the current situation is. Does this agreement give us any further mechanism for advancing that area between Thailand and Australia, or indeed between any of the ASEAN partners, on problems that we clearly have under this bilateral arrangement?

**Mr Mugliston**—What has been agreed is that those bilateral arrangements will continue to function as distinct, separate agreements. Therefore what we are seeking to do is to in fact progress this issue bilaterally under the TAFTA umbrella. Again, Mr Woolcott’s division is responsible for this so-called inbuilt agenda with TAFTA. This was an issue that Mr Crean did raise with his Thai counterparts when he was in Thailand last month for the signing of the AANZFTA.

**CHAIR**—But he raised it separately as a bilateral issue.

**Mr Mugliston**—As a bilateral issue, wanting to activate this bilateral built-in agenda, the review mechanism of TAFTA. There are a number of issues there that we want to discuss bilaterally with them.

**CHAIR**—Put aside the fact that there are no particular mechanisms in the new proposed treaty that would deal with this issue, we pursue this issue via the bilateral.

**Mr Woolcott**—That is right.

**CHAIR**—What happened?

**Mr Woolcott**—Essentially they are going to consider it. The question is whether they need cover of their parliament to enter into the inbuilt agenda review process. We would argue that it is part of the already agreed treaty and they should not need parliamentary approval. They are very sensitive about the role of the parliament and its importance in reviewing all treaty aspects at the moment, any new negotiations they enter into. So they are considering this at the moment. It is obviously something we have been pushing for a while. It has been held up by the political instability in Thailand. We now have a government there which looks like it is reasonably stable and so we took the opportunity of the minister's visit to Bangkok for the signing of the AANZFTA to push very strongly with the Thai government and the Thai trade minister for the inbuilt agenda to negotiations to take place.

**CHAIR**—Does the parliamentary majority there feel any obligation to what the government's policy is or previous treaties? Are they from different orientations?

**Mr Woolcott**—It is a coalition government. It is holding reasonably firm at the moment but it remains a coalition government and has some fragility to it. We would have thought an issue like this would not be particularly sensitive, having been agreed to by parliament in the past including the inbuilt agenda, but the Thai government is moving very carefully on this.

**CHAIR**—As there are no further questions, I thank you for your attendance here today. If there are any matters that we might need additional information on, Mr Carter will write to you. The secretariat will send you a transcript of today's hearing. Thank you very much to all of you for taking the trouble to come here today. And congratulations on what must have been a very difficult negotiation, too.

Resolved (on motion by **Ms Annette Ellis**):

That the subcommittee authorise the publication of evidence given before it at public hearing this day.

**Subcommittee adjourned at 12.28 pm**