

ASEAN-Australia-New Zealand Free Trade Area

Introduction

- 4.1 As noted in Chapter 3, a wide range of benefits (and challenges) arise from bilateral free-trade agreements. Even greater benefits, however, may be anticipated for agreements that cover groups of nations. Lowering barriers to trade across a number of countries brings with it a greater ability to access business opportunities, to encourage investment synergies, and to market goods and services on a greater scale. The recently signed AANZFTA is therefore expected to be a highly significant treaty.

Impact of the agreement

- 4.2 DFAT told the Committee, that the main effect of AANZFTA would arise from it being a 'platform' for further trade liberalisation.¹ Subsequent to its release, DFAT gave the Committee a more complete description of the unique nature and significance of AANZFTA.

¹ Mr Michael Mugliston, *Transcript 12 September 2008*, p. 10.

4.3 The agreement was the first multi-country FTA that Australia had negotiated and was the most comprehensive treaty ASEAN had entered into. DFAT added that AANZFTA was:

... 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 ...

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.²

4.4 DFAT also described the anticipated present and future benefits of AANZFTA:

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.³

4.5 A further distinctive feature of AANZFTA lay in its relationship with economic integration between countries in the region. DFAT told the Committee that this was a 'major driver' for AANZFTA, and identified strong links between AANZFTA and plans to establish an ASEAN economic community by 2015.⁴

4.6 From this description it is clear that AANZFTA occupies a distinctive position within Australia's trade apparatus. The following sections summarise the main features of AANZFTA, and considers its implications for key aspects of Australia's trade with ASEAN member countries.

2 Mr Michael Mugliston, *Transcript 16 March 2009*, p. 2.

3 Mr Michael Mugliston, *Transcript 16 March 2009*, p. 3.

4 Mr Michael Mugliston, *Transcript 16 March 2009*, p. 5.

The agreement

4.7 AANZFTA was signed at Cha-am, Thailand, on 27 February 2009. It was tabled in parliament on 16 March 2009 and will come into force on 1 July 2009 if it is ratified by a minimum of four signatory countries. DFAT predicted, based on past experience, that ASEAN a member countries would move 'within a reasonable period' to ratify the agreement.⁵

4.8 AANZFTA includes chapters on:

- Trade in goods and Rules of Origin;
- Trade in services, including Annexes on Financial Services and Telecommunications;
- Customs procedures and Sanitary and phytosanitary measures;
- Movement of natural persons; and
- Investment and Intellectual Property.

4.9 External Annexes display important detailed information on:

- Schedules of Tariff Commitments (Annex 1);
- Product Specific Rules (Annex 2);
- Schedules of Specific Services Commitments (Annex 3); and
- Schedules of Movement of Natural Persons Commitments (Annex 4).

Objectives

4.10 The objectives of AANZFTA are to:

- 'progressively liberalise and facilitate trade in goods ... through ... progressive elimination of tariff and non-tariff barriers'
- 'progressively liberalise trade in services'
- 'facilitate, promote and enhance investment opportunities'
- 'establish a cooperative framework for strengthening ... investment and economic links'

5 Mr Michael Mugliston, *Transcript 16 March 2009*, pp. 3, 6.

- ‘provide special and differential treatment to ASEAN Member States’.⁶

4.11 This is consistent with the approach taken within ASEAN – to respect differences between member states while working toward closer ties and greater efficiency.

Main elements

4.12 A central provision of AANZFTA is that parties accord each other ‘National Treatment’ – that is, that each ‘shall accord to the nationals of each other Party treatment no less favourable than it accords to its own nationals’.⁷

4.13 To support this, AANZFTA provides a number of mechanisms:

- It provides methods to identify which goods, services or entities originate or belong to the Free Trade Area, through Rules of Origin and Certificates of Origin.⁸
- It establishes a series of Committees to administer the Agreement. These include the FTA Joint Committee, Goods Committee, Rules of Origin Sub-Committee, SPS Sub-Committee, and the STRACAP (standards) Sub-Committee.⁹
- It creates avenues for consultation and dispute settlement.¹⁰This includes a requirement for each signatory country to create Arbitral Tribunals through which disputes and complaints may be resolved.¹¹
- The Agreement stipulates methods through which to establish transparency¹² and contact.¹³

6 *Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA)*, Chapter 1, Article 1, p. 3.

7 AANZFTA, Chapter 13, *National Treatment*, Article 4, Paragraph 1, p.184.

8 AANZFTA, Chapter 3, *Rules of Origin*, p. 14 ff.

9 AANZFTA, Chapter 16, *Institutional Provisions*, Article 1, pp.203-4.

10 See AANZFTA, Chapter 17, *Consultations and Dispute Settlement*, p. 206 ff. See also Dr. Milton Kirche, *Transcript 16 March 2009*, p. 17.

11 See for example AANZFTA, Chapter 8, *Trade in Services*, Article 12, Paragraph 2, p. 97.

12 Transparency entails the public availability of information on standards or judgements, including to non-national entities wishing to operate in a particular country covered by AANZFTA. See AANZFTA, pp. 68, 94, 112, 126, 136, 139, 157, 190.

13 Contact entails the provision of ‘Contact Points’ through which non-national entities can engage national representatives on particular aspects of trade. See AANZFTA, pp. 11, 57, 68, 95, 194, 231.

4.14 These measures demonstrate the character of AANZFTA. The intention is to bring signatory states into a greater state of consistency and dialogue on matters of trade. In line with this, AANZFTA displays a strong emphasis on consistency in standards and technical regulations, including for Intellectual Property.¹⁴

A 'platform' for other agreements

4.15 Before it was released, DFAT told the Committee that AANZFTA would operate as a 'platform' or 'framework', drawing on and affirming agreements already in force, and fostering new agreements between signatory states.¹⁵

4.16 This is borne out by the released text, which throughout displays strong linkages to GATT 1994, GATS and WTO agreements.¹⁶ AANZFTA itself is established under provisions of GATT 1994 and GATS.¹⁷ 'National Treatment', and other key features of the Agreement, also reference GATT 1994.¹⁸

4.17 AANZFTA allows parties to adopt new agreements which 'accelerate and/or improve tariff commitments made under this Agreement'.¹⁹

4.18 Conversely, there are clear directions that 'no Party shall adopt or maintain any prohibition or quantitative restriction' on imports.²⁰ Similar indications apply to non-tariff measures and their transparency – that the only kind of change that is permissible is to reduce them and make them more transparent.²¹

4.19 The combined effect is to facilitate progress toward trade liberalisation, and make increases in trade protection more difficult. To the extent that AANZFTA is effective, this will ensure that changes in trade settings

14 See AANZFTA, Chapter 6, *Standards, Technical Regulations and Conformity Assessment Procedures*, p. 61 ff, and Chapter 13, *Intellectual Property*, p. 183 ff.

15 Mr Michael Mugliston, *Transcript 12 September 2008*, p. 10.

16 For references to GATT 1994 see for example AANZFTA Chapter 1, *Establishment of Free Trade Area, Objectives and General Definitions*, Articles 4, 5 & 6, pp. 8-9. For WTO Agreement, see Chapter 1, Article 3, p. 8.

17 GATT 1994, Article XXIV and GATS Article V, cited in AANZFTA, Chapter 1, Article 2, p. 4.

18 GATT 1994, Article III, cited in AANZFTA, Chapter 2, Article 4, p. 8.

19 AANZFTA, Chapter 2, *Trade in Goods*, Article 2, pp. 7-8.

20 AANZFTA, Chapter 2, Article 7, Paragraph 1, p. 9.

21 AANZFTA, Chapter 2, Article 7, Paragraphs 2 & 3, p. 9.

within the free trade zone will ultimately lead toward further liberalisation.

Tariff settings

- 4.20 The body of AANZFTA defines and provides central principles, administrative bodies and means of redress, among other things. Specific tariff *settings*, and timelines for their reduction and removal under the Agreement, are contained in Annex 1 - *Schedules of Tariff Commitments*.
- 4.21 Tariff settings for each signatory are contained in a separate spreadsheet. Settings are commensurate with levels of economic development – spreadsheets for more developed ASEAN member states show lower tariffs, while for some countries tariffs continue at high rates in the near term. However, future targets show reductions.
- 4.22 After the release of AANZFTA, DFAT commented on tariffs under AANZFTA. DFAT told the Committee that a significant attribute of AANZFTA was that ‘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’.²²
- 4.23 DFAT also told the Committee that tariff settings under AANZFTA were bound to settings applied by each signatory country as at 1 January 2005. These ‘bindings’ imposed an obligation on these countries not to raise tariffs beyond the rates at that date. This was significant because these tariff rates were most often lower than bindings under WTO agreements. Consequently, AANZFTA in many instances represented an advance over tariffs under WTO.²³

Specific areas of trade

- 4.24 AANZFTA makes specific reference to two areas of trade in services significant to Australia.

22 Mr Michael Mugliston, *Transcript 16 March 2009*, p. 3.

23 Mr Michael Mugliston, *Transcript 16 March 2009*, pp. 3, 11.

- 4.25 The Annex on Financial Services focuses on transparency.²⁴ There have been instances where an absence of transparency has hindered Australian companies wishing to do business in the ASEAN region. Improvements in this area could be significant to Australia, in view of expertise and the possibility of growth in this area, subject to the financial crisis.
- 4.26 In relation to the Annex on Financial Services, DFAT told the Committee that:
- 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.²⁵
- 4.27 The Annex on Telecommunications binds parties to ‘prevent suppliers ... from engaging in or continuing anti-competitive practices’ and, importantly, requires parties to establish a ‘Telecommunications regulatory body ... not accountable to ... any supplier of public telecommunications networks or services’.²⁶ In the past, Australian firms have been frustrated in their attempts to find such an arbiter while operating within the ASEAN region.

Rules of Origin

- 4.28 Central to AANZFTA are provisions for Rules of Origin, ‘which liberalise the conditions under which products may receive tariff preferences within the ASEAN – Australia and New Zealand region’.²⁷ They are intended to allow signatory nations to trade with one another on a consistent basis,

24 See AANZFTA, Chapter 8, *Annex on Financial Services*, Article 5: *Regulatory Transparency*, p. 112.

25 Mr Michael Mugliston, *Transcript 16 March 2009*, p. 3.

26 AANZFTA, Chapter 8, *Annex on Telecommunications*, Article 11, *Telecommunications Regulatory Body*, pp. 118, 127.

27 DAFF, *Submission No. 25*, pp. 336-7.

irrespective of which nation they are dealing with in any particular transaction.

- 4.29 DFAT advised the Committee that this 'will help Australian and ASEAN industry develop greater linkages into regional production chains', increasing efficiency and maximising benefits from trade.²⁸ Modelling by DIISR suggested that in its most 'liberalising' form, AANZFTA would increase Australian Gross Domestic Product (GDP) by \$48 billion by 2020.²⁹
- 4.30 Given the 'geographic proximity' of ASEAN members to Australia, DAFF regarded AANZFTA as 'an important foundation for the future prosperity of Australian agricultural exporters'. On the other hand, DAFF noted, Rules of Origin were more readily negotiated than more 'far-reaching tariff liberalisation' for Australian agricultural exporters, and this showed the limits to current progress on trade liberalisation.³⁰

Movement of 'natural persons'

- 4.31 On occasion, exporting industries can find their ability to do business is limited by restrictions on the movement of persons – referred to as 'natural persons' – such as representatives or staff of exporting companies. DFAT told the Committee that AANZFTA represented a considerable improvement on former arrangements in this regard.³¹
- 4.32 Particularly notable is that greater freedoms apply across a wider spectrum of business activity, including 'investors, goods sellers, and service suppliers'. DFAT advised this was a significant advance on WTO agreements, which only contained more liberal arrangements for services exporters. DFAT noted, however, that the significance of these changes was greatest for Australian *services* exporters to ASEAN member countries.³²
- 4.33 The Committee notes that the APEC Business Travel Card was introduced in 1997 as a means to facilitate business travel between participating countries. The card:

28 DFAT, *Submission No. 24*, p. 295.

29 DIISR, *Submission No. 14*, p. 170.

30 DAFF, *Submission No. 25*, p. 337.

31 Mr Michael Mugliston, *Transcript 16 March 2009*, pp. 13-14.

32 Mr Michael Mugliston, *Transcript 16 March 2009*, pp. 13-14.

... allows business travellers pre-cleared, facilitated short-term entry to participating member economies. The [card] removes the need to individually apply for visas or entry permits, saving valuable time, and allows multiple entries into participating economies during the three years the card is valid. Card holders also benefit from faster immigration processing on arrival via access to fast-track entry and exit through special APEC lanes at major airports in participating economies.³³

- 4.34 Most ASEAN member countries participate in the scheme,³⁴ and therefore their business communities benefit from this initiative.

Greater economic integration

- 4.35 AANZFTA is part of a larger process of economic integration within ASEAN and allied nations. This process could, over time, result in an ASEAN Economic Community (AEC), that would share a 'seamless production base' along similar lines to those envisaged for the European Union and similar trading blocs.³⁵ There are also linkages between AANZFTA and other longer-term developments, designed to result in the:

... elimination of the remaining intra-ASEAN tariffs and the large number of non-tariff barriers, creating an effective intellectual property regime, fully liberalising trade in services, and relaxing barriers to flows of capital and skilled labour in all sectors.³⁶

- 4.36 For members of such a community, the benefits of economic integration could be significant, reducing operating costs by 25 per cent and increasing aggregate GDP in the ASEAN region by 10 per cent.³⁷
- 4.37 These long-term developments make it critically important that Australia continue to develop its involvement in trading agreements with ASEAN nations. In view of Australia's engagement with them, its proximity and current high levels of trade, a future for Australia within an integrated economic zone based on ASEAN would be considerably more attractive than one without. Questions remain, however, as to how Australia can

33 <http://www.apec.org/apec/business_resources/apec_business_travel0.html> Accessed May 2009.

34 Burma, Cambodia and Laos do not participate in the scheme.
<<http://www.immi.gov.au/skilled/business/apec/>> Accessed May 2009.

35 *Exhibit 1*, p. 7.

36 *Exhibit 1*, p. 7.

37 *Exhibit 1*, p. 7.

join with ASEAN nations to establish relationships of reliably mutual benefit. The record for Australia's existing Free Trade Agreements demonstrates the challenges Australia faces in this regard.

Implications of AANZFTA for services exports

- 4.38 DFAT told the Committee that Australia had 'secured a good outcome on services' under AANZFTA. It had produced 'increasing certainty' for Australian services exporters 'across a range of sectors', including 'professional services, education, financial services and telecommunications'.³⁸
- 4.39 DFAT also told the Committee that AANZFTA's commitments on services were an improvement on the commitments ASEAN member countries had offered in the WTO Doha Round negotiations.³⁹
- 4.40 Nevertheless, DFAT acknowledged that negotiations on services had 'been a very difficult area of negotiation within ASEAN'. This had chiefly been due to 'the so-called ASEAN-first policy', in which ASEAN member countries were not prepared to make commitments with an external partner which went beyond internal ASEAN commitments. This, DFAT told the Committee, had been a constraint on progress.⁴⁰
- 4.41 This less positive side of AANZFTA negotiations was reflected in attempts to liberalise markets for legal services. DFAT told the Committee that legal services continued to be 'a very sensitive area for ASEAN because it is a profession in ASEAN countries that is very defensive':
- 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.⁴¹
- 4.42 DFAT advised the Committee that there were also barriers in to trade liberalisation for legal services in the Philippines. Australia's response would be to 'to use the built-in agenda to review', and to adopt a long-

38 Mr Michael Mugliston, *Transcript 16 March 2009*, p. 3.

39 Mr Michael Mugliston, *Transcript 16 March 2009*, pp. 15-16.

40 Mr Michael Mugliston, *Transcript 16 March 2009*, p. 12.

41 Mr John Larkin, *Transcript 16 March 2009*, p. 12.

term view so that Australia was in a good position to export legal services when more liberal conditions eventuated.⁴²

Relationships between bilateral and multilateral agreements.

- 4.43 As a party to bilateral agreements with ASEAN countries, and the new multilateral agreement with ASEAN and New Zealand, Australia must decide how best to coordinate between them. Are current and future bilateral agreements likely to be the most rewarding avenues, or will multilateral agreements replace them?
- 4.44 Prior to the release of AANZFTA, DFAT responded to the Committee's questions on this by identifying separate functions for bilateral and multilateral agreements with ASEAN. In its view, bilateral agreements were the proper forum for negotiations on the specifics of tariff and non-tariff barriers, and the provision of time-lines to reduce them. Multilateral agreements on the other hand provided a 'framework' that supports, and provided a basis for bilateral negotiations.⁴³
- 4.45 This is analogous to the use of WTO settings as templates and benchmarks for other trade agreements.⁴⁴

Choosing which free trade agreement to use

- 4.46 In trading with those ASEAN members nations which had a bilateral FTA with Australia, exporters will need to decide whether to trade under AANZFTA or under the bilateral FTA because the outcomes, although similar, might not be identical.⁴⁵
- 4.47 DFAT told the Committee that clarity and ease-of-use had been part of DFAT's stated objectives in the context of negotiating AANZFTA.⁴⁶ Australian exporters would have to examine only a handful of tariff lines, which had consistent standard nomenclature, and the associated rules of

42 Mr John Larkin, *Transcript 16 March 2009*, p. 12.

43 DFAT, *Submission No. 24*, 9. 295; Mr Michael Mugliston, *Transcript 12 September 2009*, p. 10.

44 See for example *Exhibit 1*, p. 7, and DIISR, *Submission No. 14*, p. 170.

45 Mr Michael Mugliston, *Transcript 12 September 2008*, P. 5.

46 Mr Michael Mugliston, *Transcript 16 March 2009*, pp. 8-9.

origin to decide whether to use AANZFTA or the bilateral FTA if it was available.⁴⁷

4.48 DFAT added that it had upgraded its support for exporters who could contact DFAT for assistance, but added that exporters had expressed positive responses to the documentation.

4.49 The Committee notes the advice from the Australian Wine and Brandy Corporation that multilateral agreements were considered the instrument of choice where smaller volumes of trade were distributed amongst ASEAN countries.⁴⁸

Levels of liberalisation

4.50 A focus of concern throughout the Inquiry has been the levels of trade liberalisation in domestic markets, for both Australia and its ASEAN trading partners.

4.51 The ACTU suggested to the Committee that across-the-board liberalisation was an unrealistic approach in view of Australia's experience of continuing trade barriers, and deteriorations of balance-of-trade, after FTAs have been concluded.⁴⁹

4.52 The ACTU considered that a better response was to adopt a pattern of 'partial liberalisation', based on a case-by-case assessment of barriers and opportunities between Australia and another trading partner.⁵⁰In line with this, the ACTU called for 'an end to the modelling of prospective FTAs on the basis of comprehensive liberalisation of all sectors'.⁵¹

4.53 The ACTU also proposed that Australia employ a 'positive list' of areas of trade to be liberalised, rather than the negative list approach employed by Singapore.⁵²These views echo those of a number of contributions by Australian labour organisations.⁵³

47 Mr Michael Mugliston, *Transcript 16 March 2009*, pp. 8-9.

48 Mr Michael Mugliston, *Transcript 16 March 2009*, pp. 8-9.

49 AWBC, *Submission No. 1*, p. 8.

50 ACTU, *Submission No. 27*, p. 404.

51 ACTU, *Submission No. 27*, pp. 391-2.

52 ACTU, *Submission No. 27*, p. 407.

53 ACTU, *Submission No. 27*, pp. 385-6; *Exhibit 3*, p. 3.

Committee comment

- 4.54 The Committee considers that FTAs – bilateral and multilateral – will become an increasing part of the trade environment in which Australia operates. This will be ensured by the continued growth of Asia, and the trend towards trade and other forms of integration between countries. With this in mind, the Committee endorses the Australian government's current series of engagements on trade with ASEAN member states, and encourages it to continue with all possible vigour.
- 4.55 The Committee recognises that free trade negotiations are inherently complex and have the potential for both positive and negative effects on aspects of Australia's economy.
- 4.56 In view of the apparent inequalities arising from TAFTA, the Committee emphasises the importance of Australia achieving favourable outcomes in such negotiations. It also underscores the importance of knowing exactly what are the benefits or costs of such agreements once they are concluded.
- 4.57 This puts considerable pressure on negotiators, who are obliged to focus on tariff-based barriers as more of a known-quantity, despite the key significance of non-tariff barriers. Under present conditions, Australia's capacity to arrive at favourable outcomes is stretched. In view of the importance of these negotiations, the Committee believes that an increase in analytical resources is warranted.
- 4.58 There are also opportunities to capture better levels of information about non-tariff barriers, so that these can be costed and compared on a like-to-like basis. If this could be achieved, the resulting simplification would be a significant enhancement to the process of trade negotiation, and Australia's capacity to negotiate favourable outcomes.
- 4.59 As well, it is important that a regular reporting mechanism be introduced, showing the consequences for Australia of its FTAs.

Recommendation 1

- 4.60 **The Committee recommends that the Department of Foreign Affairs and Trade develop a single method of costing non-tariff barriers, to assist Australian FTA negotiators to identify, evaluate and target barriers to trade.**

Recommendation 2

- 4.61 **The Committee recommends that the Department of Foreign Affairs and Trade reports annually to the Parliament on the impacts of individual free trade agreements.**
- 4.62 The Committee makes further recommendations on FTAs and the reporting of outcomes in Chapter 9 after it has discussed human rights issues and the environment.

Recommendation 3

- 4.63 **The Committee recommends that when Parliamentary delegations visit South East Asian countries with which Australia has a free trade agreement, the Department of Foreign Affairs and Trade facilitate meetings with Asian policy makers to monitor progress with these treaties.**