

# Agreement Establishing the ASEAN – Australia – New Zealand Free Trade Area

## Introduction

2.1 The Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) is a free trade agreement between ASEAN, Australia and New Zealand. The members of ASEAN are:

- Burma;
- Brunei Darussalam;
- Cambodia;
- Indonesia;
- Laos;
- Malaysia;
- the Philippines;
- Singapore;
- Thailand; and
- Vietnam.<sup>1</sup>

2.2 The AANZFTA was signed by all Parties on 27 February 2009, and will come into force on or after 1 July 2009 provided that Australia, New Zealand and at least four ASEAN countries notify each other of the completion of their internal requirements.

2.3 The AANZFTA is the first plurilateral free trade agreement that Australia has signed. It is also the largest free trade agreement that Australia has

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<sup>1</sup> AANZFTA NIA, Paragraph 1.

signed.<sup>2</sup> ASEAN member countries and New Zealand together account for 21 per cent of Australia's total trade in goods and services, amounting to \$103 billion in 2007/08.<sup>3</sup>

- 2.4 The AANZFTA is intended to liberalise and facilitate trade between the Parties to the Agreement. Countries are obliged to eliminate tariffs applied to goods and services imported from other countries that meet the agreed rules of origin criteria. Above 90 per cent of goods and services traded between the more developed countries are expected to be tariff free by 2013.<sup>4</sup> However, longer transition periods have been agreed for Vietnam, Burma, Cambodia and Laos. These nations are not expected to reduce tariffs at all before 2013, and will not remove tariffs altogether until 2024.<sup>5</sup>
- 2.5 In terms of costs to Australia, the Treasury has estimated that Australia will lose \$971 million in revenues from tariff reductions up to the 2012/13 financial year.<sup>6</sup>
- 2.6 The bulk of submissions received as part of this inquiry supported Australia ratifying AANZFTA.<sup>7</sup> In particular, submitters supported the:
- regime of investment protections that will create greater transparency and certainty for Australian investors in the region;<sup>8</sup>
  - the commitments in trade related areas such as intellectual property;<sup>9</sup> and
  - the economic cooperation component which will provide technical assistance and capacity building to developing ASEAN countries to assist in implementation of the free trade agreement.<sup>10</sup>
- 2.7 This technical assistance is an integral part of the FTA and the Australian Government has committed to provide up to \$20 million in funding for worthwhile projects over a five-year period.<sup>11</sup>

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2 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 29 May 2009, p. 2.

3 AANZFTA NIA, Paragraph 3.

4 AANZFTA NIA, Paragraph 13.

5 AANZFTA NIA Annex 1 – Summary of Key Obligations, Paragraph 5.

6 AANZFTA NIA, Paragraph 21.

7 Australian Industry Group, *Submission*, p. 2; Insurance Council of Australia, *Submission*, p. 1; National Farmers' Federation, *Submission*, p. 1; Universities Australia, *Submission*, p. 1.

8 Minerals Council of Australia, *Submission*, p. 1; Telstra, *Submission*, p. 1.

9 Media Entertainment and Arts Alliance, *Submission*, p. 2; Music Council of Australia, *Submission*, p. 2.

10 National Institute of Accountants, *Submission*, p. 5; Business Council of Australia, *Submission*, p.1.

11 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 29 May 2009, p. 2.

## The prudential purpose of the Agreement

2.8 The AANZFTA appears to be serving a strategic and prudential purpose from Australia's point of view. The National Interest Analysis (NIA) highlights two reasons for undertaking the treaty action.

2.9 The first is to safeguard Australia's position against the risk of tariff increases in ASEAN countries. The NIA argues that this will provide a degree of certainty for Australian exporters to the ASEAN region.<sup>12</sup> This point was also emphasised by the Minister for Trade, the Hon. Simon Crean MP, in his press release announcing the signing of the Agreement:

Before this agreement, Australian exporters selling into ASEAN had a threat hanging over them that their products would suddenly be hit with a major tariff increase to the maximum permitted under World Trade Organisation rules. With this agreement, however, Australian producers now know they cannot be locked out overnight with a major tariff rise.<sup>13</sup>

2.10 The Department of Foreign Affairs and Trade (the Department) advised the Committee that the AANZFTA immediately binds the 2005 applied tariff rates for all but a few tariff lines. By and large, the World Trade Organisation tariff bindings for ASEAN countries are much higher than the 2005 applied tariff rates.<sup>14</sup>

2.11 The Department was keen to emphasise the benefits to be derived from binding tariff rates at their 2005 level, arguing that, even if a country has not agreed to eliminate their tariffs, they have provided an international commitment as to where the tariff levels will remain, providing certainty to exporters.<sup>15</sup>

2.12 The binding nature of the AANZFTA will, in future, protect Australian exporters from events such as Indonesia's increase in the tariff on six horticultural tariff lines from five per cent to 25 per cent in 2004.<sup>16</sup>

2.13 The second reason relates to countering economic agreements being reached by ASEAN member countries with regional trading powers such as China, Japan, Korea and India. The NIA states:

Failure to secure improved access to ASEAN markets for Australian exporters through an FTA would risk seeing Australian

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12 AANZFTA NIA, Paragraph 6.

13 The Hon. Simon Crean MP, Minister for Trade, Media Release, 17 March 2009.

14 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 29 May 2009, p. 2.

15 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 29 May 2009, p. 8.

16 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 29 May 2009, p. 7.

industry's competitiveness erode over time as regional competitors negotiate better access through FTAs.<sup>17</sup>

- 2.14 The Department stated that the fact that ASEAN had already concluded agreements with China, Korea and Japan was factored into the approach and thinking in the negotiations.<sup>18</sup>

## **Interaction with other treaties and the treatment of rules of origin**

- 2.15 As indicated above, Australia and New Zealand are already parties to a trade related Treaty: the Australia-New Zealand Closer Economic Relations Agreement. While the interaction of this Treaty and the AANZFTA has been comprehensively dealt with as part of the negotiations of the AANZFTA, this is not the only extant Treaty between Australia and other Parties to the AANZFTA.<sup>19</sup>
- 2.16 Australia has bilateral investment treaties with Indonesia, Laos, the Philippines and Vietnam; and free trade agreements with Singapore and Thailand. With the exception of the treatment of Chapter 11, relating to investment,<sup>20</sup> there is very little indication in the AANZFTA or its supporting documentation about how these treaties will interact.
- 2.17 The Committee was advised that the existing agreements will continue to function as distinct, separate agreements.<sup>21</sup> In other words, it is possible that two different free trade agreements with different tariff rates will apply to the export of a particular product. The Department argued that the choice of which tariff rate to apply will be at the discretion of the exporter in relation to each transaction.<sup>22</sup>
- 2.18 The Department argued that the choice of tariff rate will not necessarily be only based on the lowest rate. Exporters may choose a higher tariff rate in the AANZFTA in order to avail themselves of the benefit of the regional rules of origin it contains.<sup>23</sup>
- 2.19 Because the AANZFTA is an Agreement with a regional organisation of nations, goods and services containing components sourced from various

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17 AANZFTA NIA, Paragraph 10.

18 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 29 May 2009, p. 6.

19 AANZFTA NIA Annex 1 – *Summary of Key Obligations*, Paragraph 50.

20 AANZFTA NIA Annex 1 – *Summary of Key Obligations*, Paragraph 50.

21 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 29 May 2009, p. 5.

22 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 29 May 2009, p. 4.

23 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 29 May 2009, p. 3.

countries covered by the Agreement are to be subject to it. This could not be achieved through bilateral treaties with each country.

2.20 There are two mechanisms in the AANZFTA for determining origin. The Agreement contains Australia's preferred 'change in tariff classification' test, and ASEAN's preferred 'regional value content' test. Producers of most goods and services will be offered the choice of using either test to determine whether their goods comply with the rules of origin.<sup>24</sup>

2.21 To illustrate how this might work, the Department used the following example from the automotive sector:

The point is that we actually have this situation at the moment with the Thailand FTA and the AANZFTA, where there is a lower tariff outcome under the bilateral agreement. We have to wait longer for Thailand to come up to the mark in terms of what it is prepared to do bilaterally in the regional FTA; we have to wait to 2020 to get that zero tariff. The point is that the rule of origin in the regional FTA gives greater flexibility to source components from within the region and other suppliers. So you have more flexibility to source. Whereas, in the bilateral FTA you are dependent on either Australian or Thai product in meeting that specific rule of origin. That is why, in terms of looking at the future, this is an important agreement in that it provides for that flexibility and is able to plug in to these global supply chains.<sup>25</sup>

## The outcome for particular tariff lines

2.22 The 'prudential' basis of Australia's negotiating position discussed in detail above seems to have led to a focus on macro level tariff outcomes. For example, the Department pointed out that the AANZFTA achieved a higher degree of tariff elimination at the macro level than achieved in other free trade agreements with ASEAN:

...we can say with confidence that the overall levels of tariff elimination we have got from ASEAN countries are higher than what they have done in any of their FTAs with other dialogue partners. In none of their other FTAs have the key ASEAN countries committed to do more than 90 per cent elimination of tariffs on more than 90 per cent of tariff lines.<sup>26</sup>

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24 AANZFTA NIA, Paragraphs 8-10.

25 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 29 May 2009, p. 4.

26 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 29 May 2009, p. 6.

2.23 In relation to specific tariff lines, however:

Clearly, you may have circumstances where, on an individual product, the degree of liberalisation achieved in a specific FTA with another dialogue partner may be greater – certainly in the example of mandarins and a range of other horticultural products, particularly with China.<sup>27</sup>

2.24 The horticulture industry, represented by the Horticulture Market Access Committee (HMAC) is of the view that:

...the horticulture tariff outcomes under AANZFTA ... are in significant cases below optimal outcomes and lock Australian horticulture either temporarily or permanently into certain inferior trading positions against Australian horticulture's competitors into the ASEAN market.<sup>28</sup>

2.25 HMAC calculates the total benefit of a zero tariff outcome in the AANZFTA on the top 170 horticulture tariff lines would have been \$7.7 million annually. In comparison, the tariff reductions agreed in the AANZFTA will bring a total benefit of \$2.2 million in 2012, rising to \$4.7 million in 2020 on those tariff lines.<sup>29</sup>

2.26 Their specific concerns in relation to the outcome for horticulture are as follows:

- the AANZFTA does not match the horticulture outcomes in the ASEAN – China free trade agreement;<sup>30</sup>
- tariff outcomes in the AANZFTA that are worse than the tariff outcomes in previous bilateral free trade agreements with ASEAN members;<sup>31</sup>
- applied tariff outcomes in the AANZFTA that are above the globally applied Most Favoured Nation rate;<sup>32</sup> and
- the effectiveness of Australian negotiators in representing the interests of the horticulture industry.<sup>33</sup>

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27 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 29 May 2009, p. 6.

28 Horticulture Market Access Committee, *Submission*, p. 1.

29 Horticulture Market Access Committee, *Submission*, p. 3.

30 Horticulture Market Access Committee, *Transcript of Evidence*, 29 May 2009, p. 27.

31 Horticulture Market Access Committee, *Submission*, p. 9.

32 Horticulture Market Access Committee, *Transcript of Evidence*, 29 May 2009, p. 25.

33 Horticulture Market Access Committee, *Transcript of Evidence*, 29 May 2009, p. 29.

## Horticulture in the ASEAN – China free trade agreement

- 2.27 Chinese horticulture exports to ASEAN are subject to near zero tariffs across the board.<sup>34</sup> This has resulted in exceptional growth in Chinese horticultural exports to ASEAN member states. Chinese horticultural exports have grown by 132 per cent in the four years to 2007/08.<sup>35</sup>
- 2.28 From the point of view of the HMAC, in a situation in which China enjoys zero tariffs on most horticulture lines into most ASEAN countries, and Australia does not and will not for the term of the AANZFTA, Australia's competitive position will suffer for many years.<sup>36</sup> According to the HMAC:
- It is a very sensitive issue for vegetable growers because basically we have lost a lot of our markets in South-East Asia to Chinese competition. When you are trying to talk to vegetable growers about becoming export orientated, they see China getting unfair advantages in, say, these free trade agreements vis-a-vis Australia. The expectation out of all this was that Australian vegetable growers would at least be able to compete on an equal footing with Chinese vegetable growers in these markets. That is where the disappointment comes.<sup>37</sup>
- 2.29 According to the Department, the tariff outcomes for these specific lines suffered from a reaction in some ASEAN nations to the liberalising effect of the free trade agreement between ASEAN and China.<sup>38</sup>
- 2.30 The Department is of the view that, in relation to the increase in six horticultural tariffs in Indonesia in 2004 from five per cent to 25 per cent, the tariffs were increased to provide a period of adjustment for the affected industries, and that at the time, the Indonesian Government indicated its intention to bring the tariffs back down to ten per cent in the near future. It should be noted that this has not yet occurred.<sup>39</sup>
- 2.31 It should also be noted that, in terms of the quantifiable threat to Indonesian horticulture, Australia's horticulture exports total \$4.5 million, while China's horticultural exports total \$403 million.<sup>40</sup> While Indonesia's negotiating position might reflect a reaction to the ASEAN – China free trade agreement, the negotiated outcome for Australia is not a true

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34 Horticulture Market Access Committee, *Submission*, p. 5.

35 Horticulture Market Access Committee, *Submission*, p. 9.

36 Horticulture Market Access Committee, *Transcript of Evidence*, 29 May 2009, p. 27.

37 Horticulture Market Access Committee, *Transcript of Evidence*, 29 May 2009, p. 27.

38 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 29 May 2009, p. 6.

39 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 29 May 2009, p. 13.

40 Horticulture Market Access Committee, *Transcript of Evidence*, 29 May 2009, p. 35.

reflection of the actual threat posed by Australian exports to Indonesian horticulture.

## **AANZFTA tariff outcomes worse than bilateral free trade agreements**

- 2.32 In relation to Thailand, the HMAAC is concerned that Australia did not take the opportunity to improve on the result of the Thailand – Australia FTA.<sup>41</sup>
- 2.33 The tariff for a number of horticultural tariff lines in the AANZFTA is higher than those contained in the Thailand – Australia Free Trade Agreement.<sup>42</sup> As previously discussed, in such circumstances, the free trade agreement with the lower tariff outcome will prevail.<sup>43</sup>
- 2.34 The Department argued that where a poorer outcome exists in the AANZFTA, this should be considered in light of the benefits offered by the regional rules of origin.<sup>44</sup> As the Department itself pointed out, however:
- ...regional rules of origin... is something which is really not relevant to the agricultural sector. A mandarin, a table grape – it is going to meet the rule of origin whether you are talking about a bilateral FTA or a regional FTA, because, essentially, it is wholly grown in Australia. The issue of regional rules of origin really does not have too much impact for the agricultural sector,<sup>45</sup>
- 2.35 In other words, there is no trade-off available to horticulture exporters for the higher tariff outcome on tariff lines for Thailand in the AANZFTA.
- 2.36 While the action of the Thailand – Australia Free Trade Agreement means that no actual harm is done by negotiating a worse outcome for Australian horticulture in the AANZFTA, the Committee is at a loss to understand why a worse tariff outcome, that in any case will not apply, would be included in the AANZFTA. If, in such circumstances, Australian negotiators are not able to negotiate a better tariff outcome, then it would be prudent to ensure that any previously applying tariff outcome is carried over to the new free trade agreement.
- 2.37 Accordingly, in future, the Committee believes the Australian Government ought to pursue bilateral and multilateral avenues to improve the tariff outcomes for the horticulture industry.

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41 Horticulture Market Access Committee, *Submission*, p. 9.

42 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 29 May 2009, p. 5.

43 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 29 May 2009, p. 5.

44 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 29 May 2009, p. 4.

45 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 29 May 2009, p. 17.



### Recommendation 1

**The Committee recommends that the Australian Government pursue all possible bilateral and multilateral avenues to secure improved tariff outcomes for the horticulture industry.**

- 2.38 In addition, the Committee recommends that, in the absence of other measures designed to improve free trade, a free trade agreement negotiated by Australia should not include a tariff outcome on a tariff line that is worse than the existing tariff on that tariff line.

### Recommendation 2

**The Committee recommends that, in the absence of other measures designed to improve free trade, a free trade agreement negotiated by Australia should not include a tariff outcome on a tariff line that is worse than the existing tariff on that tariff line.**

## Applied tariff outcomes and the Most Favoured Nation rate

- 2.39 The HMAAC pointed out that the applied tariffs under the AANZFTA for mandarins, carrots, seed potatoes and a number of other key Australian horticultural exports to Indonesia are higher than the globally applied Indonesian Most Favoured Nation rate.<sup>46</sup>
- 2.40 As has been previously discussed, mandarin exports to Indonesia were subject to a tariff increase from five per cent to 25 per cent in 2004, causing the value of Australian mandarin exports to Indonesia to decline by a third.<sup>47</sup> The applied tariffs in the AANZFTA are 25 per cent for mandarins, carrots and seed potatoes; falling in 2025 to 18.7 per cent for mandarins and seed potatoes, and 12.5 per cent for carrots.<sup>48</sup>
- 2.41 The global applied Indonesian Most Favoured Nation tariff rate will be ten per cent in 2010.<sup>49</sup>

46 Horticulture Market Access Committee, *Transcript of Evidence*, 29 May 2009, p. 25.

47 Horticulture Market Access Committee, *Submission*, p. 4.

48 Horticulture Market Access Committee, *Transcript of Evidence*, 29 May 2009, p. 25.

49 Horticulture Market Access Committee, *Transcript of Evidence*, 29 May 2009, p. 25.

- 2.42 Australian exporters can avail themselves of the global applied Indonesian Most Favoured Nation tariff rate,<sup>50</sup> so they will not be directly disadvantaged by the AANZFTA outcome.
- 2.43 As indicated above, the Department views this outcome as a mechanism to protect Australian exporters from events such as Indonesia's increase in the tariff on six horticultural tariff lines from five per cent to 25 per cent in 2004.<sup>51</sup> However, the Department has conceded that this increase was probably short term in nature and intended to provide a period of adjustment for the affected industries.<sup>52</sup> In other words, any benefit derived from using the applied tariffs on these horticulture lines is a matter for the long term future.
- 2.44 The Committee notes that one of the strategic objectives achieved in the negotiations was to bind ASEAN countries to tariffs on tariff lines well below the tariff levels these countries could impose. However, there seems little point in binding tariffs above the current Most Favoured Nation tariff rate where the prospect of a significant tariff increase is remote. The Committee recommends that in future free trade agreements, Australia should negotiate for the binding tariff rate to be the lower of either the rate at the time of binding, or the Most Favoured Nation tariff rate at the time the free trade agreement comes into force.

### Recommendation 3

**The Committee recommends that in future free trade agreements, Australia should negotiate for the binding tariff rate to be the lower of either the rate at the time of binding, or the Most Favoured Nation tariff rate at the time the free trade agreement comes into force.**

## Australian negotiators and the horticulture industry

- 2.45 Australia uses professional negotiators to negotiate free trade agreements. These negotiators are organised on an industry basis. In relation to agriculture, there are negotiators responsible for conducting negotiations in relation to all agricultural commodities.<sup>53</sup>

50 Horticulture Market Access Committee, *Transcript of Evidence*, 29 May 2009, p. 25.

51 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 29 May 2009, p. 7.

52 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 29 May 2009, p. 13.

53 Horticulture Market Access Committee, *Transcript of Evidence*, 29 May 2009, p. 29.

- 2.46 The HMAc indicated that issues differ between agricultural industries, so negotiators are faced with a range of issues to absorb, while also taking an across-the-board agricultural and national perspective.<sup>54</sup>
- 2.47 The HMAc is generally very happy with the quality of Australian negotiators, and advised that:
- ... we are always overly welcome in terms of being willing to provide whatever information support they need for their negotiations.<sup>55</sup>
- 2.48 Having made that point, the HMAc advised that vegetable growers generally consider that Australian negotiators do not know the vegetable industry well, and do not give the vegetable industry the credence it warrants.<sup>56</sup>
- 2.49 Generally speaking, the HMAc was concerned about the precedent set by the horticultural outcomes in the Thailand – Australia Free Trade Agreement and the AANZFTA:
- The difficult situation for our negotiators going into the future is that it may be fair to say that FTAs with Thailand or ASEAN or one of two of the other FTAs are probably the easy ones and that the harder ones will be the FTAs with the North Asian countries, which already have been in place for several years now and where progress in negotiations continues to be rather slow. Our concern is that if this is the situation with the easier of the negotiating opportunities then what is going to come out of the North Asian negotiations.<sup>57</sup>
- 2.50 In considering how to improve this situation, the HMAc suggested that industry representatives be included in some of the negotiations, or be available to provide industry expertise to those involved in the negotiations.<sup>58</sup>
- 2.51 The Committee believes there is benefit in examining how negotiators can directly consult industry representatives during negotiations. Such mechanisms need not be costly. For example, the industry representatives could be based in Australia and be immediately available to be contacted by phone or e-mail.

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54 Horticulture Market Access Committee, *Transcript of Evidence*, 29 May 2009, p. 29.

55 Horticulture Market Access Committee, *Transcript of Evidence*, 29 May 2009, p. 29.

56 Horticulture Market Access Committee, *Transcript of Evidence*, 29 May 2009, p. 29.

57 Horticulture Market Access Committee, *Transcript of Evidence*, 29 May 2009, p. 36.

58 Horticulture Market Access Committee, *Transcript of Evidence*, 29 May 2009, p. 29.

- 2.52 The Committee recommends that the Department examine mechanisms to allow negotiators to directly consult with industry representatives during the negotiation process.

#### **Recommendation 4**

**The Committee recommends that the Department of Foreign Affairs and Trade prepare a report for the Committee examining mechanisms to allow negotiators to directly consult with industry representatives during the negotiation process.**

### **Speed of tariff reduction**

- 2.53 As previously discussed, the AANZFTA will result in the percentage of Australian tariff free tariff lines increasing from 48 per cent of tariff lines in 2005 to 96 per cent of tariff lines in 2010. In comparison, Indonesia and the Philippines, for example, will have 58 per cent and 60 per cent of tariff lines tariff free by 2010.<sup>59</sup>
- 2.54 A number of submissions to the inquiry questioned the wisdom of eliminating tariffs so extensively when other countries party to the AANZFTA were not doing so. The Australian Manufacturing Workers' Union argued that:
- It is not in Australia's national interest to ratify a free trade agreement that requires "far more far sooner" in the reduction of tariffs from Australia relative to other treaty participants. Nor is it in Australia's interest to compromise the future interests of key strategically important industries like Australia's auto and components industry with an unbalanced FTA.<sup>60</sup>
- 2.55 The Department pointed out that one of the key principles in negotiating free trade agreements is to take account of the differences in levels of development of the countries involved. This principle dictates that countries less developed than Australia and New Zealand should be given a longer period of time to transition to lower tariffs.
- 2.56 The Department also argued that difference in the speed of liberalisation between Australia and ASEAN countries was more apparent than real:

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59 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 29 May 2009, p. 10.

60 Australian Manufacturing Workers' Union, *Submission*, p. 5.

Forty-eight per cent of our tariff lines are tariff free, and that will increase to 96 per cent on 1 January 2010. Look at Indonesia. They currently have 21 per cent of tariff lines at zero tariffs, and that will increase to 58 per cent in 2010. I think that is quite a significant degree of liberalisation, which is actually greater than what we are doing. We are a bit over doubling our tariff-free lines; Indonesia is almost tripling. Look at the Philippines. They are going from 3.9 per cent of tariff lines at zero to 60 per cent. That is a pretty big increase on one day for a developing economy.<sup>61</sup>

## Environment, human rights and labour provisions

- 2.57 Aside from a commitment to sustainable development in the preamble, the AANZFTA does not contain any provisions relating to environment protection, protection of human rights or labour standards.<sup>62</sup>
- 2.58 The Department advised that the position taken at the commencement of negotiations in 2007 was that the AANZFTA would not cover these issues, despite the fact that New Zealand pushed very strongly for their inclusion, because of:
- ...a very firm ASEAN position that it would not agree to the inclusion of those provisions in the FTA.<sup>63</sup>
- 2.59 The Committee heard that Australia's position on the inclusion of these issues in free trade agreements is determined by the negotiation mandate given by the Government to the Department at the commencement of negotiations. The negotiation mandate is issued on a case by case basis.<sup>64</sup>
- 2.60 The Committee is concerned that the AANZFTA could, for instance, encourage trade with Burma without regard to the human rights situation there, or permit the trade in tropical timbers from endangered species of trees. While it is too late to include these matters in the AANZFTA, it is clear that such matters can be included in future free trade agreements if the Government issues a negotiation mandate that includes environment protection, protection of human rights and labour standards.
- 2.61 The Committee recommends that the Government include consideration of environment protection, protection of human rights and labour standards in all future negotiation mandates for free trade agreements.

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61 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 29 May 2009, p. 16.

62 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 29 May 2009, p. 10.

63 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 29 May 2009, p. 10.

64 Department of Foreign Affairs and Trade, *Transcript of Evidence*, 29 May 2009, p. 10.

### **Recommendation 5**

**The Committee recommends that the Australian Government include consideration of environment protection, protection of human rights and labour standards in all future negotiation mandates for free trade agreements.**

## **Conclusion**

- 2.62 The Committee is of the view that the experience of Australia's horticultural industries in the AANZFTA has exposed some deficiencies in the negotiation process. These deficiencies are likely to relate to the fact that this Agreement was considered prudential and strategic, and consequently, some specific industries were not as well served as they could have been.
- 2.63 The Committee has made a number of recommendations aimed at improving the free trade agreement negotiation process in future. With these reservations in mind, the Committee supports binding treaty action in relation to this Agreement.

### **Recommendation 6**

**The Committee supports the *Agreement Establishing the ASEAN - Australia - New Zealand Free Trade Area* and recommends that binding treaty action be taken.**