4

The trading and investment relationship

Introduction

4.1 Australia and Malaysia enjoy a significant trading relationship. With total two-way trade in 2005–06 of $11.35 billion, Malaysia is Australia's second-largest trading partner in ASEAN and ninth largest trading partner over all.

4.2 This chapter reviews the nature of that trading relationship and the opportunities and challenges faced by those wishing to engage in the market. A detailed consideration of the education and tourism markets, significant components of Australia's trade with Malaysia, are considered in separate chapters.

4.3 The chapter concludes with the Committee's review of evidence it has received concerning the proposed FTA between Australia and Malaysia.

Malaysian economy

4.4 Since Malaysia achieved independence in 1957, its economy has been transformed from one based on commodities to one based on intermediate manufacturing. Malaysia is also the world's leading exporter of palm oil and a major regional oil and gas exporter.

4.5 Changes to the economy have been underpinned by the Malaysian Government's Vision 2020 policy launched in 1991. The policy's objective was for Malaysia to achieve a developed economy status by 2020. Privatisation was to be the basis of national development with an emphasis on foreign investment to promote industrialisation.

4.6 Within this overall vision, the current policy—National Mission (2006–2020)—has five main aims:

- to move the economy up the value chain;
- to raise the country's capacity for knowledge, creativity and innovation and nurture 'first class mentality';
- to address persistent socio-economic inequalities constructively and productively;
- to improve the standard and sustainability of quality of life for Malaysians; and
- to strengthen the institutional and implementation capacity of Malaysia.

4.7 The Malaysian economy has been growing steadily at over five per cent annually. The International Monetary Fund forecasts gross domestic product growth in 2007 to be 5.8 per cent based on 'sustained global economic growth and high prices for primary commodities'. The challenges Malaysia faces include 'increased competition from other emerging markets in the region and increasing global inflation pressures.'[1]

1 DFAT, *Malaysia Country Brief – February 2007,pp. 3–4,* <http://www.dfat.gov.au/geo/malaysia/malaysia_brief.html>, accessed February 2007.

Balance of trade

4.8 Trade between Australia and Malaysia is complementary — Australia exports to Malaysia, natural resources (copper, aluminium, and coal), dairy products and sugar, whereas Australia imports from Malaysia crude petroleum, furniture, and electronic products (computers, telecommunications equipment, and integrated circuits).

4.9 Malaysia, however, enjoys a significant balance of trade in its favour. In 2005–06, merchandise imports from Malaysia amounted to $6.75 billion. In contrast, merchandise exports from Australia to Malaysia amounted to $2.54 billion. Trade in services, such as education, personal travel, and transportation is more balanced. In 2005–06, services imports from Malaysia amounted to $0.82 billion, whereas services exports from Australia to Malaysia amounted to $1.24 billion.[2]

4.10 With continued favourable global economic conditions, trade between Australia and Malaysia is increasing. In 2005–06, trade rose by 9.3 per cent to $9.29 billion. The bulk of this increase, however, was due to a marked jump in merchandise imports from Malaysia.[3,4]

Natural resources

Minerals

4.11 Until recent times, Malaysia's economy was underpinned by tin mining and rubber production. The Malaysian Government's prioritisation of manufacturing has seen a decline in the contribution of mining to the Malaysian economy. In 2004, mined production, excluding oil and natural gas, amounted to just 0.9 per cent of gross domestic product.

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2 DFAT, *Malaysia Country Brief – February 2007,pp. 9–10*; DFAT, *Malaysia Fact Sheet*, <http://www.dfat.gov.au/geo/fs/mlay.pdf>, accessed February 2007.

3 In 2003–04, merchandise imports were $4.7 billion.

4 DFAT, *Malaysia Country Brief – February 2007,p. 10*.

4.12 Australia exports aluminium, copper, zinc, and tin to Malaysia. Although figures were unavailable for aluminium, DITR's submission noted that Australian exports of these minerals accounted for between 21 to 37 per cent of Malaysian imports. DITR also noted that while Malaysia is endowed with 16 per cent of world tin reserves, in 2005 it imported from Australia some 26 per cent of its needs.

4.13 DITR's figures show a wide fluctuation from year-to-year. For example, the figures for refined zinc fluctuated in 2003 to 2004 from 12 per cent to 72 per cent of Malaysia's imports of that metal—the latest available value, for 2005, stood at 25 per cent.[5]

Coal

4.14 Malaysia has significant coal reserves, but these are unsuitable or not conveniently located for use in power generation. Consequently, Malaysia is a major importer of coal and demand is set to more than double from 2004 to 2007 as Malaysia reduces reliance on gas and petroleum.[6] The value of Australia's coal exports to Malaysia amounted to $176 million in 2005–06.[7]

Petroleum, natural gas, and biodiesel

4.15 While Australia exports a small quantity of crude petroleum to Malaysia, this is more than offset by the imports of crude and refined petroleum from Malaysia.[8] In 2005–06, Malaysia exported to Australia $2.1 billion worth of crude petroleum—the largest component of merchandise imports from that country.[9]

4.16 Australia and Malaysia are competitors in the natural gas sector. Despite Malaysia's low employment cost and government support for the industry, Australia is able to maintain its competitive edge. As DITR noted in response to the Committee's questioning:

> Australian LNG is competitively priced, as evidenced by the successful bid for the Guangdong LNG contract and the fact that the capacity of Australia's two operating LNG plants is fully contracted to customers in Japan, Korea and China.

5 DITR, *Submission No. 21*, pp. 184–5.
6 DITR, *Submission No. 21*, p. 184.
7 DFAT, *Malaysia Fact Sheet.*
8 AMBC, *Submission No. 1*, p. 3.
9 DFAT, *Malaysia Fact Sheet.*

> While Malaysia's LNG industry is partly government owned and has been able to make investment decisions quickly and ahead of obtaining sales contracts, Australia has two big advantages over Malaysia. Australia has an excellent reputation for reliability and has massive gas resources available for expansion. Malaysia's expansion capacity is limited and its reputation for reliability was dented by a major fire in 2003.[10]

4.17 Both Malaysia and Australia have the capacity to produce biodiesel. Malaysia's industry is based on palm oil which is more economic than the tallow feedstock used in Australia. DITR advised the Committee that Australia's 421 million litre biodiesel production capacity was underutilised,[11] but it was 'difficult to ascertain whether exports to Malaysia would be feasible' because of the higher costs of production in Australia. [12]

4.18 DFAT advised the Committee that Malaysia was developing a National Biofuel Policy which involved the formulation of legislation and incentives to encourage private sector involvement. There were five biodiesel companies with Australian equity involvement in Malaysia which had been granted manufacturing licences.[13] DITR noted that such plants were established with a view to exporting to the European Union.[14]

Primary produce

4.19 Malaysia is in Australia's top five markets for dairy, horticultural produce, wheat, and sugar, with Australia enjoying a significant trade surplus in this sector. In 2005–06, the surplus amounted to some $680 million. Major components in 2005–06 were:

- sugar ($281 million)—Malaysia was Australia's principal market in 2003–04 and 2004–05;
- dairy ($210 million)—Malaysia was Australia's second most valuable export market in 2004–05. Milk powders comprise 80 per cent of dairy exports;

10 DITR, *Submission No. 25*, p. 227.
11 In 2005–06, biodiesel production amounted to only 18 million litres.
12 DITR, *Submission No. 25*, p. 228.
13 DFAT, *Submission No. 22*, p. 194.
14 DITR, *Submission No. 25*, p. 228.

- grains ($167 million)—Malaysia is Australia's eighth largest market for wheat, consistently importing over 600 000 tonnes annually;
- processed meat ($46 million)—principal exports are sheep meat, beef, and veal. Malaysia is also Australia's second-largest export market for live cattle after Indonesia;
- horticultural products ($59 million)—Malaysia is Australia's sixth-largest market behind Japan, New Zealand, Hong Kong, USA, and Singapore; and
- forest and paper products ($46 million)—Malaysia is a net importer of paper and paperboard products.

4.20 Malaysia's principal agriculture and food exports to Australia amounted to $228 million in 2005–06, and included oil and fat, and seafood.

4.21 Malaysia is a major exporter of furniture, being one of the top 10 furniture exporters in the world, and second largest source of imports for the Australian market. In 2005, Australia imported $171 million worth of wooden furniture from Malaysia.[15]

4.22 The Committee asked DAFF how serious was the use of illegally logged timber in furniture imported from Malaysia, and progress with any concerns raised by the Australian Government with Malaysian authorities.[16]

4.23 DAFF responded that the issue of illegal logging had been raised with Malaysia at Ministerial level and in international fora. DAFF advised the Committee that:

> Australia supports Malaysia's efforts to reduce illegal logging and improve sustainable forest management practices, including through implementation of its certification scheme under the Malaysian Timber Certification Council.
>
> Malaysia is seeking international recognition of its scheme's assurance for legal and sustainable timber production and, to this end, is formally seeking recognition by the Program for the Endorsement of Forest Certification Schemes.[17,18]

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15 DAFF, *Submission No. 23,* pp. 206–11; DAFF, *Submission No. 32,* p. 262.

16 *Transcript 4 December 2006*, p. 29.

17 DAFF, *Submission No. 32,* p. 262.

18 The Program is an international framework for independently assessing national certification schemes to ensure they meet agreed international requirements.

4.24 DAFF also advised that Malaysia was endeavouring to improve its forest certification system and prove the legality of forest products through developing a Voluntary Partnership Agreement with the European Union under the EU Forest Law Enforcement, Governance and Trade Action Plan.[19]

Halal certification of Australian produce

4.25 Halal products are those that are permissible under Islamic law. Products such as meat and poultry products, dairy, pharmaceuticals, toiletries, cosmetics, and confectionery can be certified as Halal provided they meet 'a total quality health and sanitary system which involves adopting procedures for slaughtering, processing and other related operations'.[20]

Malaysia's Halal standard

4.26 The AMBC told the Committee that in 2002 the Malaysian Government had indicated it wished Malaysia to become a Halal hub.[21] Subsequently, Malaysia issued a Halal standard which has to be met by those wishing to export meat to Malaysia.[22]

4.27 There has as yet, however, been no agreement in the Islamic world as to whether the Malaysian standard should be adopted as the international standard. For example, Saudi Arabia and Brunei do not recognise Malaysian Halal certification.[23,24]

4.28 In 2005, Malaysia audited 50 Australian meat establishments against its standard and subsequently delisted all Australian beef abattoirs. There were no issues relating to the slaughter of sheep or goats.[25]

4.29 There followed a series of negotiations between Australia and Malaysia which resulted in an agreed protocol for the processing of cattle.[26] A subsequent audit of five abattoirs in 2006 by a Malaysian delegation resulted in three of them gaining approval for exporting

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19 DAFF, *Submission No. 32,* p. 262.

20 Government of South Australia, *Submission No. 24,* p. 222.

21 Mr John Gallagher, *Transcript 21 November 2006*, p. 18.

22 Mr Garry Cullen, *Transcript 4 December 2006*, p. 26.

23 Mr John Gallagher, *Transcript 21 November 2006*, p. 18.

24 AMBC, *Exhibit No. 1, Framework for Malaysia Australia Halal Cooperation in Food Production and Marketing: A Business Perspective,* p. ii.

25 DAFF, *Submission No. 23,* p. 212.

26 Mr Garry Cullen, *Transcript 4 December 2006*, p. 26.

beef to Malaysia.[27] DAFF told the Committee that it had requested Malaysia to audit another eight establishments five of which processed beef.[28]

Concerns with Malaysia's Halal standard

4.30 The Australian Meat Industry Council (AMIC) expressed its disappointment to the Committee at the deregistering of beef exporters:

> AMIC and its members are committed to meeting the Halal standard required. … Australia exports to over 40 Islamic markets around the world because of that commitment.
>
> We also understand the need for an appreciation of the cultural and religious sensitivities of delivering a truly 'Halal' product. We do that through the provision of the Australian Government Supervised Muslim Slaughter System … It is a measure of the Australian commitment that we are the only non-Muslim country in the global red meat market to uphold the integrity of Islamic slaughter through Government legislation.
>
> … [the] industry has had difficulty in understanding both the protocol agreed and the process by which only a limited number of plants have been accredited against the new protocol. By comparison exports of live beef cattle to Malaysia continue unencumbered.[29]

4.31 The Government of South Australia also expressed concern about the number of certifying bodies in Australia with its submission calling on the Federal Government:

> … to work with the Malaysian Government and endorse one certifying body to simplify the process and build a brand for exporters to use as a marketing tool.[30]

4.32 The Committee notes in this regard that there are 17 meat establishments across Australia that are accredited to export Halal meat to Malaysia. They are accredited by six Islamic accrediting bodies. Three of these bodies are based in Western Australia, one each

27 DAFF, *Submission No. 23,* p. 212.

28 Mr Gary Cullen, *Transcript 4 December 2006*, p. 26.

29 AMIC, *Submission No. 27,* p. 238.

30 Government of South Australia, *Submission No. 24,* p. 190.

in Victoria and South Australia, and one based in New South Wales and Queensland.[31]

4.33 The Australian Quarantine and Inspection Service (AQIS) has issued lists of Islamic bodies that are authorised to undertake Halal certification for each country to which Halal meat is exported. In total there are 26 accrediting bodies, but each country has a different list:

- Indonesia—8 accrediting bodies;
- Malaysia—13 accrediting bodies;
- Saudi Arabia—5 accrediting bodies;
- Singapore—17 accrediting bodies; and
- United Arab Emirates—4 accrediting bodies.[32]

A framework for Halal cooperation

4.34 In July 2002, The Australian Minister of Trade and the Malaysian Minister of International Trade and Industry signed a *Statement of Cooperation in Halal Food Production and Marketing*. Officials were directed to:

- work closely with industry to agree on a set of mutually acceptable standards that guarantee the food is safe and Halal at every stage of the production line;
- work with the industry to develop and promote the products and their identifying logo/label; and
- work closely in information exchange and technology transfer for mutual benefit.[33]

4.35 Responding to this initiative, the AMBC had in November 2002 formulated a framework for Halal cooperation. The work programme included:

- Establishment of a ***One-Stop Halal Shop*** so that industry can find in one place all relevant information on Halal Food Production;
- Development of ***Internationally Recognised Standards*** to ensure food safety and Halal integrity are maintained throughout the process;
- Development of ***Clear Halal Certification Requirements*** acceptable to all Muslim Countries/Councils to ensure

31 *Exhibit No. 4,* Department of Veterinary Services, Malaysia, *Approved Abattoirs & Plants.*

32 AQIS, *Notice Number 2003/10 Meat, Revised List of Recognised Islamic Bodies for Halal Certification.*

33 AMBC, *Exhibit No. 1, p. 1.*

market opportunities are not lost due to bureaucratic red tape;

- Development of an ***Internationally Recognised Logo*** to assist with the marketing of the product so consumers know they can trust the goods produced under this cooperation.[34]

4.36 The framework also called for the development of disease-free zones within Malaysia. This was because Malaysia is listed as having foot and mouth disease (FMD). As a result, Saudi Arabia prohibits the entry of beef products from Malaysia.

4.37 AMBC noted that Sarawak and Sabah were FMD-free, so if those States were able to be declared disease-free zones, processing facilities could be established immediately.[35] An alternative would be for the export of beef direct from Australia—the Committee notes advice from DAFF that a number of delegations from Malaysia had shown an interest in Australian abattoirs. The witness was unaware at the time that any deals had been signed.[36,37]

Committee comment

4.38 The Committee considers that the following issues need to be addressed:

- the need for an internationally recognised Halal standard;
- the process of certifying Halal products; and
- the potential for a lack of transparency in Halal certification.

4.39 The development of a single international Halal standard would remove the need for multiple accreditations for companies wishing to export to Muslim countries which currently recognise different standards. Moreover, it could potentially lead to the reduction of the number of accrediting bodies. Such an international standard would also facilitate the distribution of Halal products from hubs such as that proposed by the Malaysian Government.

4.40 As a major primary produce exporter, Australia has an interest in promoting an efficient Halal market. The Committee believes the Government should raise this issue in international fora when appropriate.

34 AMBC, *Exhibit No. 1,* Executive Summary.

35 AMBC, *Exhibit No. 1,* p. v.

36 Mr Gary Cullen, *Transcript 4 December 2006*, p. 29.

37 At the time of tabling this report, the witness advised that the situation had not changed.

Recommendation 1

4.41 **The Department of Agriculture, Fisheries and Forestry promote in international fora the adoption of a transparent and efficient international Halal standard.**

4.42 The Committee agrees with the Government of South Australia that the number of Halal certification bodies is an issue. The Committee accepts that having countries with different Halal certification requirements tends to increase the need for different certifying bodies. Unfortunately, different certifying organisations may have different interpretations of the standards, and their local circumstances may introduce pressures on the certification process.

4.43 An adequately funded single Halal certification body would assist the consistent application of a particular Halal standard across Australia. Such a body, if properly constituted, would be able to provide Halal certification for export destinations with differing Halal standards. Moreover, a single certifying body would be less vulnerable to local pressures on the certification process.

4.44 Evidence from the AMIC introduces concerns about the transparency of the recent Halal certification of Australian beef processing plants. AMIC reported that industry had 'difficulty in understanding' the agreed protocol and the process by which only a limited number of plants were accredited.[38]

4.45 The Committee does not come to an opinion as to whether or not the certification process was transparent. The Committee does consider, however, that **any body** certifying against a published standard should be transparent in its decision-making and accountable for its actions.

38 AMIC, *Submission No. 27,* p. 238.

Recommendation 2

4.46 **The Department of Agriculture, Fisheries and Forestry, in consultation with interested parties, provide options to the Minister for developing a single Halal certifying body within Australia. The operations of the certifying body should conform to the principles of transparency and accountability.**

Manufacturing

4.47 As noted earlier, Malaysia enjoys a significant surplus in the balance of merchandise trade with Australia. Malaysia excels in the ICT sector of the global market and in 2002 was ranked fifth largest exporter of semiconductors.

4.48 Malaysia's exports of ICT to Australia in 2005–06 were valued at $1.5 billion and comprised computers, laptops, telecommunications equipment, and electronic components. Australia's exports to Malaysia of similar goods is minuscule in comparison and amounted to $45 million in 2003–04.[39]

4.49 DCITA noted that Malaysian information technology industries were largely reliant on foreign-based technologies which created opportunities for Australian companies providing service aspects of the ICT sector.[40] For example, ADIESA noted Australia was 'very good at complex system integration—taking bits and pieces of commercial off-the-shelf equipment and marrying it together to do something that it was never intended to do.'[41]

4.50 A note of caution, however, was introduced by ADIESA when it said:

> … Malaysia is already ahead or certainly equal to Australia in some important high-tech domains. … It has bought and operated its own satellites. It is designing and it has the capacity to build sensors that are flying on satellites. … I find it difficult to know just what the differentiators between Australia and Malaysia will be in an industry and a business

39 DCITA, *Submission No. 7,* p. 51.

40 DCITA, *Submission No. 7,* p. 51.

41 Mr Brett Biddington, *Transcript 16 October 2006*, p. 26.

> sense in certainly 20 years time and perhaps in five. I think that, for us all, is a great challenge.[42]

Challenges facing Australian exporters

4.51 The Australian Electrical and Electronic Manufacturers' Association (AEEMA) commented that global competition presented challenges as well as opportunities to Australia's manufacturing sector. Competitive pressures from low-cost countries such as China and India had caused manufacturers to adapt, but as these low-cost economies moved along the innovation path, there would be increased competition at the higher end of the market. Pressures eroding the ability to meet global competition included:

> … the high exchange rate, high oil prices, the rise of China and India (and other vigorous Asian economies) and the everyday issues of market access, skills shortages, logistics, the need to innovate, and overall product trade promotion.[43]

4.52 Other challenges raised in evidence were:

- counterfeiting;
- intellectual property on components preventing sales; and
- non-tariff barriers.

4.53 The Committee was told by the Media, Entertainment and Arts Alliance (MEAA) that Malaysia was one of the centres for the pirating of DVDs and CDs.[44]

4.54 AEEMA, while only referring to anecdotal information, also noted that the country was a source of counterfeit electronic goods. The witness told the Committee that many of its members were facing counterfeit consumer electronics products, small home appliances, and lights. Not only were the items copied, but also all the branding and packaging.[45]

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42 Mr Brett Biddington, *Transcript 16 October 2006*, p. 27.

43 AEEMA, *Submission No. 18,* p. 169.

44 Ms Lynn Gailey, *Transcript 21 November 2006*, p. 28.

45 Ms Loretta Johnson, *Transcript 16 October 2006*, p. 29.

4.55 The problem also extended to large multinationals such as Cisco which produced routers and switches:

> Reputable companies like Cisco, IBM and so on are building equipment for markets knowing that there is the degree of dependence—of whole economies in the case of Cisco's switches and routers. The last thing that we can afford to do is have an economy or telecommunications system collapse because a counterfeit product has been put into the heart of the system.[46]

4.56 This issue is discussed further when the Committee considers the proposed FTA with Malaysia.

4.57 ADIESA raised the issue of intellectual property on components used by the defence manufacturing industry. Increasingly, the intellectual property rights on components was held by US or European companies and permission from these companies was needed to sell items incorporating those components. The item had to clear the hurdle of the international traffic in arms regulations (ITAR). Unfortunately, ADIESA added, the US was interpreting ITAR:

> … increasingly restrictively, even to countries such as Australia which are close and trusted allies. It becomes a real battle for us not only to get the stuff released to Australia in the first place but then to be able to onsell into the region. … to finish on ITAR, it is not controlled by the US government or by the US executive. It is very much that responsibility and the preserve of the Congress.[47]

4.58 DITR told the Committee that the Malaysian automotive industry was one of the most protected in the region:

> Malaysia applies a tariff of 30 per cent to imported automotive vehicles from non-ASEAN countries and five per cent from ASEAN countries. It also levies excise tax calculated on engine capacity and vehicle type. Large-engine vehicles, such as those produced in Australia, incur substantially higher excise. We understand that the Malaysian national car manufacturers, Proton and Perodua, may receive a 50 per cent rebate on the value of excise paid. There is also a 10 per cent sales tax on all vehicles and all

46 Mr Brett Biddington, *Transcript 16 October 2006*, p. 31.

47 Mr Brett Biddington, *Transcript 16 October 2006*, p. 27.

> goods in general. Excise and sales taxes on imported vehicles are based on the import value including customs duty.[48]

4.59 Approval from the Malaysian Government had also to be sought for importing vehicles, which effectively acted as an import quota. Importers were thereby limited to a small share of the vehicle market. Malaysia, however, was committed to phasing out this permit system by the end of 2010.[49]

4.60 DITR further advised in a supplementary submission that three Australian automotive manufacturers had invested in Malaysia:

- Pacifica Group Ltd manufactured brake callipers and drums;
- an Australian owned company was a small-volume sports car manufacturer; and
- Australian investors had a stake in a manufacturer of specialist sports cars based on the MG design.[50]

4.61 Investment issues are discussed further in the following paragraphs.

Investment flows

4.62 The disparity in trade between Malaysia and Australia is also reflected in investment flows between the two countries.

Malaysian investment in Australia

4.63 In 2005, the total stock of Malaysian investment in Australia was $5.8 billion of which $3.3 billion was foreign direct investment (FDI). This represents 1.2 per cent of FDI stock in Australia.[51] The trend in investment between 2001 with 2005 shows that Malaysian stock in Australia as a proportion of total FDI has doubled. This has moved Malaysia from 12th to 10th most important FDI source for Australia.[52]

48 Mr Ken Miley, *Transcript 16 October 2006*, p. 12.
49 Mr Ken Miley, *Transcript 16 October 2006*, p. 12.
50 DITR, *Submission No. 25*, p. 226.
51 DITR, *Submission No. 21*, p. 183.
52 Invest Australia, *Submission No. 30*, p. 250.

4.64 DITR noted that Malaysian investments in Australia were concentrated in 'energy, agribusiness, manufacturing, real estate, restaurants, travel agents and gaming.'[53] Invest Australia indicated, in addition, that there was a:

> … developing interest in Australia's knowledge-based industries such as information technology, research and development and advanced manufacturing.[54]

4.65 The submission from Invest Australia also provided a list of Malaysian companies with interests in Australia.[55]

4.66 Invest Australia suggested that Malaysian investors were drawn to Australia because of historical ties:

> For many years Malaysian people have been studying in Australia and travelling to Australia for holiday purposes. Moreover, there is a large Malaysian community in Australia which further nurtures the feeling of familiarity and understanding between the two countries. Furthermore, Australia and Malaysia share a very similar legal and financial framework …[56]

4.67 The main impediments identified by Invest Australia were the Australian labour laws and relatively high cost of labour which was 'markedly more expensive' than in Malaysia, especially in the manufacturing sector.[57]

Australian investment in Malaysia

4.68 In 2005, Australian FDI in Malaysia was $371 million, representing 0.2 per cent of Australian FDI stock abroad.[58] The trend in investment in Malaysia between 2001 and 2005 has remained stationary. This has resulted in Malaysia moving from 12th to 16th most important destination for Australian FDI.[59]

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53 DITR, *Submission No. 21*, p. 183.
54 Invest Australia, *Submission No. 30*, p. 250.
55 Invest Australia, *Submission No. 30*, pp. 252–4.
56 Invest Australia, *Submission No. 30*, p. 250.
57 Invest Australia, *Submission No. 30*, p. 250.
58 DITR, *Submission No. 21*, p. 183.
59 Invest Australia, *Submission No. 30*, p. 250.

4.69 DFAT advised the committee that Austrade estimated there were 'about 400 Australian companies with offices or joint-venture arrangements in Malaysia.'[60] Major Australian companies operating in Malaysia include, Ansell, Bluescope Steel, Boral, CSR, and Leighton.[61]

4.70 The Committee has explored the reasons for the comparatively low level of Australian investment in Malaysia.

4.71 DFAT noted that investment was a very competitive sector and Australian companies looked at risk return. China was a major competitor for all Southeast Asian countries and it was proving to be more lucrative in the investment market.[62]

4.72 AEEMA agreed and noted that the Electronics Industry Action Agenda:

> … does not necessarily regard Malaysia as a key commercial or economic strategic market within ASEAN economies. We actually view Taiwan, Thailand and Singapore, to a lesser extent, as offering better opportunities for Australia in this regard because there are linkages to the greater China region and you can leapfrog into mainland China from there.[63]

4.73 DFAT told the Committee that a factor quoted as an impediment to foreign investment in Malaysia was that country's foreign equity rules which required a 30 per cent Bumiputra equity participation in a foreign owned company. DFAT added that there were:

> … uncertainties surrounding the application of the investment rules and what are being described as slow bureaucratic processes for approval. … some industries are exempted on a case-by-case basis and … it is not a very transparent or predictable process that industry has encountered.[64]

4.74 Telstra, commenting on this issue, acknowledged a country's sovereign right to have policies addressing historical disadvantage, but noted that it posed an additional cost. To seek an appropriate

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60 DFAT, *Submission No. 11*, p. 79.

61 DITR, *Submission No. 21*, p. 183.

62 Mr Paul Grigson, Mr Pat Stortz, *Transcript* 9 *October 2006*, p. 4.

63 Ms Loretta Johnson, *Transcript 16 October 2006*, p. 24.

64 Mr Michael Mugliston, *Transcript* 9 *October 2006*, p. 13.

local partner who was 'qualified in the eyes of the government to take that 30 per cent quota' was an additional administrative hurdle.[65]

4.75 The Committee, however, was advised that the '30 per cent' rule was not a blanket requirement. DFAT advised that Malaysia's approach was to look at the net economic benefit of an investment so had adopted a case-by-case examination. It was a very sector-specific type of approval process. DFAT added:

> In the manufacturing sector, for example, Malaysia allows up to 100 per cent foreign equity by a company if it is going to export. … Malaysia would see that as a major net benefit.[66]

4.76 AEEMA told the Committee that its members had not experienced problems with the Bumiputra investment rule:

> Prima facie, it should be a disincentive, it seems to me, because it is a preferential policy. It is a protectionist policy. On paper, it should rule out effective investment by foreign companies. That appears not to have been the case with the members that have come back to us … they have had very good experiences, with some of them opening up very large facilities in Penang. … Increasingly they are saying that it has not been an issue.[67]

4.77 AMBC confirmed this view:

> … any company sophisticated enough to contemplate offshore investments should be capable of identifying a Bumiputra equity partner who, rather than 'bringing nothing to the table', is a person capable of bringing some value—be it in the form of a network of high-level business and government contacts, or local industry experience and knowledge, or equity in the form of cash, or a combination of the above.[68]

4.78 AMBC added that when Bumiputra involvement had been required, its members had found pragmatic solutions to the issue. AMBC had not been approached by a member who had 'categorically stated that

65 Mr Kavan Peries, *Transcript 21 November 2006*, p. 35.
66 Mr Michael Mugliston, *Transcript* 9 *October 2006*, p. 5.
67 Ms Loretta Johnson, *Transcript 16 October 2006*, p. 31.
68 AMBC, *Submission No. 28,* p. 243.

the Bumiputra requirement is something he cannot accept and that the AMBC should do something about it.'[69]

4.79 Indeed, AMBC stated there were good reasons to invest in Malaysia, but Australian businesses needed to be informed of these advantages.[70] Advantages identified by AMBC included:

- the Malaysian government had implemented many incentives designed to attract foreign investors;
- Malaysia was the 'fourth most open economy in the world (behind Singapore, Hong Kong and Luxembourg)';
- not all Australian businesses wishing to export were equipped to handle large markets such as India and China;
- Malaysia's infrastructure enabled easy penetration of domestic and regional markets;
- Malaysia's population was well-educated and the many alumni of Australian tertiary institutions were familiar with Australian culture;
- Malaysia offered 'a comfortable and familiar social environment for Australians where language and cultural diversity is not a problem';[71] and
- Malaysia's legal and accounting systems have developed out of the western accounting and legal professions.[72]

Free-trade agreement

4.80 In April 2005, the Prime Ministers of Australia and Malaysia agreed to commence FTA negotiations. A scoping study was conducted involving State and Territory governments, industry, and non-government groups. It concluded that 'an FTA would deliver significant benefits to both countries.' There have been several rounds of negotiations with the aim of finalising the FTA by 'around mid-2007.'[73]

69 AMBC, *Submission No. 28,* p. 243.

70 Mr Bill Wilkinson, *Transcript 21 November 2006*, p. 20.

71 AMBC, *Submission No. 28,* pp. 243–4.

72 Mr Bill Wilkinson, *Transcript 21 November 2006*, p. 19.

73 DFAT, *Submission No. 11,* p. 79.

4.81 There are two types of FTA—'positive listing', or 'negative listing'. A positive listing free-trade agreement is one whereby negotiating countries make voluntary commitments on specific items or services, thereby ensuring that the entire range of possible goods or services is not covered. A negative listing free-trade agreement covers all aspects of trade between negotiating countries except those that are not included through explicitly stated provisions.

4.82 The issues raised with the Committee included:

- the nature of the agreement;
- the protection of intellectual property;
- recognition of qualifications;
- market access; and
- tariffs.

Type of free-trade agreement

4.83 MEAA advised the Committee that it favoured a positive listing FTA with no commitments made in respect of cultural industries. In the event that the Government proceeded with a negative FTA, however, MEAA suggested that the current FTA with Singapore be used as a model. This was because, unlike the FTA with the US, the reservations provided 'appropriate protections for Australia's cultural industries to the extent possible in negative listing agreements'.[74]

Intellectual property

4.84 MEAA told the Committee that Malaysia was a major source of pirated DVDs and CDs:

> Malaysia is considered to be one of the hubs of piracy and it provides a lot of pirated material out of South-East Asia and out of Asia more generally—although I understand that more recently there appears to have been a shift where Malaysia is now becoming not the huge producer but a kicking-off point. There is a lot of pirated material coming in from China to Malaysia and then being exported out of Malaysia to other parts of the world.[75]

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74 MEAA, *Submission No. 17*, p. 133.

75 Ms Lynn Gailey, *Transcript 21 November 2006*, p. 28.

4.85 MEAA noted that Malaysia was taking the issue seriously and strengthening copyright law. It advised that in 2003, enforcement officers had seized more than 2.8 million illegal disks.[76]

4.86 Support for MEAA was provided by AEEMA which said its members also suffered from counterfeiting (see above). Its witness was supportive of the cultural industries view that the issue be addressed 'in the preliminary discussions that lead up to the drafting of the first chapter in any FTA.' AEEMA added:

> … it has been put to us by Foreign Affairs and Trade officials that there is a copying culture in Malaysia and some of the other Asian countries, and that it is a very difficult issue for Department of Foreign Affairs and Trade officials to deal with at the moment. But we're keeping it on the table, as is the entertainment industry, most strongly.[77]

4.87 DITR was noncommittal on the contents of the intellectual property chapter in the FTA, but observed that it didn't think Malaysia was not negotiating in good faith on the issue.[78]

Accreditation of courses and recognition of qualifications

4.88 Several Australian education institutions have set up branch campuses in Malaysia, but have encountered two major problems with accreditation procedures:

- The Malaysian Government system to regulate awards was insufficiently adaptable to 'allow the awards delivered by foreign institutions to coexist with Malaysian ones.' Unfortunately, when Australian providers had attempted to meet Malaysian requirements the courses were found to be no longer compliant with Australian requirements.
- Malaysia required a licence be obtained for each course of study, but did not allow any variations in the programme to cater for market changes or student interests.[79]

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76 MEAA, *Submission No. 17,* p. 147, quoting from Motion Picture Production Association of America, *Anti-piracy*, <www.mpaa.org/anti-piracy>.

77 Ms Loretta Johnson, *Transcript 16 October 2006*, p. 29.

78 Mr Ken Miley, *Transcript 16 October 2006*, p. 18.

79 DEST, *Submission No. 14,* pp. 114–15.

4.89 DEST advised there was a very high level of recognition of qualifications by the relevant Malaysian professional boards. There were problems, however, with recognition by the Malaysian Public Service Department (JPA). Such recognition was needed to allow graduates to apply for some jobs in the public service and, more importantly, to achieve comparable levels of pay to those with recognised qualifications.

4.90 Unfortunately, recognition by the JPA appeared to be based on the nomenclature of the degree awarded, rather than its quality and course content.[80]

4.91 The AVCC explained that the JPA:

> … does not recognise several categories of our degrees appropriately. For example, they do not recognise every university law degree in Australia and they do not make a distinction between our Australian undergraduate degree with honours, which is a three [year] plus one degree, and the British degree with honours, which is a three [year] only degree.[81]

4.92 DEST added that Australia's three-year bachelor degrees were currently recognised as a pass degree, equivalent to a higher diploma or two-year course. The department noted that some Malaysian private sector bodies recognised the Australian three-year bachelor's degree as equivalent to the overseas three years honours degree. Consequently, DEST was trying to have the JPA harmonise its recognition regime with that of the Malaysian private sector.[82]

Market access

Foreign equity restrictions

4.93 ANZ and Telstra both raised the foreign equity restrictions imposed by the Malaysian government as issues to be addressed in an FTA.

80 DEST, *Submission No. 14,* p. 114.

81 Professor Roger Dean, *Transcript 4 December 2006*, p. 11.

82 DEST, *Submission No. 14,* p. 116.

4.94 ANZ stated that in Malaysia there was a 30 per cent cap on foreign ownership of domestic banks with the need to seek central bank approval for holdings above five per cent and Prime Ministerial approval for holdings above 20 per cent.[83]

4.95 Telstra also raised the 30 per cent foreign ownership rule, but noted that 'in certain circumstances foreigners are permitted to take up to 61% equity provided they sell down to 49% within five years.'[84] Telstra's witness told the Committee that it was watching 'with great interest' the outcome of the Norwegian company Telenor's requirements to sell down to 49 per cent its investment in DiGi.com.[85]

4.96 DEST too, advised of equity restrictions. Foreign education providers needed a local partner to supply education services in Malaysia—the local partner was required to be the legal entity. Foreign ownership was capped at 49 per cent and the joint education institution was required to have at least one Malaysian citizen on its board.[86]

Granting of licences

4.97 Again ANZ and Telstra raised market access concerns in the services sector. ANZ complained that it was easier for a Malaysian bank to establish itself in Australia than it was for an Australian bank to establish and operate in Malaysia. This was because the central bank in Malaysia had 'not issued a new banking licence for many years and the process for granting a licence [was] not transparent.'[87]

4.98 Telstra told the Committee there were restrictions on its building telecommunications infrastructure in Malaysia:

> You are usually required to obtain a national facilities licence if you intend to lay fibre optic cable inside the country, set up a cable landing station, a satellite ground station or even a mobile network—a transceiver, transmitter: the usual mobile apparatus. No foreign operator has been allowed to acquire a significant shareholding in this type of licence other than the previous mentioned Telenor of Norway, and we reckon that

83 ANZ, *Submission No. 8,* p. 59.
84 Telstra, *Submission No. 16,* p. 127.
85 Mr Kavan Peries, *Transcript 21 November 2006*, p. 35.
86 DEST, *Submission No. 14,* p. 116.
87 ANZ, *Submission No. 8,* p. 59.

> this is a prohibitive market limitation attempt by the Malaysia authorities.[88]

4.99 DCITA's submission added that Malaysia's Foreign Investment Committee was required to approve acquisitions greater than A$3.6 million 'where the foreign company holds over 15% of the voting share, or the total foreign investment is greater than 30%.'[89]

4.100 DAFF has also raised discretionary import licensing arrangements which affected sugar, rice and dairy products. Industry was concerned about the uncertainty such arrangements caused, and DAFF was seeking, through the FTA negotiations, to ensure import licensing was not acting as a barrier to Australia's exports.[90]

Government procurement

4.101 Government procurement occupies a significant proportion of the economy. The Government of South Australia advised the Committee that the Malaysian Government intended to 'maintain the requirement that all government agencies procure supplies and services from local sources.' This requirement had limited the ability for South Australian industries, in particular the defence industry, to access the Malaysian market. The submission advocated the continued 'push for the inclusion of commitments on government procurement in the FTA.' [91]

Tariffs

4.102 DAFF's submission advised that while most agricultural products faced a very low or zero applied tariffs:

> … dairy products, some horticultural products, processed meat, some seafood, and a range of processed foods faced tariffs of between 5 and 30 per cent. … alcoholic beverages, notably wine, also face specific rate tariffs.
>
> Australian forest industries face … import tariffs ranging from 0–300 per cent. The tariff level is generally lower on raw materials and increases for those with value-added content or which undergo further processing.

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88 Mr Kavan Peries, *Transcript 21 November 2006*, p. 35.

89 DCITA, *Submission No. 7,* p. 50.

90 DAFF, *Submission No. 23,* p. 213.

91 Government of South Australia, *Submission No. 24,* p. 222.

> While Malaysia has no tariffs on imports of wool, it does maintain 15–20 per cent tariffs on certain woollen products (suits, trousers, jackets and jumpers).[92]

4.103 DAFF also noted that Malaysia had indicated it would impose tariff rate quotas on 21 agricultural product tariff lines. The Department was seeking, through the FTA negotiations, to have Australian exports exempt from these arrangements.[93]

4.104 As noted earlier, Malaysia's automotive industry is 'one of the most protected in the region.' Tariffs of 30 per cent are applied to vehicles from non-ASEAN regions and the requirement for import permits effectively acts as an import quota.[94]

Non-tariff barriers

4.105 Import licensing and the requirement for Bumiputra equity in foreign investment in Malaysia has been discussed above. A further non-tariff barrier was raised by DAFF:

> Australian wine exports entering Malaysia are required to include labelling which states the alcohol content in Bahasa Malaysia. … a bottle from each case of imported wine [must] be taken for analysis, thereby increasing the landed cost of the product. Wines exported from Australia have already undergone analysis by accredited laboratories to ensure they comply with Australian laws.[95]

4.106 DAFF advised the Committee that it was attempting to address this issue through the FTA negotiations.[96]

Committee comment

4.107 The issues on the table during FTA negotiations are many and complex. The Committee has been advised of extensive ongoing consultation with industry peak bodies, unions, and State and Territory governments, and that over 60 submissions have been

92 DAFF, *Submission No. 23,* p. 212.
93 DAFF, *Submission No. 23,* p. 212.
94 DITR, *Submission No. 21,* p. 185.
95 DAFF, *Submission No. 23,* p. 213.
96 DAFF, *Submission No. 23,* p. 213.

received.[97] Consequently, the evidence provided to the Committee is but a snapshot of issues discussed during negotiations.

4.108 An issue of concern to the Committee is the need for Malaysian authorities to test Australia wine imports. The Committee is disappointed that wine already tested by accredited laboratories in Australia needs to be retested in Malaysia, thereby significantly increasing landed costs. The Committee supports DAFF's efforts in attempting to address the issue through the FTA negotiations.

4.109 From comments made at public hearings, however, the Committee feels both Australia and Malaysia are approaching the negotiations in good faith and real progress is being achieved. The comments from a DAFF witness are typical:

> The negotiations from our point of view are going quite well. It is a hard slog, as FTAs always are, as you are aware. … From our point of view things are on track. We have not had any significant issues or disagreements with the Malaysians, other than the standard toing and froing of negotiations. … with each new FTA we learn lessons from the previous one. What our negotiators tell me informally is, again, that those lessons are being built on and we are progressing quite well.[98]

97 DITR, *Submission No. 21*, p. 183.

98 Mr David Williamson, *Transcript 4 December 2006*, pp. 25–6.