

REGULATION IMPACT STATEMENT:  
MALAYSIA-AUSTRALIA FREE TRADE  
AGREEMENT

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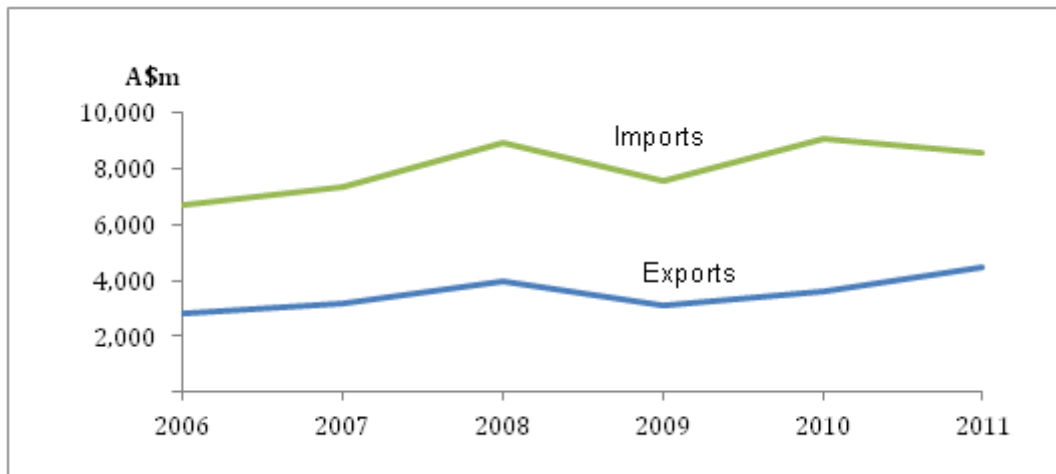
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## **REGULATION IMPACT STATEMENT: MALAYSIA-AUSTRALIA FREE TRADE AGREEMENT**

1. This Regulation Impact Statement relates to the establishment of the Malaysia-Australia Free Trade Agreement (MAFTA).
2. Negotiations for an FTA with Malaysia were launched in May 2005. After four negotiating rounds the negotiations were paused at the end of 2006 to allow both sides to focus on concluding the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA). MAFTA negotiations recommenced in August 2009 and concluded in March 2012.

### **A. Problem Identification**

3. Malaysia is an important economic partner and regional neighbour for Australia. Malaysia is Australia's 10th largest trading partner (and third largest among ASEAN countries). Trade is complementary with Australia providing inputs for Malaysia's industries and Malaysia providing Australia with a range of products, such as computers, consumer electronics, furniture and oil. Two-way goods and services trade with Malaysia totalled \$16.0 billion in 2011, representing 2.6 per cent of Australia's total trade in goods and services.
4. Australia imported \$9.9 billion in goods and services from Malaysia and exported \$6.1 billion in goods and services to Malaysia. This was broken up as follows: Australia imported \$8.6 billion in goods from Malaysia and exported \$4.5 billion in goods to Malaysia; Australia imported \$1.3 billion in services from Malaysia and exported \$1.6 billion in services to Malaysia.
5. Major Australian goods exports for 2011 included: crude petroleum \$760 million; copper \$648 million; coal \$344 million; and wheat \$303 million. Major Australian goods imports from Malaysia included: crude petroleum \$3,396 million; monitors, projectors and televisions \$646 million; computers \$556 million and refined petroleum \$378 million. Major Australian service exports to Malaysia for 2011 included: education-related travel \$759 million and personal travel (excluding education) \$458 million. Major Australia service imports from Malaysia for 2011 included: transport \$597 million and personal travel (excluding education) \$499 million.
6. Australia's merchandise trade with Malaysia, 2006 to 2011



7. In 2011, Australia was Malaysia's 10<sup>th</sup> largest export destination (3.6 per cent of Malaysia's exports) and Australia was Malaysia's 11<sup>th</sup> largest source of imports (2.2 per cent of imports).

8. Total Australian investment in Malaysia in 2011 was valued at \$5.7 billion while Malaysian investment in Australia was \$14.0 billion. Australia has a diverse range of trade and investment interests in Malaysia, including in agriculture, manufacturing, resources, education, telecommunications and financial services. About 3,500 Australian companies/organisations export to Malaysia each year. Austrade estimates there are around 250 Australian companies with some form of representation in Malaysia. Approximately 2,600 Malaysian companies export to Australia and approximately 170 Malaysian companies are represented in Australia.

9. While the economic relationship between Australia and Malaysia is strong, there is potential to develop further our economic linkages. Malaysia's trade and investment policy regimes remain mixed, combining a high degree of liberalisation in some sectors with significant interventionist and trade restrictive policies in other sectors.

10. Scoping studies into a possible FTA between Malaysia and Australia were undertaken in 2004, in parallel, by both countries. The Australian Scoping Study<sup>1</sup> included extensive consultations with Australian industry, State and Territory governments and other organisations. There was generally wide interest and support from Australian industry, State, Territory and Local governments and non-government organisations for the FTA. The Study found that an FTA would deliver worthwhile economic benefits for both countries – the GDP, trade and investment of both countries should increase as a result of the FTA. It recommended that Australia seek to enter into negotiations with Malaysia to establish a comprehensive and WTO-consistent FTA. The key conclusions of the Australian Scoping Study relate to:

- . complementarities between the Australian and Malaysian economies;
- . barriers to two-way trade and investment;

<sup>1</sup> Department of Foreign Affairs and Trade, *An Australia-Malaysia Free Trade Agreement: Australian Scoping Study*, Canberra, February 2005. See <http://dfat.gov.au/fta/mafta/> 'Resources' for further information.

- . the potential for trade and investment liberalisation and cooperation;
- . potential gains to both economies from a comprehensive FTA.

11. Australia and Malaysia have made market access and trade commitments to each other under the Marrakesh Agreement Establishing the World Trade Organization (WTO) and AANZFTA, which entered into force for both countries on 1 January 1995 and 1 January 2010 respectively. Under AANZFTA, Malaysia committed to eliminate tariffs on 96 per cent of its tariff lines by 2020, which will provide duty-free treatment to around 97 per cent of current Australian exports to Malaysia. Australia will eliminate tariffs on 100 per cent of its tariff lines by 2020, with 96 per cent of tariffs eliminated on 1 January 2010.

12. AANZFTA has delivered substantially improved access for Australian goods exporters and service suppliers and investors in a wide range of sectors in Malaysia. However, trade and investment barriers remain between Australia and Malaysia, including in sectors such as automotive, iron and steel, chemicals, plastics and a number of agricultural products, as well as a range of services sectors (financial services, telecommunications, professional services and education).

13. Nonetheless, non-tariff barriers are a significant issue for trade with Malaysia. Approximately one quarter of Malaysia's tariff lines are subject to import licensing, most of which remains non-automatic (i.e. discretionary). In 2008, Malaysia introduced tariff-rate quotas for 18 agricultural products, including liquid milk. Malaysia has adopted other trade restrictive practices such as requiring prospective importers to obtain 'no-objection letters' from competing Malaysian domestic producers in order to qualify for duty free imports in some industry sectors where high tariffs are maintained.

14. On services, Malaysia agreed to a range of 'WTO plus' commitments in AANZFTA, including in sectors of interest to Australia such as education and telecommunications. AANZFTA also incorporates modest commitments on investment protections, intellectual property, electronic commerce and an economic cooperation work program. There are other sectors where improvements could be made. These include financial services, professional services, and services incidental to mining. There is also room to improve on AANZFTA outcomes in areas such as education and telecommunications.

15. Subsequent industry submissions and numerous discussions with firms and industry associations have confirmed high interest by the Australian corporate sector in a commercially meaningful, comprehensive, high-quality bilateral FTA that goes beyond AANZFTA.

16. MAFTA has the potential to secure improved access for exporters of both countries by reducing and eliminating tariff and non-tariff barriers. It can boost investment, output and employment, including through encouraging activities that should lead to the development of new technologies and enhanced cooperation.

17. Australia's 'AANZFTA-plus' priorities for MAFTA include: improved automotive tariff outcomes (under AANZFTA, Malaysia committed to reduce its tariffs on small cars to five per cent by 2017) and removal of the quantitative restriction applying to Malaysian car imports from non-ASEAN countries; tariff commitments on wine

and rice (excluded from AANZFTA); improved tariff outcomes on other priority products, such as iron and steel, chemicals and plastics; enhanced access for some agricultural products; improved commitments on financial, education, telecommunications and professional services; commitments covering pre-establishment issues, such as foreign equity limits, for investment in non-services sectors (excluded from AANZFTA); enhanced intellectual property and competition policy provisions; and appropriate labour, environment and government procurement provisions (excluded from AANZFTA). Malaysia's priorities include faster (than AANZFTA) tariff elimination from Australia on a small number of tariff lines (autos, rubber products, wooden furniture and some steel lines), commitments on health-related services and enhanced economic and technical cooperation.

### ***Trade barriers by sector***

#### *Goods*

18. Much of the merchandise trade between Australia and Malaysia already takes place at low or zero tariffs. The Australian Scoping Study noted, however, that significant impediments remain to bilateral trade and investment which an FTA can address. It noted that barriers to Australian exports to Malaysia are important for some agricultural products, processed foods, metal manufactures and services trade. Tariffs as well as non-tariff measures, such as import licensing, were identified as impediments to increased goods trade with Malaysia. Restrictions on commercial presence in many sectors and, in some cases, licensing and residency requirements limit Australian services exports to Malaysia. The Australian Study also noted that there were some barriers facing Malaysian exports to Australia including passenger motor vehicles and parts, and textiles, clothing and footwear. Even where tariffs were already at zero, the FTA would provide the benefit of certainty for exporters – once bound they could not be increased to the FTA partner.

19. Case studies which formed part of the Australian Scoping Study indicated a number of potential synergies between the Australian and Malaysian market sectors. For example, in the automotive sector there is substantial two-way trade in components, most of it is from Malaysia to Australia, but Australian exports of motor vehicles to Malaysia is almost non-existent.

20. Automotive production is a significant part of both the Australian and Malaysian economies. Together the Australian and Malaysian automotive markets represent around 1.5 million vehicles a year. Malaysia already exports Protons to Australia, but the FTA negotiations provide an opportunity to improve the competitiveness of these exports, while providing opportunities for Australian vehicle exports, and affording both countries opportunities to work together in third markets. The differing characteristics of the two automotive sectors offer significant opportunities for complementarities and there would be potential for greater specialisation and two-way investment.

21. Australia's and Malaysia's agricultural production and trade are broadly complementary. In general, Australian agricultural products do not face sizeable barriers in the Malaysian market, but there are significant exceptions, especially for liquid milk, some meat products, other processed food and beverages. Malaysian agricultural exporters – including of palm oil, seafood and other processed food –

would enjoy the certainty of zero tariffs in Australia. MAFTA could assist Malaysia in modernising its agricultural industry through encouraging increased Australian investment.

22. A significant part of Australia's exports to Malaysia are base metals which are manufactured from Australian minerals. With some exceptions these enter Malaysia at low or zero tariffs. However, for more complex products there is significant escalation in Malaysia's tariffs. Australia's approach is aimed at having tariffs on these products eliminated under Malaysia's FTA commitments, thereby providing the opportunity for Australian exports of metal products to increase. This would be the case for some steel products.

23. Following AANZFTA's entry into force in 2010, a major focus of MAFTA negotiations was to accelerate the reduction and elimination of Malaysia's remaining tariffs in areas of priority interest to Australia. These priority areas include small cars (tariff phased down to five per cent by 2017), liquid milk (subject to tariff quotas which could be improved), iron and steel (elimination of many tariff lines, but not for an important subsector), wine and rice (both of which were excluded from Malaysia's AANZFTA tariff schedule). Malaysia also committed under AANZFTA to delay tariff elimination for certain other priority sectors (including chemicals, plastics, some automotive parts, and some fruits).

#### *Services*

24. The services sector represents a huge opportunity for growth in our bilateral trading relationship. As economies modernise, services account for an increasing proportion of economic activity. Services account for around 70 per cent of Australia's GDP and around 50 per cent of Malaysia's GDP. Both Australia and Malaysia can expect growth in our services export profile. Services account for 16 per cent of Australia's and 14 per cent of Malaysia's total exports.

25. There are considerable opportunities to further promote bilateral services trade and investment to the benefit of both countries. Australia's approach is aimed at seeking to bind existing levels of openness, including recent unilateral liberalisation, which takes account of differences in the level of development of our respective services sectors. At the same time, Australia is also seeking some liberalised access for Australian service suppliers in certain sectors to address restrictions on commercial presence, licensing requirements and issues relating to recognition of professional qualifications.

26. Malaysia maintains substantial barriers to foreign participation in most services sectors. Regulation is fragmented and poorly coordinated across a number of government agencies. Market entry to most services sectors is constrained by limits on foreign equity participation or joint venture requirements, including in key areas of interest to Australia (such as financial services, telecommunications, professional services and education). Foreign participation often depends on the exercise of discretionary powers by Ministers or officials, and decision-making is characterised by a lack of transparency and predictability. Malaysia also maintains quantitative restrictions on the temporary entry of service suppliers.

#### *Investment*

27. While our trade relationship is healthy and growing, by comparison our bilateral investment relationship is underdone. Malaysia is already a significant investor in Australia. MAFTA could provide a strengthened environment to support further Malaysian investment, as well as to encourage higher levels of Australian investment in Malaysia.

28. Input from Australian industry suggests that Australian investors are seeking a more predictable regulatory environment in Malaysia and for MAFTA to address a number of restrictions applying to commercial presence, including restrictions applying to corporate structure. The Malaysian business environment presents Australian investors with several complicating factors which serve to discourage investment. These include foreign equity restrictions, 'bumiputera' (ethnic Malays and the indigenous peoples of Sabah and Sarawak) equity and participation requirements, quantitative limitations on foreign managers and board members, employment or training obligations, and a lack of regulatory transparency.

#### *Government procurement*

29. Government procurement is an important area of economic activity for both countries, with the OECD estimating that it generally accounts for at least 10 to 15 per cent of GDP. The Australian Government is a significant buyer of goods and services, purchasing \$32.6 billion (about 101 billion ringgit at today's exchange rate or 12 per cent of Malaysia's GDP) worth of goods and services in the last financial year. Australian State and Territory governments purchase more than double this amount each year. Including government procurement in MAFTA would provide both Malaysian and Australian companies an opportunity to enjoy secure access to these very important sectors of our economies.

#### *Economic Cooperation*

30. MAFTA is not confined to market access issues. It could also facilitate trade between Australia and Malaysia and lead to much deeper economic integration over time. MAFTA could also provide the basis for much stronger cooperation in various areas, such as:

- Customs cooperation which would assist to expedite trade between Australia and Malaysia. This could take the form of cooperation to increase transparency, efficiency and consistency in customs procedures, as well as greater information exchange to assist in the investigation and prevention of infringements of customs laws.
- Addressing differing standards on industrial goods, unnecessary technical regulations and overly complex procedures for assessing conformity. MAFTA could develop measures that facilitate cooperation and provide a mechanism for addressing issues on standards certification and technical regulations, thereby facilitating trade.
- Reinforcing mutual commitment to the development and application of science-based sanitary and phytosanitary (SPS) measures which are consistent with the WTO Sanitary and Phytosanitary Agreement. MAFTA could seek to strengthen cooperation between Australian and Malaysian SPS authorities.



## **B. Objectives**

31. Australia's overall negotiating objectives for MAFTA were to:

- . achieve a comprehensive and genuinely liberalising FTA that is supportive of the multilateral trading system;
- . build on the outcomes in AANZFTA to deliver commercially meaningful 'AANZFTA-plus' commitments for Australian exporters of goods and services, and investors to the Malaysian market;
- . seek more transparent and predictable conditions for Australian traders, service suppliers and investors in Malaysia;
- . secure a platform for continuing trade and investment liberalisation in the future;
- . maintain competitiveness in the Malaysian market as Malaysia pursues Free Trade Agreements (FTAs) with other trading partners (Malaysia has concluded bilateral FTAs with Japan, India, New Zealand, Pakistan and Chile, and has been negotiating an FTA with the European Union since December 2010; it has concluded a plurilateral FTA with ASEAN and ASEAN-wide FTAs with Australia-New Zealand, China, Japan, Republic of Korea and India, and has been participating in Trans Pacific Partnership Agreement (TPP) negotiations since October 2010);
- . establish a framework for bilateral economic and technical cooperation.

## **C. Options**

32. Australia has essentially three negotiating avenues for addressing the market access priorities in Malaysia identified in Section A above – multilateral, regional and bilateral.

### *Multilateral*

33. Negotiation of a comprehensive multilateral agreement through the WTO offers the greatest opportunity for all WTO members to reduce global barriers to trade across agriculture, industrial products, and services. Further liberalisation of trade through the conclusion of the Doha Round would also stimulate growth in the global economy. While, since its launch in 2001, the Doha Round has made progress in addressing its negotiating agenda, the negotiations are at an impasse and uncertainty and the prospect of increased protectionism cloud the global economy. The Australian Government's Trade Policy Statement released in April 2011 reaffirmed Australia's commitment to pursuing multilateral trade liberalisation through the WTO, and the Government is continuing to work actively with the WTO membership to make progress on world trade talks in Geneva. While ultimately securing outcomes through the Doha Round would afford an opportunity for advancing our trade interests with Malaysia, there is no certainty that the Doha Round will deliver outcomes that would address Australia's priority interests with Malaysia as comprehensively or in as timely a way as is possible under MAFTA.

## *Free Trade Agreements*

34. The Australian Government remains committed to pursuing regional and bilateral FTAs where these build on WTO commitments. FTAs can deliver market access gains in a faster timeframe than through multilateral negotiations. And, regardless of when the Doha Round may finalise a multilateral package of trade reforms, contemporary FTAs afford the possibility of deeper market access commitments in goods and services, and measurably WTO-plus undertakings that go beyond the scope of the Doha Round in trade-related issues such as the protection of intellectual property rights and competition policy.

### *Regional FTAs - TPP*

35. Australia and Malaysia are both participating in negotiations for a Trans-Pacific Partnership Agreement (TPP), with the aim of concluding a comprehensive trade and investment agreement covering Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, the United States and Vietnam. The TPP negotiations afford a plurilateral avenue for pressing Malaysia to improve on its current market access commitments to Australia. The TPP negotiations commenced in March 2010 and Malaysia commenced its participation in October 2010. The involvement of a number of parties in the TPP negotiations, including the United States, could help to encourage TPP parties, including Malaysia, to deliver more ambitious outcomes in some areas (such as services, intellectual property, competition, and government procurement) than they may contemplate in bilateral FTAs, such as MAFTA.

36. While an option for pursuing Australia's trade interests with Malaysia could therefore have been to not proceed with MAFTA and to rely on the TPP to deliver timely results, there would be significant risks for Australia in doing so, as there are immediate market access gains to be made from concluding MAFTA even if the TPP was later to deliver additional benefits. A bilateral FTA with Malaysia would also reflect market access outcomes that are more tailored to Australia's priority interests, including in sectors that Malaysia may be unwilling to open to larger competitors.

### *Regional FTAs – AANZFTA*

37. AANZFTA covers trade and investment between Australia, New Zealand and all ten ASEAN members including Malaysia. Australia could therefore consider seeking to advance its bilateral trade and investment relationship with Malaysia via the AANZFTA review process. This includes a range of built-in agendas and review mechanisms in areas such as non-tariff measures, rules of origin, services and investment market access. Australia will pursue improvements to Malaysia's (as well as other ASEAN partners') AANZFTA market access commitments through these review mechanisms; however, realistically there are limits to what AANZFTA can achieve in the short to medium term. The relatively long timeframes involved (ranging to 2016 for commencement of some reviews) and diversity of interests inherent in the plurilateral AANZFTA framework, suggest that further gains from Malaysia could be achieved more efficiently and quickly through a bilateral agreement that provides for the implementation of commitments from an agreed early date for entry into force. A bilateral FTA with Malaysia affords the opportunity to add value to the gains made in AANZFTA by focusing on particular market access (and other) priorities, and by seeking to deliver more far-reaching

liberalisation in priority areas. Such a bilateral FTA would also support Australia's objectives for progressing its AANZFTA built-in liberalisation agenda.

#### *Bilateral - MAFTA*

38. MAFTA offers substantial benefits for Australia's trade and investment relationship with Malaysia, which would build on our existing market access and other outcomes with Malaysia under AANZFTA and the WTO. Australia's and Malaysia's shared understanding in negotiating MAFTA has been to deliver substantial 'AANZFTA-plus' outcomes, by improving on each country's market access commitments in AANZFTA and addressing specific bilateral market access and trade-related regulatory issues that may not be satisfactorily resolved in a plurilateral agreement. The MAFTA package contributes to achieving this objective.

39. There are also broader strategic reasons for entering into MAFTA. As noted earlier, Malaysia has concluded a bilateral FTA with New Zealand and commenced negotiating an FTA with the European Union in December 2010. As a member of ASEAN, Malaysia has also concluded plurilateral FTAs with China, Japan, the Republic of Korea, and India. Australia therefore needs to minimise the possibility that the competitiveness of Australian exporters is eroded over time as a result of preferential market access commitments made under FTAs to Australia's competitors in the Malaysian market. Similarly, failure to secure improved market access through MAFTA that addresses outcomes that fell short of Australia's objectives in AANZFTA, would mean forgoing an opportunity to complete AANZFTA 'unfinished business' that relevant sectors of Australian industry found disappointing and which also risk eroding Australian industry's competitiveness in the Malaysian market over time. MAFTA would also strengthen Australia's broader bilateral relationship with Malaysia. In particular, it would bolster the warmer ties that have developed between the two countries over the past decade and create a dedicated and more formalised framework for addressing trade and investment issues. At a broader level, MAFTA would deepen Australia's engagement with the Asia-Pacific region and add to the existing (Singapore and Thailand) and prospective (Indonesia) bilateral FTAs that Australia has with individual ASEAN countries.

#### **D. Impact Analysis**

40. MAFTA will support and contribute to expanding Australia's economic relationship with Malaysia, an important regional trading partner and neighbour. There is considerable potential for MAFTA to create new trading opportunities for Australian goods and services producers and to help boost Australia's investment relationship with Malaysia. MAFTA may also lead to increased Malaysian exports and investment into Australia. As noted above, Australia's two-way trade with Malaysia in 2011 accounted for \$16.0 billion, or 2.6 per cent of Australia's total two-way trade in goods and services.

41. A wide range of stakeholders identified an interest in MAFTA during the course of negotiations, including public submissions received prior to the launch of negotiations. These stakeholders included groups and individuals from the agricultural sector, the manufacturing sector, the services sector, trade unions, employer organisations, state governments and public interest groups. MAFTA, once implemented, could be expected to have impacts on a number of these stakeholders.

42. MAFTA was negotiated over 11 formal negotiating rounds and several intersessional meetings. The final MAFTA package consists of the following:

- . The full text of the agreement, containing commitments in chapters on establishment; goods; rules of origin; customs procedures; sanitary and phytosanitary measures; standards, technical regulations and conformity assessment procedures; trade remedies; services; financial services; telecommunications; temporary movement of natural persons; mutual recognition arrangements; investment; intellectual property; competition policy; electronic commerce; economic and technical cooperation; transparency; general provisions and exceptions; consultations and dispute settlement; and final provisions (see **Annex** for Chapter Summaries).
- . Schedules of tariff commitments, containing tariff reduction and elimination commitments and associated product specific rules.
- . Schedules of specific services commitments.
- . Schedules of temporary movement of natural persons commitments.
- . An 'implementing arrangement' containing an agreed work program of economic and technical cooperation projects.
- . A letter from Malaysia's Minister of International Trade and Industry to Australia's Minister for Trade and Competitiveness providing for most-favoured-nation treatment for Malaysian imports of Australian wine and a review of customs duties and other charges in other alcoholic beverages two years after MAFTA's entry into force.
- . A letter from Australia's Minister for Trade and Competitiveness to Malaysia's Minister of International Trade and Industry committing to review the inclusion of provisions on labour in MAFTA within two years of MAFTA's entry into force.
- . A letter from Malaysia's Minister of International Trade and Industry to Australia's Minister for Trade and Competitiveness committing to review inclusion of environment provisions in MAFTA within two years of MAFTA's entry into force.
- . A letter from Australia's Minister for Trade and Competitiveness to Malaysia's Minister of International Trade and Industry outlining Australia's regulatory regime for traditional and complementary medicine (TCM) and offering to facilitate discussions between Australian and Malaysian TCM industry bodies.

### ***Broad-based impacts***

43. MAFTA provides for the elimination of tariffs on 94.8 per cent of Malaysia's tariff lines on entry into force, increasing to 98.6 per cent in 2016, covering 98.9 per cent of 2009-11 imports into Malaysia from Australia. All Australian tariffs on Malaysian imports will be eliminated from MAFTA's entry into force.

44. MAFTA removes Malaysia's quantitative restrictions on car imports from Australia and includes tariff quota increases for a number of agricultural products. It also contains disciplines on a number of other non-tariff measures affecting Australia's goods exports, including the progressive opening of import licensing arrangements for certain agricultural products (liquid milk, rice) as well as improved transparency and consultative mechanisms.

45. Other trade facilitating WTO-plus provisions include the use of advance rulings on tariff classification and valuation, and business friendly Rules of Origin provisions. Co-equal rules allow exporters the choice of a value added or change of tariff classification rule. There are no certificate of origin requirements for Australian exporters and the administrative requirements reflect modern trading practices.

46. MAFTA delivers greater certainty and transparency for Australia's services exporters and investors, including through AANZFTA-plus services market access commitments across a range of sectors. These include sectors of export interest such as education, financial services, accounting, management consulting and telecommunications.

#### *Goods*

47. MAFTA provides for a high level of market access liberalisation for goods. It achieves significant and early levels of tariff elimination that improve on AANZFTA. In addition, MAFTA addresses a number of significant non-tariff barriers that were not addressed in AANZFTA.

48. In relation to tariffs, MAFTA provides for:

- . The elimination of all tariffs by Australia on entry into force of the Agreement in 2013
  - under AANZFTA, Australia will not eliminate all tariffs until 2020, and in 2013 tariff-free treatment will apply to 96.4 per cent of tariff lines covering 94.5 per cent of 2009-11 imports from Malaysia.
- . The elimination of tariffs on 94.8 per cent of Malaysia's tariff lines in 2013, rising to 98.6 per cent in 2016, 98.8 per cent in 2020 and 98.9 per cent in 2026. In 2013 97.6 per cent of 2009-11 average imports from Australia will enjoy tariff-free treatment under MAFTA, and this will increase to 98.9 per cent in 2016 and 99 per cent in 2017
  - under AANZFTA, Malaysia will provide tariff-free treatment on 89.2 per cent of tariff lines in 2013, rising to 90.5 per cent in 2016 and 95.5 per cent in 2020.
  - AANZFTA provides for 96.5 per cent of 2009-11 average imports from Australia to enjoy tariff-free treatment from 2013, increasing to 97.7 per cent from 2020.

49. Tables 1-3 provide detailed information on Malaysia's tariff-line phasing for MAFTA in comparison to AANZFTA, including their respective coverage of 2009-11 average imports from Australia.

**Table 1****Malaysia's Tariff Commitments in MAFTA for Selected Years****A. Number of Tariff Lines**

<b>Tariff Rate</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2020</b>	<b>2026</b>
<b>0%</b>	8,289	8,319	8,346	8,628	8,632	8,646	8,654
<b>5%</b>	24	36	125	4	14	0	0
<b>7%</b>	23	0	0	0	0	0	0
<b>8%</b>	0	11	8	0	0	0	0
<b>9%</b>	4	0	0	0	0	0	0
<b>10%</b>	34	102	166	14	0	0	0
<b>12%</b>	6	0	0	0	0	0	0
<b>13%</b>	11	4	0	0	0	0	0
<b>15%</b>	82	173	0	0	0	0	0
<b>18%</b>	165	0	0	0	0	0	0
<b>30%</b>	7	0	0	0	0	0	0
<b>RM 0.260/kg</b>	0	0	1	0	0	0	0
<b>RM 0.330/kg</b>	0	1	0	0	0	0	0
<b>RM 0.400/kg</b>	1	0	0	0	0	0	0
<b>TRQ</b>	15	15	15	15	15	15	15
<b>U</b>	87	87	87	87	87	87	79
<b>Total</b>	8,748	8,748	8,748	8,748	8,748	8,748	8,748

**B. Percentage of Tariff Lines**

<b>Tariff Rate</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2020</b>	<b>2026</b>
<b>0%</b>	94.8%	95.1%	95.4%	98.6%	98.7%	98.8%	98.9%
<b>5%</b>	0.3%	0.4%	1.4%	0.0%	0.2%	0.0%	0.0%
<b>7%</b>	0.3%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>8%</b>	0.0%	0.1%	0.1%	0.0%	0.0%	0.0%	0.0%
<b>9%</b>	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>10%</b>	0.4%	1.2%	1.9%	0.2%	0.0%	0.0%	0.0%
<b>12%</b>	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>13%</b>	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>15%</b>	0.9%	2.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>18%</b>	1.9%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>30%</b>	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>RM 0.260/kg</b>	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>RM 0.330/kg</b>	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>RM 0.400/kg</b>	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>TRQ</b>	0.2%	0.2%	0.2%	0.2%	0.2%	0.2%	0.2%
<b>U</b>	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	0.9%
<b>Total</b>	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

U = unbound

TRQ = tariff rate quotas

**Table 2****Malaysia's Tariff Commitments in MAFTA compared to AANZFTA:  
Tariff Lines****A. MAFTA Commitments: Percentage of Tariff Lines**

	2013	2014	2015	2016	2017	2018	2019	2020 and subsequent years
<b>X ≥ 20%</b>	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>15% ≤ x &lt; 20%</b>	2.8%	2.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>10% ≤ x &lt; 15%</b>	0.6%	1.2%	1.9%	0.2%	0.0%	0.0%	0.0%	0.0%
<b>5% &lt; x &lt; 10%</b>	0.3%	0.1%	0.1%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>x ≤ 5%</b>	95.0%	95.5%	96.8%	98.7%	98.8%	98.8%	98.8%	98.8%
<b>SM</b>	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>U</b>	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%
<b>TRQ</b>	0.2%	0.2%	0.2%	0.2%	0.2%	0.2%	0.2%	0.2%
<b>Total</b>	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
<b>0%</b>	94.8%	95.1%	95.4%	98.6%	98.7%	98.7%	98.7%	98.8%

**B. AANZFTA Commitments: Percentage of Tariff Lines**

	2013	2014	2015	2016	2017	2018	2019	2020 and subsequent years
<b>X ≥ 20%</b>	2.1%	2.1%	2.0%	2.0%	2.0%	0.0%	0.0%	0.0%
<b>15% ≤ x &lt; 20%</b>	5.4%	0.0%	0.1%	0.0%	0.0%	2.0%	0.0%	0.0%
<b>10% ≤ x &lt; 15%</b>	1.6%	6.0%	3.0%	0.1%	0.0%	0.0%	2.0%	2.0%
<b>5% &lt; x &lt; 10%</b>	0.0%	0.0%	2.5%	3.0%	0.0%	0.0%	0.0%	0.0%
<b>x ≤ 5%</b>	89.4%	90.4%	90.9%	93.4%	96.4%	96.4%	96.4%	96.7%
<b>SM</b>	0.2%	0.2%	0.2%	0.2%	0.2%	0.2%	0.2%	0.0%
<b>U</b>	1.1%	1.1%	1.1%	1.1%	1.1%	1.1%	1.1%	1.1%
<b>TRQ</b>	0.2%	0.2%	0.2%	0.2%	0.2%	0.2%	0.2%	0.2%
<b>Total</b>	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
<b>0%</b>	89.2%	89.2%	89.3%	90.5%	90.5%	90.5%	90.5%	95.5%

SM = special or mixed tariff rates

U = unbound

TRQ = tariff rate quotas

**Table 3****Malaysia's Tariff Commitments in MAFTA compared to AANZFTA: Trade****A. MAFTA Commitments: Percentage of 2009-11 Imports by Malaysia from Australia**

	2013	2014	2015	2016	2017	2018	2019	2020 and subsequent years
<b>X ≥ 20%</b>	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>15% ≤ x &lt; 20%</b>	0.2%	0.2%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>10% ≤ x &lt; 15%</b>	1.2%	1.2%	0.2%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>5% &lt; x &lt; 10%</b>	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>x ≤ 5%</b>	97.6%	97.7%	98.8%	99.0%	99.0%	99.0%	99.0%	99.0%
<b>SM</b>	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>U</b>	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%
<b>TRQ</b>	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%
<b>Total</b>	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
<b>0%</b>	97.6%	97.7%	97.7%	98.9%	99.0%	99.0%	99.0%	99.0%

**B. AANZFTA Commitments: Percentage of 2009-11 Imports by Malaysia from Australia**

	2013	2014	2015	2016	2017	2018	2019	2020 and subsequent years
<b>X ≥ 20%</b>	1.4%	1.4%	1.4%	1.4%	1.4%	0.0%	0.0%	0.0%
<b>15% ≤ x &lt; 20%</b>	0.3%	0.0%	0.0%	0.0%	0.0%	1.4%	0.0%	0.0%
<b>10% ≤ x &lt; 15%</b>	0.8%	0.4%	0.2%	0.0%	0.0%	0.0%	1.4%	1.4%
<b>5% &lt; x &lt; 10%</b>	0.0%	0.0%	0.1%	0.2%	0.0%	0.0%	0.0%	0.0%
<b>x ≤ 5%</b>	96.6%	97.3%	97.4%	97.5%	97.7%	97.7%	97.7%	97.7%
<b>SM</b>	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%
<b>U</b>	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%	0.9%
<b>TRQ</b>	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%	0.1%
<b>Total</b>	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
<b>0%</b>	96.5%	96.5%	96.6%	97.3%	97.3%	97.3%	97.3%	97.7%

Data source: Malaysian import data for 2009-11, sourced from the Global Trade Atlas.

50. In addition to these significant AANZFTA-plus tariff commitments, MAFTA addresses a number of important Malaysian non-tariff measures:

51. It provides that Malaysia's quantitative restriction on imports of completely built-up passenger motor vehicles will not apply to imports of Australian vehicles under MAFTA. This will put imports of motor vehicles from Australia on the same footing as imports of motor vehicles from ASEAN countries in the application of Malaysia's import licensing regime (its 'Approved Permits').



52. It provides that from 2023 imports of rice from Australia will no longer be subject to the current monopoly import arrangements. Under MAFTA, imports of rice from Australia will be subject to an open import licensing regime whereby:

- . There shall be no restriction on who can import rice, including no restriction on who can apply for any import licences.
- . Any import licences will be issued on a first-come, first-served basis.
- . There will be no restriction on whether product is imported in bulk or retail packs.
- . These tariff and access commitments are significant precedents given that Malaysia, like many other Asian countries, normally excludes rice from commitments in FTAs.

53. Tariff-rate quotas will continue to apply to a number of agricultural products. MAFTA will deliver improved access for these products through annual growth to the quota volumes in perpetuity. The product of most commercial interest to Australian industry is liquid milk and significant improvements in access have been achieved in MAFTA. Australia accounted for 52 per cent of Malaysian liquid milk imports in 2011, valued at \$2.9 million. In addition to large annual increases in the quota volumes – e.g. for the most important of the three liquid milk tariff quotas 9 per cent annual growth to apply in perpetuity to the 0.5 million litre in-quota volume under MAFTA, which is additional to the AANZFTA in-quota volume (3.1 million litres in 2013 with 1 per cent annual growth until 2020) - MAFTA will liberalise the import licensing arrangements that apply to these imports.

- . For the two most important of the three liquid milk tariff quotas, 35 per cent of the quotas will be subject to an open licensing system. The system will allocate import licences on a first-come, first-served basis, will allow anyone to apply for a licence, and will not involve any restriction on whether the product is imported in bulk or retail packs.
- . Improvements in the licensing system has been the industry's main objective as currently import licences are allocated to milk processors who only import bulk product and not higher value retail packs. The volumes subject to the open licensing system are large enough to be commercially valuable and will grow annually at significant rates (i.e. 9 per cent per annum in perpetuity for the largest quota).
- . The move to an open licensing system for part of the tariff quotas is not only a commercially valuable commitment in its own right, and an important reform by Malaysia; it is also a significant precedent for how an FTA can be used to make commitments on an important non-tariff barrier.

54. MAFTA will also deliver commercially valuable improvements in access for a small number of other agricultural products subject to Malaysian tariff quotas, in particular for a small number of pork and chicken meat items which have tariff quota access in AANZFTA but at levels so small as to be of limited commercial value.

- . MAFTA will deliver 50 per cent annual growth in the tariff quota volumes for these products for the first six or seven years (depending on the products) to bring them to commercially viable levels, and 5 per cent annual growth

thereafter – e.g. 50 per cent annual growth to apply from 2013-19 to the initial 550 kilogram in-quota volume for fresh or chilled pig carcasses, and then 5 per cent annual growth from 2020 in perpetuity, which is additional to the AANZFTA in-quota volume (520 kilograms in 2013 with 1 per cent annual growth until 2020). The value of Australian exports to Malaysia of fresh or chilled pig carcasses was \$33,000 in 2011.

- . While Australia is not currently able to export chicken meat to Malaysia due to the fact that none of our establishments are recognised as meeting Malaysia's Halal requirements, the tariff quotas will mean that trade will be more viable if this situation changes.
- . Australia does have valuable trade in pork products that are not subject to tariff quotas and the increased tariff quota access will allow growth in carcass trade as well.

55. Important, AANZFTA-plus, tariff outcomes for particular products include:

- . Tariff elimination from 2013 for a wide range of products on which Malaysian tariffs are not eliminated until later, often until 2020, in AANZFTA. These include a wide range of:
  - processed foods;
  - plastics;
  - chemicals;
  - automotive parts and components; and
  - other manufactured products.
- . Malaysian imports of chemicals and plastic products from Australia were worth \$30.5 million in 2011 across tariff lines that will receive earlier tariff elimination in MAFTA than is achieved in AANZFTA.
- . Tariff elimination in 2016 for new, completely-built-up motor vehicles with engine-capacity less than 2500 cubic centimetres. In AANZFTA, the tariff is not eliminated but only reduced to 5 per cent in 2017.
- . Tariff elimination for all iron and steel lines in Chapter 72 of the tariff:
  - tariffs are to be eliminated on 409 out of 427 tariff lines by 2016, covering 96.4 per cent of 2009-11 imports from Australia;
  - this increases to 413 lines, covering 99.9 per cent of 2009-11 imports, with tariff-free treatment in 2017;
  - remaining tariffs to be eliminated in 2020;
  - by contrast, in AANZFTA tariffs are not eliminated on 183 tariff lines accounting for 28 per cent of 2009-11 average imports in Chapter 72. Of these 183 lines, AANZFTA provides for a final tariff of 10 per cent in 2020 for 179 lines and 5 per cent for 4 lines.

56. Malaysian imports of iron and steel under Chapter 72 from Australia were worth on average \$176 million per year over the period 2009-11. Articles of iron and steel, in Chapter 73 of the tariff schedule, will enjoy tariff-free treatment in 2013 under both MAFTA and AANZFTA.

57. Rice is excluded from Malaysia's tariff commitments until 2023 when its tariff will be bound at 30 per cent and then reduced annually until it is eliminated in 2026. As noted in paragraph 52 above, from 2023 Australian rice imported under MAFTA will be subject to an open import arrangement and not subject to the

current import monopoly arrangements. Under AANZFTA rice remains excluded from tariff commitments.

- . Both the tariff and access commitments on rice are significant precedents given that Malaysia, like many other Asian countries, normally excludes rice from commitments in FTAs.

58. Wine is excluded by Malaysia from up-front tariff commitments. However, the MAFTA outcome includes a most-favoured-nation (MFN) commitment, ensuring that any reduction or elimination in Malaysia's tariffs on wine for any other trading partner will be automatically extended to Australian imports.

59. On the automotive sector, in addition to the tariff commitments, and the removal of Australian imports of motor vehicles from the application of the quantitative import restriction, the Agreement will encourage greater integration between the Australian and Malaysian automotive industries through its arrangements for economic and technical cooperation. These arrangements include the establishment of a Malaysia-Australia Automotive Industry Dialogue that will bring together government, industry and research bodies. The Dialogue will provide a forum to promote greater networking between the industries, identify opportunities for their cooperation, and raise any policy or other issues that may be hampering increased cooperation and trade between the two countries.

60. MAFTA is unlikely to impose adjustment costs on any industry or region in Australia, as most goods from Malaysia already enjoy tariff-free access to Australia under our applied tariffs or under AANZFTA. On 2011 figures, the percentage forgone tariff revenue as a ratio against Australia's imports of Malaysia's goods would be around 0.2 per cent, which underscores the minimal nature of the effect on Australian industry. The goods subject to additional tariff elimination under MAFTA are mainly a range of textile and clothing products, but Malaysia is not in general a competitive supplier of these types of products. On MAFTA's entry into force Australia will eliminate the 5 per cent tariff currently applying to imports of small passenger vehicles from Malaysia. Other products subject to tariff elimination on MAFTA's entry into force are covered by a small number of tariff lines (some chemical, plastic, wood, steel, automotive components, furniture products and some other manufactured products). For each of these industry sectors the number of tariff lines and trade involved is so small that any impacts of MAFTA's faster tariff elimination can be expected to be negligible.

### ***Impacts on Specific Sectors***

#### *Agriculture sector*

61. The improvements to Malaysia's AANZFTA agricultural tariff commitments are shown in the following table:

<b>Malaysia's Agricultural Tariffs</b>		
	AANZFTA Commitments	MAFTA Outcomes
Wine	Excluded	Excluded from tariff commitments but legally binding commitment to provide most-favoured-nation (MFN) treatment, contained in a side letter that is an integral part of MAFTA.
Rice	Excluded	Excluded from tariff commitments until 2023, after that the tariffs will be reduced and eliminated in 2026. Open access regime from 2023, allowing anyone to import Australian rice and to do so in either bulk or retail packs.
Liquid Milk	Zero tariff by 2012 on in-quota volumes and high out-of-quota rates. Quota grows by 1 per cent per annum until 2020.	While not improving the out-of-quota rate, Malaysia improved tariff rate quota (TRQ) volumes, better rates of TRQ growth continuing in-perpetuity and a more open licensing regime, which will allow access for high value retail product.
Meat Products – Pork and Chicken Meat	Tariff rate quotas.	While not improving the out-of-quota rate, Malaysia has improved TRQ volumes and better rates of growth in-perpetuity.
Live Animals (Chicken and Swine)	Zero tariff by 2012 on in-quota amounts and high out-of-quota rates. Quota grows by 1 per cent per annum until 2020.	While not improving the out-of-quota rate, Malaysia has improved TRQ volumes and better rates of growth in-perpetuity.
Fruit	Most tariffs eliminated in 2010 or 2012 but a set of tariff lines capped at 5 per cent.	Most tariffs eliminated on entry into force. Tariffs on the remaining 21 tariff lines to be eliminated by 2016.

*Manufacturing and resources sector*

62. The improvements to Malaysia's AANZFTA tariff commitments are shown in the following table:

<b>Malaysia's Tariffs</b>		
	AANZFTA Commitments	MAFTA Outcomes
Automotive		
• Parts and Components	Tariffs eliminated on around 80 per cent of tariff lines by 2013, and remaining 20 per cent eliminated by 2020.	Immediate tariff elimination on entry into force for virtually all tariff lines.
• Vehicles with engines of 2500 cubic centimetres and above	Tariffs eliminated in 2013.	Immediate tariff elimination on entry into force.
• Vehicles with engines of less than 2500 cubic centimetres	Tariffs reduced and capped at 5 per cent by 2017 (15 per cent in 2013, 12 per cent in 2014, 10 per cent in 2015 and 8 per cent in 2016).	Tariff eliminated in 2016 (15 per cent in 2013, 10 per cent in 2014, 5 per cent in 2015).
Iron and Steel	Tariff eliminated in 2013 on all of Chapter 73 (articles of iron and steel) of the Malaysian tariff schedule.  10 per cent tariff in 2020 for 179 tariff lines, and a 5 per cent tariff for four lines, of Chapter 72 (iron and steel), accounting for 28 per cent of average 2009-11 Malaysian imports from Australia under Chapter 72.	Same as AANZFTA for Chapter 73.  For Chapter 72, tariffs eliminated on 413 of 427 lines by 2017, covering 99.9 per cent of 2009-11 Malaysian imports from Australia, remaining tariffs eliminated in 2020.
Chemical and Plastics	Tariffs eliminated by 2013 for most tariff lines, but not until 2020 in some cases for a number of tariff lines.	All tariffs eliminated on entry into force except for sulphuric acid and oleum which will be eliminated in 2016.

Miscellaneous Edible Preparations	Tariffs eliminated by 2015 for many tariff lines, but elimination delayed until 2020 for a significant subset of products.	All tariffs eliminated by 2014.
Glass and Glassware	Tariffs eliminated by 2016 for most lines, but elimination delayed until 2018 or 2020 for several lines.	All tariffs eliminated by 2014.

### *Services sector*

63. There is considerable potential for MAFTA to promote Australia's services exports to Malaysia by addressing barriers to trade in services. Australia's services exports to Malaysia (valued at \$1.6 billion in 2011, or 27 per cent of Australia's total exports to Malaysia) are dominated by sectors – particularly education and other personal (recreational) travel services – where there are limited barriers to trade. But other significant services exports (and potential exports) to Malaysia include sectors, such as professional and technical services and telecommunication services, where substantial trade barriers exist.

64. Malaysia maintains significant market access and regulatory restrictions on foreign participation in its services sectors. These include foreign equity limits, joint venture requirements, numerical or other limits on the temporary entry and stay of foreign personnel, requirements for employment or training of Malaysian nationals, and restrictions on professionals' rights to practise. Relaxing these restrictions will open up new opportunities for Australian businesses to export services to Malaysia, and make exporting easier for those already in the market.

65. Binding this liberalisation in a treaty like MAFTA has the added benefit of providing certainty for both existing and potential exporters, particularly where there are long-term investment decisions involved. For instance, while Malaysian regulatory authorities have in the past relaxed restrictions on a discretionary case-by-case basis, they retained the right to withdraw such 'discretionary permits' and require foreign (including Australian) businesses to divest their equity in Malaysian investments. Bound commitments, such as those in MAFTA, legally require Malaysia to ensure the liberalisation contained in its MAFTA commitments are provided into the future.

66. Malaysia has made market access and regulatory commitments in MAFTA that build upon its AANZFTA commitments, including in Australia's priority sectors, such as education, financial, professional and telecommunications services.

67. The following is a summary of the key AANZFTA-plus market access gains achieved in MAFTA.

68. Professional services

- . In accounting, auditing and bookkeeping services, Malaysia has committed to allow 100 per cent ownership by an Australian entity. This exceeds the 49 per cent Malaysian commitment in AANZFTA.
- . In management consulting services, Malaysia has committed to allow 100 per cent ownership by an Australian entity in management consulting services (excluding financial management consulting) and for Australian entities to acquire majority ownership in other management consulting services. This is higher than the 70 per cent Malaysian commitment in AANZFTA.
- . In taxation services, Malaysia has committed to allow 51 per cent ownership by an Australian entity. This is higher than the 40 per cent Malaysian commitment in AANZFTA.

69. Education services

- . In higher education services provided by privately funded higher education institutions, Malaysia has committed to allow 70 per cent ownership by an Australian entity from entry into force, increasing to 100 per cent by 2015. This improves on the 49 per cent Malaysian commitment in AANZFTA.
- . For primary, general secondary and higher secondary education services in international schools, Malaysia has committed to allow 70 per cent ownership by an Australian entity from entry into force. For primary and secondary education, this improves on Malaysia's 49 per cent commitment in AANZFTA.
- . In other education services, Malaysia has committed to allow 51 per cent ownership by an Australian entity. This commitment builds on its AANZFTA commitment (49 per cent).

70. Research, development, testing and analysis services

- . In research and development services in natural sciences and engineering, Malaysia has committed to allow 100 per cent ownership by an Australian entity. Malaysia has no commitment in this sub-sector in AANZFTA.
- . In interdisciplinary research and development services, Malaysia has committed to allow 100 per cent ownership by an Australian entity. Malaysia has no commitment in this sub-sector in AANZFTA.
- . In technical testing and analysis services, Malaysia has committed to allow 100 per cent ownership by an Australian entity. This is an improvement on the 70 per cent Malaysian commitment in AANZFTA.

71. Telecommunications

- . Malaysia has committed to allow 70 per cent ownership by an Australian entity in Network Service Providers and Network Facilities Providers. This improves on its AANZFTA commitment (49 per cent).
- . For Application Service Providers, Malaysia has committed to allow 100 per cent ownership by an Australian entity. This improves on its AANZFTA commitment (49 per cent).

72. Financial services

- . In investment banking, Malaysia has committed to allow 70 per cent ownership by an Australian entity. Malaysia has no commitment in this sub-sector in AANZFTA.
- . In direct insurance companies, Malaysia has committed to allow a 70 per cent ownership by an Australian entity. This commitment significantly builds on its AANZFTA commitment (30 per cent).

73. Manufacturing related services

- . In services incidental to manufacturing, Malaysia has committed to allow 100 per cent ownership by an Australian entity. This exceeds its 70 per cent commitment in AANZFTA.

74. Tourism and travel services

- . For travel agencies and tour operator services, Malaysia has committed to allow 70 per cent aggregate ownership by Australian entities. This builds on its AANZFTA commitment (49 per cent).
- . In hotel, tourist resort and restaurant services, Malaysia has committed to allow 70 per cent ownership by an Australian entity. This commitment builds on its AANZFTA commitment (49 per cent).
- . In convention and exhibition management services, Malaysia has committed to allow 70 per cent ownership by an Australian entity. This commitment builds on its AANZFTA commitment (49 per cent).
- . In theme parks, Malaysia has committed to allow 70 per cent aggregate foreign ownership for Australian entities. This commitment builds on its AANZFTA commitment (49 per cent).

75. Mining related services

- . In services incidental to mining, Malaysia has committed to 51 per cent ownership by an Australian entity. This commitment builds on its AANZFTA commitment (49 per cent).
- . In related scientific and technical services, Malaysia has committed to allow 51 per cent ownership by an Australian entity. Malaysia has no commitment in this sub-sector in AANZFTA.

76. Environmental Services

- . In wastewater management (covering only the removal and treatment of industrial effluents), Malaysia committed to 51 per cent ownership by an Australian entity. Malaysia has no commitment in this sub-sector in AANZFTA.
- . In cleaning services of exhaust gases, Malaysia committed to 51 per cent ownership by an Australian entity. Malaysia has no commitment in this sub-sector in AANZFTA.



- In noise abatement services, Malaysia committed to 51 per cent ownership by an Australian entity. Malaysia has no commitment in this sub-sector in AANZFTA.
- In nature and landscape protection services, Malaysia committed to 51 per cent ownership by an Australian entity. Malaysia has no commitment in this sub-sector in AANZFTA.

77. Maritime Transport services

- In international maritime services (excluding cabotage), Malaysia has committed to a 51 per cent foreign ownership for Australian entities. This improves on its AANZFTA commitment (30 per cent).
- In maritime agency services covering marketing and sales of maritime transport, Malaysia has removed all foreign equity limitations. This commitment is higher than its 70 per cent foreign shareholding limit in AANZFTA.

78. Some examples of enhanced 'AANZFTA-plus' regulatory disciplines in MAFTA which will benefit Australian services exporters including commitments to:

- extend certain protections for the use of business names under which Australian service suppliers normally trade in;
- provide Australian entities with a reasonable opportunity for comment prior to adoption of new measures;
- provide Australian licence applicants with an opportunity to remedy incomplete applications, status reports on the progress of applications on request, and reasons for the denial or termination of applications;
- observe minimum standards of procedural transparency, such as reasonable notice of administrative processes (e.g. licensing and rule-making in specific cases) and opportunities to present facts and arguments before final administrative action; and
- afford services suppliers with a commercial presence certain post-establishment investment protections, as set out in the Chapter on Investment.

79. Further details of 'AANZFTA-plus' regulatory disciplines for services are in the summary of the Trade in Services Chapter in the **Annex**.

80. The impact of MAFTA on Australia's domestic services industries is likely to be negligible. Australia's services sector is already relatively open to foreign participation, and no Australian services business or industry group raised concerns regarding potential competition from Malaysian services providers. Australia's 'AANZFTA-plus' services commitments include private hospital services and hospital support services, research and development services, and some construction services. Certain services sectors, such as private hospitals, may see a rise in

Malaysian participation under MAFTA. MAFTA does not include any commitments affecting Australia's skilled business visa framework or professional accreditation practices (including for medical practitioners' access to Medicare payments).

81. In addition to the market access and regulatory improvements outlined above, MAFTA includes a built-in agenda to review market access commitments in services three years after entry into force of the Agreement, and periodically thereafter as determined by the FTA Joint Commission. The aim of these reviews is for Australia and Malaysia to further improve specific commitments so as to progressively liberalise trade in services.

#### *Movement of natural persons*

82. The temporary entry of individuals from one country into the territory of another country to supply services, explore business opportunities, negotiate and enter into contracts and establish or manage commercial enterprises is an important element of services trade. Business stakeholders in Australia have raised concerns about their ability to temporarily enter and work in Malaysia. Reasons for this include delays in obtaining entry visas and other permits, quantitative limitations on foreign service suppliers able to work at enterprises in Malaysia, and a lack of consistency and transparency in decision making. MAFTA provides a framework for addressing these concerns through a chapter on Movement of Natural Persons (MNP) and a Schedule of Specific MNP Commitments.

83. The MAFTA MNP Chapter incorporates commitments on the temporary movement of business visitors, service suppliers, executives and intra-corporate transferees, installers and servicers, goods sellers and investors. These commitments include, inter alia, obligations to grant entry or extension of stay to individuals who meet the relevant requirements; to notify an applicant for a visa or other immigration formality of the outcome of the application before the individual arrives in Malaysia; and to publish information on temporary entry requirements and rights of review. The MAFTA MNP Chapter also permits spouses and dependants to enter and stay, and under certain conditions to work, in Malaysia for the same period as a primary applicant. Any fees imposed in relation to the processing of immigration formalities are required to be reasonable and in accordance with domestic law.

84. Malaysia has agreed to include in its MAFTA MNP schedule a number of MNP market access commitments that improve on Malaysia's WTO and AANZFTA commitments. These improved commitments include the elimination of restrictions on Australian suppliers of accounting, auditing and bookkeeping services; raised numerical limits for Australians supplying taxation services, banking services, insurance and reinsurance services, architectural services and education services; and an expanded scope of individuals covered by Malaysia's general MNP commitments. Malaysia's MNP commitments in MAFTA will permit a greater number of Australian service suppliers to enter and work in Malaysia.

85. In MAFTA, Malaysia has improved on its AANZFTA MNP market access commitments as follows:

### Horizontal commitments

- Malaysia has extended the scope of its commitments on 'Business Visitors' to include goods sellers and investors. Both goods sellers and investors are permitted to enter and stay in Malaysia for a period of 90 days.

### Specific sectoral commitments

- Malaysia has removed all MNP market access limitations on accounting, auditing and bookkeeping services (CPC 862). Under AANZFTA, Malaysia limited access to five specialists or experts per institution, subject to registration and a maximum stay of two years.
- Malaysia has removed numerical limits on Taxation Services (CPC 863 / 8630). Under AANZFTA, Malaysia limited access to two specialists or experts per institution.
- On private higher education services (CPC 92390), Malaysia has raised the quantitative limitation on Australian lecturers from a maximum of 20 per cent of the total lecturers employed at an institution to 30 per cent.
- On commercial banks, merchant banks and investment banks, Malaysia has raised the number of senior managers per organisation from two to five, the number of specialists per organisation from five to ten, and has extended the maximum period of stay from five years to ten years. Malaysia has also expanded the scope of areas specialists may work in, and has removed all MNP limitations on representative offices.
- On direct insurance companies, Malaysia has raised the number of senior managers per organisation from one to five, the number of specialists per organisation from five to ten, and has extended the maximum period of stay from five years to ten years. Malaysia has also expanded the scope of areas specialists may work in.
- On reinsurance and retrocession services, Malaysia has raised the number of senior managers from two to five, and the number of specialists per organisation from three to six, and has extended the maximum period of stay from five years to ten years.
- On architectural services, Malaysia has raised the number of service suppliers per country from two to four for Australia, and has removed the requirement for Australian architects to complete a qualifying examination.
- On securities broking services, Malaysia has removed restrictions on the number of foreign dealer's representatives per organisation, and has extended the maximum period of stay from five to ten years.
- Malaysia has extended the maximum period of stay from five years to ten years for a range of specific financial services sub-sectors.

86. Australia's MNP commitments in MAFTA are likely to have a minimal impact on Australia's domestic services industries. Australia already provides an equivalent (or in some cases, greater) level of access for qualifying natural persons seeking to enter Australia to supply services. MNP market access commitments will not require changes to Australia's skilled business visa framework. Implementation of MNP commitments in MAFTA is unlikely to result in any Australian industry relocating to Malaysia.

## *Investment*

87. Total Australian investment in Malaysia in 2011 was valued at \$5.7 billion, while Malaysian investment in Australia was valued at \$14.0 billion. Australian investment in Malaysia grew significantly from \$900 million in 2006 to \$3.4 billion in 2007 (largely due to a major aluminium smelter investment) and has continued to experience modest growth. Malaysian investment in Australia has grown strongly from \$5.5 billion in 2006, with only a slight downturn reflected in 2009 and 2010. Australian investment in Malaysia includes resources processing, industrial and infrastructure development, financial services and education. Malaysian investment in Australia is focused on real estate, hotels, the hospitality and retail industries, and resources.

88. There is scope to deepen Australia's economic relationship with Malaysia through expanding direct investment. MAFTA cannot address all the factors and economic considerations that affect investor decisions. However, MAFTA can contribute to improved investor confidence by providing a more certain, liberal and transparent environment for investors.

89. Australian investors confront a variety of market access impediments to investment in non-services sectors (such as agriculture, resources and manufacturing). These impediments include foreign equity restrictions, restrictions on organisational form, and a lack of legislative and regulatory transparency. Additional post-establishment factors such as significant regulatory discretion over licensing and other approvals, 'bumiputera' participation and local employment requirements, and restrictions on financial transfers erode investor confidence and limit the potential to increase investment in Malaysia.

90. MAFTA contains a significant regime of legal protections that will enhance certainty and transparency for investors during the post-establishment stages of investment. These include requirements on the Parties to:

- apply fair and equitable treatment and full protection and security (in accordance with the customary international law minimum standard of treatment) to investments;
- ensure non-discriminatory treatment in relation to measures for investors that have suffered losses due to armed conflict, civil strife or states of emergency;
- allow funds of an investor relating to an investment (including capital, profits, proceeds from a sale and payments made under contracts) to be transferred freely and without delay, subject to specified exceptions; and
- ensure that any expropriation or nationalisation of an investment is only for a public purpose, applied in a non-discriminatory manner, is in accordance with due process of law and is accompanied by payment of prompt, adequate and effective compensation (the chapter includes an annex which elaborates on the nature and scope of 'expropriation').

91. Consistent with the Australian Government's position on excluding Investor State Dispute Settlement, as reflected in its April 2011 Trade Policy Statement, MAFTA does not include an Investor State Dispute Settlement provision.

92. On market access restrictions (pre-establishment issues), Parties made the assessment that it would not be possible to complete market access schedules (covering national treatment and most favoured nation non-conforming measures) to an appropriate standard within the timeframe allocated for concluding MAFTA negotiations. MAFTA therefore provides for a work program to enter into discussions on market access schedules, covering pre-establishment issues such as foreign equity limits, to commence within three years of entry into force and to conclude no later than five years of entry into force of the Agreement. This will enable Australia to seek improved investment commitments from Malaysia if circumstances change in the future.

### *Intellectual property*

93. The outcome on Intellectual Property (IP) under MAFTA reinforces the Parties' existing rights and obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), including reiterating national treatment obligations, and builds on those rights and obligations in a number of areas.

94. Consistent with Australia's and Malaysia's high-quality IP systems, MAFTA contains more comprehensive obligations than AANZFTA on protection of trademarks, geographical indications and copyright. It builds on AANZFTA in its inclusion of specific provisions on patents, service provider liability, and protection of encrypted programme-carrying satellite signals. These enhancements provide greater certainty for Australian IP rights holders in their dealings in Malaysia, improving business confidence and encouraging investment. They also serve to ensure that the MAFTA IP chapter is a modern text that keeps pace with emerging issues in an increasingly digital environment, to the benefit of IP rights holders and users in both countries.

95. Concerns were expressed in the submissions phase regarding copyright piracy in Malaysia. The Agreement contains more detailed provisions than AANZFTA in relation to legal remedies and their enforcement, which should give greater confidence and security to Australian rights holders. It also provides for bilateral cooperation on enforcement with a view to eliminating trade in goods infringing copyright or other intellectual property rights.

96. The intellectual property outcome also includes commitments which will help to ensure appropriate and balanced protection of terms claimed to be geographical indications (GIs). GIs are indications in a product name identifying a good as originating in a particular territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin. Once registered, only producers from that territory of that country can use that term or product name in that market.

97. MAFTA commitments include a requirement to publish GI applications, increasing transparency. Persons who consider a name or term is not actually a GI because it is a common name in common use or 'generic' term (such as 'parmesan cheese') will also have the opportunity to object to its registration. MAFTA also contains a commitment to recognising and ensuring appropriate protection for trademark rights where they predate GI claims. These are important outcomes for Australian agricultural producers, particularly in the dairy industry.

98. The Agreement provides for cooperation on IP in many areas, including to promote the efficiency and transparency of intellectual property administration and registration systems, and cooperation on border measures and enforcement with a view to eliminating trade which infringes intellectual property. In addition, provisions which will assist in the harmonisation of intellectual property systems with international norms should also reduce the complexity and uncertainty that can impede IP-related exports. It should assist to reduce transaction costs, particularly benefiting smaller businesses which seek to protect their intellectual property rights.

99. Some stakeholders raised concerns during the negotiations on whether the Agreement would affect the Pharmaceutical Benefits Scheme or access to medicines in Malaysia or Australia. It will not. There is no specific text on pharmaceuticals and the patents text is consistent with existing provisions in Malaysian and Australian law.

#### *Electronic commerce*

100. Commitments in MAFTA on electronic commerce will contribute to a secure and liberalised environment for the growth of electronic commerce between Australia and Malaysia. This will aid Australian business in harnessing the efficiencies of electronic commerce, while ensuring the protection of online consumers. In addition, in the Implementing Arrangement for Economic and Technical Cooperation Activities, Australia has agreed to assist Malaysia with the development of its new Office for the Commissioner for Personal Data Protection and the implementation of its Personal Data Protection Act. Assisting Malaysia to establish its personal information protection law and the associated Commissioner's office will contribute to Australian and Malaysian industries' utilisation of business opportunities.

#### *Competition policy*

101. MAFTA includes commitments on the promotion of competition and the application of competition measures to address anti-competitive practices. It also has additional provisions on possible further cooperation and coordination between Australian and Malaysian competition authorities, including in enforcing competition laws and policies. These commitments will help to ensure that anti-competitive practices do not undermine market access gains and trade liberalisation achieved across the Agreement.

#### *Economic and technical cooperation*

102. The Economic and Technical Cooperation Chapter provides a strategic framework for existing and future economic cooperation. It identifies five priority areas for cooperation and arrangements are in place for projects in each of these areas (automotive, agricultural, tourism, clean coal technology, and electronic commerce). These projects are described in the Implementing Arrangement for Economic and Technical Cooperation Activities in Agreed Areas pursuant to Chapter 16 (Economic and Technical Cooperation) of MAFTA. Each of the projects will directly or indirectly assist Malaysia in the implementation of MAFTA and support progress in domestic economic reform. Each of the projects also builds on, and can be expected to strengthen, institutional links between a range of Malaysian and Australian organisations.

103. The Implementing Arrangement does not have treaty-level status, but forms part of the MAFTA package.

104. The Implementing Arrangement includes specific economic and technical cooperation activities which will give initial effect to the Chapter and contribute to achievement of the Agreement's objectives. As set out below, the economic and technical cooperation package has been developed by Australian and Malaysian organisations which already have well-established relationships. It has been tailored to meet Malaysia's specific requirements with an emphasis on contribution of Australian human resources and training as well as financial contributions.

105. Funding for the specific activities has been sourced mainly from the Australian sponsors with contributions from the Malaysian proponents.

106. Funding for economic and technical cooperation activities in automotives is provided by the Malaysia Automotive Institute (MAI) with Australia's Cooperative Research Centre for Advanced Automotive Technology Ltd (AutoCRC) providing a matching funding contribution. One activity is to be funded by a grant from the Malaysia-Australia Institute.

107. The project on agriculture which will assist Malaysia to develop Phytosanitary e-Certification, involves officials from Australia's Department of Agriculture, Forestry and Fisheries working with officials of the Malaysian Quarantine and Inspections Service. The financial contribution to implement the project will be shared by these two agencies. There are no additional compliance costs on Australian business in meeting Malaysian quarantine requirements for exporting their goods to Malaysia. There are no additional costs for Australian business as a result of this project; rather e-certification is designed to decrease costs between the two countries by moving from a paper-based system, to a more efficient and secure electronic system.

108. Australia's Department of Resources, Energy and Tourism (DRET) will be making an 'in-kind' contribution to a project to assist Malaysia to develop a tourism accreditation scheme for ecotourism. DRET's contribution will be in the form of human resources, expertise and facilitation of meetings with industry and businesses.

109. On Clean Coal Technology, Australia's Global Carbon Capture and Storage Institute (GCCSI) will fund a study tour in Australia for a Malaysian delegation.

110. The Office of the Australian Information Commissioner will assist Malaysia in the development of its new Office of the Commissioner for Personal Data Protection. The costs are to be shared between the two sides.

### *Transparency*

111. The inclusion of commitments on transparency to apply across the Agreement will provide enhanced disciplines in regard to the publication, notification and provision of information on any laws, regulations and administrative rulings of general application in respect of any matter covered by the Agreement. MAFTA requires the Parties to ensure that administrative procedures and review and appeal processes applying to decisions made by the Parties under the Agreement are fair and impartial. This will enhance the

confidence of traders and investors in each Party's legal system, as they apply to the Agreement.

#### *Labour and environment*

112. MAFTA negotiations on labour and environment issues were complicated by Australia's and Malaysia's involvement in parallel TPP negotiations and concerns that MAFTA outcomes on these issues had the potential to either duplicate, or be inconsistent with, possible TPP outcomes. Both countries therefore agreed to exchange side letters under MAFTA which confirmed a mutual understanding and agreement that, as both countries are also negotiating parties in TPP, it was appropriate to defer consideration of labour and environment provisions to the TPP negotiations. The side letters record the agreement that the inclusion of labour and environment provisions in MAFTA will be reviewed no later than two years after MAFTA's entry into force or at such other time as the Parties agree.

#### *Government procurement*

113. Malaysia opposed the inclusion of government procurement in MAFTA. Malaysia argued that both Australia and Malaysia were negotiating on government procurement in the context of the TPP negotiations and that both countries would benefit from the commitments and obligations arising from the TPP Agreement.

#### **Compliance Costs**

114. The main area of potential additional costs for exporters of goods associated with MAFTA would be in relation to complying with the rules of origin (ROO) provisions required to claim preferential tariff treatment. These costs would be most relevant to the Australian manufacturing sector, due to its use of imported components and parts, but will be minimal in nature (these costs are not readily quantifiable). The approach taken in MAFTA is consistent with Australia's other FTAs. MAFTA provides business with flexibility on the ROO it applies and allows business to use documentary evidence based on current commercial documents.

115. For the majority of goods, there would be two options available to Australian exporters under MAFTA to comply with the ROO provisions (i.e. there would be 'co-equal' ROO). Exporters could utilise Australia's preferred Change of Tariff Classification (CTC) methodology - the same approach used in Australia's FTAs with the United States, Thailand and New Zealand, as it offers a simpler method of testing exports for their origin compliance - or exporters could choose to utilise Malaysia's preferred 'regional value content' (RVC) approach. This is similar to the ROO in AANZFTA and provides exporters with flexibility in determining which rule is most appropriate for their circumstances.

116. Consultations by Departments confirmed that industry generally supports a CTC-based approach on ROO as being less administratively burdensome than the alternatives. Under MAFTA co-equal ROO, for most products exporters will be able to choose whether to use CTC or RVC rules.

117. In contrast to AANZFTA, MAFTA originating status and consequent eligibility for preferential tariff treatment would be based on a declaration of origin (DOO) for Australian exporters. As the DOO is completed by the exporter or producer, without the need for certification by a third party, time and financial costs are



minimised. Malaysian exporters will still need to obtain a certificate of origin (COO) from a designated Issuing Authority in Malaysia. However, the Agreement provides that Malaysia may, if it wishes, move to a DOO system for its exporters. The issuance of COOs generally requires a small fee-for-service payment and time for processing.

118. Australia would not anticipate additional compliance costs for Customs in administering the MAFTA approach to ROO. While it is expected that most Malaysian exporters will use the RVC approach in the early years of the FTA, this choice will not provide a major additional burden for Customs which has a strong familiarity with both the CTC and RVC approaches.

### ***Impacts on stakeholders***

#### *Small business*

119. The overall impact of MAFTA on small business is likely to be positive. Many of the sectors which are expected to benefit from the FTA contain a significant number of small businesses. These include the dairy sector, automotive parts, and a range of services industries where Malaysia maintains substantial barriers to entry. No industry sectors are expected to experience a significant decline in activity as a result of the FTA.

120. In addition, provisions designed to improve transparency, consistency, and predictability in the application of business regulations and customs procedures would increase certainty and reduce costs for small businesses. For example, the Intellectual Property provisions in MAFTA should further reduce the uncertainty and transaction costs for IP-related exports to Malaysia, benefiting smaller businesses which seek to protect their intellectual property in Malaysia. New commitments on the temporary entry of natural persons, such as granting visas and work permits before arrival in Malaysia and improving entry and work rights for spouses and dependants, will also improve certainty for small business service providers doing business in Malaysia.

#### *Trade unions*

121. The main concerns expressed by trade unions related to the potential effects associated with MAFTA on the Australian manufacturing industry and the need to address Australia's manufacturing trade balance with the rest of the world.

122. As outlined above in the Impact Analysis and below in the Trade Impact Analysis sections, the analysis for the manufacturing sector has highlighted the opportunities for Australian industry from Malaysia's tariff reductions, while also noting a reduction in Australian tariffs. Overall, the impact of the elimination of Australian tariffs under MAFTA is likely to be negligible, given the already low rates of tariffs maintained by Australia. In addition, as Australia has committed in AANZFTA to eliminate all tariffs on Malaysian goods imports by 2020, Australia's 'AANZFTA-plus' tariff elimination commitments in MAFTA will simply accelerate this process.

123. As outlined above in the Impact Analysis and below in the Trade Impact Analysis sections, the overall adjustment costs from MAFTA on the Australian manufacturing industry, and impact on Australia's manufacturing trade balance, are likely to be negligible. Any increase in imports of manufactured goods from

Malaysia needs to be seen in the broader context of the potential benefits for the Australian manufacturing sector, including the automotive, steel, chemicals and plastics industries, from increased export opportunities under the FTA. Adjustment costs from any increase in manufacturing imports from Malaysia are unlikely to have major ramifications for employment in Australian manufacturing sectors.

#### *Industry groups*

124. Industry groups were broadly in favour of negotiating MAFTA, provided the agreement was comprehensive in nature and delivered clear benefits to Australian industries. As discussed in the analysis above, liberalisation will occur across a broad range of tariff lines in all sectors, and will include improvements in regulation and market access for services. This will create new opportunities for Australian exporters and investors.

#### *Public interest groups*

125. MAFTA is likely to have a positive impact on Australian consumers. There should be increased benefit for consumers as falling Australian tariffs provide greater choice, and potentially reduced costs, across many product lines. MAFTA's commitments on services should also see increased choice in service providers.

#### *State governments*

126. Australia's State and Territory governments identified themselves as stakeholders in the negotiation of MAFTA. The nature of the issues raised by State and Territory governments related to the interests of the industries residing in their states and territories, their regulatory responsibilities and administrative implications of MAFTA commitments. There are no additional impacts on State and Territory governments beyond those discussed in other sections of this impact analysis.

### ***Broader Strategic Considerations***

127. Continued engagement with Asia more broadly, and with Malaysia in particular, is an important element of Australia's foreign and trade policies. This reflects the economic importance of the Asian region to Australia, particularly as the balance of global economic weight continues to shift towards Asia over coming years. Improved economic links with the major economies of this region will be vital for Australia's future economic performance.

128. Malaysia is a natural partner for Australia. Malaysia is one of Australia's closest geographical neighbours and our bilateral relationship goes beyond just trade and economic linkages. Our historical links to the United Kingdom provide us a common language, legal institutions and parliamentary system. Our relationship includes bilateral defence cooperation through the Malaysia-Australia Joint Defence Program and the Five Power Defence Arrangements. Australia and Malaysia cooperate closely on a range of security and transnational crime issues, including counter-terrorism and people smuggling. There are strong people-to-people links. Over a quarter of a million Malaysians are graduates of Australian educational institutions.

129. Australia also has important strategic and security interests in Malaysia and elsewhere in the region. Australia and Malaysia are members of key regional

security organisations such as the East Asia Summit (EAS), ASEAN Regional Forum (ARF) and Asia-Europe Meeting (ASEM), as well as being an ASEAN dialogue partner, and Australia works in close partnership with Malaysia in these bodies. Australia and Malaysia are also both members of the WTO, AANZFTA and the Asia Pacific Economic Cooperation (APEC) forum. Forging closer economic linkages with Malaysia through a bilateral free trade agreement will support Australia's broader strategic engagement with Malaysia and the wider region.

130. A free trade agreement with Malaysia has the potential to:

- . strengthen Australia's bilateral economic relationship with Malaysia, an important regional partner with a significant role in regional and global trade;
- . provide another link between Australia and a significant economy within ASEAN, complementing Australia's bilateral FTAs with Singapore and Thailand and AANZFTA;
- . help to position Malaysia as a positive influence in the evolving regional economic architecture; and
- . strengthen the overall relationship between Australia and Malaysia.

## **E. Trade Impact Assessment**

131. MAFTA has considerable potential to create new trading and investment opportunities and contribute to boosting Australia's investment relationship with Malaysia. Australian and Malaysian two-way goods and services trade totalled \$16.0 billion in 2011. Total Australian investment in Malaysia in 2011 was valued at \$5.7 billion, while Malaysian investment in Australia was valued at \$14.0 billion.

132. MAFTA is consistent with Australia's trade policy objectives. It is a comprehensive, high-quality trade deal which complements multilateral and regional trade reform. This agreement builds on outcomes in AANZFTA to deliver commercially meaningful 'AANZFTA-plus' commitments for Australian exporters of goods and services, and investors to the Malaysian market. MAFTA is consistent with Australia's international commitments, including those under the WTO and AANZFTA.

133. Trade liberalisation under MAFTA is expected to increase two-way trade between Australia and Malaysia and boost real GDP and real GNP for both countries.

134. Stronger trade and investment linkages in MAFTA build upon Australia and Malaysia's already substantial commitments under AANZFTA. New commitments on goods (including iron and steel, automotive and agricultural products) and services (including education, accounting, telecommunications and insurance) demonstrate areas where the bilateral agreement has been able to improve on AANZFTA commitments. Securing improved market access in order to maintain competitiveness in the Malaysian market is an additional incentive to secure a bilateral trade deal.

135. Through the reduction of trade and investment barriers, MAFTA allows Australian small businesses to benefit from more competitively priced inputs and consumers to enjoy greater choice of goods and services.

136. MAFTA is unlikely to involve adjustment costs for Australia's domestic industry. Malaysia already enjoys tariff-free access to the Australian market for 96 per cent of tariff lines, covering 95 per cent of 2011 imports from Malaysia, either under Australia's applied tariffs or under our AANZFTA tariff commitments. Tariffs on the remaining 4 per cent of tariff lines are due to be eliminated in 2015, 2017 or 2020 under AANZFTA. The faster elimination of tariffs on this small number of tariff lines under MAFTA – on entry into force in 2013 – is unlikely to impose any adjustment costs on Australian industry.

- . Most of the tariff lines with faster elimination are textiles and clothing where Malaysia is not a competitive supplier (unlike certain other ASEAN countries).
- . Several of the tariff lines are passenger motor vehicles, where Malaysia is also not an internationally competitive supplier. While one Malaysian supplier, Proton, does export cars to Australia, it only has a very small market share and the removal of the 5 per cent tariff is unlikely to have any great impact on this share.
- . For the few other industry sectors where there are tariff reductions – including plastics, chemicals, steel and furniture – only a very small number of tariff lines are involved in each sector and the trade involved is also very small.

137. In relation to the automotive sector, the significant liberalisation of Malaysia's trade barriers that MAFTA will deliver, and the Agreement's arrangements for continuing industry engagement and for economic and technical cooperation, should provide opportunities for improved trade and investment. While the Malaysian automotive sector is not currently internationally competitive, Malaysia is seeking to change this through promoting reform of the sector and one of its interests in MAFTA has been to seek Australian involvement in this reform process through greater integration of our automotive industries. This could involve technology sharing, joint ventures or other collaboration in research and development, access to Australian services as well as use of quality Australian parts and components to help improve the quality of Malaysian-built vehicles.

138. Tariff reductions for Australia will become effective from MAFTA's entry into force.

139. On services, the FTA creates new services export opportunities to Malaysia through the removal of a number of Malaysian impediments in services sectors. Areas of commercial interest to Australian services providers include financial services, accounting services, education services, construction services, mining-related services, transport and telecommunications. Australian service providers will also benefit from improved conditions for the temporary entry of service providers to Malaysia.

140. Malaysia is well placed to become a major centre for automotive manufacturing and distribution for the ASEAN countries. By collaborating with Malaysia on economic and technical cooperation projects Australia is positioning itself as a key partner in Malaysia's automotive market.

## **F. Consultations**

141. Public submissions on a possible bilateral FTA with Malaysia have taken place in three phases. Firstly, as part of a feasibility assessment into a possible FTA in 2004, a call for submissions was issued and 60 written submissions were received. Secondly, in 2005, following the launch of MAFTA negotiations, a call for submissions attracted 44 written submissions. These earlier submissions dealt with a bilateral FTA in isolation from the subsequent commitments made in AANZFTA. Following the public release of information on AANZFTA outcomes, a third call for submissions was made in 2009 and stakeholders were encouraged to identify interests over and above commitments made in AANZFTA. A further fourteen submissions were received, supplemented by further input from stakeholders including through ongoing consultations.

142. During the negotiation of MAFTA, officials held regular consultations with relevant Commonwealth agencies, State and Territory governments and other stakeholders including industry, union and public interest groups, to ensure that their views informed development of the Government's negotiating strategy. In addition to a large number of one-to-one and small group meetings, there were a number of large roundtable meetings held with peak organisations representing industry, trade unions, professional bodies and other interested groups.

143. Commonwealth agencies were consulted via regular inter-departmental committee meetings and participation of relevant agencies in the Australian delegation to negotiating sessions. In accordance with a whole-of-government approach, DFAT ensured that relevant agencies were regularly consulted and kept informed about developments in MAFTA. DFAT's website was regularly updated after MAFTA negotiating sessions, providing for wider dissemination of information to stakeholders.

144. State and Territory governments were consulted through the Ministerial Council on International Trade (MCIT) and Commonwealth-States Standing Committee on Treaties (SCOT) meetings and visits by MAFTA negotiators to state and territory capitals. The Minister for Trade and Competitiveness also consulted State Premiers and Territory Chief Ministers on Australia's services and movement of natural persons schedules.

145. Consultations with industry have been substantial and ongoing with officials attending several meetings and industry roundtables. These consultations helped identify commercially significant impediments to increasing Australia's exports to, and investment in, Malaysia. Negotiators also sought, through both consultations and the call for submissions, industry views on key market access objectives to be achieved through MAFTA. The consultations included particularly intensive engagement in the concluding stages of MAFTA negotiations with Australia's automotive industry and the Victorian and South Australian state governments.

146. There was broad in-principle industry support throughout MAFTA negotiations, with most seeking improved market access to the Malaysian market. The automotive sector identified elimination of Malaysia's non-tariff barriers, including excise taxes, as key to obtaining effective access to Malaysia's passenger motor vehicle market.

147. There were regular briefings of agricultural organisations and the sector is broadly supportive of MAFTA and sought market access gains in a range of priority sectors including wine, dairy, rice and meat. In some cases, such as wine, tariffs were the main concern, but most concerns related to the elimination of non-tariff barriers as a priority for negotiation.

148. Services industries generally supported negotiation of an FTA with Malaysia, reflecting the potential for significant growth in exports due to high barriers to entry. Areas services stakeholders highlighted as priorities for them in MAFTA included increases in foreign equity limits, issues surrounding the recognition of qualifications and other restrictions that prevented them from entering the Malaysian market. Services stakeholders were consulted closely on the emerging services outcomes, including market access.

149. Australia's financial services providers were supportive of a comprehensive FTA. Equity limits were a concern for some services providers in sectors such as insurance and commercial banking. Members of the media and entertainment industries sought either the exclusion of cultural industries from the services schedules or a general cultural exception.

150. DFAT and the Attorney-General's Department conducted public seminars on legal issues such as copyright. The States and Territories were updated on issues relating to the legal chapters generally through regular Ministerial Council on International Trade (MCIT) and Commonwealth-States Standing Committee on Treaties (SCOT) meetings. Members of the International Procurement Consultative Group (including the States and Territories) were updated regularly on government procurement developments in the negotiations. Industry representatives and government agencies were also updated through the Intellectual Property Consultative Group.

151. Industries, academics and legal practitioners with an interest in intellectual property issues were generally supportive of the FTA, citing in particular the need to facilitate the development of systems to combat copyright piracy and concerns about Malaysia's enforcement of IP rights.

152. Public interest groups and unions indicated concerns about Malaysia's adherence to core labour and environmental standards. Reflecting that both Australia and Malaysia are currently involved in negotiations on labour and environment commitments under the Trans Pacific Partnership Agreement, it was decided that it was not appropriate to pursue environment or labour provisions in the Agreement at this time, but this would be reviewed within two years of entry into force of the Agreement.

## **G. Recommended Option**

153. On balance, it is in Australia's interests to enter into MAFTA, as the Agreement will:

- . deliver significant market access commitments that will provide benefits to Australian producers, exporters, consumers and investors and a platform for securing continuing trade and investment liberalisation in the future;

- . deliver these market access gains in a faster timeframe than appears possible through the WTO Doha Round;
- . achieve sufficiently comprehensive and reform-oriented WTO-plus commitments to ensure that MAFTA is supportive of the multilateral trading system;
- . substantially build on AANZFTA commitments and ensure that MAFTA is supportive of regional economic integration;
- . strengthen Australia's economic and strategic engagement with Malaysia, thereby contributing to Australia's broader engagement with the Asia-Pacific region;
- . provide overall economic gains to the Australian economy, which would outweigh the imposition of relatively small adjustment costs and other costs to Australian domestic industry; and
- . not detract from our ability to continue to negotiate trade liberalisation through the WTO, or through other regional or bilateral agreements.

## **H. Implementation and Review**

154. Once signed, MAFTA will enter into force when both Australia and Malaysia complete their domestic implementation processes. In view of the time required to complete these processes, it is expected that MAFTA will not enter into force before 1 January 2013.

155. MAFTA contains a series of mandated reviews on aspects of the Agreement following entry into force (EIF).

- . The FTA Joint Commission will meet within one year of EIF, and every year thereafter or as otherwise agreed by the Parties, to review the implementation and operation of the FTA.
- . The Parties will meet within three years of EIF, and at least every five years subsequently, to review commitments on trade in services with the aim of improving those commitments.
- . The FTA Joint Commission will meet within three years of EIF to commence discussions on schedules of non-conforming measures on pre-establishment investment for non-services sectors, and will conclude those discussions within five years of EIF.
- . The Parties will commence a review of the Rules of Origin Chapter within three years and submit a final report with any recommendations, within four years of MAFTA's entry into force.
- . A working group on Sanitary and Phytosanitary (SPS) issues will meet annually following EIF, or as otherwise agreed by the Parties, to promote the objectives of the MAFTA SPS chapter.

- . The Parties will undertake a general review of MAFTA within five years of EIF, and at least every five years thereafter, unless otherwise agreed by the Parties.



## **ANNEX: Chapter Summaries**

### **Preamble and Chapter 1 - Establishment of the Free Trade Area and General Definitions**

1. The Preamble recites the historical basis, bilateral context and broad aims for the Malaysia-Australia Free Trade Agreement (MAFTA). MAFTA is cited as *“building on [the Parties’] respective rights and obligations under... the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area [AANZFTA] and other multilateral, regional and bilateral agreements”* in recognition of MAFTA’s objective of delivering AANZFTA-plus outcomes. Chapter 1 establishes MAFTA (consistent with World Trade Organization (WTO) rules) and defines terms that are used in more than one chapter of MAFTA.

### **Chapter 2 - Trade in Goods**

2. The Trade in Goods Chapter obliges the Parties to progressively reduce and/or eliminate tariffs in accordance with each Party’s applicable schedule contained in the Schedule of Tariff Commitments. It establishes the framework of rules for trade in goods between the Parties. The Chapter affirms a number of WTO provisions that already govern trade in goods and, in some cases, provides for more specific commitments as well as enhanced transparency. This includes provisions covering national treatment, fees and charges connected with importation and exportation, publication and administration of trade regulations, and import licensing.

3. Article 2.10 (Non-Tariff Measures) requires that neither Party adopt or maintain any non-tariff measure on the importation or exportation of any good to the other Party except in accordance with their WTO rights and obligations. The Parties are required to ensure any non-tariff measures are transparent and do not create unnecessary barriers to trade between the Parties.

4. There is also provision for the Parties to hold consultations on non-tariff measures to identify the scope for additional means to enhance the facilitation of bilateral trade in goods.

5. Article 2.11 (Import Licensing) provides for a Party to respond to a request from the other Party for information on the criteria employed by its licensing authorities in granting or denying import licensing. The importing Party is also required to consider publication of such criteria.

6. With regard to tariffs, the Parties have agreed to reduce and/or eliminate tariffs ahead of the time frame provided for under AANZFTA.

### **Chapter 3 - Rules of Origin**

7. The Rules of Origin (ROO) Chapter and associated Operational Certification Procedures (OCP) and Schedule of Product Specific Rules (PSRs) establish the criteria for determining whether goods will qualify for preferential tariff treatment under MAFTA (whether a good 'originates' in Australia or Malaysia). The Chapter sets out the procedures and documentation for demonstrating that a good qualifies for preferential treatment and, if necessary, verifying that this is the case.

8. MAFTA builds on AANZFTA which established ROO based on 'co-equal' access to either the 'change in tariff classification' (CTC) model or a regional value content (RVC) test. For most goods under MAFTA, exporters and producers have the choice of testing their products under a CTC-based rule or an equivalent RVC-based rule. For some goods, only a single option applies.

9. The key benefit of the 'co-equal' approach is that it marries the objectivity of Australia's preferred CTC approach – there is a single, clear rule for each tariff line – with Malaysia's greater familiarity and comfort with the RVC-based approach. The agreement to adopt alternative approaches to ROO also provides additional flexibility for Australian exporters who may, for whatever reason, choose to export their goods under the RVC-based test. For some goods there is an additional option for exporters and producers to use a rule based on the production process.

10. The rules in this Chapter provide for full cumulation – whereby any originating material and processing which occurs in Australia or Malaysia is counted as originating content in the manufacture of another good. Under full cumulation, the whole preferential area created by the free trade agreement (FTA) is considered a single territory. Any working or processing of a good within the area is considered when determining the origin of that good, not just the originating materials used in its production. It means that the processing of a material in Australia can be counted in determining the origin of a final good produced in Malaysia, even in cases where that material was not deemed to be MAFTA originating. Full cumulation recognises the growing trend towards global production networks and the fragmentation of manufacturing into discrete units.

11. The Chapter includes provisions covering a comprehensive set of issues relating to the determination of origin, including: methodology for calculating regional value content; minimal operations and processes which do not affect originating status; treatment of accessories, parts and tools; treatment of goods where only a small proportion of inputs fail to meet the relevant ROO (the so-called de minimus principle); treatment of packing materials and containers; and transport of goods through non-Parties.

12. The Chapter also sets out procedures and requirements relating to documentation that the good satisfies the origin requirements. The documentary requirement in the case of Australian exporters is a declaration of origin (DOO) completed by the exporter or producer of the goods and for Malaysian exporters is a certificate of origin (COO) issued by a designated Issuing Authority. This is a significant improvement on AANZFTA which requires the use of COOs. As COOs impose a monetary and time cost on exporters, the use of DOOs for Australian exporters is trade facilitating and will reduce the administrative burden. Furthermore, MAFTA provides flexibility for Malaysia to waive the COO requirement and instead make use of a DOO. The mandatory data requirements are the same for DOO and COO.

13. Other administrative requirements are also trade facilitating. MAFTA contains provisions relating to review and appeal of decisions on eligibility for preferential tariff treatment. Of particular importance is the Chapter's consignment provision which allows goods to be transhipped through, stored, repacked and relabelled in non-Parties and still retain MAFTA origin. The consignment provisions are business friendly and reflect modern trading practices such as the use of distribution hubs.

14. There are also provisions for ongoing consultations aimed at ensuring effective administration of the provisions on ROO, and providing opportunity for review and amendment of the Chapter.

15. The Annexes to the Chapter include the Schedule of Product Specific Rules and an additional Annex and Appendix relating to procedures and requirements for the Operational Certification Procedures.

#### **Chapter 4 - Customs Procedures and Cooperation**

16. The Chapter on Customs Procedures and Cooperation establishes arrangements for expeditious, predictable, transparent and simplified customs administration aimed at facilitating trade between the Parties. In particular, the Chapter encourages procedures that facilitate the clearance of low-risk goods, and provides for the use of advance rulings to give greater certainty to business, and ensure the availability of review and appeal mechanisms to address disputes.

17. The Chapter requires the Parties to provide for written advance rulings on tariff classification and valuation to be issued in response to a request by importers or by exporters or producers in the exporting Party. With regard to advance rulings on origin, the Chapter provides for these to be provided to the extent permitted by each Party's domestic laws, regulations and administrative determinations. While Australia's domestic arrangements already allow for the provision of advance rulings on origin, Malaysia's current domestic arrangements do not.

18. The Chapter also contains provisions relating to the assurance of protection of confidential information exchanged between the Parties.

19. The Chapter provides for the establishment of inquiry points and publication of all statutory, regulatory and administrative requirements, either on the internet or in print. There is also a requirement for Parties to ensure importers have access to independent administrative and judicial review of decisions taken by their Customs administrations.

### **Chapter 5 - Sanitary and Phytosanitary Measures**

20. The Chapter on Sanitary and Phytosanitary Measures affirms that such measures will continue to be applied in accordance with the Parties' rights and obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures. The Chapter contains provisions on arrangements aimed at strengthening information exchange, cooperation and consultation between the Parties, and in this regard provides for the establishment of contact points for the exchange of information and notification. There is also provision for an SPS Working Group to be established that will enhance the existing arrangements for cooperation through the Malaysia-Australia Agricultural Cooperation Working Group (MCWAAG).

21. The dispute settlement provisions of MAFTA are not applicable to any matter arising under this Chapter.

### **Chapter 6 - Standards, Technical Regulations and Conformity Assessment Procedures**

22. The Chapter on Standards, Technical Regulations and Conformity Assessment Procedures affirms the Parties' rights and obligations under the WTO Agreement on Technical Barriers to Trade and provides for the establishment of arrangements for enhanced information exchange, cooperation and consultation between the Parties. The Chapter identifies a range of possible vehicles for giving effect to enhanced cooperation. The Chapter (Article 6.1) also recognises the benefits of increasing efficiency, avoiding duplication and ensuring cost effectiveness in conformity assessment procedures, and provides for the Parties to cooperate to facilitate the acceptance of conformity assessment procedures by drawing on a range of mechanisms where appropriate.

23. The Chapter also provides for the Parties to designate Chapter Coordinators to facilitate cooperation between the Parties on standards, technical regulations and conformity assessment procedures.

### **Chapter 7 - Trade Remedies**

24. The Chapter on Trade Remedies affirms the WTO rights and obligations of the Parties, and establishes arrangements for safeguard measures which may be applied during the transitional period, that is, while tariffs are being reduced and/or eliminated. Safeguard measures may only be applied to the extent and for such time as may be necessary to prevent or remedy serious injury and to facilitate adjustment during the transitional period. The transitional period is the period from entry into force of MAFTA until two years after the customs duty on a particular good is eliminated or reduced to its final commitment, in accordance with a Party's schedule of tariff commitments.

25. A safeguard action can only be taken following an investigation to establish whether the conditions justifying such action are met. The safeguard action cannot be applied for a period exceeding two years, although if certain conditions are met the action can be extended for up to a year. A safeguard action cannot be taken more than once on imports of any good.

26. The safeguard action may involve either a suspension in the reduction of the tariff or an increase in the tariff. The Chapter also contains procedures/provisions in relation to compensation in the form of substantially equivalent concessions, but this compensation may be suspended for twelve months if certain conditions are met. The Chapter references WTO provisions relating to Anti-Dumping, Subsidies and Countervailing Measures and Global Safeguard Measures. This provides certainty regarding the application of relevant WTO disciplines, and some limited 'WTO-plus' treatment. In particular, in relation to Anti-Dumping measures, the Chapter provides for a Party to normally apply the 'lesser duty' rule if this is adequate to remove injury to domestic industry; on Subsidies and Countervailing Measures, the Chapter simply affirms the WTO rights and obligations of the two Parties; with regard to global safeguard measures, the Chapter provides that there should be no duplication in the application of bilateral and global safeguard measures, and for the Parties to consult with each other relating to consideration by either Party of the initiation of global measures.

27. The Chapter also includes a general provision for the Parties to exchange information on their respective trade remedy practices.

## **Chapter 8 - Trade in Services**

28. The Chapter on Trade in Services includes the substantive obligations relating to trade in services for modes 1 to 3 (cross-border supply; consumption abroad; and commercial presence, respectively) and each Party's Schedule of Specific Services Commitments in an annex to MAFTA, including market access and national treatment; and various regulatory disciplines and other obligations that will enhance certainty and transparency for Australian services suppliers. The Chapter also contains an annex which sets out sector-specific obligations for financial services (see Annex on Financial Services below). A separate chapter and related schedule contain obligations and commitments for the movement of natural persons – 'mode 4' of trade in services (see Chapter on Movement of Natural Persons below).

29. The Chapter, which is based on the AANZFTA Chapter on Trade in Services, provides for a 'positive list' approach to scheduling market access and national treatment commitments, where each Party identifies in its own schedule the services for which market access and national treatment apply, including the specification of any limitations to such access or national treatment. This approach is identical to that provided for under AANZFTA.

30. Parties specify in their Schedule of Specific Services Commitments any limitations on market access where they have undertaken commitments in a sector (for example, limitations on foreign equity, restrictions on the organisational form of commercial presence, number of service suppliers or total value of services transactions or assets). The national treatment obligation requires that, in sectors where commitments have been undertaken, each Party shall accord to services and service suppliers of the other Party treatment no less favourable than it accords to its own like services and service suppliers, subject to any specified conditions and qualifications. There is also provision for a Party to make additional commitments relating to qualifications, standards or licensing matters. A Party may modify its specific commitments, subject to compliance with formal procedures for notification of, and consultation with, the other Party and, if necessary, compensatory adjustments.

31. The Chapter on Trade in Services provides for a review of commitments by Parties three years after entry into force of MAFTA and at least every five years subsequently. The aim of these reviews is for Parties to further improve specific services commitments so as to progressively liberalise trade in services.

32. Unlike AANZFTA, the Chapter does not contain a provision for consultations on most-favoured-nation (MFN) treatment, but includes MFN treatment in the list of issues that the FTA Joint Commission may consider in its forward work program. Australian companies supplying services to Malaysia will continue to have access to AANZFTA consultations on MFN treatment. The Chapter contains a modified provision for an emergency safeguards mechanism, which applies only to the services sectors on which AANZFTA-plus market access commitments have been made.

33. The Chapter contains a sector-specific annex covering financial services.

### **Chapter 8 Annex - Financial Services**

34. The Annex on Financial Services sets out certain rights and obligations on the Parties that reflect the distinctive characteristics and systemic importance of financial sector regulation (AANZFTA also has a Financial Services Annex to its Chapter on Trade in Services). These include exceptions for a Party in relation to measures taken for prudential reasons; to ensure the integrity and stability of the financial system; to ensure the stability of the exchange rate; or to prevent deceptive and fraudulent practices. It also contains obligations in relation to transparency, timely processing of licensing applications, and transfers and processing of information by financial service suppliers in the ordinary course of business.

35. The MAFTA Annex on Financial Services contains a number of AANZFTA-plus provisions.

- . A shorter period (within 120 days) for responses by Malaysia's regulatory authorities to applications by Australian financial institutions to supply financial services (within 180 days in AANZFTA) and vice versa.
- . Inclusion of a commitment that prudential and regulatory measures 'shall not constitute a means of arbitrary or unjustifiable discrimination' against Australia (and vice versa).

- Inclusion of a payment and clearing systems article, which provides Australian financial institutions established in Malaysia (and vice versa) access to payment and clearing systems operated by public entities, and to official funding and re-financing facilities available in the normal course of business. There is no provision for a lender of last resort facility.
- Inclusion of a provision that permits Australian financial institutions to supply any new financial service similar to those services (included in Malaysia's market access commitments) that Malaysia would permit its own financial institutions to supply (and vice versa).
- Recognition that the Annex covers Shariah-compliant financial services, given the development of Islamic finance in Malaysia and Australia.

## **Chapter 9 - Telecommunications Services**

36. The Chapter on Telecommunications Services builds on the commitments made in AANZFTA and on WTO rules (the WTO Telecommunications Reference Paper) in relation to the regulation of major telecommunications service suppliers that control essential facilities or have a dominant position in the market. Parties are required to prevent anti-competitive conduct and ensure that major suppliers provide interconnection; access to facilities; leased circuit services; and co-location of equipment on reasonable, non-discriminatory terms and conditions.

37. The Chapter contains a number of 'AANZFTA-plus' commitments, including on:

- Competitive safeguards.
- The allocation of spectrum and other scarce resources (to facilitate fair and equitable access to Malaysia's mobile telephone and internet spectrum and vice versa).
- Number portability (enables a user to carry across their existing telephone number to another service provider in the same country).
- Submarine cable systems.
- Access to public telecommunications networks.

38. The Chapter on Telecommunications Services contains provisions on transparency, including in relation to licensing and review of regulatory decisions. Regulators must be independent and impartial, and must publish or otherwise make available any regulatory decision together with the basis for the decision. The Parties must ensure telecommunications suppliers can seek timely review of any disputes, including independent judicial review of regulatory decisions. The Chapter also contains commitments to facilitate industry involvement in regulation of the telecommunications sector.

## **Chapter 10 - Movement of Natural Persons**

39. The Chapter on Movement of Natural Persons (MNP) provides a framework for commitments on the temporary movement of natural persons who are business visitors (including investors and goods sellers); contractual services suppliers; executives; intra-corporate transferees; or installers and servicers. Each Party has a Schedule of MNP Commitments in an annex to MAFTA, setting out commitments on specific categories of natural persons, in accordance with its temporary entry regime. Commitments in relation to the movement of natural persons to supply services (mode 4) are set out in each Party's Schedule of MNP Commitments rather than in their respective Schedule of Specific Services Commitments.

40. The Chapter on MNP contains obligations which require the Parties to publish information on temporary entry requirements, promptly process completed applications for temporary entry and stay, and grant temporary entry or extension of stay to natural persons who meet relevant eligibility requirements. The Chapter preserves each Party's right to protect the integrity of its borders and to ensure the orderly movement of persons across them.

41. The Chapter on MNP contains a number of 'AANZFTA-plus' regulatory commitments, including:

- . To allow the spouses and dependants of an applicant to enter, and under certain conditions to work, in the territory of a Party for the same period as the applicant (Malaysia has not made commitments on spouses and dependants in AANZFTA; this will make it easier and more practical for families to relocate to Malaysia to accompany a family member taking a short-term employment opportunity).
- . To notify applicants of the outcome of an application before the applicant arrives in the Party's territory (AANZFTA does not contain a commitment to notify applicants prior to their arrival in country, and this issue was identified by business groups as an issue to be addressed in MAFTA).
- . To establish mechanisms for responding to enquiries from interested persons about measures affecting temporary entry and stay (no commitment in AANZFTA that the Parties will respond to such enquiries).

42. The Parties are obliged to attempt to settle any differences arising out of implementation of the Chapter through consultations. Dispute settlement under MAFTA is available where there has been a refusal to grant temporary entry, but only when the matter involves a pattern of practice and the natural persons affected have exhausted the available domestic remedies regarding the matter.

## **Chapter 11 - Framework on Mutual Recognition Arrangements**

43. The Chapter on a Framework on Mutual Recognition Arrangements (MRAs) establishes a mechanism for developing mutual recognition arrangements on qualifications, registration, licensing and certification requirements for professional services suppliers.



44. The Parties have agreed to encourage competent authorities for professional services within their respective territories to develop arrangements for mutual recognition of qualifications, registration and standards. This will be achieved through exchange of information, promoting acceptable international standards and maintaining lists of mutual recognition arrangements.

## **Chapter 12 - Investment**

45. The Chapter on Investment, like its AANZFTA counterpart, includes a range of obligations on Parties aimed at enhancing legal protection and certainty in relation to investment. The obligations are directed primarily at the post-establishment stage of investment. These include, among other things, requirements on Parties to:

- . Apply fair and equitable treatment and full protection and security (the minimum standard of treatment at customary international law) to investments.
- . Ensure non-discriminatory treatment in relation to measures for investors that have suffered losses due to armed conflict, civil strife or states of emergency.
- . Allow funds of an investor relating to an investment to be transferred freely and without delay, subject to specified exceptions.
- . Ensure that any expropriation or nationalisation of an investment is only for a public purpose; applied in a non-discriminatory manner; is in accordance with due process of law; and is accompanied by payment of prompt, adequate and effective compensation.

46. The Chapter uses a broad, non-exhaustive, 'asset-based' definition of investment covering every kind of asset owned or controlled, directly or indirectly, by an investor, including, inter alia, shares, property, and business concessions conferred by law or contract, including any concession to search for, cultivate, extract or exploit natural resources.

47. The Chapter contains a number of 'AANZFTA-plus' provisions, including:

- . Inclusion of most-favoured-nation treatment of future market access commitments, which are the subject of a work program.
- . Additional obligations on governments to ensure that they fully compensate investors upon the expropriation of an investment: under MAFTA the compensation provided for the expropriation of an investment must be 'fully realisable' whereas AANZFTA only required it to be 'effectively realisable'.

48. The Chapter does not contain market access commitments on investments in non-services sectors but provides for a work program to enter into discussions on market access schedules, covering issues such as foreign equity limits, to commence within three years of entry into force of MAFTA and to conclude no later than five years from entry into force. The development of these schedules will be based on a most-favoured-nation treatment obligation as well as a national treatment obligation and a two-annex 'negative listing' approach to scheduling, set out in the Chapter. This is the same approach, including on a market access work program, as undertaken in AANZFTA.

### **Chapter 13 - Intellectual Property**

49. The Chapter on Intellectual Property (IP) reinforces the Parties' existing rights and obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and builds on them in a number of areas.

50. The Parties are obliged to accord national treatment in relation to the protection of IP rights, subject to the exceptions provided for in the TRIPS Agreement and in multilateral agreements concluded under the auspices of the World Intellectual Property Organization (WIPO).

51. The Chapter contains a number of specific obligations on protection of intellectual property rights including in regard to patents and trademarks, geographical indications and common names, copyright and copyright rights management information, effective technological measures, service provider liability, national government use of software, protection of encrypted programme-carrying satellite signals, border measures and enforcement of IP rights. There are also provisions for cooperation between the Parties, including on enforcement, to assist in the implementation of the Chapter.

### **Chapter 14 - Competition Policy**

52. The Chapter on Competition Policy establishes a framework for the promotion of competition and the curtailment of anti-competitive practices. The Chapter includes commitments on the promotion of competition and the application of competition-related measures to curtail anti-competitive practices. It also contains provisions intended to enhance cooperation and coordination, including on the enforcement of competition laws and policies.

### **Chapter 15 - Electronic Commerce**

53. The Chapter on Electronic Commerce establishes a framework for cooperation and coordination on electronic commerce. Parties are obliged to maintain domestic regulatory frameworks for electronic commerce that are based on relevant international standards, including in relation to electronic authentication of documents and transactions and minimise the regulatory burden on electronic commerce.

54. The Chapter includes provisions on online consumer protection, online personal data protection, paperless trading, and unsolicited commercial electronic messages. The Parties are to encourage cooperation in research and training activities that will enhance the development of e-commerce.

## **Chapter 16 - Economic and Technical Cooperation**

55. The Chapter on Economic and Technical Cooperation establishes a framework for economic and technical cooperation and for the promotion of capacity building activities in areas of mutual interest. It identifies five areas of cooperation for particular attention: automotive; agriculture; tourism; clean coal technology; and e-commerce. It notes that other areas may be included, subject to agreement between the Parties.

56. Cooperation is to be implemented subject to the availability of funds and other resources. Costs are to be shared equitably as agreed between the Parties. The FTA Joint Commission is to oversee, review and facilitate cooperation under this Chapter.

## **Chapter 17 - Transparency**

57. The Chapter on Transparency requires the prompt publication of all laws, regulations, procedures and administrative rulings of general application in respect of any matter covered by MAFTA, to better allow traders and investors to be aware of them before they are adopted by a Party. To the extent possible, the Parties must also notify each other of any proposed or actual measure they might take that could materially affect the operation of MAFTA or otherwise substantially affect the other Party's interests under MAFTA.

58. The Chapter contains provisions in respect of the fair conduct of any administrative proceedings undertaken in regard to laws, regulations, procedures and administrative rulings of general application in respect of any matter covered by MAFTA. It also requires each Party to provide impartial and independent review and appeal processes for final administrative actions regarding matters covered by MAFTA.

## **Chapter 18 - General Provisions and Exceptions**

59. The Chapter on General Provisions and Exceptions sets out a number of WTO-style general and security exceptions. These exceptions specify that MAFTA does not preclude either Party from adopting certain measures, for example to protect human, animal or plant life or health subject to the conditions set out in the relevant provisions.

60. The Chapter carves out application of MAFTA to a Party's taxation measures except to the extent specified (e.g. MAFTA applies to the taxation measures to the same extent as corresponding WTO provisions). The Chapter also includes a WTO-style article allowing a party in serious balance-of-payments and external financial difficulties (or a threat thereof) to take restrictive measures in prescribed circumstances.

## **Chapter 19 - Institutional Provisions**

61. The Chapter on Institutional Provisions establishes the FTA Joint Commission, consisting of representatives of the Parties, to oversee implementation and operation of MAFTA and supervise and coordinate the work of subsidiary bodies. Unless the Parties otherwise agree, the FTA Joint Commission shall meet within one year after MAFTA enters into force, and thereafter as the Parties mutually agree, and as necessary to discharge its functions. The FTA Joint Commission reports to the Joint Trade Committee. The Chapter also establishes contact points for each Party to facilitate communication on any matter relating to MAFTA. These contact points are additional to subject matter-specific contact points established in other chapters.

## **Chapter 20 - Consultations and Dispute Settlement**

62. The Chapter on Consultations and Dispute Settlement establishes a process for consultations and for settlement of disputes arising under the FTA. The Chapter does not apply to disputes arising under the Chapter on Sanitary and Phytosanitary Measures, the Chapter on Electronic Commerce, the Chapter on Economic and Technical Cooperation and the Chapter on Competition Policy.

63. The Chapter sets out procedures and timelines for consultations on disputes arising under the FTA and, should such consultations be unsuccessful in resolving the matter, additional rules for the establishment, functions, composition, proceedings and reports of arbitral tribunals. The Chapter also contains provisions for the implementation of the findings of the arbitral tribunal, including where Parties disagree as to compliance. Remedies, such as compensation and suspension of concessions are also covered by the Chapter. An Annex to the Chapter also sets out Rules of Procedure to govern arbitral tribunals.

64. The Chapter contains commitments on non-violation complaints which will provide for consultations between the Parties in the event that any measures are taken by a Party which, while not inconsistent with MAFTA, have the effect of nullifying and impairing benefits that could reasonably have been expected to accrue to the other Party under the Chapters on Trade in Goods, Rules of Origin, and Trade in Services. Should the Parties not be able to resolve the matter through consultations, the matter may be referred to the FTA Joint Commission, which may meet at Ministerial level.

## **Chapter 21 - Final Provisions**

65. The Chapter on Final Provisions governs the way in which MAFTA operates as a treaty. It sets out the relationship of MAFTA to other international agreements to which Australia and Malaysia are both Parties, including the WTO Agreement. In particular it states that MAFTA does not derogate from the WTO Agreement or other agreements to which the Parties are party, and the Parties will consult in the event of any inconsistencies with such other agreements.

66. The Chapter provides that entry into force shall occur 45 days after Australia and Malaysia have notified each other of completion of their necessary domestic procedures, or after such other period as the Parties may agree, and also provides a procedure for termination of the treaty.

67. The Chapter contains a clause mandating a general review of MAFTA within five years after entry into force, and at least every five years thereafter.

68. In addition, the Chapter provides general confidentiality and disclosure provisions to apply across MAFTA, unless other Chapters apply their own specific requirements.