

15 December 2009

Ms Naomi Viccars
Free Trade Agreement Division
Department of Foreign Affairs and Trade
RG Casey Building
John McEwen Crescent
BARTON ACT 0221

By email: malaysia.fta@dfat.gov.au

Dear Ms Viccars,

Australia - Malaysia Free Trade Agreement

The Law Institute of Victoria (LIV) welcomes the recommencement of negotiations on the proposed Malaysia-Australia Free Trade Agreement (MAFTA).

The LIV contributed to the original scoping study conducted by Department of Foreign Affairs and Trade (DFAT) into the proposed MAFTA, and subsequently contributed submissions in 2005 and 2006 to the earlier rounds of negotiations.

The LIV thanks DFAT for the opportunity to provide further comments on the proposed MAFTA.

LIV's comments on MAFTA

The LIV wishes to make the following comments:

- The LIV endorses the previous submissions of both the LIV and the Law Council of Australia (LCA) on the proposed MAFTA;
- The LIV supports the LCA's ongoing work with the Malaysian Bar Council regarding the liberalisation of the legal services market in Malaysia; and
- In negotiations, the LIV emphasises the importance of ensuring that the MAFTA is consistent with the APEC Legal Services Initiative.

New Zealand- Malaysia Free Trade Agreement

In relation to the recent New Zealand-Malaysia Free Trade Agreement, the LIV supports the inclusion of a similar labour cooperation agreement into the proposed MAFTA, particularly the framework for cooperation on labour laws, policies practices in employment relations, promotion of labour rights and OH&S. The LIV also supports the inclusion of a similar environmental cooperation agreement to that of the New Zealand-Malaysia Free Trade Agreement.

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The LIV supports the specific commitment to Environmental Services in the New Zealand-Malaysia Free Trade Agreement.

In negotiations, the New Zealand-Malaysia FTA should be reviewed so that if New Zealand receives preferential treatment or other benefits through their FTA, then Malaysia should agree to extend to Australia treatment no less favourable than that granted to New Zealand so that Australian lawyers have similar levels of access to the Malaysian market.

ASEAN Free Trade Agreement

As Malaysia is a participating member of the ASEAN FTA, the LIV suggests that it would be appropriate for the proposed MAFTA to include and build upon relevant provisions and standards from the ASEAN FTA as well as the WTO.

Customs and Rules of Origin

As the LIV has previously commented, the significant inconsistencies between the approaches adopted by the Australian and United States customs authorities have caused difficulties for Australian importers trying to implement the rules of origin under the Australia and United States Free Trade Agreement (AUSFTA). Difficulties with the application of rules of origin can constitute significant barriers to improvements in the trade of goods. The LIV has also previously noted that the Australian Customs Service is adopting an unrealistic approach to requirements to satisfy preferential status under the AUSFTA.

In response to these issues, the LIV is of the view that the Federal government must address these inconsistencies in Australian Customs' procedures, and that Australia must adopt an approach which conforms to internationally recognised standards. The LIV recognises that there may be an opportunity during the negotiations to raise customs matters and we strongly recommend these issues be discussed.

If these customs practices can be successfully modified, then the LIV would support the adoption of the Rules of Origin system used under the AUSFTA. However, if the practice does not change, then the LIV will continue to endorse the use of Certificates of Origin to assist in identifying and clarifying preferential treatment in relation to the trade of goods.

Government procurement work

The LIV reiterates our previously expressed view and supports the initiative to strike a deal on government procurement work in the MAFTA. Although this is often a difficult negotiation point in Free Trade Agreements, the LIV is of the view that this is an important opportunity for Australian exporters, as well as for the Australian legal profession for whom it opens up an avenue for providing legal advice to those wishing to compete for government procurement contracts.

The LIV would be delighted to be consulted in further discussions regarding the negotiation of the MAFTA.

If you have any questions in relation to this submission, please contact Francesca Harrison, Lawyer, International Law Section, Law Institute of Victoria on (03) 9607 9389.

Yours sincerely



Danny Barlow
President
Law Institute of Victoria