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The Asia Trade Taskforce  
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Dear Asia Trade Taskforce Team

**Australia-Malaysia FTA – Public Submission by Law Institute of Victoria**

The Law Institute of Victoria (*LIV*) notes the 'Call for Public Submissions' by the Department of Foreign Affairs and Trade (*DFAT*) relating to the proposed Australia-Malaysia FTA (*FTA*).

The LIV contributed a submission to the Scoping Study (*Submission*), which was conducted by DFAT into the FTA, and notes that the Scoping Study Report (*Report*) released by DFAT addresses many of the issues identified in the Submission.

The LIV would like to draw the attention of the Australian team negotiating the FTA to the comments in the Submission. In addition, the LIV would like to make specific additional comments in relation to the following key issues raised in the Submission.

- Access to Malaysia's legal services market;
- Customs procedures – Rules of Origin and Certificates of Origin; and
- Dispute resolution and enforcement

The LIV suggests that these important areas of bilateral trade and commerce require particular attention during the FTA negotiations to ensure a fair and equitable agreement is reached.

## 1. Access to Malaysia's legal services market

The LIV supports the Australian Government's focus on removing restrictions in many of Malaysia's services sectors 'as a priority objective for Australia in an FTA with Malaysia'.

As indicated in our Submission (refer para 4.1, 'Legal Services') and the Report, foreign access to Malaysia's legal services sector remains substantially restricted, thus preventing Australian lawyers from practising in Malaysia.

Under Malaysia's *Legal Profession Act*, Malaysian law may only be practised by Malaysian citizens or permanent residents who have served under a Malaysian lawyer, are competent in Bahasa Melayu (national language of Malaysia), and have a local law degree or are accredited British Barristers at Law.

Foreign lawyers are not permitted to:

- practice Malaysian law;
- operate as foreign legal consultants, except on a limited basis in the Labuan International Offshore Financial Centre;
- affiliate with local firms, except as minority partners with local law firms, and their stake in any partnership is limited to 30 percent; or
- use the name of an international firm.

Accordingly, the scope of legal services provided by foreign lawyers in Malaysia is limited to legal advice on foreign domestic and international law.

These restrictions are in contrast to the large number of Malaysian students who study law at Australian universities and return to Malaysia with an Australian legal education and can be admitted (after meeting local admission requirements) to their home jurisdiction. We also note the Bahasa Melayu language requirement, which poses a significant and unnecessary barrier to Australian lawyers practising in Malaysia, in light of English as the second most commonly spoken language in Malaysia.

As stated in our Submission, the LIV proposes that Australian lawyers be permitted to operate only in certain areas of law (ie intellectual property, commercial, corporate, financial services, customs, trade and international law). The LIV does not recommend seeking access for Australian lawyers to provide advice on domestic Malaysian (including Sharia law), such as conveyancing and family law. The LIV also recognises the possible need for phased liberalisation measures to allow the Malaysian domestic legal market to manage the transition in a manner consistent to that contemplated by Article XIX of the *General Agreement on Trade in Services (GATS)*.

Accordingly, we urge Australia's FTA negotiators to pursue this significant opportunity for liberalisation of Malaysia's legal services market and submit that any FTA between Australia and Malaysia would be deficient if it did not provide specifically for such liberalisation measures.

## 2. Customs Procedures – Rules of Origin

The LIV's Submission and the Report both address the issue of problems associated with Rules of Origin governing preferential treatment of goods under the FTA.

Again, both the Submission and the Report reflect that the complex Rules of Origin can constitute a non-tariff barrier to trade.

The LIV endorses the following proposals regarding the proposed Rules of Origin under the FTA.

- In general, for goods not 'wholly obtained or produced in either country', there should be product-specific 'Rules of Origin' based on change of tariff classification as employed in Australia's free trade agreements with the United States and Thailand. We suggest that there is significant merit in adopting these criteria, which is consistent to other practices.
- Limit the categories of goods subject to other requirements such as 'regional value contents'.
- If regional value content requirements are imposed, they should use the 'build-down' method as set out in the Australia-Thailand FTA.
- Avoid the adoption of a 'yarn forward' rule for textiles, clothing and footwear as appears in the Australia-United States FTA.

### 3. **Customs Procedures – Certificates of Origin**

The LIV's Submission includes comments by the LIV that support the adoption of 'Certificates of Origin' in the FTA. This would require parties claiming preferential status for goods to provide a Certificate of Origin for the goods issued by an approved body in the country of origin. This approach is consistent with Australia's free trade agreements with Singapore and Thailand (but not the United States).

We note that the Report does not address this issue. Accordingly, the LIV reiterates its support for Certificates of Origin to be required under the FTA with the process for their issue to be similar to the process set out in the Australia-Thailand FTA.

### 4. **Dispute resolution and enforcement**

The LIV's Submission includes comments and recommendations as to the form of dispute resolution provisions and procedures to enforce judgments. However, the Report does not appear to comment on this issue and the LIV wishes to reiterate its comments in this regard.

The LIV would welcome the opportunity for further consultation with DFAT on any of the issues raised in this letter and our Submission. Please contact me directly on 03 9607 9367 or [president@liv.asn.au](mailto:president@liv.asn.au). Alternatively, Jo Kummrow, International Law Committee Solicitor is available to answer specific enquiries on 03 9607 9385 or [jkummrow@liv.asn.au](mailto:jkummrow@liv.asn.au).

Yours sincerely



**Victoria Strong**  
President  
Law Institute of Victoria