

## **EXPLANATORY STATEMENT**

Issued by the Minister for Home Affairs

*Customs Act 1901*

*Customs Legislation Amendment (ASEAN-Australia-New Zealand Free Trade Area Second Protocol Implementation and Other Measures) Regulations 2025*

### **Legislative Authority**

The *Customs Act 1901* (the Customs Act) concerns customs-related functions. It is the legislative authority that sets out the customs requirements for the importation of goods into, and the exportation of goods from, Australia.

Subsection 270(1) of the Customs Act provides, in part, that the Governor-General may make regulations, not inconsistent with the Customs Act, prescribing all matters which by the Customs Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for giving effect to the Customs Act.

### **Purpose**

The proposed Regulations implement a range of customs obligations arising under the Second Protocol to amend the Agreement establishing the ASEAN-Australia-New Zealand Free Trade Area (the Second Protocol) and the Regional Comprehensive Economic Partnership Agreement (the RCEP Agreement).

### **Background**

On 21 August 2023, the Assistant Minister for Foreign Affairs, the Hon Tim Watts MP, and his counterparts from New Zealand, Brunei Darussalam, Indonesia, Malaysia, and Singapore signed the Second Protocol. The Second Protocol includes, amongst other things, upgrades to the Rules of Origin procedures for claiming preferential rates of customs duty. These rules determine whether goods imported into Australia from another Party to the Agreement are originating goods (referred to as AANZ originating goods) and are thereby eligible for preferential rates of customs duty.

The Agreement establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) is a plurilateral free trade agreement between Australia, Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic (PDR), Malaysia, Myanmar, New Zealand, the Philippines, Singapore, Thailand and Viet Nam. AANZFTA was signed by all participating countries on 27 February 2009.

The AANZFTA is a free trade agreement that aims to deliver tariff reduction and greater certainty for service suppliers and investors.

On 1 January 2010, AANZFTA entered into force for Australia. It was subsequently amended by the First Protocol to Amend the AANZFTA (First Protocol). The First Protocol was signed on 26 August 2014 by participating countries. These amendments entered into force for Australia on 1 October 2015. On 13 November 2022, the leaders of ASEAN, Australia and New Zealand announced the substantial conclusions of negotiations to upgrade the AANZFTA First Protocol. The result of the negotiations led to Assistant Minister Tim Watts, with ASEAN and New Zealand Ministers, signing the Second Protocol on 21 August 2023.

The Joint Standing Committee on Treaties handed down its report on the Second Protocol on 13 May 2024. It recommended that Australia take binding treaty action on the Second Protocol.

On 15 November 2020, Senator the Hon Simon Birmingham, former Minister for Trade, Tourism and Investment and his counterparts from Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, Viet Nam, China, Japan, New Zealand and the Republic of Korea, signed the RCEP Agreement.

The RCEP Agreement is a regional free trade agreement that complements and builds upon Australia's existing free trade agreements with 14 other Indo-Pacific countries. It is a modern and comprehensive free trade agreement delivering outcomes for Australian businesses in trade in goods, trade in services, investment, economic and technical cooperation, and new rules for electronic commerce, intellectual property, government procurement, competition and small and medium sized enterprises.

The RCEP Agreement entered into force on 1 January 2022.

## **Impact and effect**

The *Customs Legislation Amendment (ASEAN-Australia-New Zealand Free Trade Area Second Protocol Implementation and Other Measures) Regulations 2025* (the Regulations) will implement the customs obligations arising from the *Customs Amendment (ASEAN-Australia-New Zealand Free Trade Area Second Protocol Implementation and Other Measures) Act 2024* (the AANZFTA Act) which received the Royal Assent on 10 December 2024.

For customs obligations arising under the Second Protocol, the proposed Regulations will implement:

- changes to the Rules of Origin which will allow, in addition to the Certificates of Origin issued by issuing bodies, exporters or producers to issue Declarations of Origin where the exporter have been authorised as an 'approved exporter'
- new record keeping obligations on exporters and producers that export goods to a Party to the AANZFTA and who make a claim that the goods exported are originating goods in accordance with the agreement

- a new approved exporter scheme to allow approved exporters to complete Declarations of Origin in order to allow importers in other Parties to claim preferential rates of customs duty.
- changes to the Rules of Origin to allow for separate value-added work done in the various participating countries of the free trade area on a non-originating good to be added together when determining a goods originating status.

For customs obligations arising under the RCEP Agreement, the proposed Regulations will implement:

- a new approved exporter scheme to allow approved exporters to complete Declarations of Origin in order to allow importers in other Parties to claim preferential rates of customs duty.
- changes to the existing record keeping obligations on exporter and producers that export goods under the RCEP Agreement to ensure the record-keeping obligations of approved exporters are implemented.

These regulations amend the *Customs (International Obligations) Regulation 2015* (the International Obligations Regulation), the *Customs (ASEAN-Australia-New Zealand Rules of Origin) Regulations 2009* and the *Customs (Regional Comprehensive Economic Partnership Rules of Origin) Regulations 2021* in order to implement these changes.

## Consultation

The Department of Foreign Affairs and Trade (DFAT) led Australia's negotiations for the Agreement in consultation with other government agencies. Australia's negotiating positions for the Agreement were informed by the views and information provided by stakeholders through both formal and informal mechanisms. DFAT provided stakeholders the opportunity to provide written submissions on the AANZFTA General Review process. These submissions helped inform Australia's position on the areas to be considered as part of the AANZFTA upgrade.

DFAT undertook regular stakeholder engagement on the Second Protocol once negotiations commenced in 2019. DFAT, in conjunction with other government agencies, consulted widely with industry and other stakeholders in formulating their positions. DFAT held biannual Peak Bodies Consultations which provided an avenue to update peak organisations (including Australian businesses, civil society, First Nations groups and unions) on the status of the DFAT-led international trade negotiations and for peak organisations to ask questions about the government's trade agenda. DFAT is committed to continuing to review and evaluate AANZFTA's implementation in Australia including through inviting submissions from and consulting with stakeholders in the course of these processes.

Details of these consultations were set out in the consultation attachment to the National Interest Analysis for the Agreement.

## Details and Operation

The Act does not impose any conditions that need to be satisfied before the power to make the Regulations may be exercised. The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act).

Details of the Regulations are set out in Attachment B.

A Statement of Compatibility with Human Rights has been prepared in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*, and is set out in Attachment C.

Paragraph 54(2)(b) of the Legislation Act has the effect that if a legislative instrument is prescribed by regulation for the purposes of that paragraph, then the instrument is exempt from the operation of sunseting under Part 4 of the Legislation Act.

Item 1 of the table under section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015* prescribes the following instruments made under the Act as being exempt from sunseting for the purposes of paragraph 54(2)(b) of the Legislation Act:

- an instrument the sole purpose of which, or a primary purpose of which, is to give effect to an international obligation of Australia.

Subjecting these regulations to sunseting may conflict with Australia's international obligations and with ongoing intergovernmental arrangements. As such, these regulations are exempt from sunseting under Part 4 of the Legislation Act.

Division 1 of Part 3 of Chapter 3 of the Legislation Act operates to automatically repeal a legislative instrument that has the sole purpose of amending or repealing another instrument. That Division applies to automatically repeal the Amendment Regulations. As the Amendment Regulations will be automatically repealed, the sunseting framework under Part 4 of the Legislation Act.

## Impact Analysis

An impact analysis (OBPR22-02548) in relation to the regulatory impact of the measures in the Regulations is at Attachment D.

**COMMON ABBREVIATIONS AND ACRONYMS**

| <b>Abbreviation<br/>acronym</b>           | <b>Meaning</b>                                                                                                                                                                        |
|-------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| AANZ                                      | ASEAN, Australia and New Zealand                                                                                                                                                      |
| AANZFTA                                   | Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area, as amended and in force for Australia from time to time, but excluding amendments made by the Second Protocol |
| ABF                                       | Australian Border Force                                                                                                                                                               |
| AANZFTA Act                               | Customs Amendment (ASEAN-Australia-New Zealand Free Trade Area Second Protocol implementation and Other Measures) Act 2024                                                            |
| ASEAN                                     | Association of Southeast Asian Nations                                                                                                                                                |
| Customs Act                               | <i>Customs Act 1901</i>                                                                                                                                                               |
| Customs Tariff Act                        | <i>Customs Tariff Act 1995</i>                                                                                                                                                        |
| DFAT                                      | Department of Foreign Affairs and Trade                                                                                                                                               |
| HS                                        | Harmonized Commodity Description and Coding System                                                                                                                                    |
| Home Affairs                              | Department of Home Affairs                                                                                                                                                            |
| International<br>Obligation<br>Regulation | <i>Customs (International Obligations Regulation) 2015</i>                                                                                                                            |
| Legislation Act                           | <i>Legislation Act 2003</i>                                                                                                                                                           |
| PSR                                       | Product Specific Rules                                                                                                                                                                |
| RCEP Agreement                            | Regional Comprehensive Economic Partnership Agreement                                                                                                                                 |
| Regulations                               | <i>Customs Legislation Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Second Protocol Implementation and Other Measures) Regulations 2025</i>                            |
| RVC                                       | Regional Value Content                                                                                                                                                                |
| Second Protocol                           | Second Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area                                                                                   |

**Details of the *Customs Legislation Amendment (ASEAN-Australia-New Zealand Free Trade Area Second Protocol Implementation and Other Measures) Regulations 2025***

**Section 1 – Name**

This section provides that the title of the instrument is the *Customs Legislation Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Second Protocol Implementation and Other Measures) Regulations 2025* (the Regulations).

**Section 2 – Commencement**

This section sets out, in a table, the date on which each of the provisions contained in the Regulations will commence.

Subsection 2(1) provides that each provision of the Regulations specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table, and that any other statement in column 2 has effect according to its terms.

Table item 1 provides that sections 1 to 4 and anything in the Regulations, not covered elsewhere by the table will commence the day after this instrument is registered.

Table item 2 outlines that Schedule 1 will commence at the same time as Schedule 1 to the Customs Amendment (*ASEAN-Australia-New Zealand Free Trade Area Second Protocol Implementation and Other Measures*) Act 2024 (AANZFTA Act) commences. Schedule 1 of the AANZFTA Act commences on the later of the day after that Act receives the Royal Assent and the day the Second Protocol done on 21 August 2023 Semarang, Indonesia enters into force for Australia. However, the provisions do not commence at all if the Second Protocol does not enter into force for Australia.

Table item 2 of the AANZFTA Act also provides that the Minister must announce the day on which the Second Protocol enters into force for Australia by a notifiable instrument. The announcement made in the notifiable instrument does not lead to the commencement of Schedule 1, it merely requires the Minister to announce the commencement of the Second Protocol for public awareness. This instrument is not legislative in character. This instrument is declared by the Act to be a notifiable instrument for the purposes of the Legislation Act 2003 (Legislation Act) to ensure it is still required to be made publicly available on the Register. Notifiable instruments are governed by the Legislation Act.

Table item 3 provides that Schedule 2 commences at the same time as Schedule 2 to the AANZFTA Act. Schedule 2 will commence on a single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day the Act receives the Royal Assent, which was on 10 December 2024, they commence on the day after the end of that period.

The note at the foot of the table explains that it relates only to the provisions of the Regulations as originally made and that the table will not be amended to address any later amendments of the Regulations.

Subsection 2(2) provides that any information in column 3 of the table is not part of the Regulations, when enacted. Information may be inserted in this column, or information in it may be edited, in any published version of the Regulations.

### **Section 3 – Authority**

This section sets out the authority under which the Regulations are to be made, which is the *Customs Act 1901* (the Customs Act).

### **Section 4 – Schedules**

This section is the formal enabling provision for the Schedule to the Regulations, and provides that each instrument that is specified in a Schedule to the Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and that any other item in a Schedule to this instrument has effect according to its terms.

The Customs (*ASEAN-Australia-New Zealand Rules of Origin*) Regulations 2009, the Customs (*International Obligations*) Regulation 2015 and the Customs (*Regional Comprehensive Economic Partnership Rules of Origin*) Regulations 2021 are amended by the Regulations.

### **Schedule 1—ASEAN-Australia-New Zealand Free Trade Area Second Protocol Amendments**

#### ***Customs (ASEAN-Australia-New Zealand Rules of Origin) Regulations 2009***

#### **Item 1 – Regulation 1.1**

Regulation 1.1 omits *Customs (ASEAN-Australia-New Zealand Rules of Origin) Regulations 2009* and substitutes it with *Customs (ASEAN-Australia-New Zealand) Regulations 2009*. As the Regulations introduce provisions in relation to the approved exporter scheme, the purpose of this change is to reflect that the amending provisions include other matters that do not directly relate to the Rules of Origin.

#### **Item 2 - Regulation 1.4**

This regulation inserts the following definitions for the purposes of the Regulations.

#### **Harmonized System**

The term ***Harmonized System*** has the meaning given by subsection 153ZKB(1) of the Customs Act.

The Harmonized Commodity Description and Coding System (HS) is a structured nomenclature that organises goods according to the degree of production by four and six digit codes. They numerical codes are commonly used throughout the world to identify products when assessing duties and taxes. The HS is administered by the World Customs Organisation and updated every five years.

Annex 3B of the Second Protocol, the Product-Specific Rules (PSRs), contains the HS codes under the version of the HS that commenced in 2022 (HS 2022), for each product listed. From 1 January 2023, Australia is required to use this updated version of the PSRs which uses the nomenclature of HS 2022.

New paragraph 153ZKB(1)(b) of the Customs Act outlines that if either:

- Annex 3B to Chapter 3 of the Second Protocol is amended or replaced to refer to Chapters, headings and subheadings of an updated version of the HS; or
- there is a transposition (as mentioned in paragraph 4 of Article 3 of Chapter 3 of the Second Protocol) of Annex 3B to Chapter 3 of the Second Protocol because of an updated version of the Harmonized Commodity Description and Coding System and that transposition is adopted as mentioned in that paragraph;

then the version of the HS used is whichever of those events occurred most recently.

The purpose of inserting this definition is to implement the PSRs using HS 2022 nomenclature in accordance with the Second Protocol. The updated definition has the effect that subsequent versions of the HS are incorporated by reference when either Annex 3B to Chapter 3 is formally amended or as a result of a transposition, which is a process by which a parallel or separate version of the PSRs is developed because of updates to the HS.

### *Participating Party*

The term ***Participating Party*** has the same meaning as in Article 6 of Chapter 3 of the Second Protocol.

Article 6 of Chapter 3 of the Second Protocol outlines the relevant rules in relation to cumulative Rules of Origin. Article 6 of the Second Protocol sets up new rules for determining the originating status of goods that allows Parties to opt-out of the ‘full cumulation’ provisions as outlined in paragraph 2 of Article 6. Pursuant to paragraph 5, a party can elect not to be subject to ‘full cumulation’ by notifying the other Parties via the FTA Joint Committee that it does not intend to implement Article 6 paragraph 2 of the Second Protocol. The Parties that implement, or intend to implement the full cumulation provision under Article 6 paragraph 2, are ‘Participating Parties.’ A Party can also withdraw its notification of intention not to implement article 6 paragraph 2 at any time, and become a Participating Party.

### *Proof of Origin*

The term ***Proof of Origin*** has the meaning given by subsection 153ZKB(1) of the Customs Act.

The Customs Act determines that ***Proof of Origin*** means a certificate, or a declaration, that is in force and complies with the requirements of Rule 1 of Annex 3A to Chapter 3 of the Agreement.

Rule 1 of Chapter 3 to Annex 3A concerns the new document requirement required to be met under the Second Protocol in order to satisfy a requirement for the purpose of determining whether imported goods are to be treated as originating goods under AANZFTA and as such be eligible for preferential tariff treatment. Under Rule 1, any of the following shall be considered as a Proof of Origin:

- a Certificate of Origin issued by an Issuing Authority/Body in accordance with this Annex;
- a Declaration of Origin by an approved exporter in accordance with paragraph 1(a) of Rule 14; or
- a Declaration of Origin by an exporter or producer in accordance with paragraph 1(b) of Rule 14;

based on information available that the good is originating.

The purpose of this amendment is to give effect to Article 15 of Chapter 3 of the Second Protocol for the purpose of Article 2 of that Chapter. Article 2 of Chapter 3 sets out the kind of goods that are to be treated as originating goods for preferential tariff treatment provided other requirements under that Chapter are met. For Article 2, Article 15 of Chapter 3 provides that a claim that goods are eligible for preferential tariff treatment shall be supported by a Proof of Origin, which includes Declarations of Origin in addition to Certificates of Origin. Paragraph 5 of Rule 1 sets out the format of, and the matters to be included in, a Proof of Origin.

Under AANZFTA, a claim that goods are originating goods can only be supported by a Certificate of Origin. A Declaration of Origin differs to a Certificate of Origin in that it may be made by the exporter of goods (self-certification), as opposed to an independently issued Certificate of Origin from an authorised issuing body.

For a Declaration of Origin by an approved exporter, paragraph 1(a) of Rule 14 of Annex 3A of the Second Protocol requires that the document be completed by an approved exporter within the meaning of Rule 15 of Annex 3A of the Second Protocol. For a Declaration of Origin by an exporter or producer that is not an approved exporter, paragraph 1(a) of Rule 14 requires the document to be completed by the exporter or producer of the goods.

Regardless of who completes a Declaration of Origin, paragraph 2 of Rule 14 provides the format of the document.

Furthermore, irrespective of whether a Certificate of Origin is completed, Rule 9 of Annex 3A requires that a Proof of Origin shall specify the relevant origin conferring criteria. That is, the criteria that is satisfied to qualify the good as AANZ originating goods.

### **Item 3 – At the end of regulation 4.1**

New subregulation 4.1(4) outlines that for the purposes of working out the value of particular non-originating material used in the production of goods where the last process of production occurs in a Participating Party, the following may be deducted:

- the value of any production undertaken on the non-originating materials in any other Participating Party;
- the amount of the value added to the non-originating materials in any other Participating Party.

This subregulation reflects updates to the cumulative rules of origin in the Second Protocol which now allows for separate value added work done in the various participating countries of the free trade area on a non-originating good to be added together so as to confer originating status. Ultimately, updates to the cumulative rules of origin is intended to increase the number of goods that can qualify for preferential tariff rates under AANZFTA.

This method of determining a good's originating status is commonly referred to as full cumulation. Full cumulation allows cumulating origin-counting processing to be added across participating countries even when the initial input is not originating in that country.

Article 6 of the Second Protocol sets up a new scheme that allows Parties to opt-out of the full cumulation provisions. Pursuant to paragraph 5, a Party can elect not to be subject to full cumulation by notifying the other Parties via the FTA Joint Committee that it does not intend to implement Article 6 paragraph 2 of the Second Protocol. The Parties that implement, or intend to implement Article 6 paragraph 2, are 'Participating Parties.' A Party can also withdraw its notification of intention not to implement Article 6 paragraph 2 at any time and become a Participating Party.

In order for a good to qualify as being from a Participating Party the Regional Value Content (RVC) must be calculated in accordance with the formulas outlined in Article 5 of Chapter 3 of the Second Protocol, one of which is referred to as the indirect/build-down formula, and implemented in Part 3 of the *Customs (ASEAN-Australia-New Zealand Rules of Origin) Regulations 2009*. The RVC provides the percentage of a product's value that originates from within the Participating Parties of the Second Protocol.

Assume, for example, that both Malaysia and Thailand are Participating Parties in the full cumulation scheme. For the purposes of this example, the RVC under the indirect/build-down method is worked out using the formula outlined in Rule 3.2 of *Customs (ASEAN-Australia-New Zealand Rules of Origin) Regulations 2009*, which is:

$$\frac{\text{Customs Value} - \text{Value of non originating materials}}{\text{Customs Value}} \times 100$$

Customs value refers to the monetary value of goods as assessed by the ABF for the purpose of calculating duties and value of non-originating materials means the value, worked out under Part 8 of the Customs Act, of the non-originating materials used in the production of the goods. For the purposes of this example, assume the RVC is 60% which means that the total value of the non-originating inputs must not be more than 40% of the final value of the goods.

For example, Malaysia imports \$40 worth of lightbulbs from India. In Malaysia, the lightbulbs are then used to manufacture headlight components and are now worth \$50. At this stage, the value of non-originating inputs is currently 80% of the final value of the goods and therefore does not qualify under the rules of origin requirements for the preferential tariff rate for export.

However, now the headlight components are exported to Thailand where these components are used to manufacture electric scooters which are worth \$100. Under full cumulation, the value added in Malaysia, although part of a non-originating good, can be used for the purposes of determining the originating status of the final product. The separate manufacturing work done in both Malaysia (value add of \$10) and Thailand (value add of \$50) can be combined to calculate the originating content value which is \$60. Thus, the value of non-originating inputs is \$40 or 40% of the final value.

Using the formula for calculating RVC as explained above, the example RVC can be expressed using the below equation:

$$\frac{100 - 40}{100} \times 100 = 60$$

As the RVC is 60%, it is now eligible for the preferential tariff rate when imported into Australia. In the absence of full cumulation, the \$10 of work undertaken in Malaysia would be ‘lost’ and the goods would not be originating as insufficient value was added in Thailand.

#### **Item 4 – After Part 4 insert Part 5 – Record keeping obligations and Part 6 – Approved exporters**

This inserts new Part 5, which is titled ‘Record keeping obligations’ and Part 6, which is titled ‘Approved exporters’.

#### **Part 5 – Record keeping obligations**

New Part 5 contains new regulations 5.1 and 5.2. The purpose of these provisions is to impose new record-keeping obligations on Australian exporters and producers that are similarly prescribed across other Free Trade Agreements. These obligations are incorporated under Rule 25 of Annex 3A of the Second Protocol.

Part 5 of the Regulations specifies the records that must be kept for goods exported from Australia to a Party and where the goods are claimed to be originating goods, in accordance with Chapter 3 of the Agreement, for the purpose of obtaining preferential tariff treatment in the Party.

Under new subsection 126AKDB(1) of the Customs Act, the regulations may prescribe record keeping obligations that apply in relation to goods that:

- are exported to a Party; and
- are claimed to be originating good, in accordance with Chapter 3 of the Agreement, for the purpose of obtaining a preferential tariff in the Party.

**Regulation 5.1 – Exportation of goods to a Party – record keeping by exporter who is not the producer of the goods**

Subregulation 5.1(1) outlines that, for the purposes of subsection 126AKDB(1) of the Customs Act, an exporter of goods mentioned in that subsection, who is not also the producer of the goods, must keep the following records:

- records of the purchase of the goods by the exporter;
- records of the purchase of the goods by the person to whom the goods are exported;
- evidence that payment has been made for the goods;
- evidence of the classification of the goods under the Harmonized System;
- if the goods include any accessories, spare parts, tools or instructional or other information materials that were purchased by the exporter:
  - i. records of the purchase of the accessories, spare parts, tools or instructional or other information materials; and
  - ii. evidence of the value of the accessories, spare parts, tools or instructional or other information materials;
- if the goods include any accessories, spare parts, tools or instructional or other information materials that were produced by the exporter:
  - iii. records of the purchase of all materials that were purchased for use or consumption in the production of the accessories, spare parts, tools or instructional or other information materials; and
  - iv. evidence of the value of the materials so purchased; and
  - v. records of the production of the accessories, spare parts, tools or instructional or other information materials;
- if the goods are packaged for retail sale in packaging material or a container that was purchased by the exporter:
  - vi. records of the purchase of the packaging material or container; and
  - vii. evidence of the value of the packaging material or container;
- if the goods are packaged for retail sale in packaging material or a container that was produced by the exporter:
  - viii. records of the purchase of all materials that were purchased for use or consumption in the production of the packaging material or container; and
  - ix. evidence of the value of the materials so purchased; and
  - x. records of the production of the packaging material or container;
- a copy of the Proof of Origin for the goods;

- any other documents in support of the goods being originating goods in accordance with Chapter 3 of the Agreement (including documents from the producer or supplier of the goods).

For the records referred to in Regulation 5.1 of the Regulations, subregulation 5.1(2) provides that the records must be kept for at least five years starting on the date the Proof of Origin for the goods is issued.

Subregulation 5.1(3) of the Regulations sets out the manner in which a record is to be kept. The exporter may keep the records at any place (whether or not in Australia), and must ensure that:

- the records are kept in a form that would enable a determination of whether the goods are originating goods in accordance with Chapter 3 of the Agreement; and
- if the records are not in English--the records are kept in a place and form that would enable an English translation to be readily made; and
- if the records are kept by mechanical or electronic means--the records are readily convertible into a hard copy in English.

**Regulation 5.2 - Exportation of goods to a Party—record keeping by the producer of the goods**

Subregulation 5.2(1) outlines that, for the purposes of subsection 126AKDB(1) of the Customs Act, a producer of goods mentioned in that subsection, whether or not the producer is the exporter of the goods, must keep the following records:

- records of the purchase of the goods;
- if the producer is the exporter of the goods—evidence of the classification of the goods under the Harmonized System;
- evidence that payment has been made for the goods;
- evidence of the value of the goods;
- records of the purchase of all materials that were purchased for use or consumption in the production of the goods and evidence of the classification of the materials under the Harmonized System;
- evidence of the value of those materials;
- records of the production of the goods;
- if the goods include any accessories, spare parts, tools or instructional or other information materials that were purchased by the producer:
  - i. records of the purchase of the accessories, spare parts, tools or instructional or other information materials; and
  - ii. evidence of the value of the accessories, spare parts, tools or instructional or other information materials;
- if the goods include any accessories, spare parts, tools or instructional or other information materials that were produced by the producer:
  - iii. records of the purchase of all materials that were purchased for use or consumption in the production of the accessories, spare parts, tools or instructional or other information materials; and

- iv. evidence of the value of the materials so purchased; and
- v. records of the production of the accessories, spare parts, tools or instructional or other information materials;
- if the goods are packaged for retail sale in packaging material or a container that was purchased by the producer:
  - vi. records of the purchase of the packaging material or container; and
  - vii. evidence of the value of the packaging material or container;
- if the goods are packaged for retail sale in packaging material or a container that was produced by the producer:
  - viii. records of the purchase of all materials that were purchased for use or consumption in the production of the packaging material or container; and
  - ix. evidence of the value of the materials so purchased; and
  - x. records of the production of the packaging material or container;
- a copy of the Proof of Origin for the goods.

For the records referred to in subregulation 5.2(1) of the Regulations, subregulation 5.2(2) of the Regulations provides that the records must be kept for at least five years starting on the date the Proof of Origin for the goods is issued.

Subregulation 5.2(3) of the Regulations sets out the manner in which a record is to be kept. The producer may keep the records at any place (whether or not in Australia), and must ensure that:

- the records are kept in a form that would enable a determination of whether the goods are originating goods in accordance with Chapter 3 of the Agreement; and
- if the records are not in English--the records are kept in a place and form that would enable an English translation to be readily made; and
- if the records are kept by mechanical or electronic means--the records are readily convertible into a hard copy in English.

## **Part 6 - Approved Exporters**

Subsection 126AKDE(2) of the Customs Act contains a head of power, as inserted by the AANZFTA Act, to administer the approved exporter scheme including by prescribing various matters in regulations.

Subsection 126AKDE(3) of the Customs Act provides that the Comptroller-General of Customs may make provision for the following matters:

- the making of applications to the Comptroller General of Customs by entities for approval as approved exporters and the withdrawal of those applications;
- the eligibility criteria that an entity must meet in order for the Comptroller General to approve the entity as an approved exporter;
- the matters that the Comptroller General must consider in deciding whether to approve an entity as an approved exporter;

- the making of decisions by the Comptroller General of Customs in relation to the applications;
- the conditions that an approval of an entity as an approved exporter is subject to;
- the variation, suspension or termination of an approval of an entity as an approved exporter;
- the giving of notice of decisions made by the Comptroller General of Customs ;
- the review of decisions made by the Comptroller General of Customs.

Rule 15 of Annex 3A of the AANZFTA Second Protocol establishes the scheme to allow approved exporters to issue Declarations of Origin. The Second Protocol allows, in addition to the Certificates of Origin issued by issuing bodies, exporters or producers to issue Proof of Origin through self-issued Declarations of Origin where the exporter has been authorised as an ‘approved exporter.’

In general, this means that there is less oversight over the making of a Declaration of Origin, however, many of Australia’s existing free trade agreements allow for a form of self-declaration without any additional administrative burdens. This would bring about greater convenience to businesses by saving time and eliminating the need to obtain a Certificate of origin.

The approved exporter scheme implemented in the Second Protocol provides additional safeguards to the use of Declarations of Origin by ensuring that exporters using Declarations of Origin comply with standards implemented under that agreement. The duration of the approved exporter schemes are time limited, up to 30 years in the case of Cambodia, Laos PDR and Myanmar.

Prescribing matters relating to the approved exporter scheme in subordinate regulations ensures flexibility and adaptability. The regulatory frameworks for the approved exporter scheme have been designed to balance stability and transparency, allow reasonable flexibility to take into account the dynamic international trade environment and ensure the continued relevance of the scheme to participants. This approach also allows the Department to more quickly update the scheme as international trade dynamics change or as compliance requirements evolve. By prescribing details of the scheme in the regulations, the Department can implement and revise procedures efficiently, making it easier for exporter to understand and comply with the requirements.

The implementation of the scheme will be subject to ongoing evaluation by the Department. As the program evolves, further opportunities to reduce the regulatory burden associated with customs procedures at the border may be identified. Prescribing these in the regulations rather than the primary legislation will provide the flexibility that is required to enable the scheme to develop.

As the regulations are a legislative instruments, they will be subject to parliamentary scrutiny and disallowance.

#### Regulation 6.1 Application for approval as approved exporter

Subregulation 6.1(1) provides that an exporter may apply to the Comptroller-General of Customs for approval as an approved exporter. Subregulation 6.1(2) outlines that an application may be made by either by document or electronically.

These provisions are modelled after section 176B of the Customs Act to ensure consistency with other legislative models such as the Australia Trusted Trader scheme. The application is a self-assessment questionnaire which contains questions addressing the qualification criteria set out in these Regulations. It also will contain general information questions to allow the Comptroller-General of Customs to gather sufficient information to form a comprehensive view of the entity and identify any risks in its international supply chain.

Subregulation (3) provides that a documentary application must:

- be communicated to the Comptroller General of Customs; and
- be in an approved form; and
- contain the information required by the approved form; and
- be signed in a manner indicated by the approved form.

Subregulation (4) provides that an electronic application must communicate such information as is set out in an approved statement.

Subregulation (5) allows applicants to withdraw their application at any time.

### Regulation 6.2 Eligibility Criteria

Regulation 6.2 implements Rule 15.1 of Chapter 3 of Annex 3A to the Second Protocol and requires prospective approved exporters to satisfy the following eligibility criteria:

- a trusted trader agreement with the entity is in force under section 176A of the Act;
- the Comptroller General is satisfied that the entity knows and understands the rules of origin as set out in Annex 3A to Chapter 3 of the Agreement;
- the Comptroller General is satisfied that, if the entity were to complete a Declaration of Origin for goods exported to a Party, the entity would be able to obtain from the producer of the goods a declaration:
  - i. claiming that the goods are originating goods in accordance with Chapter 3 of the Agreement; and
  - ii. stating that the producer is willing to cooperate with any verification process in accordance with Rules 19 and 20 Annex 3A to Chapter 3 of the Agreement and is able to meet the requirements of that Annex.

By limiting the eligibility criteria to entities already subject to an Australian Trusted Trader agreement, the Department can ensure those participants in the approved exporter scheme are able to demonstrate use of secure supply chains and a high level of trade compliance.

### Regulation 6.3 Comptroller-General of Customs to decide application

Subregulation 6.3(1) enables the Comptroller General of Customs, in writing, to approve an entity as an approved exporter if:

- the entity makes an application in accordance with under regulation 6.1; and
- the Comptroller General is satisfied that the entity meets the eligibility criteria under regulation 6.2.

Subregulation 6.3(2) outlines that the Comptroller-General of Customs must consider the following matters in deciding whether to approve an entity as an approved exporter:

- whether a trusted trader agreement between the entity and the Comptroller General has been varied, suspended or terminated under section 178A of the Act;
- whether the Comptroller General of Customs is considering varying, suspending or terminating a trusted trader agreement between the entity and the Comptroller General.

Subregulation (3) provides that subregulation (2) does not limit the matters the Comptroller-General may consider in deciding whether to approve an entity as an approved exporter.

When considering the risks posed by the entity becoming an approved exporter, factors such as whether the Comptroller-General of Customs has or is considering varying, suspending or terminating a trusted trade agreement is relevant and may act as mitigating factors against any risks considered by the Comptroller-General of Customs. For example, when considering the extent and degree of any non-compliance, the Comptroller-General of Customs may consider matters such as whether the non-compliance was an isolated incident or an ongoing pattern of systemic non-compliance, the materiality of the non-compliance (which may be determined by having regard to the seriousness of the consequences of the non-compliance) and the frequency of non-compliance having regard to the entity's volume of trade.

Subregulation (4) provides that an approval under subregulation 6.3(1) must also specify the entity's approved exporter code. This code is a unique reference number of the approved exporter and must be indicated on Proof of Origin documents under the Second Protocol.

Subregulation (5) provides that the Comptroller-General must give a copy of an approval under subregulation (1) to the entity.

Subregulation (6) provides that an approval under subregulation (1) must specify the period for which it is in force.

Subregulation (7) provides that if an entity makes an application for approval as an approved exporter and the application is in accordance with under regulation 6.1, the Comptroller General of Customs may, in writing, refuse to approve the entity as an approved exporter.

Subregulation (8) provides that if the Comptroller-General does refuse an application under subregulation (7), the Comptroller General must notify the entity of the refusal and of the reasons for the refusal.

Subregulation (9) provides that an application may be made to the Administrative Review Tribunal for review of a decision to refuse to approve an entity as an approved exporter.

#### **Regulation 6.4 Conditions of Approval**

For the purposes of section 126AKDE of the Customs Act, an approval of an entity as an approved exporter is subject to the following conditions:

- the entity complies with paragraph 4 of Rule 15 of Annex 3A to Chapter 3 of the Agreement; and
- any other conditions specified in the approval by the Comptroller General of Customs.

Paragraph 4 of Rule 15 of Annex 3A establishes the following obligations on the approved exporter:

- to allow the competent authority of an exporting Party access to the records referred to in Rule 25 and premises for the purposes of monitoring the use of an authorisation;
- to complete Declarations of Origin only for goods for which the approved exporter has been allowed to do so by the competent authority of an exporting Party and for which it has all appropriate documents proving the originating status of the goods concerned at the time of completing the declaration;
- to take full responsibility for all Declarations of Origin completed, including any misuse; and
- to promptly inform the competent authority of an exporting Party of any changes related to the information referred to in subparagraph (b).

Ongoing satisfaction of the conditions of approval is a key principle of the approved exporter scheme. Ongoing monitoring will be undertaken to ensure an entity that has entered into the scheme continues to satisfy the above obligations on the approved exporter.

#### **Regulation 6.5 Variation, suspension or termination of approval**

Subregulation 6.5(1) provides that the Comptroller General of Customs may, in writing, vary, suspend or terminate an entity's approval as an approved exporter if the Comptroller-General is satisfied that:

- the entity no longer meets the eligibility criteria under regulation 6.2; or
- the entity has not complied, or is not complying, with any condition of the entity's approval.

Consideration of the matters in subregulation 6.5(1) enables a holistic assessment of non-compliance. These factors are intended to operate to put any history of any non-compliance into context by considering the elements that may be regarded as mitigating factors and assist in determining the seriousness of any previous non-compliance. For example, when considering the extent and degree of any non-compliance, the Comptroller-General of Customs may consider

matters such as whether the non-compliance was an isolated incident or an ongoing pattern of systemic non-compliance, the materiality of the non-compliance (which may be determined by having regard to the seriousness of the consequences of the non-compliance) and the frequency of non-compliance having regard to the entity's volume of trade.

Subregulation (2) provides that, without limiting subregulation (1), a variation of an approval may involve imposing new conditions on the approval or varying or removing existing conditions.

Subregulation (3) provides for the process the Comptroller-General must follow when making a decision under subregulation (1). Before making a decision, the Comptroller-General must, in writing, state the decision it is considering making, state the reasons for the decision and invite the entity to make written submissions to the Comptroller-General within the period specified in the notice.

Subregulation (4) provides that, in deciding to make a decision under subregulation (1), the Comptroller-General must consider any submissions received from the entity within the period specified in the notice.

Subregulation (5) provides that subregulation (4) does not limit the matters the Comptroller-General may consider in deciding whether to make a decision under subregulation (1).

Subregulation (6) provides the Comptroller-General of Customs must give notice of a variation, suspension or termination to the entity. The purpose of this is to provide entities with certainty of the outcome of the Comptroller-General of Customs decision.

Subregulation (7) outlines the notice must specify the day the variation, suspension or termination takes effect.

Subregulation (8) provides that the Comptroller-General of Customs must give the entity notice in writing of the decision not to vary, suspend or terminate its approval as an approved exporter.

Subregulation (9) outlines an approval has no effect while suspended, but the period for which it remains in force continues to run despite the suspension.

Subregulation (10) provides that the Comptroller-General of Customs may, under subregulation (1), vary or terminate an approval while it is suspended.

Subregulation (11) provides that the Comptroller-General of Customs may, in writing, revoke a suspension under subregulation (1).

Subregulation (12) outlines that the Comptroller-General must give notice of the revocation of the suspension to the entity. The notice must specify the day the revocation takes effect.

Subregulation (13) provides that an application may be made to the Administrative Review Tribunal for review of a decision to vary, suspend or terminate an entity's approval as an approved exporter.

**Customs (International Obligations) Regulation 2015**

**Item 5 – Section 4 (paragraph (b) of the definition of *Certificate of Origin*)**

This item amends section 4 of the International Obligation Regulation to repeal the definition of *Certificate of Origin*.

The amendments made by item 6 will insert a definition of *Proof of Origin* into regulation 4 of the International Obligation Regulation. That definition covers *Certificate of Origin* and *Declaration of Origin*, both by reference to the meaning as set out in Chapter 3 of the Second Protocol. As a result, the definition of *Certificate of Origin* under section 4 is no longer required and is repealed.

**Item 6 – Section 4**

This item inserts a new definition of *Proof of Origin* into regulation 4 of the International Obligation Regulation.

*Paragraph 4(a) – Proof of Origin for AANZ originating goods*

Rule 1 to Annex 3A of the Second Protocol outlines the new document requirement to be met under the Second Protocol in order to determine whether the import goods are to be treated as AANZ originating goods covered by that Agreement and therefore be eligible for preferential tariff treatment. Under Rule 1, any of the following shall be considered as a Proof of Origin:

- a Certificate of Origin issued by an Issuing Authority/Body in accordance with this Annex;
- a Declaration of Origin by an approved exporter in accordance with paragraph 1(a) of Rule 14; or
- a Declaration of Origin by an exporter or producer in accordance with paragraph 1(b) of Rule 14;

based on available information that the good is an originating good.

This item implements the new document requirement by defining *Proof of Origin* to have the same meaning given by subsection 153ZKB(1) of the Customs Act, which is a certificate or declaration that is in force and complies with the requirements of Rule 1 of Annex 3A to Chapter 3 of the Second Protocol.

The purpose of this amendment is to complement the amendments made by items 7 and 8, and together give effect to Article 15 of Chapter 3 of the Second Protocol for the purpose of Article 2 of that Chapter. Article 2 of Chapter 3 outlines the kind of goods that are to be treated as originating goods for preferential tariff treatment provided other requirements under that Chapter are met. Article 15 of Chapter 3 provides that a claim that goods are eligible for preferential treatment shall be supported by a Proof of Origin document which includes a Certificate of Origin and Declaration of Origin (as outlined in Rule 1 of Annex 3A to Chapter 3). These Regulations implement the amended concept of Proof of Origin, incorporating the previous

Certificate of Origin within this broader term as well as incorporating the new Declaration of Origin.

Paragraph 5 of Rule 1 sets out the format and the matters to be included in a Proof of Origin.

The amendment made by this item has the effect of incorporating the aforementioned requirements under the Second Protocol, ensuring the document requirements to be met and implemented under amendments made by items 6 to 8 are consistent with the Second Protocol.

*Paragraph 4(b) – Proof of Origin for RCEP originating goods*

Paragraph 1 of Article 3.16 of Chapter 3 of the RCEP Agreement outlines the document requirement to be met under the RCEP Agreement in order to determine whether the imported goods are to be treated as RCEP originating goods covered by that Agreement and therefore be eligible for preferential tariff treatment. Under paragraph 1, any of the following shall be considered as a Proof of Origin:

- a Certificate of Origin issued by an Issuing Authority/Body in accordance with this Annex;
- a Declaration of Origin by an approved exporter in accordance with paragraph 1(a) of Rule 14; or
- a Declaration of Origin by an exporter or producer in accordance with paragraph 1(b) of Rule 14;

based on available information that the good is originating.

This item implements the new document requirement by defining *Proof of Origin* to have the same meaning given by subsection 153ZKQB(1) of the Customs Act, which is a certificate or declaration that is in force and complies with the requirements of paragraph 1 of Article 3.16 of Chapter 3 of the RCEP Agreement.

Paragraph 5 of Article 3.16 sets out the format and the matters to be included in a Proof of Origin.

The amendment made by this item has the effect of incorporating the aforementioned requirements under the RCEP Agreement, ensuring the document requirements to be met.

**Item 7 – Section 23 (table item 8)**

Section 23 of the International Obligation Regulation prescribes circumstances in which a refund, rebate or remission may be made by a Collector. The regulation also contains a table of originating goods, and the circumstances for refunds, rebates and remissions for each good. The table under Section 23 sets out the circumstances for refunds, rebates and remissions for originating goods.

The ‘class of goods’ to which item 8 of that table relates is ‘goods that would have been AANZ originating goods if, at the time the goods were imported, the importer held a Certificate of Origin or a copy of a Certificate of Origin for the goods’.

The circumstances where a refund, rebate or remission may be made by a Collector in relation to this class of goods are:

- that duty has been paid on the goods; and
- that the importer holds a Certificate of Origin or a copy of a Certificate of Origin for the goods at the time of making the applications for the refund.

This item amends table item 8 in section 23 of the International Obligations Regulations to omit the words ‘Certificate of Origin’ and substitute them with ‘Proof of Origin’. In doing so, these amendments enable a refund of duty for goods that would have been AANZ originating good if, at the time the goods were imported, the importer held a Proof of Origin or a copy of a Proof of Origin for the goods where both of the following apply:

- the duty has been paid on the goods;
- the importer holds a Proof of Origin or a copy of a Proof of Origin for the goods at the time of making the application for the refund.

A Proof of Origin is a document that has the same meaning given by subsection 153ZQB(1) of the Customs Act. That is, a document that is in force and that complies with the requirements under Article 3.16 of Chapter 3 of the Agreement.

Under paragraph 1 of Article 3.16 of Chapter 3, any of the following shall be considered as a Proof of Origin:

- a Certificate of Origin issued by an issuing body in accordance with Article 3.17 a (Certificate of Origin);
- a Declaration of Origin by an approved exporter in accordance with subparagraph 1(a) of Article 3.18 (Declaration of Origin); or
- a Declaration of Origin by an exporter or producer in accordance with subparagraph 1(b) of Article 3.18 (Declaration of Origin), and subject to implementation in accordance with that Article;

based on information available that the good is an originating good.

### **Item 8 – Section 23 (table item 18)**

Section 23 of the International Obligation Regulation outlines circumstances in which a refund, rebate or remission may be made by a Collector. The regulation also contains a table of originating goods, and the circumstances for refunds, rebates and remissions for each good. The table under section 23 sets out the circumstances for refunds, rebates and remissions for originating goods.

The ‘class of goods’ to which item 18 of that table relates is ‘goods that would have been RCEP originating goods if, at the time the goods were imported, the importer held a Proof of Origin (within the meaning of subsection 153ZQB(1) of the Act), or a copy of one, for the goods’.

The circumstances where a refund, rebate or remission may be made by a Collector in relation to this class of goods are:

- that duty has been paid on the goods; and
- that the importer holds a Proof of Origin (within the meaning of subsection 153ZQB(1) of the Act), or a copy of one, for the goods at the time of making the applications for the refund.

This item amends table item 18 in section 23 of the International Obligation Regulation to omit ‘within the meaning of subsection 153ZQB(1) of the Act’ wherever occurring. The purpose of this item is to provide consistency with the amendments made in item 7 which do not refer to the relevant subsection in the Customs Act as well as ensure that any amendments made to subsection 153ZQB(1) of the Customs Act would not affect the Regulation.

## **Schedule 2—Approved exporters for Regional Comprehensive Economic Partnership Agreement**

### **Customs (Regional Comprehensive Economic Partnership Rules of Origin) Regulations 2021**

#### **Item 1 – Section 1**

Section 1 omits *Customs (Regional Comprehensive Economic Partnership Rules of Origin) Regulations 2021* and substitutes it with *Customs (Regional Comprehensive Economic Partnership Rules of Origin) Regulations 2009*. As the Regulations introduce provisions in relation to the approved exporter scheme, the purpose of this change is to reflect that the amending provisions include other matters that do not directly relate to Rules of Origin.

#### **Item 2 – At the end of subsection 11(1)**

This item adds new subparagraph (j) to the record keeping obligations found in subsection 11.

Subparagraph (j) provides that for the purposes of subsection 126AQB(1) of the Act, an exporter of goods mentioned in that subsection, who is not also the producer of the goods, must keep the following records:

- any other documents in support of the goods being originating goods in accordance with Chapter 3 of the Agreement (including documents from the producer or supplier of the goods).

This item is to ensure paragraph 8 of Article 3.21 of the RCEP Agreement is effectively implemented. Paragraph 8 of Article 3.21 provides that:

8. *An approved exporter shall be prepared to submit at any time, on request of the customs authorities of the importing Party, all appropriate documents proving the originating status of the goods concerned, including statements from the suppliers or producers in accordance with the laws and regulations of the importing Party as well as the fulfilment of the other requirements of this Chapter.*

The purpose of this item is to address a potential gap which would arise if there are documents which fall within the scope of paragraph 8 of Article 3.21 but which do not currently fall within the categories of documents an approved exporter is required to keep under the regulations. This item also ensures consistency with the new record-keeping obligations to be inserted under the Customs (*ASEAN-Australia-New Zealand Rules of Origin*) Regulations 2009.

### **Item 3 – At the end of the instrument add Part 6 –Approved Exporters**

This inserts new Part 6, which is titled ‘Approved exporters’.

Subsection 126AQE(2) of the Customs Act contains a head of power, as inserted by the AANZFTA Act, to administer the approved exporter scheme including by prescribing various matters in regulations.

Subsection 126AQE(3) of the Customs Act provides that the Comptroller-General of Customs may make provision for the following matters:

- the making of applications to the Comptroller General of Customs by entities for approval as approved exporters and the withdrawal of those applications;
- the eligibility criteria that an entity must meet in order for the Comptroller General to approve the entity as an approved exporter;
- the matters that the Comptroller General must consider in deciding whether to approve an entity as an approved exporter;
- the making of decisions by the Comptroller General of Customs in relation to the applications;
- the conditions that an approval of an entity as an approved exporter is subject to;
- the variation, suspension or termination of an approval of an entity as an approved exporter;
- the giving of notice of decisions made by the Comptroller General of Customs ;
- the review of decisions made by the Comptroller General of Customs.

Article 3.21 of the RCEP Agreement establishes the scheme to allow approved exporters to issue Declarations of Origin. The RCEP Agreement allows, in addition to the Certificates of Origin issued by issuing bodies, exporters or producers to issue Proof of Origin through self-issued Declarations of Origin where the exporter has been authorised as an ‘approved exporter.’

In general, this means that there is less oversight over the making of a Declaration of Origin, however, many of Australia’s existing free trade agreements allow for a form of self-declaration without any additional administrative burdens. This would bring about greater convenience to businesses by saving time and eliminating the need to obtain a Certificate of Origin.

The approved exporter schemes implemented in the RCEP Agreement provide additional safeguards to the use of Declarations of Origin by ensuring that exporters using Declarations of Origin comply with standards implemented under that agreement. The duration of the approved

exporter scheme is time limited, up to 30 years in the case of Cambodia, Laos PDR and Myanmar.

Prescribing matters relating to the approved exporter scheme in subordinate regulations ensures flexibility and adaptability. The regulatory frameworks for the approved exporter scheme have been designed to balance stability and transparency, allow reasonable flexibility to take account of the dynamic international trade environment and ensure the continued relevance of the scheme to participants. This approach also allows the Department to more quickly update the scheme as international trade dynamics change or as compliance requirements evolve. By prescribing details of the scheme in the regulations, the Department can implement and revise procedures efficiently, making it easier for exporter to understand and comply with the requirements.

The implementation of the scheme will be subject to ongoing evaluation by the Department. As the program evolves, further opportunities to reduce the regulatory burden associated with customs procedures at the border may be identified. Prescribing these in the regulations rather than the primary legislation will provide the flexibility that is required to enable the scheme to develop.

As the regulations are a legislative instruments, they will be subject to parliamentary scrutiny and disallowance.

### Section 13 - Application for approval as approved exporter

Subsection 13(1) provides that an exporter may apply to the Comptroller-General of Customs for approval as an approved exporter. Subsection 13(2) outlines that an application may be made by either by document or electronically.

These provisions are modelled after section 176B of the Customs Act to ensure consistency with other legislative models such as the Australia Trusted Trader scheme. The application is a self-assessment questionnaire which contains questions addressing the qualification criteria set out in these Regulations. It also will contain general information questions to allow the Comptroller-General of Customs to gather sufficient information to form a comprehensive view of the entity and identify any risks in its international supply chain.

Subsection (3) provides that a documentary application must:

- be communicated to the Comptroller General of Customs; and
- be in an approved form; and
- contain the information required by the approved form; and
- be signed in a manner indicated by the approved form.

Subsection (4) provides that an electronic application must communicate such information as is set out in an approved statement.

Subsection (5) allows applicants to withdraw their application at any time.

### Section 14 Eligibility Criteria

Section 14 implements Article 3.21 of Chapter 3 of the RCEP Agreement and requires prospective approved exporters to satisfy the following eligibility criteria:

- a trusted trader agreement with the entity is in force under section 176A of the Act;
- the Comptroller-General is satisfied that the entity knows and understands the rules of origin as set out in Section B of Chapter 3 of the Agreement;
- the Comptroller-General is satisfied that, if the entity were to complete a Declaration of Origin for goods exported to a Party, the entity would be able to obtain from the producer of the goods a declaration:
  - (i) claiming that the goods are originating goods in accordance with Chapter 3 of the Agreement; and
  - (ii) stating that the producer is willing to cooperate with any verification process in accordance with Article 3.24 of Chapter 3 of the Agreement and is able to meet the requirements of Section B of that Chapter.

By limiting the eligibility criteria to entities already subject to an Australian Trusted Trader agreement, the Department can ensure those participants in the approved exporter scheme are able to demonstrate use of secure supply chains and a high level of trade compliance.

#### Regulation 15 Comptroller-General of Customs to decide application

Subsection 15(1) enables the Comptroller General of Customs, in writing, to approve an entity as an approved exporter if:

- the entity makes an application in accordance with under section 13 of this instrument; and
- the Comptroller General of Customs is satisfied that the entity meets the eligibility criteria under section 14 of this instrument.

Subsection 15(2) outlines that the Comptroller-General must consider the following matters in deciding whether to approve an entity as an approved exporter:

- whether a trusted trader agreement between the entity and the Comptroller General of Customs has been varied, suspended or terminated under section 178A of the Act;
- whether the Comptroller General is considering varying, suspending or terminating a trusted trader agreement between the entity and the Comptroller General.

Subsection (3) provides that subsection (2) does not limit the matters the Comptroller-General may consider in deciding whether to approve an entity as an approved exporter.

When considering the risks posed by the entity becoming an approved exporter, factors such as whether the Comptroller-General of Customs has or is considering varying, suspending or terminating a trusted trade agreement is relevant and may act as mitigating factors against any risks considered by the Comptroller-General of Customs. For example, when considering the extent and degree of any non-compliance, the Comptroller-General of Customs may consider

matters such as whether the non-compliance was an isolated incident or an ongoing pattern of systemic non-compliance, the materiality of the non-compliance (which may be determined by having regard to the seriousness of the consequences of the non-compliance) and the frequency of non-compliance having regard to the entity's volume of trade.

Subsection (4) provides that an approval under subsection 15(1) must also specify the entity's approved exporter code. This code is a unique reference number of the approved exporter and must be indicated on Proof of Origin documents under the Second Protocol.

Subsection (5) provides that the Comptroller-General must give a copy of an approval under subsection (1) to the entity.

Subsection (6) provides that an approval under subsection (1) must specify the period for which it is in force.

Subsection (7) provides that if an entity makes an application for approval as an approved exporter and the application is in accordance with under section 13, the Comptroller General of Customs may, in writing, refuse to approve the entity as an approved exporter.

Subsection (8) provides that if the Comptroller-General does refuse an application under subsection (7), the Comptroller General must notify the entity of the refusal and of the reasons for the refusal.

Subsection (9) provides than an application may be made to the Administrative Review Tribunal for review of a decision to refuse to approve an entity as an approved exporter.

### **Section 16 Conditions of Approval**

For the purposes of section 126AQE of the Act, an approval of an entity as an approved exporter is subject to the following conditions:

- the entity complies with paragraph 3 of Article 3.21 of Chapter 3 of the Agreement; and
- any other conditions specified in the approval by the Comptroller General of Customs.

Paragraph 3 of Article 3.21 of Chapter 3 of the RCEP Agreement establishes the following obligations on the approved exporter:

- to allow the competent authority of an exporting Party access to the records and premises for the purposes of monitoring the use of an authorisation, in accordance with referred to in Article 3.27 (Record-Keeping Requirement);
- to complete Declarations of Origin only for goods for which the approved exporter has been allowed to do so by the competent authority of an exporting Party and for which it has all appropriate documents proving the originating status of the goods concerned at the time of completing the declaration;
- to take full responsibility for all Declarations of Origin completed, including any misuse; and

- to promptly inform the competent authority of an exporting Party of any changes related to the information referred to in subparagraph (b).

Ongoing satisfaction of the conditions of approval is a key principle of the approved exporter scheme. Ongoing monitoring will be undertaken to ensure an entity that has entered into an approved scheme continues to satisfy the above obligations on the approved exporter.

#### Section 17 Variation, suspension or termination of approval

Section 17(1) provides that the Comptroller General of Customs may, in writing, vary, suspend or terminate an entity's approval as an approved exporter if the Comptroller-General is satisfied that:

- the entity no longer meets the eligibility criteria under regulation 14 of this instrument; or
- the entity has not complied, or is not complying, with any condition of the entity's approval.

Consideration of the matters in section 17(1) enables a holistic assessment of non-compliance. These factors are intended to operate to put any history of any non-compliance into context by considering the elements that may be regarded as mitigating factors and assist in determining the seriousness of any previous non-compliance. For example, when considering the extent and degree of any non-compliance, the Comptroller-General of Customs may consider matters such as whether the non-compliance was an isolated incident or an ongoing pattern of systemic non-compliance, the materiality of the non-compliance (which may be determined by having regard to the seriousness of the consequences of the non-compliance) and the frequency of non-compliance having regard to the entity's volume of trade.

Subsection (2) provides that, without limiting subsection (1), a variation of an approval may involve imposing new conditions on the approval or varying or removing existing conditions.

Subsection (3) provides for the process the Comptroller-General must follow when making a decision under subsection (1). Before making a decision, the Comptroller-General must, in writing, state the decision it is considering making, state the reasons for the decision and invite the entity to make written submissions to the Comptroller-General within the period specified in the notice.

Subsection (4) provides that, in deciding to make a decision under subsection (1), the Comptroller-General must consider any submissions received from the entity within the period specified in the notice.

Subsection (5) provides that subsection (4) does not limit the matters the Comptroller-General may consider in deciding whether to make a decision under subsection (1).

Subsection (6) provides the Comptroller-General must give notice of a variation, suspension or termination to the entity. The purpose of this is to provide entities with certainty of the outcome of the Comptroller-General of Customs decision.

Subsection (7) outlines the notice must specify the day the variation, suspension or revocation takes effect (which must not be before the day after the notice is given to the entity).

Subregulation (8) provides that the Comptroller-General of Customs must give the entity notice in writing of the decision not to vary, suspend or terminate its approval as an approved exporter.

Subsection (9) outlines an approval has no effect while suspended, but the period for which it remains in force continues to run despite the suspension.

Subsection (10) provides that the Comptroller-General of Customs may, under subsection (1), vary or revoke an approval while it is suspended.

Subsection (11) provides that the Comptroller-General of Customs may, in writing, revoke a suspension under subsection (1).

Subsection (12) outlines that the Comptroller-General of Customs must give notice of the revocation of the suspension to the entity. The notice must specify the day the revocation takes effect.

Section (13) provides that an application may be made to the Administrative Review Tribunal for review of a decision to vary, suspend or terminate an entity's approval as an approved exporter.

## **Part 7 – Application provisions**

### **[Item 18] Amendments made by the *Customs Legislation Amendment (ASEAN-Australia-New Zealand Free Trade Area Second Protocol Implementation and Other Measures) Regulations 2025***

This item provides that the amendment of subsection 11(1) made by Schedule 2 to the proposed Regulations would apply in relation to goods produced on or after the commencement of that Schedule.

The purpose and effect of this amendment is to clarify when the goods to which these amendments apply.

## **Statement of Compatibility with Human Rights**

Issued by authority of the Minister for Home Affairs

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

### ***Customs Legislation Amendment (ASEAN-Australia-New Zealand Free Trade Area Second Protocol Implementation and Other Measures) Regulations 2025***

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Disallowable Legislative Instrument**

The purpose of the Customs Legislation Amendment (ASEAN-Australia-New Zealand Free Trade Area Second Protocol Implementation and Other Measures) Regulations 2025 (the Regulations) is to prescribe new rules relating to record keeping, verification, an approved exporter scheme and rules of origin under Part VI and part VIII of the Customs Act 1901 (the Customs Act). These rules implement measures under the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) as amended by the First Protocol to Amend the AANZFTA and the Regional Comprehensive Economic Partnership Agreement (RCEP).

On 21 August 2023, Assistant Foreign Minister, the Hon Tim Watts MP, and ministers from Brunei Darussalam, Indonesia, Malaysia, Singapore and New Zealand signed the Second Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (the Second Protocol). The Second Protocol updated AANZFTA, to provide for upgraded documentary requirements for claiming preferential rates of customs duty under the Agreement, new origin verification requirements and an Approved Exporter scheme.

The Customs Amendment (ASEAN-Australia-New Zealand Free Trade Area Second Protocol Implementation and Other Measures) Act 2024 (Customs Implementation Act) amended Divisions 4EAA and 4L of Part VI and Division 1G of Part VIII of the Customs Act to implement the new requirements under the Second Protocol. The Customs Implementation Act also implemented the Approved Exporter scheme provided for under RCEP, which entered into force for Australia on 1 January 2022.

The Customs Legislation Amendment (ASEAN-Australia-New Zealand Free Trade Area Second Protocol Implementation and Other Measures) Regulations 2025 (the Regulations) amends the Customs (ASEAN-Australia-New Zealand Rules of Origin) Regulations 2009, the Customs (International Obligations) Regulation 2015 and the Customs (Regional Comprehensive Economic Partnership Rules of Origin) Regulations 2021 to prescribe matters that are required under the Second Protocol and RCEP for the purposes of Divisions 4EAA and 4L of Part 6 and 1G of Part VIII of the Customs Act. The Regulations will:

- update the calculation of regional value content and the refund circumstances applicable to goods under AANZFTA;
- provide record keeping obligations for exporters and producers where goods claim preferential customs duty rates under AANZFTA; and
- establish conditions for an Approved Exporter scheme for AANZFTA and RCEP.

Schedule 1 of the Regulations commences at the same time as Schedule 1 to the Customs Implementation Act, which is on the later of the day the Customs Implementation Act receives the Royal Assent and the day the Second Protocol enters into force for Australia. Schedule 2 of the Regulations commences at the same time as Schedule 2 to the Customs Implementation Act, which is on a day to be fixed by Proclamation or, if the provisions do not commence within six months of the day that the Customs Implementation Act receives the Royal Assent, the day after the end of that period.

### **Human rights implications**

This Disallowable Legislative Instrument engages:

- the right to a fair and public hearing, including the preservation of the privilege against self-incrimination under Article 14 of the International Covenant on Civil and Political Rights (ICCPR); and
- the right to privacy under Article 17 of the ICCPR.

#### **Right to a Fair and Public Hearing**

Article 14(1) of the ICCPR provides the right to a fair and public hearing in civil proceedings as one of the guarantees in relation to legal proceedings. The right to a fair hearing provides that all persons are equal before courts and tribunals and guarantees a fair and public hearing before a competent, independent and impartial court or tribunal established by law.

The Customs Implementation Act inserts new sections 126AKDE and 126AQE into the Customs Act, which allow for regulations to be made for the purposes of, among other things, applications for Approved Exporter status, approval, variation, suspension and termination of approval of an Approved Exporter, and the review of decisions made by the Comptroller-General. The Regulations provide that if the Comptroller-General of Customs refuses to approve the entity as an approved exporter, an application may be made to the Administrative Review Tribunal (ART) for the review of that decision. An application can also be made to the ART for the review of a decision to vary, suspend or revoke an entity's approval as an approved exporter.

In most cases entities applying for approved exporter status will be corporations. However, in instances in which the entity is an individual, the right to equality and non-discrimination will be engaged in relation to a decision of the Comptroller-General of Customs under the approved exporter scheme.

The Regulations promote this right as they provide for external merits review of certain decisions by the Comptroller-General of Customs. This supports the right to a fair hearing, as entities may apply to the ART to seek an independent review of decisions made by the Comptroller-General

of Customs to refuse to approve an entity as an approved exporter, or to vary, suspend or revoke an entity's approval as an approved exporter.

### Right to Privacy

Article 17 of the ICCPR states that “No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, not to unlawful attacks on his honour and reputation”. It provides that persons have the right to the protection of the law against such interference or attacks. An interference with privacy will not be arbitrary if it is authorised by law or consistent with the provisions, aims and objectives of the ICCPR and is reasonable in the circumstances. Reasonableness, in this context, incorporates notions of proportionality, appropriateness and necessity. In essence, this will require that limitations:

- serve a legitimate objective
- adopt a means that is rationally connected to that objective and
- the means adopted are not more restrictive than they need to be to achieve that objective.

A number of amendments in the Regulations engage the right to privacy contained in Article 17 of the ICCPR because they require the collection, use and disclosure of commercial and personal information.

### *Record keeping obligations*

Under Chapter 3 of the Second Protocol, a Proof of Origin document provided by the exporter or producer shall support a claim that the goods are eligible for preferential rates of customs duty in accordance with AANZFTA. The information that must be included in these documents, that is a Certificate of Origin or Declaration of Origin, is detailed in Appendix 3A.1 and Appendix 3A.2 to Chapter 3 of the Second Protocol. This information may include personal information.

The Customs Implementation Act inserts new sections 126AKDB and 126AKDC into the Customs Act to enable regulations to be made that prescribe record keeping obligation for goods exported from a Party to AANZFTA that are claimed to be AANZFTA originating in accordance with the Agreement.

The regulations prescribing record keeping obligations are in Part 5 of the Regulations. These require records and evidence of the purchase and value of materials, the production of goods, and the Proof of Origin to be kept for at least 5 years from the date that the Proof of Origin for the goods is issued. The Regulations implement the record keeping requirements of Rule 25 of Annex 3A to Chapter 3 of the Second Protocol.

Part 5 of the Regulations and sections 126AKDB and 126AKDC of the Customs Act operate to allow an authorised officer to verify the origin of goods exported from Australia that are claimed to be AANZFTA originating goods. As a Proof of Origin includes personal information, this engages the right to privacy. Information contained in a Proof of Origin may be disclosed to an AANZ customs official (within the definitions in section 126AKA of the Customs Act) for the purpose of verifying a claim for preferential tariff treatment under AANZFTA.

The limitation of the right to privacy is not arbitrary and is pursuant to law. Amendments to the Customs Act made by the Customs Implementation Act permit the collection and disclosure of personal information in relation to claiming goods to be AANZFTA originating goods. The

provisions of the Customs Implementation Act and the Regulations do not alter the existing protections.

The verification of eligibility for preferential tariff treatment is required under AANZFTA and the measures in the Regulations are directed at the legitimate purpose of facilitating and supporting Australia's international obligations under the agreement. The collection and disclosure of personal information will only be permitted for the limited purposes of verifying a claim made by a person for preferential tariff treatment, making it a reasonable and proportionate response for a legitimate purpose. As such, the collection and disclosure of personal information in these circumstances is not an unlawful or arbitrary interference with privacy.

### *Nomination*

Under Rule 15 of Annex 3A of Chapter 3 the Second Protocol, Parties to the agreement shall authorise and grant the status of an Approved Exporter to exporters that apply in writing or electronically and meet the conditions provided by that party. Approved Exporters are permitted to complete Declarations of Origin in accordance with Rule 14 of Annex 3A of Chapter 3 of the Second Protocol to support claims that goods are originating and are eligible for preferential tariff treatment under the Agreement. The authorisation of Approved Exporters under Article 3.21 of Chapter 3 of RCEP requires that exporters seeking this status apply in writing or electronically and meet conditions provided by the approving Party. Article 3.16 of Chapter 3 provides that a Declaration of Origin by an Approved Exporter is a Proof of Origin, which can be used to support a claim for preferential tariff treatment.

The Customs Implementation Act inserts new sections 126AKDE and 126AQE into the Customs Act to enable regulations to be made in relation to the approval of entities as Approved Exporters. The Regulations provide that the application made to the Comptroller-General of Customs by an entity for approval as an Approved Exporter must contain, in electronic or document form, the information in an approved form, including the entity's approved exporter code.

An application to become an Approved Exporter will require the entity seeking to obtain this status to disclose information, including personal information, to the Comptroller General of Customs. This information will be limited to information identifying the exporter, such as their legal or trading name and business address, and information required to assess the suitability of an exporter for the approved exporter scheme, such as the exporter's prior compliance with the scheme. In most cases, entities applying for Approved Exporter status will be corporations. However, in instances in which the entity is an individual, the right to privacy will be engaged in relation to the requirement to provide personal information and consent to its disclosure.

The collection, use and disclosure of this information will be done in accordance with the *Privacy Act 1988*, including the Australian Privacy Principles. Applications for Approved Exporter status will be supplemented with a privacy notice listing the circumstances in which their personal information can be used, stored and disclosed.

As part of the privacy notice associated with their application, an entity will also be required to consent to their personal information being collected and disclosed either to the other Parties to the respective agreement or through a public register. Information that may be collected and shared may include: the legal name and address of the exporter, their approved exporter

authorisation code, the issuance date and expiry date of approval of Approved Exporter status and goods to which the approval relates. Failure to consent to the sharing of information will mean that they do not meet the requirements of the respective agreements. The collection and disclosure of this information will be limited to the information required to grant and maintain Approved Exporter status and to allow Parties to AANZFTA or RCEP to verify compliance with the Approved Exporter scheme to ensure that goods are eligible for preferential rates of customs duty in accordance with the relevant agreement.

To the extent that an entity is an individual and their name is disclosed to Parties to the agreement or through a public register, the right to privacy will be limited. This limitation is not arbitrary and is directed at the legitimate objectives of implementing Australia's international obligations under AANZFTA and RCEP and facilitating streamlined documentary requirements for claiming preferential tariff treatment under these agreements.

Participation in the Approved Exporter scheme is voluntary and if entities choose not to opt in, other alternative method of certifying eligibility for preferential tariff treatment is available to exporters. Where an application for Approved Exporter status limits the right to privacy, the information that will be required will be limited to that which allows for identification of an entity and verification of the entity's compliance with AANZFTA, RCEP or the approved exporter schemes under these agreements. As such, the limitation will be reasonably necessary, proportionate and rationally connected to the objective of ensuring that only exporters who have demonstrated their capacity to comply with origin requirements under the agreements are able to self-certify the originating status of their goods.

## **Conclusion**

The Disallowable Legislative Instrument is compatible with human rights because it promotes the right to a fair and public hearing and to the extent that it limits the right to privacy, those limitations are reasonable, necessary and proportionate in achieving a legitimate objective.

**The Hon. Tony Burke MP, Minister for Home Affairs**

# **Signing of the Second Protocol to Amend the Agreement Establishing the ASEAN- Australia-New Zealand Free Trade Area**

## **Impact Analysis**

**Department of Foreign Affairs and Trade**

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## Introduction

### Signing the Second Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area

In accordance with the Australian Government Guide to Policy Impact Analysis, the Department of Foreign Affairs and Trade (DFAT) has completed this Impact Analysis (IA) to analyse the impact of the decision to sign *the Second Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA Amendment)*.

The Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) entered into force in January 2010 for Australia. It is a regional free trade agreement (FTA), with the ten ASEAN Member States (Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand, Vietnam), Australia and New Zealand. The Agreement has provisions for regular reviews to improve its implementation and ensure it remains a high quality, ambitious, and contemporary FTA.

In 2016, the Parties commenced a General Review of AANZFTA, in line with Article 9 of Chapter 18 of the Agreement, with the aim of removing impediments to trade and to further increase trade and investment between the Parties.

In 2018, AANZFTA Ministers endorsed recommendations from the General Review, agreeing to start upgrade negotiations. These negotiations were formally launched in late 2020, with negotiation rounds starting from 2021. Ministers involved in the negotiations substantially concluded negotiations to the upgraded AANZFTA on November 13, 2022, at the 40th and 41st ASEAN Summit in Phnom Penh, Cambodia.

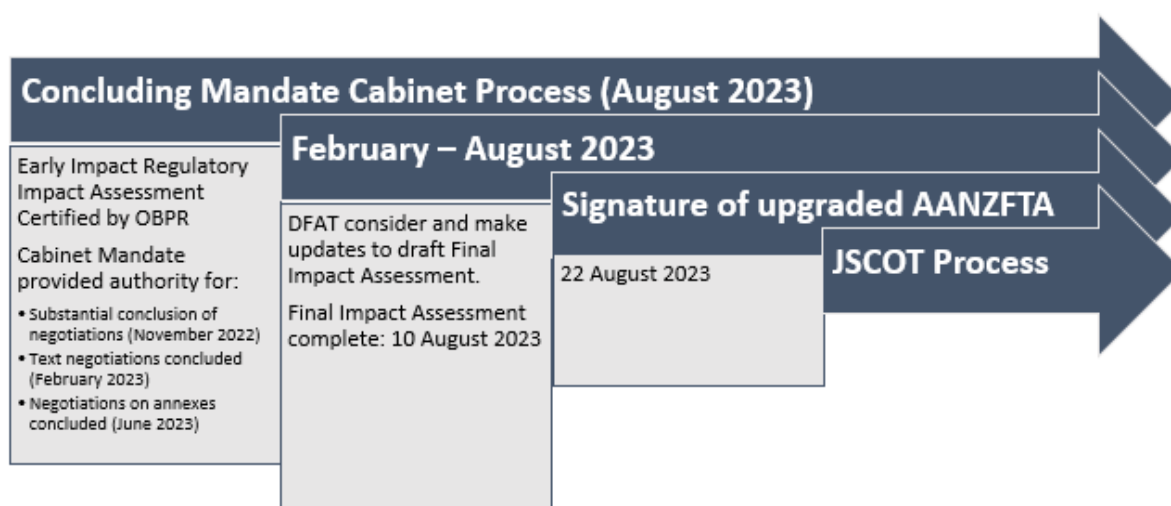
Negotiations on the AANZFTA Amendment were finalised in June 2023. The 2023 ASEAN Chair, Indonesia, alongside other ASEAN member states, intends the AANZFTA Amendment to be signed in the margins of the ASEAN Economic Ministers' Meetings in Semarang, Indonesia, between 20-22 August 2023. This is a Priority Economic Deliverable for Indonesia as 2023 ASEAN Chair, highlighting Indonesia's commitment to these timeframes.

Australia has a strong relationship with ASEAN states. Australia is ASEAN's first dialogue partner and in 2024, Australia will celebrate 50 years of dialogue partnership, including with a proposed Special Commemorative Summit. In 2021, our relationship was elevated to a Comprehensive Strategic Partnership (CSP). The CSP highlighted regional priorities, including the development of high-quality digital trade standards and the Regional Trade for Development (RT4D) initiative, in which Australia will contribute AUD46 million to support the implementation of both RCEP and AANZFTA through economic cooperation programs to maximise the benefits of these agreements. Ensuring that AANZFTA is a high-quality, contemporary agreement is essential to enable delivery of these key priorities.

Prime Minister Anthony Albanese has commented directly on the value of AANZFTA Amendment, by saying: 'Strengthening trade agreements with ASEAN and New Zealand will mean better outcomes for Australian business and Australian families.' The Minister for Trade and Tourism, Senator Don Farrell, said: 'By upgrading AANZFTA, we hope to create new commercial opportunities for Australians, our exporters and investors to work hand-in-hand with ASEAN. This would cement Australia as a partner of choice in an open and inclusive region.'

## Part 1 Impact Assessment Timeline

Below is a summary of the timeline of updates to the Impact Assessment.



### 1. What is the problem you are trying to solve?

#### 1.1 DFAT assessed that the original AANZFTA no longer met Australian consumer and business requirements

The original AANZFTA has not kept pace with new opportunities in the ASEAN region, such as in education, services, investment, mobility, and digital trade. Since AANZFTA entered into force in 2010, best practice for FTAs has changed as a result of technological developments in the digital economy and uptake of e-commerce, in order to facilitate greater e-commerce in the region and enhance consumer confidence, data transfers, promote privacy and combat fraud. The original AANZFTA also lacks modern FTA outcomes on areas such as environmental protection, competition, government procurement, labour rights and gender equality.

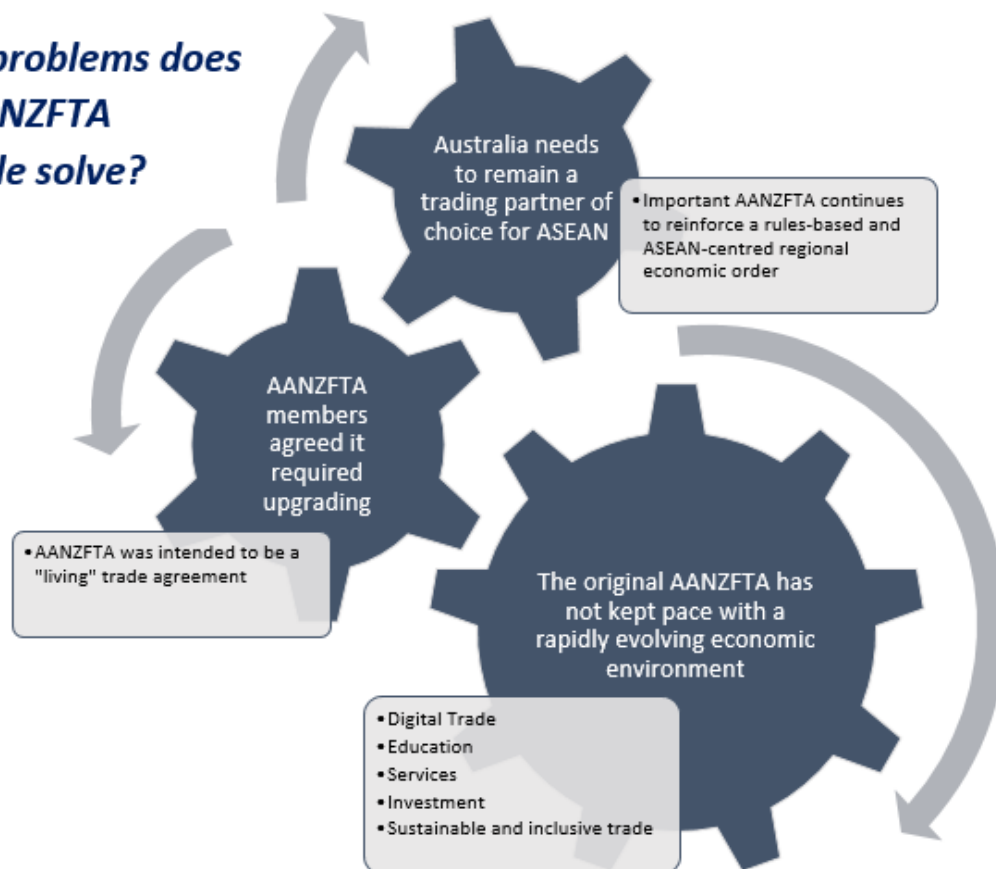
The upgrade to AANZFTA solves the problem of the current version of AANZFTA no longer meeting the consumer and business requirements for a high-quality, contemporary FTA.

ASEAN's trade is important for the Australian economy and it is therefore important to ensure that Australia remains a trading partner of choice for ASEAN. In 2021, Australia's trade with ASEAN countries was \$127.1 billion, which is greater than our two-way trade with Japan and the United States. Our two-way investment with ASEAN in 2021 was \$248.7 billion. A strong AANZFTA is also important as it reinforces a rules-based and ASEAN-centred regional economic architecture.

##### 1.1.1 Australian Stakeholders assessed that AANZFTA required upgrading

Submissions received from key Australian stakeholders, including peak industry bodies, on balance indicated that the Australian business community saw a requirement for the AANZFTA upgrade. In particular, stakeholders saw a need for streamlined rules of origin processes and updated services and investment outcomes to increase certainty for Australian businesses and investors. Stakeholders also sought trade facilitation measures and for progressive trade outcomes, such as on competition and sustainable development, to be included in the upgrade.

## What problems does the AANZFTA upgrade solve?



## 1.2 AANZFTA Parties agreed that the original AANZFTA required upgrading

The AANZFTA Parties envisaged that the Agreement would be a 'living' document and need periodic review and updating to ensure it remained a high quality and ambitious agreement. The First Protocol to Amend AANZFTA was signed by Ministers on 26 August 2014. This responded to practical business concerns in resolving implementation problems associated with Certificates of Origin and Rules of Origin.

In 2018, following the delivery of a 2017 comprehensive review of the Agreement (the AANZFTA General Review Stage One Report), AANZFTA trade and economic ministers agreed that AANZFTA required further modernisation to address technological advancements and to bring it in line with contemporary FTAs such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

The General Review Stage One Report found that the implementation period had been positive, with an ongoing implementation agenda, supported by review mechanisms, work programs and institutional arrangements established under the Agreement. Trade, investment and AANZFTA business utilisation had continued to increase. However, questions remained over business awareness and use of AANZFTA.

One challenge that reaffirmed the need to change international trade structures was the COVID-19 pandemic. This demonstrated a need for expedited trade during humanitarian crises, epidemics and pandemics - reinforcing the need to upgrade the Agreement to promote supply chain resiliency and economic integration.

### Part 2 1.1.3 Key areas where the original AANZFTA required upgrading

Industry inputs to the General Review highlighted a number of key issues for further work under AANZFTA, which are illustrated in Box 3.1, which was included in the Stage One Report.

The report highlighted that the broader regional architecture had evolved, with many AANZFTA Parties having signed more comprehensive bilateral and multilateral FTAs that provided more access to certain investment, services, digital opportunities, and closer economic cooperation commitments. AANZFTA Parties were also involved in the RCEP negotiations, which aimed to go further on goods, services, and investment commitments. In this broader context, it became imperative for AANZFTA to progress its built-in agenda and issues of interest to business, as well as to engage with other stakeholders. In particular, there was considerable potential for more work in the areas of customs procedures, sanitary and phytosanitary measures (SPS) and standards, technical regulations and conformity assessment procedures (STRACAP). Priority was accorded to progressing the services and investment built-in agendas, in particular on improving legal certainty and predictability of services regulations and investment regimes, as well as further developing rules in areas where policy frameworks are still developing, such as e-commerce. AANZFTA also provides a strategic focus for Australia, to promote ASEAN centrality and support the international rules-based order. The upgrade will further instil the importance of ASEAN in our region to promote economic integration, security, and supply chain resilience.

**Box 3.1 – Key issues highlighted by business for future work**

Business responses identified a number of key issues for future work under AANZFTA. These include:

➤ **Non-Tariff Measures**

Businesses consider NTMs to be a serious impediment to trade and the ability of companies to provide high quality products to consumers. Some businesses suggested harmonisation of standards as an area for further work in the AANZFTA General Review.

➤ **Tariffs**

Some exporters continue to face significant tariffs; addressing these is seen as a priority by those businesses affected.

➤ **Certificates of Origin**

Some exporters, noting that documentation requirements can be burdensome, sought improvements to the certification regime (including self-certification). Exporters also called for implementation of the First Protocol by the remaining AANZFTA Party.

➤ **Trade facilitation**

Exporters suggested that trade facilitation be addressed further through AANZFTA, including by updating the Agreement to build upon the WTO Trade Facilitation Agreement.

➤ **SPS and STRACAP**

Businesses suggested strengthening these Chapters of AANZFTA to provide for recognition of equivalence in regulation.

➤ **Regulatory cooperation**

Given regulatory requirements differ across the region (particularly for labelling, import/export certification and product registration), business is keen to improve regulatory cooperation with a view to streamlining and simplifying requirements across the region.

➤ **Professional services and qualifications recognition**

Businesses are seized with the benefits of providing for recognition of qualifications across the region.

➤ **Addressing the 'noodle bowl'**

Some businesses were concerned about the proliferation of overlapping FTAs and the complexity this creates for business. These businesses discouraged further negotiations until the conclusion of RCEP.

➤ **Outreach**

Respondents reported a knowledge gap when it came to existing trade agreements, including AANZFTA.

To address these limitations, the Ministers agreed to initiate AANZFTA upgrade negotiations on the following

- **Rules of origin:** to take better account of modern trade practices, address implementation issues encountered by Australian exporters and make rules of origin easier to use and less costly for traders.
- **Customs procedures:** enhance and modernise AANZFTA's provisions on customs procedures to promote trade facilitation, including a new provision that promotes expedited trade during humanitarian crises, epidemics and pandemics.
- **Services and investment:** incorporate best practice rules and legal architecture, as reflected in modern FTAs, such as the CPTPP and RCEP, to support market openness and enhance trade facilitative practices and regulatory certainty.

- **Movement of natural persons:** to better facilitate the movement of natural persons engaged in the conduct of trade and investment between the Parties and improve transparency of procedures of visa applications.
- **E-Commerce:** modernise AANZFTA to support the growth of the digital economy in Australia and reflect the substantial developments in the digital economy since AANZFTA was originally negotiated.
- **Competition (including consumer protection):** build on RCEP standards to include new provisions on consumer protection, including regional cooperation on the development and implementation of matters covered by the revised chapter.
- **Government procurement:** facilitate enhanced cooperation on labour rights, women's economic empowerment and environmental protection.
- **Micro, small, and medium enterprises (MSMEs):** new provisions for MSMEs as well as a framework for sharing information on best practice programs and activities aimed to enhance the capability of MSMEs to participate in and benefit from the economic opportunities created by the upgraded agreement.

AANZFTA's services and investment outcomes are modest compared to other agreements. Only 2.8 per cent of Australian investment goes to ASEAN and services exports are also underutilised, with Singapore accounting for one third of all Australian services exports to ASEAN. Australian companies are deterred from entering the underutilised ASEAN markets as they are concerned that the domestic laws and policies will change with no or little notice.

In their 13 November 2022 joint statement on the upgrade's substantial conclusion, the AANZFTA ministers emphasized the importance of the upgrade to strengthening the resilience of supply chains. The joint statement said that the upgrade 'is a testament to the AANZFTA Parties' resolve to accelerate post-pandemic economic recovery by deepening and broadening economic integration and cooperation to bolster more robust and resilient supply chains, keep markets open for trade and investment and catalyse longer-term growth by leveraging digital trade and sustainable development.'<sup>1</sup>

While AANZFTA remains the highest quality of ASEAN's FTAs with its partners there were areas for significant improvement identified by the AANZFTA General Review. The AANZFTA Amendment directly addresses the AANZFTA General Review's recommendations and is consistent with the first recommendation of the Pivot report by enhancing opportunities for Australians wishing to trade with ASEAN Member States.

### **Part 3**                      **1.1.4 The original AANZFTA was surpassed by RCEP**

The Regional Comprehensive Economic Partnership (RCEP) entered into force for Australia on 1 January 2022. RCEP is a regional free trade agreement that complements and builds upon Australia's existing free trade agreements with 14 other Indo-Pacific countries (Brunei Darussalam, Cambodia, China, Japan, Laos, New Zealand, Singapore, Thailand, Vietnam, Republic of Korea, Malaysia, Indonesia and the Philippines). Building on RCEP outcomes, an upgraded AANZFTA will ensure the Agreement remains a relevant, contemporary agreement, which will continue to provide commercial benefits to businesses and consumers.

## **1.3 DFAT assessed that the original AANZFTA was no longer consistent with Australia's trade diversification agenda**

Trade diversification is the central pillar of the Government's trade policy strategy, providing us and our regional partners with certainty and agency in the choices we make about where and with whom we trade, and addressing the risk of over-exposure to any one market or product. ASEAN partners are key to this diversification effort. Australia's liberal trade policy settings have underpinned our ongoing economic growth. Our open economy and support for rules-based international trade have contributed to the high standard of living Australians enjoy. Maintaining contemporary trade agreements that are fit for purpose is central to this policy.

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<sup>1</sup> Joint Statement on the substantial conclusion of AANZFTA upgrade negotiations, <https://asean.org/wp-content/uploads/2022/11/04-Special-AEM-CER-Joint-Statement-Substantial-Conclusion-ADOPTED.pdf>.

In 2020, an Inquiry by the Joint Standing Committee on Trade and Investment Growth into Diversifying Australia's Trade and Investment Profile concluded in a report entitled 'Pivot'<sup>2</sup>, that there was a need to diversify Australia's trade. The first recommendation was:

- That the Australian Government develop and release a plan for trade diversification, with:
  - a focus on maintaining relationships with existing close trading partners as well as expanding trade with other countries; and,
  - a plan for diversifying Australia's range of goods and services exports.

## **2. Why is Government action needed?**

### **2.1 Objectives of government action**

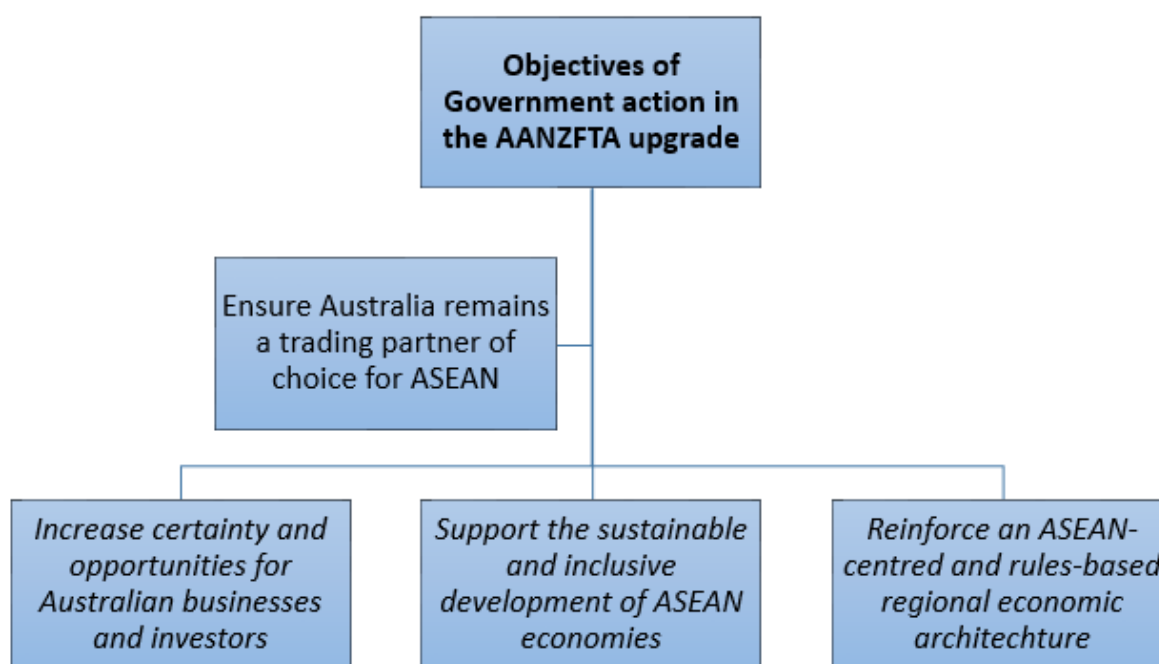
The overall objective of upgrading AANZFTA is to ensure that Australia remains a trading partner of choice for ASEAN member countries. This benefits Australian businesses and investors by ensuring the region is open to trade with Australia, thereby expanding economic opportunities for Australians and, ultimately, contributing to maintaining and improving the living standards of Australians. This also complements Australia's other foreign policy and diplomatic efforts, such as under Australia's Comprehensive Strategic Partnership with ASEAN. Additional objectives of Government action in upgrading AANZFTA include supporting the sustainable and inclusive development of our neighbouring ASEAN economies, in particular the least developed ASEAN economies, and reinforcing our region's rules-based and ASEAN-centred regional economic architecture.

Australia's economy relies on a strong and open global trading environment. The Australian Government is strongly committed to the WTO and its framework of rules, which helps promote and protect the open global trading system. Our membership in the WTO means that we benefit from its trade rules and we have a process to settle disputes if other trade partners breach these rules. A key rule of the multilateral trade system is that reductions in trade barriers should be applied, on a most-favoured nation basis, to all WTO members. This means that no WTO member should be discriminated against by another member's trade regime. However, regional trade agreements (RTAs) are an important exception to this rule. Under RTAs reductions in trade barriers apply only to the parties to the agreement. This exception is allowed under Article XXIV of the General Agreement on Tariffs and Trade (GATT) for trade in goods, in Article V of the General Agreement on Trade in Services (GATS) for Trade in Services and in the Enabling Clause for developing countries. There are two major types of regional trade agreements under the WTO - customs unions and free trade areas, with AANZFTA being a free trade area. RTAs must be consistent with the WTO rules governing such agreements, which require that parties to a regional trade agreement must have established free trade on substantially all trade within the regional area, and that the parties cannot raise their tariffs or other barriers against countries outside the agreement.

RTAs like AANZFTA are treaties, and the power to enter into treaties is an Executive power within section 61 of the Australian Constitution. Given that any treaty necessarily involves an element of Australia's foreign relations, the Minister for Foreign Affairs and the Department of Foreign Affairs and Trade (DFAT) have responsibility for treaties.

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<sup>2</sup> Source: Pivot – Parliament of Australia ([aph.gov.au](http://aph.gov.au))



## Part 4 2.1.2 Methods to achieve government action

Australia's method to achieve this government action is through its trade liberalisation agenda. The upgraded AANZFTA seeks to reinforce the trade liberalisation agenda and be a liberalising framework by:

- Improving the government procurement processes through improved transparency and cooperation in government procurement.
- Streamlining rules of origin processes to make it easier and less costly for businesses to access AANZFTA's benefits, with **Figure 1** highlighting the importance of goods trade to Australia's economy.
- Improving uptake of investments through high quality commitments on the entry of Australians to ASEAN Member States to supply services, including as business visitors and intra-corporate transfers, with **Figure 1** also highlighting the importance of services trade to Australia's economy.
- Boosting Australian investors' confidence, particularly in the region's higher income services sectors, including to create legal certainty for our services providers and investors in Southeast Asia.
- Including new provisions for micro, small, and medium enterprises (MSMEs) to sharing information on best practice programs and activities aimed to enhance the capability of MSMEs to participate in and benefit from the economic opportunities created by the upgraded agreement.
- Including new provisions on digital trade standards, digital inclusion, and dispute settlement reflect developments in digital trade since the original AANZFTA entered into force in 2010.
- Including a new trade and sustainable development chapter to address identified emerging priorities in sustainable and inclusive trade, including labour rights, environmental protection, and women's economic empowerment, and to facilitate Australia's targeted economic cooperation activities under the Regional Trade for Development Program (RT4D).

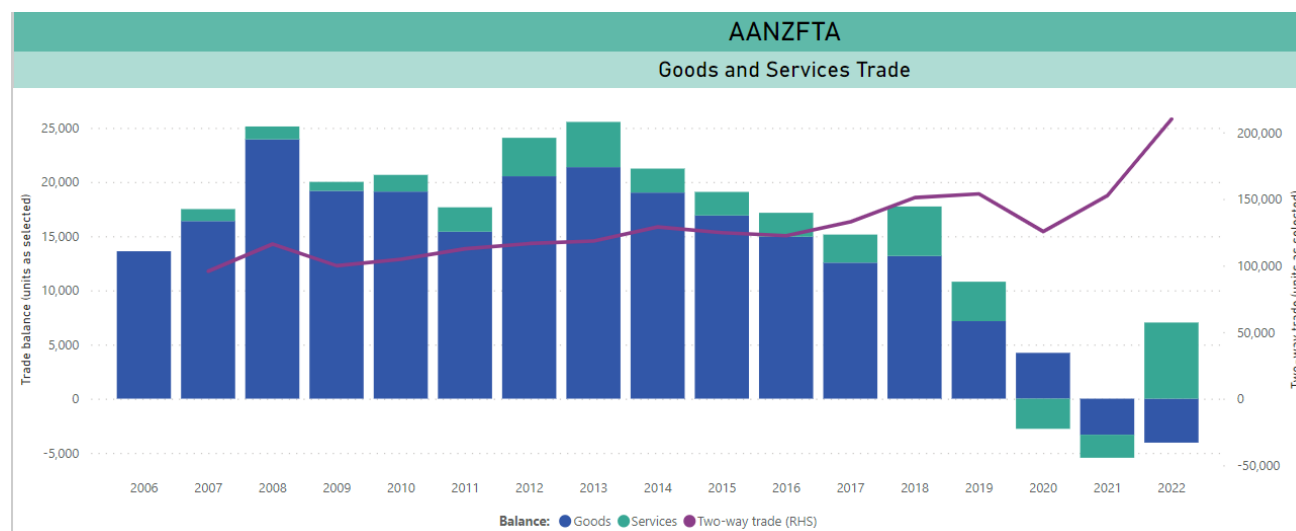


Figure 1: AANZFTA Goods and Services Trade

## 2.2 Why government action is required

Government action is required to ensure AANZFTA remains a competitive, relevant, contemporary agreement, which continues to deliver economic benefits to Australian businesses and consumers. Signing the AANZFTA Amendment ensures that AANZFTA will provide opportunities to further promote and facilitate trade and investment between Australia and ASEAN member states, improve business conditions specific to Australian commercial interests and enhance regional economic integration.

Government action is needed for the AANZFTA upgrade to enter into force. As stipulated under article 7 of Chapter 18 'Final Provisions' of the Agreement, for the upgrade to come into effect it requires Australia, New Zealand, and at least four ASEAN Member States to ratify. To ensure that at least four ASEAN Member States (AMS) ratify in a timely manner, the Australian Government will advocate the benefits of the upgrade and provide support to countries requiring assistance (capacity building). Since some AMS do not have similar resources as Australia, it would most likely delay the upgrade's entry into force, delaying Parties stakeholders in realising the benefits from the upgrade. To progress entry into force, Australia could entail translation assistance, which is a requirement in those countries for ratifying free trade agreements. Australia could provide marketing material and other advocacy documents for use of these least developed nations, helping them advocate internally to reassure their domestic decision makers and expedite the process.

**Figure 2** highlights the value of the ASEAN market to Australia's economy, and therefore the value of upgrading AANZFTA to ensure that Australia remains a trading partner of choice for ASEAN.

ASEAN

Key economic indicators

Source: IMF WEO.

| Nominal GDP    |                  |      |      | Population         |                  |      |
|----------------|------------------|------|------|--------------------|------------------|------|
| (USD billions) | (share of world) |      |      | (People, millions) | (share of world) |      |
| 2022           | 3,657.6          | 3.6% |      | 2022               | 672.4            | 8.5% |
| 2021           | 3,378.2          | 3.5% | 2021 | 666.2              | 8.5%             |      |

Australia's investment with ASEAN, 2022 (stocks)

Source: ABS.

| Investment in Australia |               |  |  | Australia's investment abroad |               |  |
|-------------------------|---------------|--|--|-------------------------------|---------------|--|
| Total (A\$b)            | Direct (A\$b) |  |  | Total (A\$b)                  | Direct (A\$b) |  |
| 183.4                   | 58.3          |  |  | 106.3                         | 28.3          |  |

Summary of Australia's trade relationship with ASEAN, 2021-22

Source: DFAT-adjusted ABS data.

| Exports  |      |       | Imports  |      |       | Total trade |       |       |
|----------|------|-------|----------|------|-------|-------------|-------|-------|
|          | A\$b | share |          | A\$b | share |             | A\$b  | share |
| Goods    | 65.5 | 12.3% | Goods    | 66.2 | 17.1% | Goods       | 131.7 | 14.3% |
| Services | 8.4  | 13.8% | Services | 10.7 | 14.8% | Services    | 19.1  | 14.4% |
| Total    | 74.0 | 12.4% | Total    | 76.9 | 16.7% | Total       | 150.9 | 14.3% |

Australia's major goods and services trade with ASEAN, 2021-22

Source: DFAT-adjusted ABS data.

| Exports*                             | A\$b |  | Imports                                 | A\$b |
|--------------------------------------|------|--|-----------------------------------------|------|
| Coal                                 | 11.1 |  | Refined petroleum                       | 19.0 |
| Natural gas                          | 10.3 |  | Goods vehicles                          | 5.8  |
| Wheat                                | 4.8  |  | Crude petroleum                         | 5.6  |
| Education-related travel services    | 3.8  |  | Transport services                      | 4.9  |
| Gold                                 | 2.9  |  | Telecom equipment & parts               | 2.8  |
| Iron ore & concentrates              | 2.7  |  | Prof, tech & other business services    | 2.4  |
| Crude petroleum                      | 1.9  |  | Passenger motor vehicles                | 1.7  |
| Prof, tech & other business services | 1.8  |  | Personal travel excl education services | 1.6  |
| Cotton                               | 1.6  |  | Computers                               | 1.4  |
| Copper                               | 1.6  |  | Edible products & preparations, nes     | 1.2  |
| Total                                | 74.0 |  | Total                                   | 76.9 |

\* Includes \$10.9 billion of confidential items (estimated to be mainly crude petroleum, alumina, unwrought nickel & manganese ores), 15% of total exports.

ASEAN's major global goods trade relationships, 2021

Source: UN Comtrade (extra-trade).

| Principle export destinations |       |      |                   | Principle import sources |       |      |
|-------------------------------|-------|------|-------------------|--------------------------|-------|------|
| Destination                   | Share | Rank |                   | Source                   | Share | Rank |
| China                         | 20.9% | 1    |                   | China                    | 30.0% | 1    |
| United States                 | 19.2% | 2    | Japan             | 9.9%                     | 2     |      |
| Hong Kong (SAR of China)      | 8.6%  | 3    | Republic of Korea | 9.6%                     | 3     |      |
| Japan                         | 8.5%  | 4    | United States     | 8.9%                     | 4     |      |
| Republic of Korea             | 5.1%  | 5    | Taiwan            | 8.7%                     | 5     |      |
| Australia                     | 3.1%  | 8    | Australia         | 2.8%                     | 7     |      |

Compiled by the Trade Data Section, DFAT, using the latest data from the ABS, the IMF and various other sources.

ASEAN members: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Vietnam.

IMF data may include forecasts or projections for recent years. Merchandise trade data may exclude confidential items of trade.

Totals may not add up due to rounding. Investment data is stocks as at end December. All data may be subject to future revisions.

GDP - Gross Domestic Product. na - Data is not available. np - Data is not published. f.c.f. Fresh, chilled or frozen. nes - Not elsewhere specified.

Figure 2: ASEAN Key Economic Indicators

## **2.3 Potential Implications of failure to take government action**

Failure of the Government to implement the AANZFTA upgrade will forego the opportunity for Australian industry to benefit from improvements in market access and trade rules through the AANZFTA upgrade. Failing to sign the upgraded AANZFTA may also have negative implications for Australia's relationship with ASEAN and ASEAN member countries and reduce Australia's influence with ASEAN. Not signing will also undermine complementary effects such as the Southeast Asia Economic Strategy.

## **2.4 Alternatives to government action**

DFAT assessed that there were not feasible alternatives to government action. Australian businesses and services are not able to seek trade enhancement, under AANZFTA, without the Australian Government's intervention to upgrade the Agreement. As addressed above, the power to enter into treaties is an Executive power within section 61 of the Australian Constitution, which only the Australian Government, and not private actors, can do.

## **2.5 Barriers to government action**

While Australia negotiates FTAs to benefit Australian exporters, importers, producers and investors by reducing and eliminating certain barriers to international trade and investment, these negotiations are always subject to the agreement and preferences of our negotiating partners. This is particularly true in the case of multilateral negotiations including countries with a variety of different priorities and sensitivities.

## **3. What policy options are you considering?**

This Impact Analysis considers two options: to sign or not to sign AANZFTA Amendment.

### **3.1 Option 1 – Sign the upgraded AANZFTA**

The upgraded AANZFTA addresses issues identified under the AANZFTA General Review and agreed by AANZFTA trade and economic ministers and also includes new outcomes on issues such as digital trade and sustainable development.

Signing the upgraded AANZFTA will provide opportunities to further promote and facilitate trade and investment between Australia and ASEAN Member States, improve business conditions specific to Australian commercial interests and enhance regional economic integration. The upgraded AANZFTA builds on RCEP outcomes, and ensures AANZFTA remains a relevant, contemporary agreement, which continues to provide commercial benefits to businesses and consumers.

To ensure AANZFTA is contemporary and delivers financial benefits and ease of access to Australian businesses and consumers, Australia achieved the following the key outcomes in the course of AANZFTA Upgrade negotiations.

#### **3.1.1 Key AANZFTA Upgrade Outcomes**

##### **Part 5 Rules of Origin**

This chapter determines which goods are originating under AANZFTA and eligible for preferential tariff treatment. Key outcomes include enhanced, trade facilitating documentary evidence of origin arrangements (such as self-certification of origin); transit arrangements that reflect modern hubbing practices; and greater support for regional value chains, through more flexible rules on which regional inputs may count towards a good's originating status.

The upgraded AANZFTA will establish new regional rules of origin that make it easier and less costly for businesses to access AANZFTA's benefits. New cumulation rules will give traders more flexibility in sourcing and shipping inputs, promoting greater integration into regional and global supply chains. There is now a standalone consignment provision that provides for transshipment – this will provide clearer and broader scope for goods to retain their originating status when transiting through countries outside of AANZFTA.

The upgraded AANZFTA will also simplify and empower traders when it comes to completing documentation. Certificate of Origin arrangements, which are already familiar to Australian business will be maintained. The upgrade establishes an option for self-declaration (Declarations of Origin), with scope for proof of origin to be accepted in electronic format. Several AANZFTA Parties are familiar with Declarations of Origin through other FTAs. In addition, third party invoices will only require information to be provided where known, promoting ease of access to FTA benefits.

The Product Specific Rules (PSR) (which are the detailed Rules of Origin applying to individual products) have been upgraded to reflect specific treatment of chemical and technical rules. The PSR format will also be updated to be consistent with the current version of the HS (HS 2022). The AANZFTA PSR are currently recorded in a previous version of the HS (HS 2012). This causes unnecessary complexity for businesses and creates a risk that business will inadvertently make a mistake when claiming AANZFTA tariff preference.

## Part 6 Customs Procedures

The Customs Procedures chapter has been expanded to include trade facilitation arrangements, building on commitments under the World Trade Organization (WTO) Trade Facilitation Agreement and gains made in other negotiations. Key outcomes include modernised rules enhancing predictability, consistency, and transparency in the application of customs laws and regulations; and promoting more efficient administration of customs procedures (e.g. through expedited clearance of express consignments and perishable goods; an authorised operator's scheme to reduce compliance burdens; and encouraging post-clearance audits a risk-based approach to customs compliance activities).

## Part 7 Services & Investment

**Figure 3** highlights the value of services trade to Australia's economy. The services commitments and chapter text have been expanded in the upgrade, taking into account existing built-in agenda items and progress in other relevant FTAs. Key outcomes include building on ASEAN's existing AANZFTA services commitments to achieve an RCEP parity agreement as a baseline, going beyond RCEP in areas of commercial interest for Australia such as education and professional services, including by further facilitating mutual recognition of professional qualifications, and ensuring greater regulatory coherence and harmonisation in the region. The two Annexes on Telecommunications and Financial Services have also been upgraded to build on RCEP standards.

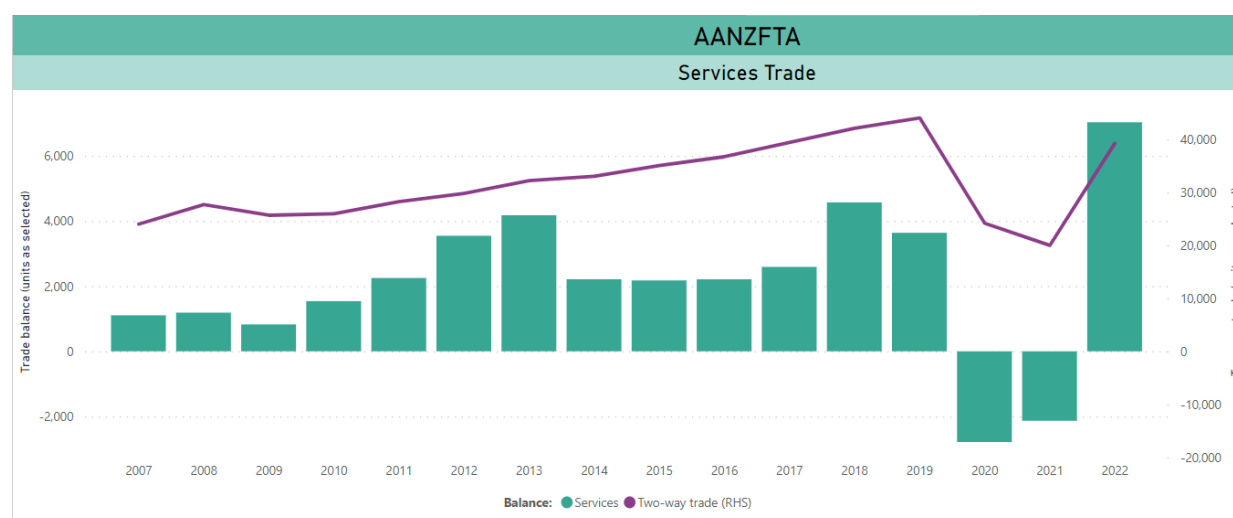


Figure 3: AANZFTA Services Trade

The Investment chapter text has been expanded considering existing built-in agenda items and progress in other relevant FTAs. Key gains include investment outcomes that reflect, or where possible, build on RCEP outcomes, and

exploring the inclusion of modern safeguards or other approaches to enhance certainty in the Investor-State Dispute Settlement mechanism.

The upgraded AANZFTA will provide a strong platform to expand trade in services and to promote investment throughout the region. AANZFTA will establish high quality rules for investment and the supply of services between AANZFTA parties, including obligations to provide access to foreign service suppliers (market access), to treat local and foreign suppliers and investors equally (national treatment) and to treat foreign suppliers and investors at least as well as suppliers and investors of any other non-AANZFTA country (most-favoured-nation or MFN).

The upgraded AANZFTA will include a forward-looking MFN provision in services, like that agreed in RCEP, and a significant improvement over the MFN provision that existed in the original AANZFTA.

Several parties will make use of the inherently more liberalising approach of negative listing for the first time for services market access. All parties to the original AANZFTA used the 'positive list' approach to scheduling services, while the upgraded agreement will see the 'negative list' used in AANZFTA for the first time by Australia, Brunei Darussalam, Indonesia, Malaysia, New Zealand, and Singapore.

All AANZFTA parties have scheduled investment commitments in a 'negative list', and AANZFTA parties that have used a 'positive list' for services commitments are required to transition to a negative list. This ensures clarity and consistency across regional agreements.

The upgraded AANZFTA will include a 'ratchet-mechanism' which locks in future unilateral liberalisation for selected sectors and will allow significant reduction of barriers to services and investment trade over time.

The upgraded AANZFTA enhances the protections for Australian investors through the Investor-State Dispute Settlement (ISDS) mechanism, guaranteeing Australians against unlawful expropriation and unequitable treatment and provides investors with the right to access an international tribunal to resolve international disputes. The upgrade will modernise ISDS through exempting the Foreign Investment Review Board (FIRB) and expanding security exceptions. Australia could not unilaterally remove ISDS from AANZFTA. However, under the AANZFTA package of outcomes, Parties will review AANZFTA's existing ISDS mechanism through a work program that will commence 18 months after the entry into force of the upgraded AANZFTA. Further, the AANZFTA Amendment will disapply ISDS to AANZFTA's "National Treatment" obligation for 30 months from the date of entry into force. Foreign investment screening under Australia's Foreign Investment Review Board will also be exempt from the application of ISDS and state-to-state dispute settlement.

The sector-specific commitments provided by the other parties represent substantial improvements over those contained in the original AANZFTA agreement. These improvements will provide greater certainty for Australian service suppliers and investors and will benefit Australian businesses across a range of sectors, including in professional services; education services; financial services; communications services; healthcare services; construction and related engineering services; tourism, recreational, cultural and sporting services; transport services; and wholesale trade and retailing services.

The Annex on Professional Services (Annex 8C) facilitates cooperation on recognition of professional qualifications, licensing and registration requirements. It provides a framework for professional bodies to expand their links with AANZFTA counterparts, encouraging dialogue on recognition of qualifications, licences and registration, as well as encouraging development of mutual recognition arrangements in professions of mutual interest and alignment with international frameworks on standards and criteria for professions.

The Annex on Education Services Cooperation (Annex 8D) recognises the important role that education services play in enhancing growth and prosperity and deepening institutional and people-to-people links among the Parties. The Annex will encourage cooperation in education quality assurance processes and the recognition of qualifications. It will also encourage cooperation on the development of training, programs, and staff exchanges. The Annex provides

an important signal of the Parties' mutual priorities and interests in particular sectors or fields, and complements the specific, formalised rules contained in the market access schedules.

## **Part 8 Movement of Natural Persons**

The mobility market access commitments and chapter text has been expanded to further facilitate the movement of natural persons engaged in the conduct of trade and investment between the Parties, and improve transparency of procedures of visa applications – while protecting the integrity of Australia's borders, domestic labour force and permanent employment.

The Movement of Natural Persons chapter and related schedules build on the original AANZFTA and RCEP commitments and provide certainty on temporary entry and stay for businesspersons to facilitate trade and investment in the region.

The upgraded Movement of Natural Persons chapter (chapter 9) builds on existing AANZFTA commitments, giving Australian businesspersons certainty on temporary entry and stay access in the region and greater certainty about the rules that will apply to them. The Movement of National Persons chapter establishes rules for the temporary entry and stay of natural persons between AANZFTA parties, including new obligations to facilitate and streamline immigration formalities. These include obligations to accept immigration formalities in electronic format, accept copies of authenticated documents, and to publish information in English. The chapter also includes new provisions to distinguish the Movement of Natural Persons chapter from other chapters of the agreement, removing ambiguity regarding obligations in other chapters applying to temporary entry and stay, especially as they relate to Trade in Services obligations such as Most-Favoured Nation. This provides additional protections for Australia's, and other Parties', immigration systems.

Australia's Movement of Natural Persons schedule of commitments are consistent with original AANZFTA and RCEP commitments. Australia made commitments on business visitors, intra-corporate transferees, independent executives, contractual service suppliers and spouses. Consistent with AANZFTA and RCEP, Australia has retained the right to apply labour market testing for contractual service suppliers, to the extent that this is not inconsistent with commitments under the WTO. Consistent with more recent trade agreements, including RCEP, Australia has removed sectoral commitments under all categories, providing Australia more flexibility to modify its domestic visa arrangements, such as changes to occupation lists.

## **Part 9 Electronic Commerce (E-Commerce)**

The Electronic Commerce chapter text has been expanded to take into account developments at the international, regional and national level. Key outcomes include digital trade outcomes up to our best trade agreement practice, including high quality rules that improve on RCEP outcomes; and the application of dispute settlement to as much of the ecommerce chapter as possible.

The upgraded E-Commerce chapter will modernise AANZFTA to support the growth of the digital economy in Australia and reflect the substantial developments in the digital economy since AANZFTA was originally negotiated. The chapter will help provide certainty for businesses and consumers engaging in digital trade in the region by promoting interoperability of systems across borders, protecting consumer privacy and building trust in the online environment.

Several new articles have been adapted from RCEP (given its status as a shared precedent for AANZFTA Parties), but the upgraded chapter also extends beyond RCEP by including articles on digital inclusion, electronic invoicing, digital trade standards and open government data.

Specifically, the chapter includes obligations that promote a move towards paperless trading in the digital economy by requiring the acceptance of e-signatures and e-authentication, and by encouraging the adoption of interoperable electronic invoicing systems. The chapter also includes commitments that promote trust and confidence in the

digital economy through rules on the protection of personal information, consumer protection, transparency and the prevention of unsolicited communications (e.g. spam).

The movement of data across borders continues to be a fundamental aspect of e-commerce between countries, with most transactions involving the creation and transfer of data. The chapter includes rules that support the free flow of data across borders and that prevent unjustified data localisation requirements, while maintaining appropriate regulatory space in certain areas, including for the protection of privacy.

Significantly, AANZFTA Parties agreed that the dispute settlement mechanism in chapter 17 will apply to the E-Commerce chapter subject to specific transitional periods for data rules (Articles 17 and 18).

## **Part 10            Competition**

The Competition chapter text has been expanded to build on RCEP standards to include new provisions on consumer protection, including regional cooperation on the development and implementation of matters covered by the revised chapter.

The Competition chapter (chapter 14) now contains obligations requiring AANZFTA parties to adopt or maintain competition laws and regulations to proscribe anti-competitive actions and enforce those laws accordingly. The chapter obliges AANZFTA parties to adopt or maintain laws or regulations to proscribe the use in trade of misleading practices or false or misleading deceptions. It also provides for cooperation between the AANZFTA parties on consumer protection and on competition law enforcement. The Competition chapter contains standard provisions that are similar to Australia's previous FTAs and are consistent with the Competition and Consumer Act 2010.

## **Part 11            Government Procurement**

A Government Procurement chapter has been developed, without market access commitments, which supports improved transparency and cooperation in government procurement. Key outcomes include transparency, integrity and cooperation provisions reflecting our best trade agreement practice, building on the RCEP Government Procurement chapter, and establishing a platform for future negotiations on government procurement commitments through a built-in work programme.

The Government Procurement chapter (chapter 17) provides for commitments that recognise the importance of promoting enhanced transparency and integrity in government procurement processes; facilitating Micro, Small and Medium Enterprise participation in government procurement; promoting the concept of environmental sustainability in government procurement; and promoting the use of electronic procurement systems to facilitate easier access to ASEAN and New Zealand procurement opportunities for Australian suppliers. In addition, the chapter provides for capacity building and the development of cooperation among the AANZFTA Parties.

The chapter does not contain market access commitments and its scope is limited to the central government level (the Commonwealth Government in Australia). No legislative or regulatory changes are required for Australia.

## **Part 12            Trade and Sustainable Development**

The upgraded AANZFTA will include a new Trade and Sustainable Development chapter which will facilitate enhanced cooperation on labour rights, women's economic empowerment and environmental protection. This chapter will facilitate Australia's targeted economic cooperation activities under the Regional Trade for Development Program (RT4D).

The upgraded AANZFTA's new Trade and Sustainable Development chapter is ASEAN's first chapter on sustainable development issues in a trade agreement. For AANZFTA members not party to the CPTPP, it also contains their first commitments in a trade agreement on environment and labour standards. It contains all ASEAN members' first commitment in a trade agreement on women's economic empowerment.

The chapter recognises Parties' commitment to sustainable development, environmental protection, labour protections and women's economic empowerment. Parties also recall their commitment to multilateral environment and labour agreements to which they are individually a party, as well as to the 2030 Agenda for Sustainable Development and its Sustainable Development Goals. Parties additionally recognise that it is inappropriate to weaken or reduce levels of protection in their environmental or labour standards to encourage trade and investment. The chapter facilitates economic cooperation activities in these areas, including in climate, green and blue economy, energy and sustainable development broadly. Cooperation under the chapter is overseen by the FTA Joint Committee.

### **Part 13            Micro, Small and Medium Enterprises (MSMEs)**

A new MSMEs chapter has been developed to help address issues that MSMEs face, which other larger businesses don't. Priorities include seeking a range of provisions aimed at fostering the growth and development of the sector: e.g., Information sharing – commitments that will make it easier for businesses to get the information they need to export/import; and cooperation provisions – to allow parties to work together on issues such as trade facilitation and digital trade.

The Micro, Small and Medium Enterprises chapter seeks to promote information sharing and cooperation among AANZFTA parties to enhance opportunities for their MSMEs to participate in the benefits created by the upgraded Agreement.

### **3.2 Option 2 – No action**

The second option is for Australia to not sign the upgraded AANZFTA. DFAT has identified the below two limitations with this option.

#### **Part 14            3.2.1 DFAT assess that declining to sign the upgraded AANZFTA would be inconsistent with Australia's trade liberalisation agenda**

Not signing the AANZFTA upgrade would be at odds with Australia's trade liberalisation agenda and may have reputational risks for Australia's relationship with ASEAN Member States. Not upgrading Australia's most important FTA with ASEAN will not serve our strategic interests in promoting a prosperous and secure region. If we do not ensure our participation with ASEAN economic development and cooperation in the Indo-Pacific, Australia will reduce its influence and limit the potential opportunities for trade diversification and economic resiliency. We will reduce our ability to guide regional trade, such as enhanced supply chains, greater trade facilitation, and ease of doing business for all Parties. ASEAN is forecasted to grow 4.7 per cent in 2023 (ADB) with a nominal GDP USD 3.66 trillion and will continue to grow. ASEAN, as a combined economy, is projected to rank as the fourth-largest economy globally by 2050, and currently ranks as the seventh-largest economy (McKinsey). If we do not upgrade AANZFTA, Australia is projected to lose the economic opportunity of selling Australian products, services, and investments to ASEAN Member States.

#### **Part 15            3.2.2 DFAT assess that declining to sign the upgraded AANZFTA or delays in Australia's ratification would prevent the upgrade from entering into force for other AANZFTA members**

Pursuant to Article 2(2) of the *Second Protocol to Amend the Agreement Establishing AANZFTA*, the upgraded AANZFTA will only enter into force 60 days after the date on which Australia, New Zealand and at least four ASEAN member states have deposited their instruments of ratification, acceptance or approval. This means that if Australia fails to sign and ratify the upgraded AANZFTA, that it will prevent the upgraded AANZFTA from entering into force for all other AANZFTA members. This would prevent AANZFTA members, including less developed ASEAN members, from realising the benefits of the upgraded AANZFTA, despite the extensive resources these countries have extended to upgrade the Agreement.

Delays in any aspects of the legislative process could result in delays to entry into force of the upgraded AANZFTA. Depending on the reasons for these delays, this could result in reputational risks for Australia, as it could be perceived that Australia is stalling on its commitments.

Australia's bilateral engagement with the countries of Southeast Asia is strengthened by Australia's engagement with ASEAN, the region's premier representative grouping. Government to government links between Australia and ASEAN are strong and reflect close to half a century of cooperation. Compromising these by not signing the upgrade which has been under negotiations since 2018 could be harmful to our bilateral relationships and people-to-people links between Governments. Not signing would also undermine efforts to implement and maximise benefits outlined in the Southeast Asia Economic Strategy 2040.

## **4. What is the likely net benefit of each option?**

### **4.1 Option 1 – Sign the upgraded AANZFTA**

Signing the upgraded AANZFTA will be a strong sign of the Government's commitment to diversifying our trading relationships, creating new commercial opportunities for our exporters and driving inclusive economic growth for all Australians. The changes that will be made to AANZFTA through upgrade also complements the Government's Southeast Asia Economic Strategy to 2040 by strengthening Australia's economic engagement with the region. Once in force, the upgrade will maintain AANZFTA's status as ASEAN's highest-quality trade agreement and further reinforce the Indo-Pacific's rules-based economic architecture.

## **Impacts of key changes to AANZFTA through the upgrade process**

### **Part 16            4.1.1 Rules of Origin**

#### Benefits

The upgraded AANZFTA establishes new rules of origin that make it easier and less costly for business to access the Agreement's benefits. The upgrade streamlines and modernises product origin documentation and transit agreements, making it easier and less costly for business to export products to ASEAN Member States. For example, new opportunities will be created for ASEAN exporters by enabling traders to have more flexibility in sourcing inputs for the products they sell. In turn, Australian exporters will gain greater demand for their inputs into ASEAN production. This provides for the future implementation of Declarations of Origin (DOOs), reducing time and cost for traders by allowing self-certification.

#### Costs

There is potential for some upfront implementation costs for business, including the costs associated with training staff to understand and implement new Rules of Origin processes. However, no longer term costs have been identified.

### **Part 17            4.1.2 Customs Procedures**

#### Benefits

Key outcomes include modernised rules enhancing predictability, consistency, and transparency in the application of customs laws and regulations through promoting more efficient administration of customs procedures. For example, the upgrade will expedite clearance of express consignments and perishable goods and will put into place an authorised operator's scheme to reduce compliance burdens. The upgrade will also encourage post-clearance audits a risk-based approach to customs compliance activities and includes provisions for trade facilitation of essential goods during crises, which streamlines trade procedures. These changes have the cumulative impact of reducing current compliance burdens, which will reduce broader operating costs for businesses.

#### Costs

There are limited costs associated with changes to customs procedures provisions, as the modernised rules will enhance and streamline compliance and regulatory administration. There may be limited upfront implementation costs for businesses.

## **Part 18**

### **4.1.3 Services and Investment**

#### Benefits

The upgraded AANZFTA modernises existing protection for investors, including guarantees against unlawful expropriation, and adds rules to provide further protections for investors, such as protecting investors from requirements to appoint nationals as the manager or to the board of their investment.

The upgrade also establishes high quality rules for investment and the supply of services between AANZFTA parties, including obligations to provide access to foreign service suppliers (market access), to treat local and foreign suppliers and investors equally (national treatment); and to treat foreign suppliers and investors at least as well as suppliers and investors of any other non-AANZFTA country (most-favoured-nation or MFN). Australian service suppliers and investors will benefit across a range of sectors, including in professional services; education services; financial services; communications services; healthcare services; construction and related engineering services; tourism, recreational, cultural and sporting services; transport services; and wholesale trade and retailing services.

Professional services will benefit from stronger rules and legal architecture by assisting business with a platform for the development of mutually acceptable professional standards. A ‘ratchet-mechanism’ which locks in future unilateral liberalisation for selected sectors and will also allow significant reduction of barriers to services and investment trade over time. This means that countries cannot walk back on existing market access commitments, providing businesses and consumers a guaranteed level of investment and services.

#### Costs

Some stakeholders held concerns on the Investor-State Dispute Settlement (ISDS) mechanism, which is still active in AANZFTA. However, Australia and New Zealand continue constructive engagement with existing commitments under ISDS. Under the AANZFTA package of outcomes, the Parties will review AANZFTA’s existing Investor State Dispute Settlement ISDS mechanism through a work program that will commence 18 months after the entry into force of the upgraded AANZFTA.

## **Part 19**

### **4.1.4 Movement of Natural Persons**

#### Benefits

The upgraded AANZFTA will improve transparency of procedures of visa application, through established rules and new obligations to facilitate immigration formalities (digitalised forms, documents and translated in English). The upgrade expands on existing commitments and provides certainty on temporary entry and stay for businesspersons to facilitate trade and investment in the region. Australia has removed sectoral commitments under all visa categories, providing Australia more flexibility to modify its domestic visa arrangements, such as changes to occupation lists.

**Figure 4** highlights the movement of persons over the previous decade between AANZFTA members and Australia. Please note the COVID19 pandemic impacted the number of arrivals in 2020, however, since travel restrictions have been lifted, returns are rebounding.

Figure 4: Movement of persons between AANZFTA members and Australia<sup>[11]</sup>Costs

Nil costs have been identified.

## Part 20 4.1.5 Electronic Commerce

Benefits

The upgraded AANZFTA provides improved certainty for business and consumers engaging in digital trade in the region by promoting interoperability of systems across borders, protecting consumer privacy, and building trust in the online environment. The Electronic Commerce chapter includes key obligations that promote a move towards paperless trading in the digital economy by requiring the acceptance of e-signatures and e-authentication, and by encouraging the adoption of interoperable electronic invoicing systems. The chapter moreover includes commitments that promote trust and confidence in the digital economy through rules on the protection of personal information, consumer protection, transparency and the prevention of unsolicited communications (e.g. spam), in addition to rules that support the free flow of data across borders

Costs

Nil costs have been identified from the new E Commerce chapter for Australia.

## Part 21 4.1.6 Competition

Benefits

The upgraded AANZFTA includes new provisions on consumer protection, including regional cooperation on the development and implementation matters. These outcomes protect Australian business and consumers by requiring AANZFTA Parties to adopt or maintain competition laws and regulations and enforce laws accordingly.

Costs

Nil costs have been identified from these new commitments for Australia. Australia, already having high regulatory standards, is already compliant with these outcomes.

## Part 22 4.1.7 Government Procurement

Benefits

The upgraded AANZFTA includes government procurement chapter including transparency, integrity, and cooperation provisions reflecting best trade practices. These outcomes promote the use of electronic procurement systems to facilitate easier access to Australian suppliers.

Costs

Nil costs have been identified. Advice taken from State and Territories consultations was to not include market access commitments in upgrade negotiations. As there are no changes to market access commitments under the Government Procurement chapter, there has been no changes to these settings when compared with the existing AANZFTA. This also means that the commitments under the chapter do not limit the Government's ability to direct procurement to Australian small businesses, such as under the Buy Australia Plan.

**Part 23                      4.1.8 Trade and Sustainable Development**

Benefits

The upgraded AANZFTA will be ASEAN's first trade agreement to include outcomes on environmental protection, labour rights and women's economic empowerment. The trade and sustainable development chapter intends to facilitate enhanced cooperation in these areas.

Costs

Nil costs for government are identified as emerging from the upgrade, as these are cooperation commitments that are implemented under Australia's already in place Regional Trade for Development Initiative.

**Part 24                      4.1.9 Micro, Small and Medium Enterprises (MSMEs)**

Benefits

The upgraded AANZFTA provides a facility for MSMEs to share information and best practices to foster growth and development in import/export sectors.

Costs

Nil costs are identified, as these are cooperation commitments.

## Part 25 Summary Table :Cost-Benefit Analysis

### Key

| Costs                 | Benefits                 |
|-----------------------|--------------------------|
| Nil                   | Nil                      |
| Few-costs expected    | Few benefits expected    |
| Medium-costs expected | Medium benefits expected |
| High costs expected   | High benefits expected   |

| Topic                               | Costs | Benefits | Net Benefit |
|-------------------------------------|-------|----------|-------------|
| Rules of Origin                     |       |          |             |
| Customs Procedures                  |       |          |             |
| Services and Investment             |       |          |             |
| Movement of Natural Persons         |       |          |             |
| Electronic Commerce                 |       |          |             |
| Competition                         |       |          |             |
| Government Procurement              |       |          |             |
| Trade and Sustainable Development   |       |          |             |
| Micro, Small and Medium Enterprises |       |          |             |

As a bloc, ASEAN accounted for 14.3 per cent of Australia's total trade in 2021-22, or A\$150,875 billion. In its 2021 National Trade Survey, the Australian Chamber of Commerce and Industry found that businesses rated AANZFTA as the third most utilised free trade agreement for goods traders, behind FTAs with China and the US.<sup>[1]</sup> However, only 2.8 per cent of Australian investment goes to ASEAN Member States.<sup>[2]</sup> In 2021-22, Australia's services trade with ASEAN was A\$19,142 billion, with Singapore accounting for more than 59 per cent of that figure. When compared to Australia's A\$1.3 trillion plus services sector, there is room to grow.

There are multiple influences on international trade and investment flows, such as current economic conditions, exchange rate fluctuations, supply and demand factors, and environmental issues such as natural disasters. This has an impact on determining a causal relationship between an FTA and trade and investment outcomes.

While economic forecasting is not currently available on the potential net-benefits of the AANZFTA upgrade, the economic benefits of AANZFTA to Australia and its AANZFTA partners are nonetheless demonstrated by available data. We know that AANZFTA contains regional rules of origin and substantial tariff reduction and elimination commitments, as well as World Trade Organization (WTO)-plus commitments in other areas such as services, which provide commercially meaningful benefits to Australian business and further strengthen Australia's commercial ties with ASEAN. Improved access and certainty in ASEAN markets resulting from AANZFTA is commercially significant for Australian industry, particularly in the Indonesian, Philippines and Vietnamese markets. The Australian Chamber of Commerce and Industry have advised that they see AANZFTA as 'Australia's leading Free Trade Agreement' and that AANZFTA has 'provided benefits to our members and Australia in general.' Demonstrating this, **Figure 5** highlights goods exports to ASEAN since 2017, including that there has been a steady increase in exports, with this increase being anticipated to continue in coming years.

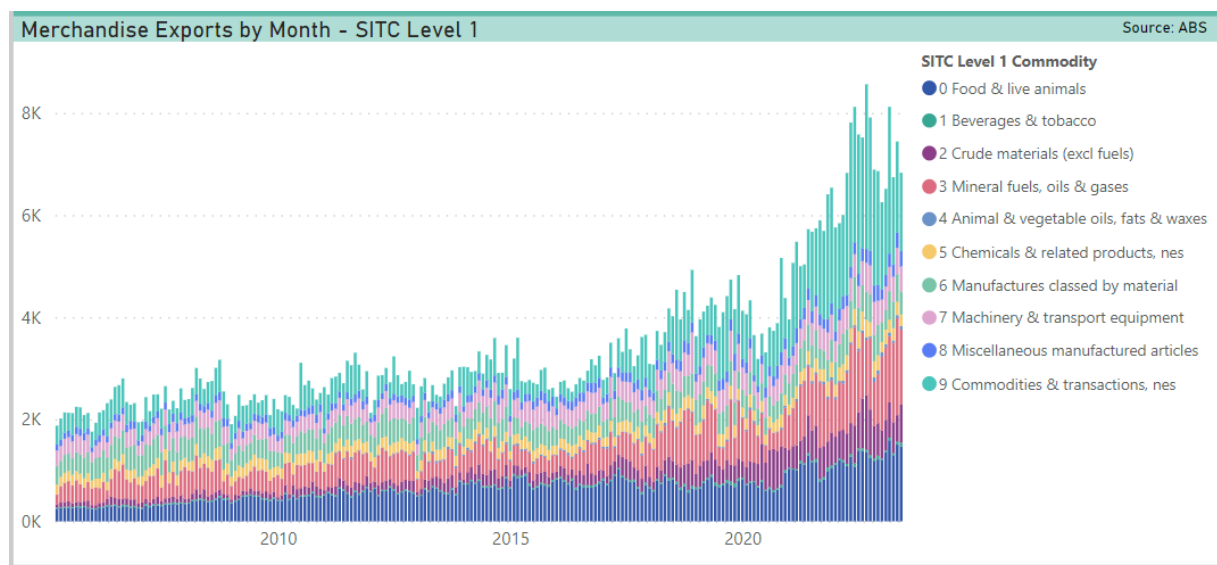


Figure 5: Australia's Monthly Goods Exports to AANZFTA<sup>[5]</sup>

Australian industry peak bodies have highlighted the benefits of AANZFTA for their exports in addition to the net benefits of an upgrade. The Minerals Council of Australia (MCA) in their submission to the AANZFTA review highlighted the high value of Malaysia, Vietnam and Indonesia as export markets for Australian minerals, and the importance of addressing non-tariff barriers and barriers to services and investment in the AANZFTA upgrade to facilitate continued export growth to these markets.<sup>[6]</sup> The MCA have found that ASEAN imports of minerals and basic metals were more than USD94 billion in 2018 (compared to USD530 billion in 2022), with import growth from ASEAN countries being faster in aggregate than for China, India and Japan, and faster than for the rest of the world minus ASEAN. The AANZFTA upgrade will ensure Australia maintains its access to the ASEAN Minerals market, taking advantage of the growth in the region.<sup>[7]</sup> Figure 6 also highlights the net benefits of goods and services trade under AANZFTA.

Figure 6: Australia's Goods and Services Trade with AANZFTA (Exports -ve / Imports +ve)<sup>[8]</sup>

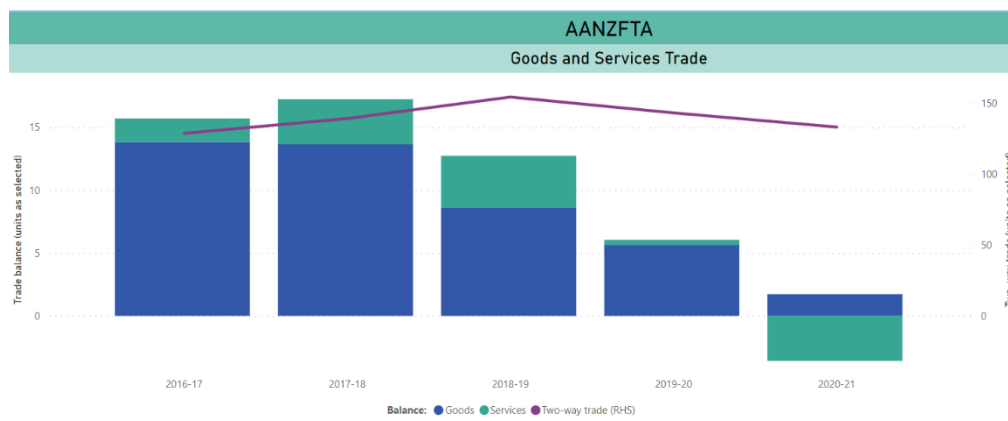


Table 1 below demonstrates the key sectors benefitting from Australia's services trade under AANZFTA during 2021-22, including A\$11.5 billion in exports and A\$12.6 billion in imports.

**Table 1: Australia's services trade with AANZFTA, 2021-22**

| Exports                               |             | Imports                              |             |
|---------------------------------------|-------------|--------------------------------------|-------------|
| Item                                  | A\$b        | Item                                 | A\$b        |
| Education-related travel              | 3.9         | Prof, tech & other business services | 3.5         |
| Prof, tech & other business services  | 2.6         | Transport services                   | 5.5         |
| Transport services                    | 1.1         | Telecom & ICT services               | 0.8         |
| Other services – details not provided | 3.9         | Other Services                       | 2.8         |
| <b>Total</b>                          | <b>11.5</b> | <b>Total</b>                         | <b>12.6</b> |

## 4.2 Option 2 – No action

There are no meaningful advantages to not signing the AANZFTA upgrade but there are many disadvantages.

### Part 26 4.2.1 Declining to sign the upgraded AANZFTA would be inconsistent with Australia's trade liberalisation agenda

As outlined in the problem identification and policy options sections, if Australia did not sign the upgraded AANZFTA, this would be at odds with Australia's trade liberalisation agenda. Australia would forego the opportunity to benefit from improvements in market access and trade rules through the AANZFTA upgrade and Australian businesses would continue to face higher transaction costs for exporters, lower investment confidence and outdated digital trade standards.

### Part 27 4.2.2 Declining to sign the upgraded AANZFTA would prevent the upgrade from entering into force for other AANZFTA members

Pursuant to Article 2(2) of the *Second Protocol to Amend the Agreement Establishing AANZFTA*, the upgraded AANZFTA will only enter into force 60 days after the date on which Australia, New Zealand and at least four ASEAN member states have deposited their instruments of ratification, acceptance or approval. This means that if Australia fails to sign and ratify the upgraded AANZFTA, it will prevent the upgraded AANZFTA from entering into force for all other AANZFTA members. This would prevent AANZFTA members, including less developed ASEAN members, from realising the benefits of the upgraded AANZFTA, despite the extensive resources these countries have extended to upgrade the Agreement.

This course of action may have tangible negative implications for Australia's relationship with New Zealand, ASEAN and ASEAN member countries and reduce Australia's influence with ASEAN. Australia's bilateral engagement with the countries of Southeast Asia is strengthened by Australia's engagement with ASEAN, the region's premier representative grouping. Government to government links between Australia and ASEAN are strong and reflect close to half a century of cooperation.

## 4.3 Trade Impact Assessment of the AANZFTA Upgrade

The upgrade to AANZFTA will maintain Australia's competitive edge in Southeast Asia and will enable Australian exporters to diversify. It will also boost investor confidence in the region. The upgrade to AANZFTA is consistent with Australia's international commitments, including those under the World Trade Organisation (WTO).

As a bloc, ASEAN accounted for 14.3 per cent of Australia's total trade in 2021-22 or A\$150,875 billion. In 2021-22, Australia's services trade with ASEAN was A\$19,142 billion.

The upgrade to AANZFTA is likely to impact predominantly on services and investment between Australia, New Zealand and ASEAN Member States.

The main affected stakeholders in Australia will be:

- Consumers, who will be able to access more competitive goods and services and to transact on-line with enhanced protection.
- Australian businesses, who will benefit from enhanced transparency and integrity in the government procurement process which will create a more level playing field in bidding for contracts across the region.
- Professionals, who will benefit from mutually acceptable professional standards and streamlined licensing and registration systems, which will reduce costs and time for them and their clients.
- Traders, who will benefit from increased flexibility in sourcing and shipping inputs, promoting greater integration into regional and global supply chains. Additionally, traders will benefit from simplified documentation requirements from origin certification to invoicing.

The upgrade to AANZFTA will have a positive impact on services, trade and investment by simplifying documentation requirements and enhancing trader and consumer confidence in online and electronic business. The upgrade to AANZFTA does not contain any AANZFTA-minus commitments, meaning it only serves to improve services, trade and investment between Australia, New Zealand and ASEAN Member States.

The upgrade to AANZFTA would need to be notified to the WTO pursuant to Paragraph 14 of the Transparency Mechanism for Regional Trade Agreements (WT/L/671).

## **5. Who did you consult and how did you incorporate their feedback?**

### **5.1 Submissions Received**

DFAT provided stakeholders the opportunity to provide written submissions on the AANZFTA General Review process. Table 2 below outlines submissions received, which are also published on DFAT's website.

*Table 2: Summary of Stakeholder Submissions*

| Stakeholder                                                             | Key Concerns & Recommendations                                                | Addressed in Upgrade                                                                                                                          |
|-------------------------------------------------------------------------|-------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------|
| Export Council of Australia                                             | • Simplified rules of origin                                                  | Yes – see 4.1                                                                                                                                 |
|                                                                         | • Trade facilitation measures                                                 | Yes – see 4.1                                                                                                                                 |
|                                                                         | • AANZFTA to be a more modern agreement, including progressive trade outcomes | Yes – the upgraded AANZFTA includes ASEAN's first Trade and Sustainable Development chapter, outcomes on Government Procurement, and on MSMEs |
| Australian Chamber of Commerce and Industry                             | • No changes recommended                                                      | Not applicable                                                                                                                                |
| Freight and Trade Alliance and the Australian Peak Shippers Association | • Simplified rules of origin                                                  | Yes – see 4.1                                                                                                                                 |

|                                                                                                |                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                          |
|------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Victorian Chamber of Commerce and Industry                                                     | <ul style="list-style-type: none"> <li>• Simplified rules of origin</li> </ul>                                               | Yes – see 4.1                                                                                                                                                                                                                                                                                                                                                            |
| Minerals Council of Australia                                                                  | <ul style="list-style-type: none"> <li>• Trade facilitation measures</li> </ul>                                              | Yes – see 4.1                                                                                                                                                                                                                                                                                                                                                            |
|                                                                                                | <ul style="list-style-type: none"> <li>• Restrictions on trade in services and investment</li> </ul>                         | Yes – see 4.1                                                                                                                                                                                                                                                                                                                                                            |
|                                                                                                | <ul style="list-style-type: none"> <li>• Need for skilled labour mobility</li> </ul>                                         | Yes – see 4.1                                                                                                                                                                                                                                                                                                                                                            |
|                                                                                                | <ul style="list-style-type: none"> <li>• Impetus for competition outcomes</li> </ul>                                         | Yes – see 4.1                                                                                                                                                                                                                                                                                                                                                            |
| Australian Pork Limited                                                                        | <ul style="list-style-type: none"> <li>• Technical market access for pork</li> </ul>                                         | <p>No</p> <p>Note technical market access for pork was not included in the AANZFTA upgrade as technical market access is approved through government-government negotiation of sanitary and phytosanitary measures.</p> <p>Negotiation of specific technical market access protocols for animals and plants and their products do not form part of FTA negotiations.</p> |
| Chamber of Commerce and Industry of Western Australia                                          | <ul style="list-style-type: none"> <li>• Simplified rules of origin</li> </ul>                                               | Yes – see 4.1                                                                                                                                                                                                                                                                                                                                                            |
| Asia Business Trade Association                                                                | <ul style="list-style-type: none"> <li>• Simplified rules of origin</li> </ul>                                               | Yes – see 4.1                                                                                                                                                                                                                                                                                                                                                            |
| Dr Luke Nottage, Professor of Comparative and Transnational Business Law, University of Sydney | <ul style="list-style-type: none"> <li>• Restrictions on trade in services and investment, including on education</li> </ul> | <p>Yes – see 4.1</p> <p>Note Annex on Education Services Cooperation</p>                                                                                                                                                                                                                                                                                                 |

These submissions helped inform Australia’s position on the areas to be considered as part of the AANZFTA upgrade.

The submissions highlighted that AANZFTA has been a transformative trade agreement, benefitting both small and large companies within the member economies and endorsed the governments to position to upgrade AANZFTA. Australian Pork Limited commented on the fact that exports of Australian pork to the ten ASEAN economies rose from A\$80.7 million in 2009 to A\$87 million in 2016, growth of almost ten percent since the introduction of AANZFTA. The submissions also highlighted that and that upgrading AANZFTA will expand the benefits of the agreement for member economies, including through the removal of barriers to trade such as tariffs, quota restrictions and licensing and registration restrictions.

The upgrade to AANZFTA directly addresses concerns raised by these submissions, such as the Export Council of Australia's requests to simplify rules of origin and introduce chapters on trade facilitation and government procurement. These amendments to AANZFTA support Australian businesses to fully utilise the benefits of the Agreement.

## **5.2 Stakeholder Engagement**

DFAT also reached out to industry stakeholders and offered regular engagement opportunities throughout the AANZFTA upgrade negotiations, including engaging directly with representatives of the business sector and civil society on relevant aspects of the upgrade negotiations. DFAT held Biannual Peak Bodies Consultations, allowing Australian businesses, civil society, First Nations groups and unions to engage with the Department's trade agenda. DFAT provided updates on the outcomes of the negotiation rounds through published articles on the DFAT AANZFTA website and stakeholder engagement sessions.

## **5.3 States and Territories**

States and Territories were consulted throughout the negotiations. Consultations included 5 State and Territory information seminars. The main interest of States and Territories was changes to market access to government procurement, which was not included in the Government Procurement chapter review.

## **5.4 Whole of Australian Government Engagement**

Throughout the negotiation period DFAT hosted regular interdepartmental meetings to keep whole of Australian Government stakeholders updated. DFAT subject matter negotiators also engaged continuously and directly with Australian Government policy leads throughout the negotiation process.

## **6. What is the best option from those you have considered?**

Table 3 below summarises the costs and benefits of the two options. DFAT's qualitative assessment is that signing AANZFTA Amendment will result in a net benefit for Australia.

|                 | Option 1 – Sign the upgraded AANZFTA                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Option 2- no action                                                                                                                                                                                                                                                                                                                                                        |
|-----------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Benefits</b> | <p>Opportunities to further promote and facilitate trade and investment between Australia and ASEAN Member States and improve business conditions specific to Australian commercial interests.</p> <p>Ensures AANZFTA (as in force for Australia) remains a relevant, contemporary agreement, which continues to provide commercial benefits to businesses and consumers in the long-term.</p> <p>Enhances regional economic integration.</p> <p>Alignment with Australia's geostrategic interests in promoting ASEAN centrality</p> | <p>The AANZFTA Amendment would not have to pass through domestic legislative processes which would save time and financial resources.</p> <p>Ministerial attendance at the ASEAN Economic Ministers Meeting (EMM) in August would no longer be required. Noting, however, that the EMM addresses a broad range of topics that Ministerial engagement will profit from.</p> |

|              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|--------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|              | in the rules-based regional architecture.                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Costs</b> | <p>The upgraded AANZFTA is unlikely to impose any additional regulatory costs on businesses or individuals and in many cases will improve productivity and ease of doing business. Including;</p> <p>Professionals will benefit from streamlined licensing and registration systems, which will reduce costs and time for them and their clients.</p> <p>Traders will also benefit from reduced costs resulting from simplified and documentation requirements from origin certification to invoicing.</p> | <p>Will prevent the upgraded AANZFTA parties (ASEAN and New Zealand) from entering into force for the 11 other AANZFTA members.</p> <p>Damage to Australia's international reputation, loss of influence with ASEAN and damage to Australia's bilateral relationships with New Zealand and ASEAN member states.</p> <p>Will prevent ASEAN members, including less developed ASEAN members, from realising the benefits of the upgraded AANZFTA.</p> <p>In the medium term, AANZFTA will be overtaken by FTAs signed between ASEAN and third countries.</p> |

## **6.1 Option 1 – Sign the upgraded AANZFTA**

Taking into account submissions and consultations in combination with available data on the benefits of AANZFTA to the Australian economy, signing the upgraded AANZFTA has been identified as the best option with the greatest net benefits. This includes a provision to make it easier for business to self-certify the origin of their goods, eliminating the need to pay a peak body to obtain a certificate of origin, which was a specific request of the Export Council of Australia.

Signing the upgraded AANZFTA will provide opportunities to further promote and facilitate trade and investment between Australia and ASEAN Member States, improve business conditions specific to Australian commercial interests, and enhance regional economic integration. Building on RCEP outcomes, the upgrade negotiations have ensured that the upgraded AANZFTA remains a relevant, contemporary agreement, which will continue to provide commercial benefits to businesses and consumers.

The upgrade is well aligned with the Government's policy to improve business conditions for Australian exporters of goods and services, and Australian investors, and with our geostrategic interests in promoting transparent and rules-based approaches to trade and enhancing regional prosperity and integration.

The upgraded AANZFTA is consistent with Australia's obligations under other international agreements, including the WTO. Chapter 21 (Final Provisions) provides that AANZFTA will coexist with AANZFTA parties' existing international agreements with each other (which include, for example, the WTO Agreement and Australia's bilateral FTAs with other AANZFTA Parties).

### **Part 28      6.1.1 Regulatory impacts**

The upgraded AANZFTA entering into force is expected to result in a reduction in ongoing business compliance costs for Australian businesses trading with ASEAN due to simplified documentation requirements from origin certification to invoicing.

The upgrade will not result in changes to regulations that would adversely affect Australian businesses, community organisations, or individuals. The AANZFTA upgrade is unlikely to impose any additional regulatory costs to businesses or individuals.

## **7. How will you implement and evaluate your chosen option?**

### **7.1 Implementation**

In line with Australia's treaty-making processes the text of the AANZFTA upgrade will be tabled in Parliament. The Joint Standing Committee on Treaties (JSCOT) will then conduct an inquiry into the FTA and report back to the Parliament. Following consideration by the JSCOT, Parliament will consider any legislation, or amendments to existing legislation that may be necessary to implement the Agreement prior to treaty action being taken.

Article 2 of the Second Protocol provides that it shall enter into force 60 days after the date on which Australia, New Zealand and at least four of the ten ASEAN Member States have notified other AANZFTA Parties of the completion of their respective internal requirements necessary for entry-into-force. The Parties are aiming for entry-into-force in 2024.

Australia would need to make legislative changes in order to implement the obligations in AANZFTA, including amendments to the following:

- a. *Customs Act 1901*
- b. *Customs (International Obligations) Regulation 2015*; and
- c. *Customs (ASEAN-Australia-New Zealand Rules of Origin) Regulations 2009* (for determining the originating status of goods for the purpose of determining eligibility for preferential rates of customs duty)

DFAT will work closely with the relevant Australian Government departments to implement the necessary administrative and legislative changes, as outlined in the above paragraph, required to give effect to the proposed AANZFTA upgrade.

### **7.2 Evaluation**

#### **Part 29            7.2.1 Continued evaluation by DFAT**

DFAT will continue to internally review and evaluate AANZFTA's implementation in Australia, including in close coordination with DFAT's Trade Data analytics area as new data on AANZFTA becomes available. DFAT will utilise relevant ABS and Home Affairs trade and mobility data, as available, in this monitoring.

#### **Part 30            7.2.2 Evaluation in accordance with the Agreement**

In accordance with Chapter 21, Article 10 of the proposed AANZFTA upgrade, AANZFTA will continue to undergo formal periodic reviews and upgrades to ensure it remains fit-for-purpose in an evolving regional trade and investment environment. Australia will continue to participate in AANZFTA review and upgrade processes, including through inviting submissions from and consulting with stakeholders in the course of these processes.

Evaluation metrics will include both quantitative and qualitative assessment and the extent to which the relevant committee, subsidiary bodies and working groups under AANZFTA are working effectively and meeting regularly.

The scheduled review of the upgraded AANZFTA may consider the following:

- each chapter, annex and appendix of AANZFTA;
- any elements of the built-in agenda that have not been completed;

- the role of economic cooperation in the ongoing implementation of the Agreement and negotiation of the built-in agenda, as well as advancing economic integration among the Parties (Annex 1: Economic Cooperation);
- supporting the ASEAN objectives of narrowing development gap, including facilitating the more effective economic integration of least developed ASEAN Member States;
- the outcomes from any reviews of other FTAs that ASEAN, Australia or New Zealand is a member of, and any RCEP outcomes, in assessing any implications for AANZFTA;
- improvements that could be made to areas of commitments already included in AANZFTA;
- options to enhance AANZFTA's role in promoting closer economic integration among the Parties (e.g. regulatory cooperation); and
- the inclusion of any other issues that would ensure AANZFTA remains a high quality and ambitious agreement.

In support of this work, AANZFTA Parties may share trade data and other analysis, including tariff preference utilisation to the extent that such information is available. The findings of consultation and analysis undertaken individually by the Parties may be shared with the other Parties.