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HOUSE OF REPRESENTATIVES

**CUSTOMS AMENDMENT (ASEAN-AUSTRALIA-NEW ZEALAND FREE
TRADE AGREEMENT IMPLEMENTATION) BILL 2009**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Home Affairs,
the Honourable Brendan O'Connor MP)

CUSTOMS AMENDMENT (ASEAN-AUSTRALIA-NEW ZEALAND FREE TRADE AGREEMENT IMPLEMENTATION) BILL 2009

OUTLINE

The purpose of this Bill is to amend the *Customs Act 1901* (the Customs Act) to introduce new rules of origin for goods that are imported into Australia from a Party to the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (the Agreement). The Customs Act amendments will enable goods that satisfy the rules of origin to enter Australia at preferential rates of customs duty.

Complementary amendments will also be made to the *Customs Tariff Act 1995* (the Customs Tariff Act) by the Customs Tariff Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Bill 2009.

Formal talks between the Governments of the ten Association of South East Asian Nations (ASEAN) Member States, New Zealand and Australia to establish a Free Trade Agreement commenced in March 2005, culminating in the signing of the Agreement in February 2009.

The Agreement is the first free trade agreement Australia has signed since the onset of the global financial crisis and demonstrates the Government's commitment to providing a solid platform to support growth in Australia's trade and investment with the region.

As a group, ASEAN and New Zealand constitute a larger trading partner for Australia than any single country. Two-way trade was valued at \$103 billion in 2007–08, accounting for 21% of Australia's total trade. Australia's two-way trade with ASEAN has grown by an annual average of 10 per cent over the past decade – faster than Australia's trade with any of its top 10 commercial partners, except China.

The Agreement is the most comprehensive free trade agreement that ASEAN has concluded. It covers goods, services, investment, intellectual property, e-commerce, temporary movement of business people, and economic cooperation. The Agreement also binds ASEAN tariffs and contains substantial tariff elimination commitments, which will strengthen Australia's commercial ties with the region. It also contains commitments that will expand and deepen over time in line with development of the ASEAN Economic Community.

To give effect to the preferential entry of goods under the Agreement, the amendments contained in this Bill provide rules for determining whether goods are AANZ originating goods. The amendments to the Customs Tariff Act will provide for the preferential entry of goods that meet those rules.

The amendments contained in this Bill will be operative from the later of the day the Bill receives the Royal Assent or the day the Agreement enters into force for Australia.

FINANCIAL IMPACT STATEMENT

It is estimated that the customs duty forgone as a result of the implementation of the Agreement could be approximately \$971 million for the period up to the end of the 2012/13 financial year. This figure will be affected by a range of factors, including the degree of utilisation of the Agreement's tariff commitments, changes in trade flows, fluctuations in exchange rates and GDP growth.

REGULATION IMPACT STATEMENT

The following regulation impact statement was tabled in the Joint Standing Committee on Treaties on 12 March 2009:

REGULATION IMPACT STATEMENT

ASEAN-AUSTRALIA-NEW ZEALAND FREE TRADE AREA

1. This Regulation Impact Statement relates to the Agreement Establishing the ASEAN (Association of Southeast Asian Nations)¹ - Australia - New Zealand Free Trade Area (AANZFTA).

A. Problem Identification

2. The AANZFTA negotiations originated from efforts begun in the early 1990s to develop linkages between the ASEAN Free Trade Area (AFTA) and the Australia-New Zealand Closer Economic Relations (CER) Trade Agreement. A High Level Task Force report in 2000, entitled 'The Angkor Agenda', argued in favour of the formation of a free trade area between AFTA and CER. The report concluded that establishing an AFTA-CER free trade area was not only feasible but also advisable if both ASEAN and CER were to keep pace with global developments. Economic modelling by the Centre for International Economics at that time indicated gains of US\$48.1 billion of GDP (US\$19.1 billion for Australia). The report was produced against the background of: the 1997-98 East Asian Financial Crisis; the increasing competitive challenge from rapidly emerging economies such as China and India; and the global spread of free trade agreements (FTAs) that accelerated following the failure of the 1999 Seattle World Trade Organization (WTO) Ministerial meeting to launch a new WTO Round.

3. Australia's trading relationship with ASEAN and New Zealand is valued at \$103 billion, representing 21 per cent of Australia's total trade in goods and services (2007-08 figures). ASEAN, as a group, is a larger trading partner for Australia than any single country, accounting for 17 per cent (\$81 billion) of Australia's trade in goods and services in 2007-08 (China 13 per cent, Japan 12 per cent, and the United States 10 per cent). In 2007-08, ASEAN member countries purchased 11

¹ The Members of ASEAN are Brunei, Burma, Cambodia, Indonesia, Laos, Malaysia, the Philippines, Singapore, Thailand and Vietnam.

per cent of Australia's merchandise exports (\$20.5 billion) and 16 per cent of our services exports (\$8.4 billion).

4. There is a significant difference between two-way trade, and investment flows, between Australia and ASEAN. Whereas Australia's trade with ASEAN accounts for around 17 per cent of total merchandise and services trade, only 5 per cent of Australia's direct investment abroad (i.e. direct physical investment in other countries) is held in ASEAN economies. Australian direct investment in ASEAN was around \$16.4 billion at the end of 2007, having grown strongly by 26 per cent between 2005–06 and 67 per cent between 2006–07, as a result of strong growth in investment to Singapore and Malaysia. ASEAN investment in Australia represents around 4 per cent of the total stock of foreign direct investment in Australia: ASEAN direct investment stocks in Australia were around \$14.8 billion at the end of 2007.

5. ASEAN member countries have committed to establishing an ASEAN Economic Community by 2015. This is aimed at bringing down barriers to goods, services, skilled labour and capital, to create a single market in a region with more than 570 million people and a combined GDP of more than US\$1 trillion. This could help ASEAN to establish itself as a higher growth area in Asia.

6. While achieving a substantial outcome from the WTO Doha Round remains Australia's highest trade policy priority, FTAs are also an important plank of Australia's trade policy. Australia is pursuing FTAs with a number of countries, as is ASEAN. While Australia has a significant trading relationship with ASEAN, many goods and services exports continue to face substantial barriers to trade. The future growth prospects of ASEAN and its significance to Australia's trade and investment interests suggested substantial economic gains, including for Australia's manufacturing industry, from a comprehensive FTA with ASEAN and New Zealand.

7. The formal decision to launch the AANZFTA negotiations was taken by leaders at the ASEAN-Australia-New Zealand Commemorative Summit in November 2004. Leaders agreed to a comprehensive set of "Guiding Principles" for the negotiations and that the negotiations would commence in early 2005 and be completed within two years. The Guiding Principles committed countries to negotiate an agreement that covered goods, services and investment; the progressive elimination of all forms of barriers to trade and investment; and full implementation within ten years. The negotiations concluded at the ASEAN Economic Ministers-CER Trade Ministers meeting in August 2008, although it was also agreed that Australia would continue negotiating bilaterally with Indonesia and Malaysia with a view to improving automotive tariff commitments from those countries. These bilateral negotiations were subsequently finalised and AANZFTA was signed in Thailand on 27 February 2009. Although the negotiations were conducted between Australia, New Zealand and ASEAN as an entity, the completed FTA has resulted in separate market access commitments for Australia, New Zealand and each of the ten ASEAN member countries.

8. Australia's negotiating approach to the AANZFTA was aimed at reaching an outcome that would be WTO-consistent, support the multilateral trading system, preserve the benefits contained in Australia's existing bilateral FTAs and offer new opportunities for Australian exporters and investors.

9. Improved access and certainty in ASEAN markets resulting from the AANZFTA would be commercially significant for Australian industry, particularly in the Indonesian, Malaysian, Philippines and Vietnamese markets, where we do not have bilateral FTAs. In Vietnam's case, the AANZFTA provides an opportunity to build on the 2006 bilateral settlement agreed with Vietnam as part of its WTO accession. Australia's trade with Brunei and ASEAN's three Least Developed Countries (Burma, Cambodia and Laos) is modest, although Australian industry has growing interests in the Cambodian and Lao markets, especially investment in the mining and resource sectors.

10. The AANZFTA has the potential to generate broader benefits than a series of bilateral FTAs, by creating opportunities for Australian products to tap into regional supply chains. For example, Australian automotive component manufacturers could be expected to benefit from regional rules of origin (ROO) that would allow their products to be more readily integrated into regional production chains.

11. While many tariffs in ASEAN member countries are low, there are many sectors where tariffs are often high or at prohibitive levels. Barriers to Australian exports are significant in manufactures (e.g. automotive products and steel), processed foods and agricultural products. Tariffs, however, are only part of the problem. There are also significant non-tariff barriers, including non-automatic import licensing, differential excise duties, onerous labelling requirements and local content rules. Several ASEAN member countries impose import quotas on a number of agricultural products. Access to the services sector in most ASEAN member countries is limited with domestic regulations restricting market access for Australian service providers. Regulations and restrictions limit Australian investment in the region.

12. In contrast, ASEAN member countries face low barriers in the Australian market. Australia has a low overall average applied tariff of 3.6 per cent with over 86 per cent of Australian tariff rates ranging between zero and 5 per cent. Where tariff rates exceed 5 per cent – in Australia's textiles, clothing and footwear (TCF) and passenger motor vehicles (PMV) sectors – these tariffs are scheduled to be reduced through future unilateral tariff reductions. PMV tariffs will fall to 5 per cent in 2010 and TCF tariffs will fall to 5 per cent in 2015.

Trade Barriers by Sector:

Manufacturing

13. ASEAN member countries tariffs in some areas of manufacturing are extremely high, often effectively locking Australian exports out of the market, for example:

- tariffs on passenger motor vehicles are generally in the 30 to 80 per cent range;
- tariffs on automotive parts are generally in the 15 to 30 per cent range;
- aluminium tariffs are also generally in the 20 per cent (Indonesia) to 40 per cent range (Vietnam); and
- iron and steel tariffs are generally high and range up to 50 per cent (Malaysia).

14. Non-automatic import licensing, including for steel and PMVs and differential excise taxes, particularly for PMVs, restricts trade or creates uncertainty. Industry has identified local content requirements as an impediment to trade. Customs administration, including delays and lack of transparency, negatively impact trade.

Agriculture

15. There are significant tariffs on some agricultural products (e.g. horticulture products attract tariffs of up to 40 per cent) and the use of specific or mixed tariffs (tariffs generally based on volume, rather than value) increases the real duty paid for efficient, low-cost producers like Australia. Several ASEAN member countries impose tariff rate quotas on certain agricultural products which limit opportunities for Australian exporters. There are also non-tariff barriers which can be major impediments to trade. For example, discretionary import licensing applies to a large number of products in some countries. Sole importer status is granted to particular firms for imports of agricultural commodities such as wheat and sugar.

Services

16. Services sectors in ASEAN member countries generally contain significant barriers to foreign participation. Regulation is often fragmented (and poorly coordinated) across a number of government agencies and entry to the market may be either prohibited, constrained by limits on foreign equity participation or joint venture requirements, or depend heavily on the exercise of discretionary powers by Ministers or officials. Decision making is often characterised by a lack of both transparency and predictability.

Investment

17. There are impediments to investing in most ASEAN member countries which may have contributed to the fact that ASEAN accounts for a relatively small share of the total stock of Australian overseas investment. Australian investors confront a variety of impediments or other factors in the business environment which discourage investment. These include foreign equity restrictions, performance requirements (local content or export requirements), and a lack of legislative and regulatory transparency.

B. Objectives

18. Australia's overall negotiating objectives for the AANZFTA were to:

- Achieve a comprehensive and genuinely liberalising FTA that is supportive of the multilateral trading system;
- Deliver improved market access for Australian exporters of goods and services and investors to the ASEAN market² that provides commercial benefits and a platform for securing continuing trade and investment liberalisation in the future;
- Preserve the benefits of Australia's bilateral FTAs with individual ASEAN member countries and pursue opportunities to enhance them;
- Seek more transparent and predictable conditions for Australian traders, service suppliers and investors in ASEAN; and
- Position Australia to strengthen our strategic engagement with ASEAN.

19. Australia's detailed negotiating objectives can be found at Annex A.

C. Options

20. Australia has a number of options for addressing the market access problems identified in Section A above – through multilateral, bilateral and regional negotiations.

Multilateral

21. The Government's highest trade priority remains achieving a successful conclusion to the WTO.³ Doha Round of multilateral trade negotiations. This is because the WTO negotiations offer the greatest opportunity to reduce barriers to trade and for Australia to increase access to overseas markets across agriculture, industrial products and services. Further liberalisation of trade through the conclusion of the Round will be key to stimulating growth in the global economy. Since it was launched in 2001 the Round has made important progress, particularly at the WTO Ministerial Meeting in July 2008.

Bilateral

22. The global spread of FTAs gained pace in the mid-1990s and accelerated following the failure of the Seattle WTO Ministerial Meeting in 1999. Australia was

² Australia's FTA with New Zealand (ANZCERTA) already provides for free trade in goods and services.

³ All ASEAN countries are members of the WTO with the exception of Laos, which has observer status and is undertaking accession negotiations.

part of this trend in seeking to conclude FTAs where these offered the prospect of delivering significant benefits more quickly than might be possible through a WTO round. Since 2003, Australia has concluded bilateral FTAs with Singapore, Thailand, the United States, and Chile. Australia also has FTA negotiations underway with China, the Gulf Cooperation Council, Japan, Korea and Malaysia. In addition, a joint FTA feasibility study has been finalised with Indonesia and a study is underway with India. ASEAN member countries too have substantial FTA negotiating agendas, with Brunei, Indonesia, Malaysia, Philippines, Singapore, Thailand and Vietnam, all having completed bilateral FTAs.

Regional

23. Australia has continued to promote trade liberalisation at the regional level through the AANZFTA and the Asia-Pacific Economic Cooperation (APEC)⁴. In November 2008, the Minister for Trade, the Hon Simon Crean, MP, announced that Australia would participate in negotiations for a Trans-Pacific Partnership Agreement (TPP), expanding on the existing Trans-Pacific Strategic Economic Partnership Agreement (between Brunei, Chile, New Zealand and Singapore). Initial parties to the TPP negotiations are likely to comprise Brunei, Chile, New Zealand, Singapore, Australia, the United States, Peru and Vietnam.

24. The AANZFTA is the first time Australia has negotiated a plurilateral FTA, a key objective of which was to ensure that Australia maintains access to ASEAN markets at least as good as that provided to ASEAN's other FTA partners.

25. ASEAN has concluded FTAs with China (goods and services), Japan (goods), the Republic of Korea (goods and services) and is close to signing a goods agreement with India. ASEAN launched FTA negotiations with the European Union in May 2007. ASEAN's pursuit of region-wide FTAs is driven by wanting to attract more foreign investment and by its ambition to consolidate its position in the evolving regional economic architecture. The negotiation of bilateral FTAs by individual ASEAN member countries, notably Singapore and Thailand, was also an important factor motivating other ASEAN member countries to support ASEAN-wide FTA negotiations.

26. ASEAN-wide FTAs have been viewed by some ASEAN member countries as vehicles for driving internal ASEAN reforms. They have also provided the framework for developing ASEAN's economic linkages and ongoing engagement with key trading partners. However, the 'ASEAN first' policy has also meant that ASEAN has not been prepared to make commitments in ASEAN-wide FTAs that go beyond its own internally agreed commitments – which are modest in the non-goods areas. This is despite the fact that some ASEAN member countries have made more ambitious commitments in their bilateral FTAs with non-ASEAN trading partners.

⁴ All ASEAN countries are members of APEC except Burma, Cambodia and Laos.

27. The ASEAN region is marked by countries at different stages of development with varying capacities to negotiate across the full range of trade-related issues. The AANZFTA Guiding Principles recognise these differences and the need for them to be reflected appropriately in the FTA. In the main, the aim was to achieve such differentiation through different timeframes for implementing commitments: Australia and New Zealand having the shortest timeframes, followed by ASEAN's six more developed members (Brunei, Indonesia, Malaysia, the Philippines, Singapore and Thailand), with Vietnam having additional time, and the three Least Developed Country members (Burma, Cambodia and Laos) the longest timeframes.

28. The Government remains committed to the achievement of the APEC Bogor Goals of free trade and investment in the Asia-Pacific region by 2010/2020. APEC has done useful work in support of the multilateral trading system and has made the successful conclusion of the WTO Doha Round its highest priority. APEC has also pursued the promotion of high-quality FTAs through best practices and model measures. It is now examining the feasibility of a Free Trade Area of the Asia-Pacific.

29. The East Asia Summit (EAS)⁵ participants are also pursuing work on free trade agreements. This includes Japan's proposed Comprehensive Economic Partnership for East Asia initiative, which is essentially a proposal for an FTA involving EAS countries.

The AANZFTA

30. The comprehensiveness of the AANZFTA agreement, covering all sectors, can be expected to encourage further trade liberalisation in the WTO or bilateral contexts individually within ASEAN. Australia's approach is aimed at utilising complementary supportive approaches to maximise Australia's trade, investment, commercial linkages and competitiveness across the ASEAN region and to provide new commercial opportunities for Australian industry and investors.

31. By its nature as a regional FTA, the AANZFTA has potential for broader benefits than a series of bilateral FTAs, including through the use of regional rules of origin to simplify the trade environment and expand trade opportunities. The AANZFTA establishes a framework for region-wide economic integration which should have long-term advantages in supporting the development of regional production chains and more efficient region-wide trading networks.

32. However, given the diversity of countries in ASEAN, and the differences in their level of development, there are limits to what the AANZFTA can achieve in the short to medium term. Therefore, there is scope for bilateral FTAs with ASEAN member countries to add value by focusing more intensively on particular market access

⁵ All ASEAN countries are EAS participants, along with Australia, China, India, Japan, New Zealand and the Republic of Korea.

(and other) priorities than has been possible in the AANZFTA, and by seeking to deliver some earlier or more far-reaching liberalisation in priority areas.

33. There are also strategic reasons for entering into the AANZFTA. ASEAN, as a group, has either signed or recently finalised FTAs with China, Japan, the Republic of Korea and India (i.e. all of its East Asian dialogue partners except Australia and New Zealand). Failure to secure improved access to ASEAN markets for Australian exporters through an FTA would not only risk seeing Australian industry's competitiveness erode over time as regional competitors negotiate better access through FTAs, but would also risk Australia's exclusion from participation in the emerging regional economic architecture.

D. Impact Analysis

34. A wide range of stakeholders identified an interest in the AANZFTA during a call for public submissions prior to the launch of negotiations. These stakeholders included groups and individuals from the agricultural sector, the manufacturing sector, the services sector, trade unions, employer organisations, state governments and public interest groups.

35. The AANZFTA, once implemented, could be expected to have impacts on a number of these stakeholders. There is considerable potential for the AANZFTA to create new trading opportunities and contribute to boosting Australia's modest investment relationship with ASEAN. As noted above, Australia's trade with ASEAN is substantial, with ASEAN accounting for 17 per cent (\$81 billion) of Australia's total two-way trade in goods and services.

36. Negotiated over sixteen rounds and several intersessional meetings, the final AANZFTA package consists of:

- (i) the FTA text, containing commitments on goods, services, investment, temporary movement of natural persons, electronic commerce, intellectual property, economic cooperation and competition policy (see Annex B for summary of key obligations);
- (ii) schedules of tariff commitments, containing tariff reduction and elimination commitments (paras 37-42 and Annex C), and the associated rules of origin (paras 55-59);
- (iii) schedules of specific services commitments (paras 62-67 and Annex D);
- (iv) schedules of temporary movement of natural persons commitments (paras 68-70 and Annex E);
- (v) an 'implementing arrangement' containing an agreed work program of economic cooperation projects (Annex F);

- (vi) a letter from Australia's Minister for Trade to Vietnam's Minister of Industry and Trade, according recognition of Vietnam's Market Economy Status (para 54); and
- (vii) a Memorandum of Understanding on Article 1 (Reduction and/or Elimination of Customs Duties) of the Chapter on Trade in Goods (Annex G).

Separately, Australia and New Zealand exchanged letters outlining how the AANZFTA is to apply between Australia and New Zealand (Annex H).

Broad-based gains

37. The AANZFTA provides for the progressive reduction or elimination of tariffs facing Australian goods exports to ASEAN over a transition period, and the elimination of all Australian tariffs on imports from the AANZFTA Parties. Tariffs will be eliminated on a high percentage of tariff lines, with phasing commencing early in the transition period, using as a starting point applied most-favoured-nation (MFN) tariffs in the 2005 base period. Many tariffs currently at possibly prohibitive levels will be reduced to levels that should allow trade to flow within a few years. Exclusions from tariff commitments have been kept to a minimum, and generally do not exceed 1% of a country's national tariff lines. For those tariff lines where tariffs are not eliminated, but which are not in the exclusion category, tariffs will either be bound at the base period rate, or will be subject to tariff reductions ranging between 20% and 80%. The tariff commitments in the Agreement apply to those goods which meet the rules of origin (ROO).

38. The tariff outcomes provide for longer transition periods, and lower tariff elimination outcomes, for Vietnam and the three Least Developed Countries (Burma, Cambodia and Laos), in recognition of their status as newer ASEAN member countries with less developed economies.

39. A snapshot of the tariff elimination outcomes is provided by Table 1, which shows, for each Party, the number of tariff lines with tariff-free treatment in the base year of 2005, in 2010, in 2013, and at the end of the transition period for each country. The Table demonstrates the high levels of tariff elimination that will be achieved by the AANZFTA, and the fact that high levels of tariff-free treatment – generally around 90% - will be achieved as early as 2013 for the more developed ASEAN markets.

Table 1
Percentage of Tariff Lines with Tariff-Free Treatment

Country	2005 Base Tariffs (%)	2010 (%)	2013 (%)	Final Tariff Elimination (%)	Year Achieved
Australia	47.6	96.4	96.5	100	2020
Brunei	68	75.7	90	98.9	2020
Burma	3.7	3.6	3.6	85.2	2024
Cambodia	4.7	4.7	4.7	88	2024
Indonesia	21.2	58	85	93.2	2025
Laos	0	0	0	88	2023
Malaysia	57.7	67.7	90.9	96.3	2020
New Zealand	58.6	84.7	90.3	100	2020
Philippines	3.9	60.3	91	94.6	2020
Singapore	99.9	100	100	100	2009
Thailand	7.1	73	87.2	99	2020
Vietnam	29.3	29	29	89.8	2020

40. An additional perspective on the significance of the AANZFTA's tariff commitments is provided by Table 2 which shows the percentage of each country's tariff lines in the 0-5% range (i.e. tariffs that are zero or at such a low level they should not restrict trade) in the 2005 base period, in 2011, 2013, 2017, 2020 and 2025. The Table demonstrates that, within 2 years of the AANZFTA's entry into force, the tariff commitments should deliver some significant improvements in access to ASEAN markets for Australian exporters.

Table 2
Percentage of Tariff Lines with Tariffs in the 0-5% Range

Country	2005 Base Tariffs(%)	2011(%)	2013(%)	2017(%)	2020(%)	2025(%)
Australia	86.2	96.7	96.8	97.6	100	100
Brunei	76.2	77	93.2	95.8	99	99
Burma	68.6	68.1	68.1	89	89.1	96.9
Cambodia	4.7	4.7	4.7	35.4	71.4	95
Indonesia	59.4	85	92.4	95.6	96.2	96.7
Laos	49.6	49.4	49.4	84.8	88.3	95.8
Malaysia	66.2	83.8	91	97	97.2	97.2
New Zealand	65.4	91.3	94.6	98.3	100	100
Philippines	57.2	91.3	94.5	95.7	96.5	96.5
Singapore	99.9	100	100	100	100	100
Thailand	56.5	76.8	91.4	92.3	99	99
Vietnam	46.7	46.3	55	90.8	90.8	95

41. Table 3 provides information on the percentage of base period (2005) imports from Australia with tariff-free treatment in 2005 (in relation to MFN tariffs), 2010, 2013, and at the final year of tariff elimination for each of the more developed ASEAN 6 countries and Vietnam. This table demonstrates the high level of current trade flows covered by tariff elimination commitments.

Table 3
Percentage of Base Period (2005) Imports from Australia with Tariff-Free Treatment

Country	2005 (%)	2010 (%)	2013 (%)	Final Tariff Elimination (%)
Brunei	93.2	93.8	96	99.7
Indonesia	67	81.3	85.4	93.4
Malaysia	87.8	90.9	96	96.9
Philippines	4.3	65.9	75.8	92
Singapore	99.9	100	100	100
Thailand	50	87.2	88.4	98.5
Vietnam	19.8	19.8	19.8	96.8

42. Annex C provides a summary of the tariff outcomes for individual product sectors in relation to the four largest ASEAN markets with which Australia does not currently have an FTA, i.e. Indonesia, Malaysia, the Philippines and Vietnam.

43. Negotiations also recognised the wide range of non-tariff measures applied by ASEAN member countries which impact on Australia's trade in goods and that they can be a serious barrier to commercially meaningful market access. These include import licensing, differential excise duties and quantitative restrictions that may be applied in a way that favours domestic products over imports. These measures are a major concern for Australian exporters of manufactures, especially automotive and steel products, and have an impact on export conditions for a range of products of interest to Australia.

44. The AANZFTA incorporates WTO disciplines applying to non-tariff measures. However, it was not possible to negotiate any additional disciplines on such non-tariff measures as part of the AANZFTA outcome. Ensuring that such measures are effectively addressed will be a factor in determining the long-term success of the AANZFTA in facilitating Australia's trade with ASEAN member countries, however, and the Trade in Goods text includes a provision establishing a work program which aims to identify additional means of addressing such measures.

45. The FTA also delivers greater certainty and transparency for Australia's services exporters and investors, including through WTO-plus services market access commitments across a range of sectors and countries. These include key sectors of export interest, such as professional services, higher education, financial and telecommunication services.

Impacts on Specific Sectors and Stakeholders:

Agricultural Sector

46. ASEAN is an important market for Australian agriculture. ASEAN member countries have been among Australia's principal export market for sugar and among Australia's top ten markets for live animals, dairy, horticulture and wheat. Australia's agriculture exports to ASEAN were valued at around \$3.9 billion in 2007–08.

47. The agriculture industry identified the following specific issues they sought to be addressed in the AANZFTA negotiations:

- reduction/elimination of specific and mixed tariffs (i.e. tariffs based on volume);
- immediate reduction of tariffs to ASEAN Common Effective Preferential Tariff (CEPT) rates, if tariffs are not eliminated immediately;
- elimination of tariffs on horticulture, especially in priority markets – Indonesia, Malaysia, the Philippines, Thailand and Vietnam as a fall back, tariffs at the level provided to China under the ASEAN-China FTA;
- removal of tariff rate quotas on meat, including on goat products in the Philippines;
- removal of restrictive elements in SPS (i.e. quarantine) certification requirements of food products such as chicken, liquid milk and eggs;
- increased transparency of ASEAN food standards and labelling regimes for example the Philippines require pre-registration of labelling;
- disciplines to ensure wine labelling requirements are not used to restrict trade;
- reduction in burdensome customs procedures in some ASEAN member countries;
- reduction in the range of import licences on agricultural products whose conditions vary by product and are often limited to only a few domestic companies these include rice and rice products, sugar, milk and cereal flours (including wheat) livestock imports are subject to import licensing in addition to a requirement for veterinary certificates and pre-export quarantine periods (particularly in Indonesia and the Philippines).

48. The AANZFTA can be expected to facilitate an increase in Australia's exports of dairy products, some processed meat products, other processed foods and beverages. Exporters of a wide range of agricultural products would also benefit from the greater certainty resulting from the binding of current duty free entry, and

elimination of some tariff quotas. The significance of the tariff outcomes for the agriculture sector is demonstrated in Annex C.

49. As a consequence of the AANZFTA, ASEAN member countries could be expected to increase their exports of some food products to Australia. However, as almost all Australian agricultural tariffs are currently applied at rates from zero to 5 per cent, tariff elimination under the AANZFTA would be unlikely to have a significant impact on the Australian agriculture industry. Nor would the AANZFTA commitments affect Australia's quarantine regime, as the FTA's provisions reaffirm the primacy of the WTO Agreement on Sanitary and Phytosanitary Measures.

Manufacturing and Resource Sector

50. High tariffs and tariff escalation (i.e. tariff levels rising in line with the degree of processing) were identified by Australian industry as barriers to increasing trade with ASEAN member countries. Non-tariff measures affect a number of industries. The lack of transparency in customs procedures adds substantially to the cost of doing business in ASEAN member countries. The manufacturing sector highlighted the following specific issues they sought to be addressed in the AANZFTA:

- significantly high tariffs in the automotive, steel, chemical and plastics and processed food sectors;
- rules of origin that allow for further integration with the ASEAN automotive supply chain;
- initial reduction of ASEAN textile, clothing and footwear tariffs to at least ASEAN Common Effective Preferential Tariff (CEPT) rates removal of non-tariff measures, such as restrictions on distribution, and domestic subsidies;
- elimination of differential excise taxes for cars which affect Australian exports of larger vehicles;
- removal of non-automatic import licensing (including for steel and passenger motor vehicles);
- improvements in transparency of customs administration; and
- enhanced standards and conformance cooperation to facilitate engagement.

51. In line with reducing and eliminating ASEAN tariffs, the FTA could be expected to result in increases in Australia's exports of manufactured items such as motor vehicles and components, transport equipment, ferrous metals, metal products, chemical, rubber and plastic products, textiles and paper products. The significance of the tariff commitments for the manufacturing and resource sectors is demonstrated in Annex C.

52. The set of rules of origin negotiated under the AANZFTA could also be expected to provide Australian exporters with better opportunities to link into regional supply chains. Products produced primarily from inputs sourced from the AANZFTA countries would receive preferential tariff rates when exported to the AANZFTA parties. This would provide a greater potential for Australian exports to, and imports from, ASEAN of intermediate products such as automotive parts and provide further investment opportunities in the region.

53. Reductions in Australian tariffs may result in ASEAN member countries increasing their exports to Australia of electronic equipment, machinery and equipment, motor vehicles and parts, metal products, wood products, chemicals, rubber and plastics and textiles and clothing. However, given Australia's already low tariffs (averaging 3.6 per cent), the overall impact on the Australian manufacturing industry is likely to be modest.

54. Vietnam is accorded WTO Market Economy Status as part of the AANZFTA package. This change puts Vietnam on the same footing as other WTO Members in relation to dumping, and subsidy and countervailing, investigations, as Australia agrees to not have recourse to special procedures allowed under Vietnam's terms of accession to the WTO. Industry representatives have noted that anti-dumping has not been a significant issue in relation to Vietnam, and highlighted Vietnam's level of market access opening in the AANZFTA as the key issue in developing a balanced package.

Compliance costs

55. The main area of additional costs for exporters associated with the AANZFTA would be in relation to complying with the rules of origin provisions required to claim preferential tariff treatment, including obtaining certificates of origin. These costs would be most relevant to the Australian manufacturing sector, due to its use of imported components and parts, but should not be significant.

56. For the majority of goods, there would be two options available to Australian exporters under the AANZFTA to comply with the rules of origin (ROO) provisions (i.e. there would be "co-equal" ROO). Exporters could utilise Australia's preferred Change of Tariff Classification (CTC) methodology - the same approach used in Australia's FTAs with the United States, Thailand and New Zealand, as it offers a simpler method of testing exports for their origin compliance – or exporters could also utilise ASEAN's preferred 'value-added' approach.

57. Consultations by the Department of Foreign Affairs and Trade (DFAT), the former Department of Industry, Tourism and Resources (DITR), the Department of Agriculture, Fisheries and Forestry (DAFF) and the Australian Customs Service (Customs) confirmed that industry generally supports a CTC-based approach on ROO as being less administratively burdensome than the alternatives. Under the

AANZFTA co-equal ROO, for most products exporters will be able to choose whether to use CTC or value-added rules.

58. As with Australia's existing FTAs with Singapore and Thailand, origin status and consequent eligibility for preferential tariff treatment, would be based on certificates of origin which, in Australia's case, are expected to be issued by endorsed industry bodies such as the Australian Chamber of Commerce and Industry or the Australian Industry Group. The issue of these certificates would generally require a small fee-for-service payment by exporters.

59. We would not anticipate additional compliance costs for Customs in administering the AANZFTA's approach to ROO. While it is expected that most ASEAN exporters will use the 'value added' approach in the early years of the FTA, this choice will not provide a major additional burden for customs which has a strong familiarity with both the CTC and 'value added' approaches. Customs would not be directly involved in the issue of certificates of origin in Australia.

Services Sector

60. Two-way trade in services between Australia and ASEAN is worth around \$18 billion and there is considerable potential for Australia's services exports (worth \$8.4 billion) to increase. Services account for over 29 per cent of Australia's total exports to ASEAN. Both exports to and imports from ASEAN are dominated by travel and transportation services, with more than half of Australia's travel exports to ASEAN being education-related. Communication services, construction, and financial services and insurance, each accounted for less than 2 per cent of total services exports to ASEAN.

61. Most ASEAN member countries control foreign participation in their services sectors very tightly and maintain significant regulatory restrictions. These include foreign equity limits, joint venture requirements, geographic restrictions on the location of foreign firms; numerical or other limits on the temporary entry and stay of foreign personnel; and in the case of professional services, nationality restrictions on the right to practise. Some of these restrictions may be relaxed by regulatory authorities on a discretionary case-by-case basis, or on a unilateral basis (either indefinitely or for defined periods of time). Consequently, there can be significant gaps between applied levels of market openness and the levels that are "bound" in the WTO or other trade treaties, which creates uncertainty for foreign service suppliers.

62. The AANZFTA negotiations provided an important opportunity for Australia to enhance certainty and transparency for Australian services suppliers in sectors of priority trade interest, such as education, financial, professional and telecommunications services, including by closing the gap between applied and WTO-bound levels of market openness, strengthening regulatory disciplines and creating a platform for ongoing economic engagement on services trade issues.

63. Under the AANZFTA, ASEAN member countries have made market access and regulatory commitments that will enhance certainty and transparency for services suppliers in the region.

64. Some examples include 'WTO-plus' market access improvements in (see Annex D for more details of 'WTO-plus' gains in sectors of Australian priority trade interest):

- professional services from Malaysia (accounting, architecture and engineering), Philippines (accounting , engineering) and Vietnam and Indonesia (legal);
- higher education services from Malaysia, the Philippines, Indonesia and Vietnam (including an MFN commitment from Vietnam in relation to future ASEAN-wide FTAs on the cross-border supply of higher education services);
- telecommunications - all ASEAN member countries have agreed, subject to transitional arrangements in some cases, to pro-competitive regulatory disciplines to ensure that foreign suppliers can operate on a level-playing field with monopoly or former monopoly incumbent operators, which may own or control essential network facilities and infrastructure;
- financial services from the Philippines (banking), Indonesia (insurance and banking) and Malaysia (other financial services);
- construction services from Indonesia, Malaysia and Brunei;
- mining and energy related services from the Philippines and Thailand;
- temporary entry of business persons from Indonesia (intra-corporate transferees), Malaysia and Thailand (particularly in the education sector) and the Philippines (particularly in some professional services).

65. There is a built-in agenda to review market access commitments in services three years after entry into force of the Agreement, and periodically thereafter as determined by the FTA Joint Committee. The aim of these reviews is for Parties to further improve specific commitments so as to progressively liberalise trade in services.

66. Australia also has the right to request that an ASEAN member country extend to Australia any more favourable treatment (than provided for in the AANZFTA) which is afforded to a third country as part of a future ASEAN-wide FTA. This kind of "MFN on request" approach is consistent with the approach in Australia's bilateral FTAs with Singapore and Thailand.

67. Some examples of enhanced 'WTO-plus' regulatory disciplines in the AANZFTA which will benefit Australian services exporters in the region include requirements on Parties to:

- encourage competent bodies to enter into negotiations for recognition of professional qualifications, licensing and registration requirements and procedures;
- ensure that the use of business names under which service suppliers normally trade in their respective home country markets is not unduly restricted;
- publish measures of general application affecting trade in services on the Internet, to the extent possible;
- endeavour to provide interested persons of other Parties with a reasonable opportunity for comment prior to adoption of new measures;
- provide license applicants with an opportunity to remedy incomplete applications, status reports on the progress of applications on request, and reasons for the denial or termination of applications;
- publish information on temporary entry requirements, process completed applications for temporary entry and stay promptly and to notify applicants, on request, about the status or outcome of the application;
- observe minimum standards of procedural transparency, such as reasonable notice of administrative processes (e.g. licensing and rule-making in specific cases) and opportunities to present facts and arguments before final administrative action;
- afford services suppliers with a commercial presence certain post-establishment investment protections, as set out in the Investment chapter, including investor-state dispute settlement.

Movement of Natural Persons

68. The ability of investors, goods sellers and service suppliers from one country to enter and stay temporarily in another country to explore business opportunities, negotiate and enter into contracts and transact business (supply services) is a key hallmark of deeper economic integration. Business stakeholders in Australia have raised issues concerning delays in obtaining entry visas or other permits in some ASEAN member countries, difficulties in obtaining relevant forms and documentation and a lack of transparency in decision-making. The AANZFTA aims to provide a platform for addressing these concerns through a movement of natural persons (MNP) chapter.

69. The AANZFTA MNP chapter provides a framework for Parties to make commitments on temporary movement of service suppliers, investors and goods sellers and other persons engaged in regional trade and investment. The chapter contains obligations which require Parties to publish information on temporary entry requirements, process completed applications for temporary entry and stay promptly and to notify applicants, on request, about the status or outcome of the application. Any fees imposed in relation to the processing of immigration formalities are required to be reasonable and in accordance with domestic law.

70. From entry into force of the AANZFTA, the commitments of most ASEAN member countries under the MNP chapter will relate only to service suppliers, consistent with the WTO GATS framework. However, most ASEAN member countries have improved their WTO commitments in this area, including Indonesia, Malaysia, Singapore, the Philippines and Thailand (e.g. length of stay for intra-corporate transferees); Malaysia and Thailand (education services suppliers) and the Philippines (professional services) – see Annex E for details of ‘WTO plus’ gains. The MNP chapter provides a platform for countries to broaden and deepen their commitments in future and thereby facilitate freer movement of skilled labour within the region across all sectors of the economy.

Investment

71. There is a significant difference between two-way trade, and investment flows, between Australia and ASEAN. Whereas Australia’s trade with ASEAN accounts for around 17 per cent of total merchandise and services trade, only 5 per cent of Australian’s direct investment abroad (i.e. direct physical investment in other countries) is held in ASEAN economies. ASEAN investment in Australia also represents only around 4 per cent of the total stock of foreign direct investment in Australia. ASEAN direct investment stocks in Australia were around \$14.8 billion at the end of 2007. Singapore accounts for about 51 per cent of total ASEAN investment. ASEAN direct investment in Australia declined sharply between 2001 and 2002, from \$16.3 billion to \$7 billion, but has increased steadily since 2003.

72. Australian direct investment in ASEAN was around \$16.4 billion at the end of 2007. Direct investment grew only modestly between 2001 and 2005, but rose strongly by 26 per cent between 2005-06 and 67 per cent between 2006-07, driven by strong growth in investment to Singapore and Malaysia. Investments in the region vary widely. In Singapore, for example, the main investments are in information technology, financial services and investment holdings for regional operations. In Vietnam, there are important investments in manufacturing, food and beverages, financial services and education. Australian investors in Malaysia include prominent companies in industrial and infrastructure development as well as education, while in Indonesia, Australian companies have invested principally in mining, beverages and financial services.

73. The majority of Australian investment in ASEAN takes the form of portfolio investment (e.g. shares) and other investment rather than direct investment. The same is true of ASEAN investment in Australia. Total Australian investment in ASEAN was around \$31.4 billion at the end of 2007. Total ASEAN investment in Australia at the end of 2007 was \$52.8 billion. Australian investment in ASEAN is also highly concentrated, with Singapore having been the recipient of more than half of Australia's total investment in ASEAN over recent years.

74. Against this background, there is clearly scope to deepen the economic relationship between Australia and ASEAN through an expansion of direct investment and to broaden Australian investment across ASEAN. The AANZFTA cannot address all the factors and economic fundamentals that affect investor perceptions and decisions. However, to the extent that improved market access and legal safeguards can be realised in the AANZFTA, the FTA can contribute to improved investor confidence by providing a more certain, liberal and transparent environment for Australian investors.

75. With regard to market access in non-services sectors (agriculture, mining, forestry, fishing and manufacturing), Australian investors confront a variety of impediments. These include foreign equity restrictions, restrictions on organisational form, and a lack of legislative and regulatory transparency. While these issues may also adversely impact upon investor confidence, additional post-establishment factors such as the potential for expropriation, restrictions on profit repatriation and transfers, and the absence of adequate legal protection in some ASEAN member countries erode investor confidence and limit the potential to increase investment across ASEAN.

76. The AANZFTA contains a significant regime of legal protections that will enhance certainty and transparency for investors during the post-establishment stages of investment. These obligations are comparable to Australia's existing bilateral Investment Promotion and Protection Agreements (IPPAs) with four ASEAN member countries. These include requirements on Parties to:

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

effective compensation (the chapter includes an annex which elaborates on the nature and scope of “indirect” expropriation).

77. There are detailed provisions on investor-state dispute settlement (ISDS) which provide that where an investor alleges that a Party has breached specific obligations (including those mentioned in the previous paragraph) in such a way as to cause loss or damage, and it has not been possible to resolve the dispute by consultations, the dispute may be referred to international arbitration. Investor-state dispute settlement will not apply to investment screening or admission processes.

78. On market access restrictions (pre-establishment issues), Parties made the assessment that there was insufficient time to complete market access schedules to an appropriate standard within the timeframe of the negotiations. Therefore, the AANZFTA provides for a work program to develop market access schedules, covering pre-establishment issues such as foreign equity limits, within five years of entry into force of the Agreement, subject to agreement of the Parties. The assessment was based, in part, on the novelty of the agreed two-annex “negative listing” approach to scheduling for many ASEAN member countries. The work program notes, inter alia, that further discussions between the Parties will take place on the application of MFN treatment and procedures for the modification of schedules.

Intellectual Property (IP)

79. There are significant variations in intellectual property law and practice both within ASEAN and between some ASEAN member countries and Australia. This variation introduces complexity and uncertainty that impedes IP-related exports to the ASEAN region and adds to the transaction costs of those businesses which do seek to protect their intellectual property in ASEAN markets. Australian industry expressed concern regarding inadequate protection and enforcement of intellectual property in most ASEAN member countries. These concerns further undermine the confidence of IP-related exporters and raise apprehension regarding a flow of counterfeit and pirated goods from ASEAN into Australia. Australia’s priority was to seek commitments and mechanisms for cooperation to enhance harmonisation of ASEAN’s intellectual property systems with international standards, with a view to delivering efficiency gains to Australia’s IP exporters and advancing the protection and enforcement of the rights of Australian intellectual property holders.

80. The outcome on IP under the AANZFTA reinforces the Parties’ existing rights and obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), including reiterating national treatment obligations, and builds on those rights and obligations in a number of areas. The Agreement contains specific obligations on protection of trade marks and geographical indications, copyright, government use of software and transparency. It provides for cooperation in many areas, including to promote the efficiency and transparency of intellectual property administration and registration systems, cooperation on border

measures with a view to eliminating trade which infringes intellectual property and cooperation regarding accession to a number of international standard setting treaties which would facilitate further harmonisation of intellectual property systems in the region. Importantly, the Agreement also includes a Committee on Intellectual Property to drive implementation of the IP Chapter, providing a high level vehicle to enable closer cooperation with New Zealand and ASEAN for the benefit of IP owners and users in the region.

Trade Unions

81. One of the main concerns of trade unions, as highlighted in the public submission process, was the potential adjustment costs associated with the AANZFTA on the Australian manufacturing industry. The analysis for the manufacturing sector above has highlighted the opportunities for Australian industry from ASEAN tariff reductions, while also noting a reduction in Australian tariffs, including the higher tariffs in the textile, clothing and footwear (TCF) and passenger motor vehicle (PMV) sectors. The main adjustment costs for Australian industry are likely to be in these areas.

82. However, the overall adjustment costs from the FTA on the TCF and PMV tariff reductions are likely to be modest. Any increase in imports of motor vehicles from ASEAN member countries needs to be seen in the broader context of the potential benefits for the Australian manufacturing sector, including the automotive industry, from increased export opportunities and access to regional supply chains under the FTA. Similarly, trade in TCF with ASEAN is not large – imports from ASEAN are just under 6 per cent of total TCF imports. Adjustment costs from any increase in TCF imports from ASEAN are therefore unlikely to have major ramifications for employment in Australian TCF sectors.

Industry Groups

83. Industry groups were broadly in favour of negotiating the AANZFTA, provided the agreement was comprehensive in nature and delivered clear benefits to Australian industries. As discussed in the analysis above, liberalisation will occur across a broad range of tariff lines in all sectors – including agriculture and manufacturing – and will create substantial new market access opportunities for Australian exporters of goods and services.

State governments

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

Public interest groups

85. The AANZFTA is likely to have a positive impact on Australian consumers. There should be increased benefit for consumers as falling Australian tariffs provide greater choice across many product lines, including in TCF and PMV. The AANZFTA's new provisions on services should also see increased choice in service providers.

Small business

86. The overall impact of the AANZFTA on small business is likely to be positive. Many of the sectors which are expected to benefit from the FTA contain a significant number of small businesses. These include the dairy sector, beverages, construction, and a range of services industries where barriers to entry are high. No industry sectors are expected to experience a significant decline in activity as a result of the FTA. As noted above, the system of rules of origin should benefit access for business, including small business, into regional supply chains, at minimal administrative cost.

87. In addition, provisions designed to ensure transparency, consistency, and predictability, in the application of customs laws and regulations would increase certainty and also reduce costs for small businesses. Provisions which would assist in harmonisation of ASEAN intellectual property systems with international standards should also reduce the complexity and uncertainty that can impede IP-related exports to the ASEAN region and reduce transaction costs, particularly benefiting smaller businesses which seek to protect their intellectual property in ASEAN markets.

Federal Government

88. The main impact of AANZFTA on the Federal Government will be the loss of tariff revenue. The Treasury has estimated that the loss of tariff revenue to the Australian Government resulting from AANZFTA over the 2009-10 Budget forward estimates (four years from 2009-10 to 2012-13) will be \$971 million. This estimate is based on an analysis of existing trade levels (as at November 2008) and does not take into account variations in the level of trade that will result from the FTA, either in terms of imports from ASEAN increasing faster than imports from other non-FTA countries or the positive impact on economic growth of the treaty. The estimates will be affected by revisions to forecasts and projections for the level of imports.

Broader strategic considerations

89. Continued engagement with Asia is a key element of Australia's foreign and trade policies. In part, this reflects the trade and economic importance of the region to Australia. Australia also has strong security and defence interests in the region. An FTA has the potential to:

- deliver significant benefits to the overall relationship between Australia and ASEAN member countries;
- complement the broader economic/political institutional frameworks of APEC, the ASEAN-Australia Forum and our various bilateral arrangements;
- encourage ASEAN to adopt a high standard and WTO-consistent approach to FTAs;
- assist ASEAN’s own economic integration efforts; and
- help to position ASEAN as a positive influence in evolving regional economic architecture.

E. Consultations

90. Public submissions were sought prior to the commencement of the AANZFTA negotiations and around 50 written submissions were received, including from the South Australian, Victorian and Western Australian governments. Submissions from these governments recognised the potential benefits of an FTA between Australia and ASEAN, and agreed on the need to negotiate a comprehensive, high quality agreement.

91. During the negotiation of the AANZFTA, DFAT officials held regular consultations with relevant Commonwealth agencies, state and territory governments and other stakeholders, including industry, unions and public interest groups, to ensure that their views informed development of the Government’s negotiating strategy. In addition to a large number of one-to-one and smaller group meetings, there were five large roundtable meetings between December 2006 and December 2008 with peak organisations representing industry, trade unions, professional bodies and other interested groups.

92. Commonwealth agencies were consulted via regular inter-departmental committee meetings and participation of relevant agencies in the Australian delegation to negotiating sessions. DFAT’s web site was updated after each AANZFTA negotiating session, providing for wider dissemination of information to stakeholders.

93. State and territory governments were consulted through regular senior State and Territory Trade Officials Group (STOG) and Commonwealth-States Standing Committee on Treaties (SCOT) meetings, teleconferences and regular visits by the AANZFTA negotiators to state and territory capitals. The Minister for Trade also consulted state Premiers and territory Chief Ministers on Australia’s services and movement of natural persons schedules and briefed his state and territory counterparts at the COAG Ministerial Council on International Trade.

94. Consultations with industry have been particularly substantial with DFAT attending more than 100 meetings and industry roundtables. These consultations helped identify commercially significant impediments to increasing Australia's exports to, and investment in, ASEAN markets. At the negotiating rounds in Perth in July 2007 and Brisbane in April 2008, business representatives participated in seminars with senior ASEAN and New Zealand negotiators.

95. Industry groups were broadly supportive throughout the AANZFTA negotiations, with most seeking improved market access to ASEAN member countries. The automotive industry was strongly supportive of the FTA and sees benefits in gaining market access to ASEAN's growing passenger motor vehicle market. The sector also sees benefits in attaining better access to regional supply chains for automotive parts, which is expected to be facilitated by the more liberal regional rules of origin negotiated under the AANZFTA.

96. The textile, clothing and footwear (TCF) industry saw both pluses and minuses in a potential FTA. For example, the Council of Textile and Fashion Industries of Australia indicated a preparedness to consider a reduction and elimination of tariffs on individual tariff lines of interest to ASEAN, but only on a reciprocal basis and only if these reductions were not used as a precedent in other FTAs. Similarly, the Australian footwear industry had both offensive and defensive interests. It was prepared to accept a lowering of footwear tariffs in Australia to zero, but only on the basis of reciprocity from ASEAN.

97. There were regular briefings of agricultural organisations, including through the Technical Working Group facilitated by the National Farmers' Federation. Australia's agriculture sector is broadly supportive of the AANZFTA and sought market access gains in a range of priority sectors such as dairy, red meat, pork, wheat and grains, and wine. In some cases (e.g. horticulture) high tariffs were the main concern, but most indicated the use of non-tariff measures as a priority for negotiation. A number of industries warned of the dangers of any weakening of Australia's quarantine regime.

98. Services industries generally supported an FTA with ASEAN, reflecting the potential for significant growth in exports due to high barriers to entry. Services stakeholders, including the Australian Services Roundtable, Certified Practising Accountants, Engineers Australia, Institute of Chartered Accountants of Australia, Insurance Council of Australia, Law Council of Australia, TAFE Directors Australia, Australian Nursing and Midwifery Council and the Australian Nursing Federation, were consulted closely on the emerging services outcomes, including market access.

99. Australia's financial services providers were particularly supportive of a comprehensive FTA. ASEAN regulations prevent foreign banks from offering full domestic banking services, and limit their ability to compete in the regional market. Equity limitations were a concern for some services providers. Members of the

media and entertainment industries sought a positive list approach to services market access commitments in the FTA, either with no listing of cultural industries or a general cultural exception that would allow the Government to introduce protective legislation in the future.

100. Public interest groups and unions indicated concerns over environment, human rights abuses (especially the ACTU and Australian Manufacturing Workers Union (AMWU) in relation to Burma), and trade and labour standards. The ACTU and AMWU also expressed a preference for pursuing multilateral trade agreements over bilateral or regional FTAs. Some submissions raised concerns with Australia negotiating with a regional grouping that includes Burma. The AANZFTA does not change Australia's relationship with Burma. Negotiating an FTA with a country or, in the case of the AANZFTA, a group of countries, did not constrain or alter the approach Australia takes bilaterally, plurilaterally or multilaterally on human rights-related matters. Australia expects to continue its ongoing bilateral dialogue and engagement on these issues, as well as through all relevant international and regional mechanisms. At the August 2007 ASEAN Economic Ministers-CER Consultations it was agreed that government procurement and labour and environment provisions would not be included in the AANZFTA itself. Australia and New Zealand pursued their government procurement objectives as part of the AANZFTA package, but it was not possible to achieve any outcomes in this area. New Zealand pursued its labour and environment agenda with some individual ASEAN member countries in the context of the AANZFTA negotiations, and agreed a bilateral outcome with the Philippines which supplements instruments already secured separately with other ASEAN member countries.

F. Recommended Option

101. On balance, it is in Australia's interests to enter into the AANZFTA, given the Agreement will:

- deliver significant market access commitments that provide benefits to Australian producers, exporters, consumers and investors and a platform for securing continuing trade and investment liberalisation in the future;
- support greater economic integration in the region, including through greater use of supply chains, especially due to its use of regional rules of origin to determine eligibility for the AANZFTA tariff commitments;
- deliver these market access gains in a faster timeframe than appears possible through the WTO Doha Round;
- achieve sufficiently comprehensive and reform-oriented WTO-plus commitments to ensure that the AANZFTA is supportive of the multilateral trading system;

- preserve and build on the benefits in Australia’s existing bilateral FTAs with New Zealand, Singapore and Thailand;
- strengthen Australia’s strategic engagement with ASEAN and with the evolving regional economic architecture;
- impose small adjustment costs that would be outweighed by the overall economic gains to the Australian economy; and
- not detract from our ability to continue to negotiate trade liberalisation in other fora – WTO, regional or bilateral.

G. Implementation and Review

102. Once signed, the AANZFTA will enter into force when Australia, New Zealand and at least four ASEAN member countries complete their domestic implementation processes. In view of the time required for a number of the AANZFTA Parties to conclude their domestic processes, it is expected that the AANZFTA will enter into force in the second half of 2009 and, in any event, no later than 1 January 2010.

103. The AANZFTA contains a series of mandated reviews on aspects of the Agreement following entry into force (EIF):

- the FTA Joint Committee will meet within one year of EIF to review the implementation and operation of the FTA;
- the Committee on Investment will meet within one year of EIF and oversee discussions on investment market access and application of MFN, to be concluded within five years of EIF;
- the Sub-Committee on Rules of Origin will review the cumulative rules of origin provision between 12 and 18 months from EIF;
- a report on non-tariff measures in relation to trade in goods will be submitted by the Committee on Trade in Goods to the FTA Joint Committee within two years of EIF;
- a new round of services negotiations will commence within three years of EIF; and
- a general review of the AANZFTA will take place in 2016 and every five years thereafter, unless otherwise agreed by the Parties.

ANNEX A

ASEAN-Australia-New Zealand Free Trade Area (AANZFTA):

Negotiating Objectives

Trade in Goods

- Ensure an outcome that is WTO-consistent, by seeking to eliminate and bind tariffs and other barriers to trade between Australia and ASEAN on the broadest possible basis; and
- Provide a basis for reducing over time the restrictive impact of non-tariff barriers.

Rules of Origin

- Agree on a set of rules of origin that ensures that the benefits of preferential tariff treatment under the FTA apply only to goods from Australia, New Zealand and ASEAN while avoiding unnecessary obstacles to trade, which reflects the principle of substantial transformation and is not unnecessarily burdensome to administer.

Customs Cooperation

- Ensure that the customs procedures of the parties are transparent, efficient and consistent, and that they facilitate trade; and
- Strengthen cooperation and exchange of information to assist in the detection, investigation and prevention of infringements of customs laws.

Quarantine/Sanitary and Phytosanitary (SPS) Measures

- Seek to reinforce mutual commitment to the development and application of science based quarantine measures, consistent with the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement);
- Seek to strengthen cooperation between Australian, New Zealand and ASEAN quarantine authorities; and
- Seek to strengthen cooperation in implementing the WTO SPS Agreement.

Standards, Technical Regulations and Conformity Assessment Procedures

- Seek to enhance cooperation on the development and application of standards, technical regulations and conformity assessment procedures, consistent with the WTO Agreement on Technical Barriers to Trade; and

- Seek to enhance arrangements for information exchange on regulatory regimes.

Trade in Services

- Obtain improved opportunities for, and minimise discriminatory treatment of, Australian service suppliers through the more developed ASEAN 6 members (Brunei, Indonesia, Malaysia, the Philippines, Singapore and Thailand) substantially improving on their WTO market access commitments in priority sectors;
- Seek an appropriate Most Favoured Nation (MFN) clause, with exclusions for all visa-related requirements;
- Seek to include WTO-plus disciplines on regulatory practice, notably for financial services, telecommunications and to facilitate the temporary movement of business people in the ASEAN region;
- Ensure the outcome of the negotiations takes account of Australia's cultural and social policy objectives, and the need for appropriate regulation and support measures to achieve these objectives; and
- Ensure the outcome of the negotiations does not limit the ability of Government to provide public services, such as health, education, law enforcement and social services.

Investment

- Seek to promote greater transparency of investment rules and ensure that investors have access to appropriate legal protection;
- Ensure that the negotiations take account of Australia's foreign investment policy;
- Seek to reduce foreign equity participation limits in ASEAN and provide greater certainty for Australia investors in relation to ASEAN pre-establishment investment screening regimes and related approval processes; and
- Seek an appropriate MFN clause, with exclusions for all visa-related requirements.

Intellectual Property Rights

- To further harmonise intellectual property systems in the region with international frameworks in order to deliver efficiency gains to business and to enhance the protection and enforcement of the rights of intellectual property holders.

Electronic Commerce

- Seek to enhance the growth of electronic commerce in goods and services in ways that promote the use of electronic commerce globally.
- Reaffirm the current practice of not imposing customs duties on electronic transmissions between Australia, New Zealand and ASEAN members.

Competition Policy

- Seek the development, implementation and enforcement of policies in ASEAN that promote a pro-competitive environment.
- Foster cooperation on competition policy.

Economic Cooperation

- Seek agreement on a work program of specific economic cooperation projects to enhance ASEAN's capacity to implement the AANZFTA commitments.

Dispute Settlement

- Encourage the early identification and settlement of disputes through consultation.
- Establish fair, transparent, timely, and effective procedures to settle disputes arising under the Agreement.

Government Procurement

- Seek a basis for the initiation of market access negotiations on government procurement, including by Australia being treated comparably with any countries with which ASEAN agrees to begin negotiations on access to ASEAN government procurement markets.

ANNEX B

ASEAN-Australia-New Zealand Free Trade Area (AANZFTA): Summary of Key Obligations

Preamble and Chapter 1: Establishment of the Free Trade Area, Objectives and General Definitions

1. The Preamble recites the historical basis, regional context and broad aims for the AANZFTA. Importantly, the AANZFTA is cited as an “important building block towards regional economic integration” in recognition of the free trade agreement’s (FTA’s) role in contributing to the development of regional economic architecture. Chapter 1 sets out the objectives of the FTA, establishes the ASEAN-Australia-New Zealand Free Trade Area (consistent with World Trade Organization (WTO) rules) and defines terms that are used in more than one chapter of the FTA.

Chapter 2: Trade in Goods

2. The Trade in Goods Chapter obliges Parties to progressively reduce and/or eliminate tariffs in accordance with each Party’s applicable schedule contained in the Schedule of Tariff Commitments. It establishes the framework of rules for trade in goods among the Parties. The Chapter affirms a number of WTO provisions that already govern trade in goods among the Parties and, in some cases, provides for more specific commitments as well as enhanced transparency. This includes provisions covering: national treatment, fees and charges connected with importation and exportation, publication and administration of trade regulations, and import licensing. The Chapter contains a commitment that, consistent with WTO rights and obligations, each Party will eliminate all forms of export subsidies for agricultural goods exported to other Parties. There is also a commitment for the Committee on Trade in Goods (established pursuant to Article 11) to review non-tariff measures and to report to the FTA Joint Committee within two years of entry into force of the Agreement with a view to considering the scope for additional means to increase trade between the Parties.

3. The Chapter provides for the establishment of contact points to facilitate information exchange. The Chapter also provides for consultations on request as well as for the Committee on Trade in Goods to consider matters arising under this Chapter or under other goods-related chapters (Chapters 3, 4, 5, 6 and 7).

4. With regard to tariffs, the tariff schedules in Annex 1 to the Agreement provide for the reduction and elimination of tariffs over a transition period. Tariffs will be eliminated on a high percentage of tariff lines in all AANZFTA Parties. The tariff elimination commitments will be phased-in from early in the transition period, and many tariffs currently at possibly prohibitive levels will be reduced to levels that should allow trade to flow within a few years. Exclusions from tariff commitments

have been kept to a minimum, and generally do not exceed one per cent of a country's national tariff lines. For those tariff lines where tariffs are not eliminated, but which are not in the exclusion category, tariffs will either be bound at the base (i.e. 2005) tariff rate or subject to tariff reductions.

5. The tariff outcomes provide for longer transition periods and lower tariff elimination outcomes for Vietnam and the three least developed countries (Burma, Cambodia and Laos), in recognition of their status as newer ASEAN member countries with less developed economies.

6. For further information, see Annex C: Summary of AANZFTA Tariff Commitments.

Chapter 3: Rules of Origin

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

8. The AANZFTA establishes a ROO based on "co-equal" access to rules based on either the 'change in tariff classification' (CTC) model or a regional value content (RVC) test. For most goods under AANZFTA, exporters have the choice of testing their products under a CTC-based rule or an equivalent RVC-based rule. For some goods, only a single option applies. Exporters wishing to access the tariff arrangements agreed under AANZFTA will need to support their claim with a certificate of origin issued by a relevant industry body.

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

10. The rules in this Chapter provide for regional cumulation – that is, where a good which complies with the origin requirements is exported by a Party for use as an input in the production of a good in another Party, the good will be treated as if it originated in the Party where the working or processing of the finished good has taken place. This recognises the increasing trend to global production chains in the region.

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

12. The Chapter also sets out procedures and requirements relating to the issuance of certificates of origin, including data requirements for applications and for the content of certificates. It also contains provisions relating to review and appeal of determinations of eligibility for preferential tariff treatment.

13. There are provisions for ongoing consultations aimed at ensuring effective administration of the provisions on ROO, and providing opportunity for review and amendment of the Chapter. The Chapter also provides for the establishment of a Sub-Committee, which, among other things, is required to commence a Review of Article 6 of the Chapter (which defines the operation of the cumulation principle) and the application of “chemical reaction” and other process-based rules between 12 and 18 months from entry into force of the Agreement.

14. The Annexes to the Chapter include the Schedule of Product Specific Rules in Annex 2 to the Agreement and an additional Annex and two Appendices relating to procedures and requirements for the issuance of Certificates of Origin.

15. For further information, see AANZFTA Fact Sheet – Rules of Origin.

Chapter 4: Customs Procedures

16. The Chapter on Customs Procedures establishes arrangements for expeditious, predictable, transparent and simplified customs administration aimed at facilitating trade among the Parties. In particular, the Chapter encourages procedures that facilitate the clearance of low-risk goods and the use of automated, electronic customs transactions.

17. The Chapter affirms that the customs value of goods is to be determined in accordance with the WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (GATT) (Agreement on Customs Valuation). In addition the Chapter provides that, wherever possible, authorities will provide advance rulings to enable exporters to verify tariff classification, and seek rulings about the valuation and the origin of goods in advance of export. The Chapter also contains provisions relating to the assurance of protection of confidentiality of information provided by exporters.

18. The Chapter provides for the establishment of inquiry points and publication of all statutory, regulatory and administrative requirements, either on the internet or in

print. There is also a requirement for Parties to ensure importers have access to administrative review within customs administrations or, where applicable, access to further administrative or judicial review of determinations.

Chapter 5: Sanitary and Phytosanitary Measures

19. The Chapter on Sanitary and Phytosanitary Measures affirms that such measures will continue to be applied in accordance with the Parties' rights and obligations under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures. The Chapter contains provisions on arrangements aimed at strengthening information exchange, cooperation and consultation among the Parties. It also provides for the establishment of contact points and a Sub-Committee on Sanitary and Phytosanitary Measures to review progress in the implementation of the Chapter.

20. The dispute settlement provisions of the AANZFTA are not applicable to any matter arising under this Chapter.

Chapter 6: Standards, Technical Regulations and Conformity Assessment Procedures

21. The Chapter on Standards, Technical Regulations and Conformity Assessment Procedures affirms the Parties' rights and obligations under the WTO Agreement on Technical Barriers to Trade and provides for the establishment of arrangements for enhanced information exchange, cooperation and consultation among the Parties. The Chapter identifies a range of possible vehicles for giving effect to enhanced cooperation.

22. The Chapter also recognises the scope for Parties to enter into agreements or arrangements on regulatory matters as a means of facilitating trade, and encourages consideration of extending such arrangement to interested Parties. The Chapter provides for the establishment of contact points and a Sub-Committee on Standards, Technical Regulations and Conformity Assessment Procedures to monitor implementation of the Chapter, and to consider issues that may be raised by the Parties.

Chapter 7: Safeguard Measures

23. The Chapter on Safeguard Measures establishes arrangements for safeguard measures which may be applied during the transitional period, i.e. while tariffs are being reduced and/or eliminated. Safeguard measures may only be applied to the extent and for such time as may be necessary to prevent or remedy serious injury and to facilitate adjustment during the transitional period. The transitional period is defined as the period from entry into force of the Agreement until three years after the customs duty on a particular good is eliminated or reduced to its final commitment, in accordance with a Party's schedule of tariff commitments. There

are limits on the length of time for which a safeguard measure may be applied (two years, with a possible extension for one year), and limits in respect of any repeat application of a safeguard measure. In addition, the Chapter sets out procedures and conditions for compensation or the suspension of substantially equivalent concessions by Parties affected by the application of transitional safeguard measures.

24. The Chapter also contains provisions relating to the level of tariffs that may be applied as safeguard measures, and minimum thresholds for the application of safeguard measures to imports from ASEAN Parties.

25. Provisions setting out procedures for notification, investigation, application of provisional safeguard measures, and review of measures mirror relevant provisions of the GATT Article XIX and the WTO Agreement on Safeguards. The Chapter also affirms the Parties' rights and obligations in relation to global safeguard measures applied in accordance with the WTO Agreement.

Chapter 8: Trade in Services

26. The Chapter on Trade in Services includes the substantive obligations relating to trade in services and each Party's Schedule of Specific Services Commitments in Annex 3 to the Agreement, including market access and national treatment; provisions on most-favoured-nation treatment and safeguards; and various regulatory disciplines and other obligations that will enhance certainty and transparency for Australian services exporters. The Chapter also contains two annexes which set out sector-specific obligations for financial and telecommunications services respectively.

27. The Chapter provides for a "positive list" approach to scheduling market access and national treatment commitments, where each Party identifies in its own schedule the services for which market access and national treatment apply, including the specification of any limitations to such access or national treatment. This approach, including the definition of "trade in services" with its four modes of services supply, is identical to the approach provided for under the WTO General Agreement on Trade in Services (GATS), with one exception. The exception is that a Party's commitments in relation to the movement of natural persons (mode 4) are set out in a separate schedule to the Movement of Natural Persons Chapter (mode 4 commitments) (see chapter 9 below). Each Party's Schedule of Specific Services Commitments therefore contain commitments only in relation to cross-border supply (mode 1); consumption abroad (mode 2); and commercial presence (mode 3).

28. Consistent with the GATS, the market access obligation requires a Party to specify in its Schedule any limitations on market access where it has undertaken commitments in a sector (e.g. limitations on foreign equity, restrictions on the organisational form of commercial presence, number of service suppliers or total value of services transactions or assets). The national treatment obligation requires

that, in sectors where commitments have been undertaken, each Party shall accord to services and service suppliers of another Party treatment no less favourable than it accords to its own like services and service suppliers, subject to any specified conditions and qualifications. Like the GATS, there is also provision for a Party to make additional commitments relating to qualifications, standards or licensing matters. A Party may modify its specific commitments, subject to compliance with formal procedures for notification of, and consultation with, other Parties and, if necessary, compensatory adjustments.

29. Under the provision for consultations on most-favoured-nation (MFN) treatment, Australia has the right to request an ASEAN member country to extend to Australian services and to service suppliers any more favourable treatment that it accords to a third country in a future ASEAN-wide agreement. ASEAN member countries have the same right in relation to future bilateral and plurilateral FTAs to which Australia is a Party, except bilateral and plurilateral agreements involving Australia or New Zealand and one or more ASEAN member countries. The requested Party is obliged to enter into consultations, although whether it accedes to the request is a matter for negotiation. (Vietnam has also included in its Schedule of Specific Services Commitments an MFN commitment on the cross-border supply of higher education services, undertaking to extend any commitments that go beyond the AANZFTA made to a third country as part of future ASEAN-wide FTAs.)

30. The Chapter also provides that, pending the conclusion of multilateral negotiations under GATS on emergency safeguard measures, a Party may request consultations with another Party if it considers that implementation of the AANZFTA commitments has caused substantial adverse impact to a service sector. Any measure adopted as a result of these consultations must be mutually agreed between the Parties concerned. The operation of this provision will be reviewed upon conclusion of multilateral negotiations under GATS on emergency safeguard measures.

31. The Chapter provides for a review of commitments by Parties three years after entry into force of the Agreement, and periodically thereafter as determined by the FTA Joint Committee. The aim of these reviews is for Parties to further improve specific services commitments so as to progressively liberalise trade in services. The Chapter establishes a Committee on Trade in Services which is required, inter alia, to carry out these reviews of commitments, enter into discussions on the application of MFN, and to review the implementation of the Chapter.

32. The Chapter sets out a range of obligations on Parties that will enhance regulatory certainty and transparency for Australian services exporters. These are based upon equivalent GATS obligations, including in relation to domestic regulation (licensing and qualification requirements and procedures and technical standards) and transparency, although they go beyond the GATS in several areas. Key 'GATS-plus' regulatory obligations include requirements on Parties to:

- encourage competent bodies to enter into negotiations for recognition of professional qualifications, licensing and registration requirements and procedures;
- ensure that the use of business names under which service suppliers normally trade in their respective home country markets is not unduly restricted;
- publish measures of general application affecting trade in services on the Internet, to the extent possible;
- endeavour to provide interested persons of other Parties with a reasonable opportunity for comment prior to adoption of new measures;
- provide license applicants with an opportunity to remedy incomplete applications, status reports on the progress of applications on request, and reasons for the denial or termination of applications;
- observe minimum standards of procedural transparency, such as reasonable notice of administrative processes (e.g. licensing and rule-making in specific cases) and opportunities to present facts and arguments before final administrative action;
- afford services suppliers with a commercial presence certain post-establishment investment protections, as set out in the Chapter on Investment, including investor-state dispute settlement.

33. The Chapter contains two sector-specific annexes, covering financial services and telecommunications.

34. For further information, see Annex D: AANZFTA Services: Key ‘WTO Plus’ Gains.

Annex on Financial Services

35. In line with the GATS Annex on Financial Services, the AANZFTA Annex on Financial Services sets out certain rights and obligations on Parties that reflect the distinctive characteristics and systemic importance of financial sector regulation. These include exceptions for a Party in relation to measures taken for prudential reasons, to ensure the integrity and stability of the financial system, to ensure the stability of the exchange rate or to prevent deceptive and fraudulent practices. However, the AANZFTA Annex also contains obligations that go beyond the GATS Annex in relation to transparency, timely processing of licensing applications, and transfers and processing of information by financial service suppliers in the ordinary course of business.

Annex on Telecommunications

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

37. The Annex also contains provisions on transparency, including in relation to licensing, and review of regulatory decisions. Regulators must be independent and impartial and must provide written explanation of regulatory decisions on request. Recognising that some ASEAN countries are still developing their telecommunications regulatory regime, Parties are permitted to delay the application of some obligations, according to a specified timetable (set out in an Appendix to the Annex).

38. For further information, see Annex D: AANZFTA Services: Key 'WTO Plus' Gains.

Chapter 9: Movement of Natural Persons

39. The Chapter on Movement of Natural Persons (MNP) provides a framework for commitments on the temporary movement of services suppliers, investors, goods sellers and other business persons engaged in regional trade and investment. Each Party has a Schedule of MNP Commitments in Annex 4 to the AANZFTA, setting out commitments on specific categories of natural persons, in accordance with its temporary entry regime. Commitments in relation to the movement of natural persons who are services suppliers (mode 4) are set out in each Party's MNP Schedule (mode 4 commitments), rather than in their respective Specific Services Commitments Schedule.

40. The Chapter contains obligations which require Parties to publish information on temporary entry requirements, process completed applications for temporary entry and stay promptly and to notify applicants, on request, about the status or outcome of the application. The Chapter preserves each Party's right to protect the integrity of its borders and to ensure the orderly movement of persons across them.

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

42. For further information, see Annex E: AANZFTA Temporary Movement of Natural Persons (MNP): Key 'WTO Plus' Gains.

Chapter 10: Electronic Commerce

43. The Chapter on Electronic Commerce establishes a framework for regional cooperation and coordination on electronic commerce. Parties are obliged to maintain, or adopt as soon as practicable, domestic regulatory frameworks for electronic commerce that are based on relevant international standards, including in relation to electronic authentication of documents and transactions. Parties are obliged to publish regulatory measures relating to electronic commerce and respond to requests for information about such measures promptly.

44. The Chapter involves provisions on online consumer protection, online data protection and paperless trading. The Parties are to encourage cooperation in research and training activities that will enhance the development of e-commerce. Recognising that some ASEAN countries are still developing their regulatory regimes in this area, Parties are permitted to delay the application of some obligations, pending implementation of relevant domestic legislation. The Chapter is not subject to the AANZFTA's dispute settlement provisions (Chapter 17).

Chapter 11: Investment

45. The Chapter on Investment includes a range of obligations on Parties aimed at enhancing legal protection and certainty in relation to investment. The Chapter uses a broad, non-exhaustive, "asset-based" definition of investment covering every kind of asset owned or controlled by an investor, including, inter alia, shares, property, and business concessions conferred by law or contract, including any concession to search for, cultivate, extract or exploit natural resources.

46. The obligations are directed primarily at the post-establishment stage of investment. These include requirements on Parties to:

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

effective compensation (the Chapter includes an Annex to elaborate the nature and scope of “indirect” expropriation).

47. There are detailed provisions on investor-state dispute settlement (ISDS) which provide that, where an investor alleges that a Party has breached specific obligations (including those mentioned in the previous paragraph) in such a way as to cause loss or damage, and it has not been possible to resolve the dispute by consultations, the dispute may be referred to international arbitration. Investor-state dispute settlement will not apply to investment screening or admission processes.

48. The Chapter provides for a work program to develop market access schedules, covering pre-establishment issues such as foreign equity limits, within five years of entry into force of the Agreement, subject to the agreement of the Parties. The development of these schedules will be based on a national treatment obligation and a two-annex “negative listing” approach to scheduling, set out in the chapter. The work program notes, inter alia, that further discussions between the Parties will take place on the application of MFN treatment and procedures for the modification of schedules.

49. The Chapter also contains provisions on transparency and performance requirements, which cover both the pre- and post-establishment stages of investment. The latter obligation prohibits a Party from adopting performance requirements that are inconsistent with the WTO Agreement on Trade-Related Investment Measures.

50. Australia’s four bilateral investment treaties with ASEAN member countries (Indonesia, Laos, the Philippines and Vietnam) and the investment provisions of Australia’s FTAs with Singapore and Thailand remain in force (i.e. are not superseded or terminated by AANZFTA). AANZFTA does not override existing investment agreements and makes it clear that, in the event of any inconsistency between the Agreement and existing investment agreements, Parties will immediately consult with a view to finding a mutually satisfactory solution.

51. For further information, see AANZFTA Fact Sheet – Investment.

Chapter 12: Economic Cooperation

52. The Chapter on Economic Cooperation records the agreement of the AANZFTA Parties to support implementation of the AANZFTA through economic cooperation activities that are trade or investment related as set out in a separate work program mutually determined by the parties prior to the entry-into-force of the Agreement.

53. The Parties are obliged to contribute to the implementation of the programme of economic cooperation activities (“the work program”) taking into account their different levels of development and capacities. The work program is to be reviewed

by the FTA Joint Committee to assess its overall effectiveness. The Chapter is not subject to the AANZFTA dispute settlement provisions.

54. For further information, see Annex F: AANZFTA Economic Cooperation.

Chapter 13: Intellectual Property

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

56. The Parties are obliged to accord national treatment in relation to the protection of IP rights, subject to the exceptions provided for in the TRIPS Agreement and in multilateral agreements concluded under the auspices of the World Intellectual Property Organization (WIPO). The chapter contains a number of specific obligations on protection of intellectual property rights, government use of software and transparency. This includes an obligation on Parties to endeavour to make available on internet databases all pending and registered trade mark rights in their respective jurisdictions.

57. The Chapter contains detailed provisions for cooperation between the Parties to assist in the implementation of the chapter. These include the establishment of contact points in relevant government agencies, information exchange on infringement of IP rights, the promotion of IP education and awareness, promotion of efficiency and transparency in IP administration and registration systems, and the facilitation of responses to requests by Parties for technical assistance to enhance their respective national IP frameworks. The provisions also refer to cooperation to support any Party's accession to, and implementation of, specified international IP agreements, including the Patent Cooperation Treaty 1970 and Patent Law Treaty 2000; WIPO Copyright Treaty 1996, WIPO Performances and Phonograms Treaty 1996 and the TRIPS Agreement.

58. The Chapter also establishes a Committee on Intellectual Property to monitor the implementation of the chapter.

Chapter 14: Competition

59. The Chapter on Competition establishes a framework for cooperation in the promotion of competition, economic efficiency, consumer welfare and the curtailment of anti-competitive practices. The Chapter covers the establishment of contact points, exchange of information and experience on the promotion and enforcement of competition law and policy, and exchanges of officials between Parties for training purposes and to participate in advocacy programs. There is also provision for Australia and New Zealand to assist ASEAN member countries, if Australia deems appropriate, with the implementation of the Chapter, subject to appropriate identification of competition policy-related needs and availability of

resources. The Chapter is not subject to the AANZFTA's dispute settlement provisions.

Chapter 15: General Provisions and Exceptions

60. The Chapter on General Provisions and Exceptions sets out a number of general provisions and exceptions which apply to some or all chapters of the AANZFTA. The WTO-style general and security exceptions specify that nothing in certain chapters of the AANZFTA precludes the adoption by a Party of certain measures, for example, to protect human, animal or plant life or health, as provided for in these exceptions. The Chapter also carves out application of the AANZFTA to a Party's taxation measures except where specifically intended, such as in certain disciplines under the Chapter on Investment. The Chapter also includes a WTO-style article allowing a party in serious balance of payments and external financial difficulties (or a threat thereof) to take restrictive measures in prescribed circumstances. The Chapter further includes a New Zealand-specific exception allowing New Zealand to take measures that it deems necessary to accord more favourable treatment to Maori including in fulfilment of its obligations under its Treaty of Waitangi, provided that such measures do not involve arbitrary or unjustified discrimination, or a disguised restriction on trade. There is also a general exception available to all AANZFTA Parties relating to 'creative arts' which can be exercised under prescribed circumstances.

Chapter 16: Institutional Provisions

61. The Chapter on Institutional Provisions establishes the FTA Joint Committee, consisting of representatives of the Parties, to oversee implementation and operation of the AANZFTA and supervise and coordinate the work of subsidiary committees. Unless the Parties otherwise agree, the FTA Joint Committee shall meet within one year after the AANZFTA enters into force, and thereafter as the Parties mutually agree, and as necessary to discharge its functions. The FTA Joint Committee reports to the ASEAN Economic Ministers (AEM) – Closer Economic Relations (CER) Trade Ministers consultations, through the related senior officials meetings (SEOM-CER). The Chapter also establishes contact points for each Party to facilitate communication on any matter relating to the AANZFTA. These contact points are additional to subject matter-specific contact points established in other chapters.

Chapter 17: Consultations and Dispute Settlement

62. The Chapter on Consultations and Dispute Settlement establishes a process for consultations and for settlement of disputes arising under the FTA. The Chapter does not apply to disputes arising under Chapter 5 (Sanitary and Phytosanitary Measures), Chapter 10 (Electronic Commerce), Chapter 12 (Economic Cooperation) and Chapter 14 (Competition). If a dispute arises on a matter under the FTA and under another international agreement to which the disputing parties are party (such

as the WTO), the complaining party has a choice of forum. The Chapter sets out procedures and timelines for consultations on disputes arising under the FTA and for establishment, composition, proceedings and reports of arbitral tribunals. Time periods specified in the Chapter may be modified by mutual agreement of the Parties to a dispute.

Chapter 18: Final Provisions

63. The Chapter on Final Provisions governs the way in which AANZFTA operates as a treaty. The AANZFTA does not derogate from the WTO Agreement or other agreements to which the Parties are party, and Parties will consult in the event of any inconsistencies. In the event of an inconsistency between the AANZFTA and any other agreement to which two or more Parties are party, those Parties shall consult with a view to finding a mutually satisfactory solution. The Chapter provides that entry into force shall occur on or after 1 July 2009 provided that Australia, New Zealand and at least four ASEAN member countries have notified each other of completion of their internal requirements. The Parties have also agreed to conduct a general review of the AANZFTA in 2016.

ANNEX C

SUMMARY OF AANZFTA TARIFF COMMITMENTS

1. Following is a summary of the tariff outcomes for individual product sectors in relation to the four largest ASEAN markets with which Australia does not currently have an FTA, i.e. Indonesia, Malaysia, the Philippines and Vietnam.

Agriculture and Fisheries Products

Live Animals and Meat

2. Indonesia will bind its current tariff-free treatment for most livestock at entry-into-force (EIF). It will eliminate its 5% tariff on other livestock tariff lines in 2010, except for one live animals line (asses, mules etc) which is excluded from tariff commitments and 'other' live bovine animals, for which the 5% tariff will be reduced to 2.5% in 2025. Most meat tariffs (generally at 5%) will be eliminated in 2010. However, tariffs on some lines will be eliminated in 2020, and there is a small number of lines that will be excluded from tariff commitments, including some frozen sheepmeat lines (other cuts with bone-in, and boneless) with significant trade, and 1 frozen beef line (other cuts, bone-in), or which will be subject to a reduction in the tariff from 5% to 2.5% in 2025 (some sheepmeat lines) or phase to 3.75% (1 pigmeat line). Tariffs of 25% on frozen chicken thighs will be reduced to 12.5% in 2025. Tariffs of 5% on most meat preparations will be eliminated in 2010, while the 5% tariff on one line reduces to 4% in 2015 and will be eliminated in 2023.

3. Malaysia will bind its current tariff-free treatment for most livestock and most meat lines. Country-specific tariff quota access will be provided for Australia in relation to 4 live animal lines (live swine other than pure bred, day old chicks and chickens) and 6 meat lines (meat of pork and chicken), with elimination of the in-quota tariff rate by 2013 and reduction of the out-of-quota tariff rate. Tariffs of 0% on most meat preparations will be bound at 0% on EIF, with tariffs of 15% and 20% phasing to 0% by 2012 or 2020.

4. The Philippines will eliminate most of its livestock tariffs, ranging from 1% for sheep and goats (for breeding) and 3% for bovine animals (that are to be eliminated in 2010) to 35% or 40% for other livestock. Tariffs of 40% on goats, other than for breeding, phase to 5% by 2018. Tariffs of 40% on poultry will phase to 0% by 2013 or 2020 for some lines, or to 5% or 32% for other lines. The Philippines will also eliminate its 5% tariff on sheepmeat in 2010, and its 10% tariff on beef in 2012, while tariffs on beef offal will be eliminated in 2011, 2012 or 2019. Tariffs of 35% on goat meat will phase to 5% by 2018. For most fresh or chilled pork, tariffs of 40% will be reduced and eliminated by 2020. For the remaining 16 pork tariff lines, covering frozen pork and fresh or chilled boneless cuts, tariffs will reduce to 32% in one step in 2020. Tariffs of 5-10% on pork offal will be eliminated by 2011 or 2012; but the tariff of 5% on pork liver will reduce from 5% to 4% in 2015. For meat

preparations, tariffs of 30%, 35% or 40% on 13 lines will phase to 0% by 2015, and tariffs on the remaining 11 lines will be reduced from 40% to 32% in 2020.

5. Vietnam's tariffs of 0% for breeding animals will be bound on EIF; tariffs of 5% for other animals will be eliminated in one step in 2016. Tariffs of 15% or 20% on beef and beef offal will phase to 0% by 2018 or 2019. Tariffs of 10% on sheep and goat meat will phase to 0% by 2016. Tariffs of 30% on chilled or frozen pork will phase to 0% by 2020, while tariffs of 15% on pork offal will phase to 0% by 2016. Tariffs of 50% on meat preparations phase to 5% by 2022 on 17 lines, and are phased to 0% on the remaining 2 lines by 2019 or 2020.

Fish and Fish Products

6. Indonesia will eliminate tariffs on most fisheries products (currently generally 5%) in 2010. The 5% tariffs on tinned sardines, tuna and mackerel will be reduced to 2.5% in 2025 (4 tariff lines). The 15% tariff on live fish will phase to 0% by 2013. The 15% tariff on some fresh, chilled or frozen fish (kerapu and tilapia) and some fish fillets and fish meat will phase to 7.5% by 2025, with reductions commencing in 2013 (7 tariff lines).

7. Malaysia will eliminate tariffs on all fisheries products (currently 0%-20%), with most tariffs bound at 0% on EIF, or eliminated in 2010 or phased to 0% by 2011. The 20% tariffs on most octopus will phase to 0% by 2015.

8. The Philippines will eliminate most tariffs on fisheries products ranging from 1% to 15%, by 2015 at the latest, with many eliminated or phased to 0% by 2010, 2011 or 2012. Some 15% tariffs on tinned or preserved fish will phase to 0% by 2015. The tariff on one product (fish fillets, dried, salted or in brine) will phase from 15% to 5% by 2016, and the 5% tariff on frozen mackerel will be reduced to 4% in 2015.

9. Vietnam will phase its tariffs, generally at 30%, on most fresh, chilled, frozen and dried fish to 0% by 2018 (125 tariff lines). Tariffs of 30% on some fish fillets, prawns and crabs will phase to 5% by 2022, commencing in 2017 (17 tariff lines). Tariffs on processed fish and crustaceans will generally phase from 40% to 5% by 2022, with reductions commencing in 2015 (23 tariff lines).

Dairy Products

10. Indonesia will eliminate tariffs on 39 tariff lines, and phase tariffs on the remaining 11 lines to 4%. It will eliminate 5% tariffs on 31 dairy tariff lines in 2010 (including butter, most cheese, ice cream, dairy spreads, yoghurt, and some milk powders including unsweetened WMP, milk preparations) and on 7 tariff lines by 2017 (whey for human consumption), 2018 (cream) or 2019 (including unsweetened SMP for human consumption and sweetened WMP). Tariffs of 5% on 11 lines will reduce to 4% in 2015 (including tariffs on milk, some milk powders, some whey

products and grated or powdered cheese). The 0% tariff on casein will be bound on EIF.

11. Malaysia will bind its current tariff-free treatment for many dairy products (including whey, milk powders, casein), and eliminate tariffs on all other dairy products except liquid milk. It will eliminate its 2%-5% tariffs on several dairy products on EIF or in 2010 (butter, dairy spreads, ice cream), eliminate its 25% tariff on some yoghurt on EIF, eliminate its 5%-10% tariff on processed cheese on EIF, and eliminate tariffs on certain milk preparations by 2011. Malaysia will provide market access for Australia through country-specific tariff quotas for liquid milk, with in-quota tariffs to be eliminated from 2013, and out-of-quota tariffs to be reduced from 45% to 20% by 2013.

12. The Philippines will eliminate tariffs on all but 2 products (liquid yoghurt and dairy spreads, on which the 7% tariffs will reduce to 5%). Many tariffs (including the 1% tariff on milk powder, casein, some cheese, butter oil and whey) will be eliminated in 2010. Tariffs of 3% on milk, and 7% on butter, filled milk and processed cheese, will phase to 0% by 2019. Tariffs of 10% on ice cream and 7% on dairy spreads will phase to 0% by 2012.

13. Vietnam will eliminate all tariffs on dairy by 2020 at the latest. Tariffs of 20% on milk, whey, butter and dairy spreads will phase to 0% by 2017, 2018 or 2019. Tariffs of 10%-30% on milk powders will phase to 0% by 2016 or 2019. Tariffs of 10% on cheese will phase to 0% by 2016, 2017, 2019 or 2020. Tariffs of 15% or 30% on milk preparations will phase to 0% by 2016, 2018, 2019 or 2020. Tariffs of 30% on yoghurt will phase to 0% by 2017. The 50% tariff on ice cream will phase to 0% by 2018 while the 10% tariff on casein will phase to 0% by 2019.

Grains and Milled Products (excluding Rice)

14. Indonesia will bind its current tariff free treatment for wheat, barley and grain sorghum, and eliminate its 5% tariffs on many other grains in 2010. The 5% tariffs on wheat flour and unroasted malt will phase to 0% by 2020 and 2023 respectively, both of which are of significant trade interest to Australia. Maize is excluded from tariff commitments.

15. Malaysia will bind its current tariff-free treatment for wheat, other grains, wheat flour and malt at EIF, and will eliminate the tariff of 5% on flour and meal of sago and manioc in 2010.

16. The Philippines will eliminate its 3% or 7% tariffs on wheat and wheat flour and most other grains in 2010 or 2011. The 1% tariff on malt will be eliminated in 2010. The 50% tariff on maize will reduce to 40% in 2020. Tariffs on manioc starch and some maize products will reduce to 5% by 2017.

17. Vietnam will eliminate tariffs on all grains. Most tariffs (5% on wheat, malt, maize and grain sorghum; 3% on rye, barley and oats) will be eliminated in 2016, while the 20% tariff on wheat flour will phase to 0% by 2018. Tariffs of 5%-50% on other products will phase to 0% by 2020 at the latest.

Rice

18. Indonesia, Malaysia and the Philippines will exclude rice from tariff commitments. Vietnam will eliminate all its rice tariffs, which are generally in the 40% to 50% range, by 2019 or 2020.

Horticulture (Plants, cut flowers, vegetables, fruit, nuts, preparations of these)

19. Indonesia's horticulture tariffs (270 tariff lines) range between 0% and 25%, with most at 5%. It will bind tariffs of 0% on EIF on 17 lines and

eliminate tariffs on another 202 lines in 2010, and phase tariffs to 0% on an additional 25 lines by 2023. The remaining lines will have tariffs reduced to 4% or 5% (including pineapples, bananas, avocados, strawberries and some vegetables), except for 6 lines (including mangoes, mandarins, potatoes, shallots and carrots) where the current 25% tariff will be reduced to 12.5% or 18.75% in 2025.

20. Malaysia will bind tariffs of 0% (covering most fruit, nuts and vegetables) on 173 lines on EIF. Tariffs between 2% and 10% covering apples, pears, peaches, and cherries, will be eliminated by 2012. Tariffs of 20% and 30% (17 lines covering mainly dried fruits) will phase to 0% by 2020. Compound tariffs on 21 lines (some fruits, including mangoes and melons) will have the specific component of the tariff eliminated by 2020, leaving only a 5% tariff or a low specific rate (pineapples).

21. The Philippines has tariffs between 1% and 40% on 270 lines, with the majority of tariffs (197 lines) between 1% and 10%. It will eliminate tariffs on all but 22 lines between EIF and 2015, with another 10 lines phased to 0% by 2020 (e.g. tariffs of 10% on mandarins will phase to 0% by 2015; other tariffs of 3%-15% on plants, fruit and nuts, vegetables will phase to 0% by 2010, 2011, 2012 or 2013). The 15% tariff on cut flowers will phase to 0% by 2013 or 2015. Tariffs of 25% on cauliflowers, broccoli and lettuce will reduce from 25% to 20% in one step in 2020; tariffs of 20% on celery will reduce in one step to 16% in 2020. Tariffs of 40% on onions and garlic will reduce to 5% by 2018, while tariffs of 40% on potatoes and carrots will reduce to 32% in 2020. Tariffs on all preparations of vegetables, fruits and nuts, with tariffs between 1% and 15%, will phase to 0% by 2015 or, for 1 line, 2020.

22. Vietnam has tariffs between 0% and 50%, covering 261 lines. Tariffs will be eliminated on all but one line ('other' citrus fruit), with reductions generally commencing in 2010. Tariffs of 10%-20% on vegetables will phase to 0% by 2016 or 2017 with tariffs of 30% to be eliminated by 2018. Tariffs of 20-25% for grapes, apples, pears, quinces, and berries will phase to 0% by 2016; tariffs of 40% on one

tariff line covering some minor citrus fruit will reduce to 32% in one step in 2022; other tariffs of 40% will phase to 0% by 2017 or 2020. The 40% tariffs on cut flowers will phase to 0% by 2017 or 2018. Tariffs on preparations of vegetables, fruits and nuts will phase to 0% by 2018, 2019 or 2020.

Sugar

23. Indonesia and the Philippines will exclude sugar from tariff commitments. Malaysia will bind its current tariff-free treatment on EIF. Vietnam will retain the tariff quota treatment for sugar, but will phase the 30% in-quota tariff to 0% by 2020, and reduce the 80% out-of-quota tariff to 50% in 2022.

Wine

24. Indonesia and Malaysia will exclude all wine from tariff commitments.

25. The Philippines will phase all wine tariffs, currently in the 5%-7% range, to 0% by 2010 (3 tariff lines covering sparkling wine and some grape must), 2011 (1 tariff line for wine not exceeding 15% alcohol in containers exceeding 2 litres) or 2015 (remaining 7 tariff lines covering other wine and some grape must lines).

26. In 2022, Vietnam will reduce its current 80% tariffs to 20% on wine and 40% on grape must.

Wool and Cotton

27. Indonesia will eliminate tariffs of 5% on all wool in 2010. It will bind current tariff-free treatment for uncarded uncombed cotton, and will eliminate 5% tariffs on other cotton, cotton yarn and cotton sewing thread in 2010.

28. Malaysia will bind all wool and cotton tariffs at 0% on EIF. Tariffs on wool yarn will also be bound at 0% on EIF, while tariffs of 10% and 15% on cotton yarn and sewing thread will phase to 0% by 2011 and 2012 respectively.

29. The Philippines will eliminate all wool and cotton tariffs. Tariffs of 1% or 3% on raw, carded, combed, waste (as well as wool yarn) will be eliminated in 2010. Tariffs of 7% and 10% on cotton yarn and sewing thread phase to 0% by 2011 and 2012 respectively.

30. Vietnam will bind its current tariff-free treatment for raw wool and cotton and carded or combed wool on EIF. Tariffs of 10% on wool waste and cotton waste will phase to 0% by 2016. Tariffs of 20% on wool yarn and cotton yarn will phase to 0% by 2017, while the 30% tariff on cotton sewing thread will phase to 0% by 2018.

Resources and Industrial Products

Wood

31. Indonesia will eliminate tariffs on all 235 tariff lines covering wood. Tariffs of 0% on unworked timber will be bound at 0% on EIF. Tariffs of 5% will be eliminated in 2010 (including most sawn timber, particleboard). Most tariffs of 10% (most plywoods and other worked timbers) will phase to 0% by 2012, with tariffs on only 3 lines phasing from 10% to 0% by 2020.

32. Malaysia will bind tariffs of 0% on EIF (1,857 lines) and will phase all other tariffs (113 lines) to 0%. Tariffs of 5% will be eliminated by 2010, tariffs of 10% will be eliminated by 2011, and tariffs in the 15%-40% range will be eliminated by 2012 or 2013.

33. The Philippines' tariffs range from 0% to 15%. The Philippines will eliminate tariffs on all 235 tariff lines, mostly by 2012 or earlier. Tariffs of 15% on plywoods and veneers generally will phase to 0% by 2020. Other tariffs of 15% (e.g. on particleboard, fibreboard) will mostly phase to 0% by 2013 or 2015.

34. Vietnam will eliminate tariffs on all 235 tariff lines covering wood (with tariffs ranging from 0% to 40%), mostly by 2016, but with higher tariffs phasing to 0% by 2017, 2018 or 2020.

Pulp and Paper

35. Indonesia will eliminate tariffs on all 244 tariff lines covering pulp and paper. Tariffs of 5% (240 lines) will be eliminated in 2010, while tariffs of 15% will phase to 0% by 2013.

36. Malaysia will eliminate tariffs on all 310 pulp and paper tariff lines. Tariffs on 113 lines will be bound at 0% on EIF, with most other tariffs (ranging from 5% to 30%) being eliminated by 2011, 2012 or 2013. Tariffs of 10% on newsprint in rolls (1 tariff line) will phase to 0% by 2020.

37. The Philippines will eliminate tariffs between 1% and 15% on all 317 pulp and paper tariff lines. Many tariffs will be eliminated by 2010, 2011 or 2012, with the remaining tariffs phasing to 0% by 2020 at the latest.

38. Vietnam's tariffs range from 0% to 50%. Tariffs of 0% will be bound on EIF. Vietnam will eliminate tariffs of 1%-15% by 2016, but higher tariffs will phase to 0% by 2017, 2018 or 2020. Tariffs will eventually phase to 0% on a total of 197 tariff lines out of a total of 231 lines. Tariffs of 50% and some 40% tariffs will phase to 5% by 2022 (involving the remaining 34 tariff lines).

Minerals

39. Indonesia's tariffs range from 0% to 30%. Tariffs of 0% on 75 tariff lines will be bound on EIF. Tariffs on lubricating oils, greases and hydraulic brake fluid (4 lines) will phase from 30% to 15% by 2025. Tariffs on some salt will phase from 10% or 15% to 5% by 2015 or 2016 (2 tariff lines). Tariffs on some other salt (2 tariff lines) will phase to 0% by 2013. All other tariffs will be eliminated in 2010 or phase to 0% by 2013.

40. Malaysia's tariffs range from 0% to 50%. Tariffs of 0% will be bound on EIF (179 lines) and all other tariffs (25 lines) will phase to 0% by 2010, 2012, 2013 or 2020.

41. The Philippines' tariffs range from 1% to 7%. Tariffs will phase to 0% by 2010, 2015 or 2018 for 210 tariff lines but for the remaining 3 lines (some types of cement) the tariff of 5% will reduce to 4% in 2015.

42. Vietnam's tariffs range from 0% to 60%, including a tariff quota on salt which Vietnam will retain but where in-quota tariffs will phase to 0% by 2020. Some petroleum oils are excluded from Vietnam's tariff commitments, and the current tariffs of 5% on condensate and some gases and 15% on one line for crude oil will be bound but not reduced. All other tariffs (171 lines out of a total of 220 lines) will phase to 0% by 2016 (121 tariff lines), 2018 or 2020.

Iron and Steel, and Articles of Iron and Steel

43. Indonesia will bind current tariff-free treatment for 88 iron and steel tariff lines, and eliminate tariffs on 512 other lines (currently between 5% and 20%) by 2015, with most of these eliminated by 2010 or 2012. Tariffs on an additional 8 lines will phase to 0% by 2020, with tariffs on the remaining 187 lines being reduced to levels no higher than 5%.

44. Malaysia's tariffs on iron and steel range between 0% and 50%, with more than half in the 20% to 50% range. Malaysia will bind current tariff-free treatment for 121 tariff lines, and eliminate tariffs on another 315 tariff lines by 2013 at the latest. Tariffs on a further 12 lines will be phased to 0% by 2020. Tariffs on the remaining 189 lines will be phased to a level no higher than 10% (3 lines no higher than 5%) by 2019.

45. The Philippines' iron and steel tariffs range between 0% and 15%. The Philippines will eliminate tariffs on 320 iron and steel tariff lines by 2010. Tariffs on a further 177 lines will be eliminated by 2011, 2012, 2013 or 2015. Tariffs on another 162 lines will be reduced to a level between 2% and 8%. The remaining 77 lines, with tariffs at levels of 0%-3%, will be excluded from tariff commitments.

46. Vietnam's iron and steel tariffs range between 0% and 50%. Vietnam will bind tariffs on 246 tariff lines at 0% on EIF. Tariffs on 145 lines will be eliminated by 2016, tariffs on 96 lines will phase to 0% by 2017, 2018, 2019 or 2020. Of the remaining 243 tariff lines in this sector, tariffs on 95 lines will be reduced mostly to levels no higher than 5% (but will not be eliminated), tariffs on a further 95 lines will be bound at their base rates ranging from 3% to 30% (but will not be reduced), and 53 lines (generally with tariffs of 40%) will be excluded from tariff commitments.

Other Metals (Aluminium, Copper, Lead, Zinc, and Articles of these metals)

47. With the exception of 1 tariff line, Indonesia will eliminate tariffs on copper and copper products (ranging from 0% to 20%) by 2014, with most eliminated by 2012. The tariff of 5% on copper cathodes will be bound but not reduced. All tariffs, ranging from 0% to 20% on aluminium and aluminium products will be bound at 0% on EIF or will phase to 0% by 2015 at the latest, with the majority of tariffs eliminated by 2010 or 2012. All tariffs, ranging from 0% to 15%, on lead and zinc products will be bound at 0% on EIF or will phase to 0% by 2013 at the latest.

48. Malaysia's tariffs on copper and copper products range from 0% to 25%. Malaysia will bind all tariffs at 0% on EIF or phase them to 0% by 2013 (except for 2 lines that will be phased to 0% in 2020). Malaysia's tariffs on aluminium and aluminium products range from 0% to 30%. Malaysia will bind all tariffs at 0% on EIF or will phase them to 0% by 2013 at the latest. All lead and zinc tariffs (currently 0%-25%) will be bound at 0% on EIF or phased to 0% by 2013.

49. The Philippines' tariffs on copper and copper products range from 1% to 15%. The Philippines will phase all tariffs to 0% by 2013 at the latest. Tariffs on all aluminium and aluminium products (where tariffs range between 1% and 15%) will be eliminated by 2015, with the majority eliminated by 2010 or 2012. Tariffs on all lead and zinc products (where tariffs are between 1% and 5%) will be eliminated in 2010.

50. Vietnam's tariffs on 94 copper and copper products range from 0% to 40%. Vietnam will bind all 0% tariffs at EIF, and eliminate or phase tariffs to 0% by 2018 at the latest. Vietnam will bind tariffs on all 88 aluminium and aluminium products tariff lines at 0% on EIF or will phase tariffs (ranging from 1% to 40%) to 0% by 2020 at the latest, with the majority reaching 0% by 2016. All tariffs on lead and zinc will either be bound at 0% on EIF or will be phased to 0% by 2016.

Passenger Motor Vehicles, other Automotive Vehicles and Automotive Parts

51. Indonesia, which has vehicle tariffs ranging between 25% and 80%, will eliminate tariffs on passenger motor vehicles (PMV) with an engine capacity between 3000cc and 4000cc in 2014, and on PMV with smaller engines in 2019. Tariffs on PMV with engines above 4000cc, or with diesel engines, will only be subject to a modest reduction to 50%. Buses and vehicles for the transport of goods

generally have tariffs in the 25% to 40% range, and most of these will be phased to 0% by 2012, 2015 or 2020, but some of those with 40% tariffs will only have these reduced to 20% in 2025. Some other vehicle tariffs of 45% and 80% will reduce to 22.5% and 50% respectively in 2025. Tariffs on automotive parts (323 tariff lines) range between 0% and 15%. Tariffs at 0% will increase from 62 tariff lines on EIF, to 121 lines in 2010, 261 lines in 2013, and 318 lines in 2020. Tariffs will be retained at reduced levels on 5 lines – 3 lines will reduce from 5% to 4% in 2015 and 2 lines (bodies for some vehicles) will reduce from 45% to 22.5% in 2025.

52. Malaysia, which has tariffs of 30% to 50 % for most vehicles, will eliminate tariffs on larger PMV (engines above 2500cc) in 2013, and phase tariffs on PMV with smaller engines to 5% in 2017. Buses generally have 30% tariffs that will be phased to 5% by 2017. Trucks and other vehicles for transporting goods generally have 30%-35% tariffs that will be phased to 5% by 2017. Automotive parts tariffs (168 tariff lines) range from 0% to 50%, with about half in the 0% to 5% range. Tariffs on 56 lines will be bound at 0% on EIF, with the tariff eliminated on another 32 lines in 2010. The number of tariff lines at 0% will increase to 148 lines in 2015, and to all 168 lines by 2020.

53. The Philippines, which has tariffs for PMV of 30%, for buses of 15%-20%, and for trucks and other vehicles for transporting goods of 20%-30%, will eliminate tariffs on 187 vehicle lines on EIF. Tariffs on PMV with an engine capacity greater than 3000cc will be eliminated in 2010, and tariffs on PMV with smaller engines will be eliminated in 2012. All tariff lines for buses and vehicles for the transport of goods will be phased to 0% no later than 2012. Automotive parts (327 tariff lines) have tariffs ranging between 0% and 15%. Tariffs on 164 lines will be at 0% on EIF, with another 134 lines phasing to 0% in 2010, 2012 or 2013. By 2015 tariffs on 304 lines will be at 0%, and tariffs on 17 lines (horns, some seat belts, some brakes, some gearboxes, some radiators and silencers, exhausts, some clutches and some chassis) will be 5% and will remain at this level; 4 lines (some body parts, seats and springs) will fall to 5% in 2016 and remain at that level; and 1 line (toughened safety glass) will fall to 8% in 2020.

54. Vietnam, with many vehicle tariffs at 100%, will reduce the tariffs on PMV, buses and some vehicles for transporting goods, to 50% in 2022. For those vehicles for transporting goods which currently have tariffs in the 15%-60% range, these will be reduced to 5%-30% by 2022. Tariffs on automotive parts (323 tariff lines) range between 0% and 50%, with over half at 30%. By 2017, 283 tariff lines will be in the 0%-5% range, with all of these lines falling to 0% by 2020. A further 36 lines (diesel engines, locks, new tyres, signalling equipment, some bodies and chassis, carburettors and pistons) will reduce to 5% in 2022. Three tariff lines (retreated tyres) are excluded from tariff commitments.

Chemicals

55. Indonesia's tariffs range from 0% to 170%. Tariffs on 1181 tariff lines will either be bound at 0% on EIF or phased to 0% in 2010, 2012 or 2013, and tariffs on 3 lines will be phased to 0% by 2020. Tariffs on the remaining 2 lines covering odoriferous alcoholic preparations will reduce from 170% to 85% in 2025.

56. Malaysia's tariffs range from 0% to 50% and all will be eliminated. Current tariffs of 0% on 837 lines will be bound on EIF. Tariffs on a further 93 lines will phase to 0% by 2013. Tariffs on the remaining 100 lines (currently mainly at levels of 20% -50%) will phase to 0% by 2020.

57. The Philippines' tariffs range from 0% to 30% on 1187 tariff lines. Tariffs of 0% will be bound on EIF. Tariffs on almost all tariff lines will be phased to 0% by 2010 or 2011. Remaining tariffs will be phased to 0% by 2020, except for tariffs on 6 products that will be reduced from 5% to 4% or from 7% to 5%.

58. Vietnam's tariffs range from 0% to 50%. Tariffs on all 1164 tariff lines will either be bound at 0% on EIF (631 lines) or phased to 0% by 2016, 2017, 2018, 2019 or 2020, except for 18 lines covering explosives, fireworks and waste chemicals that will be excluded from tariff commitments.

Pharmaceutical Products

59. Indonesia will exclude 1 tariff line (waste pharmaceuticals) from tariff commitments, but all other 124 pharmaceutical lines will either be bound at 0% on EIF or eliminated by 2011.

60. Malaysia will bind on EIF its current tariff-free treatment for all pharmaceutical products (198 lines).

61. The Philippines will bind its 0% tariff on 1 pharmaceutical tariff line at EIF and eliminate tariffs (ranging from 1% to 5%) on another 118 lines in 2010, with the remaining tariff line (waste pharmaceuticals) phasing from 20% to 0% by 2013.

62. Vietnam's tariffs on pharmaceuticals range from 0% to 20%. Tariffs on 113 lines will either be bound at 0% on EIF or will phase to 0% by 2016. Tariffs on another 3 lines will phase to 0% by 2020, another 3 lines will phase to 5% by 2022. One line (waste pharmaceuticals) is excluded from tariff commitments.

Textiles, Clothing and Footwear

63. Indonesia's textile tariffs are generally 5%, 10% or 15%, and it will eliminate tariffs on almost all tariff lines, with tariffs on the remaining 12 lines reduced to 5%. About 98% of all textile lines will have tariff-free treatment by 2013. Clothing tariffs are generally 10% or 15%. Indonesia will eliminate tariffs on 338 clothing lines by 2012 or 2013, eliminate the tariff on 1 line in 2020, and reduce tariffs on the remaining 77 tariffs to 5% by 2016. Tariffs on footwear range between 5% and

15%, and all will be eliminated, the 5% tariffs (on parts) by 2010 and the rest at 10% or 15% by 2012 or 2013.

64. Malaysia's textile tariffs range between 0% and 30%, and it will bind tariffs of 0% on EIF, and eliminate all other textile tariffs by 2013. Clothing tariffs range between 0% and 20%, and Malaysia will bind 0% tariffs on EIF for 49 lines and eliminate other tariffs (252 lines) by 2012. On footwear, it will bind the current tariff-free treatment on 21 tariff lines, and eliminate tariffs ranging between 2% and 30% on the other 29 lines by 2013.

65. The Philippines will eliminate almost all textile tariffs (724 out of 732 tariff lines, with tariffs ranging between 0% and 20%) by 2015, with most eliminated by 2013. The remaining tariffs will be reduced to 5% or 12%. The Philippines will eliminate all clothing tariffs (397 lines with base rates at 0-15%) by 2013. It will eliminate tariffs on 28 footwear lines, generally with tariffs in the 10%-15% range, mostly by 2012, and phase tariffs on a further 11 lines to 5% by 2016.

66. Vietnam's textile tariffs range between 0% and 100%, with a majority at 30%-40%, and it will eliminate tariffs on 712 textile lines by 2016-2019, with the remaining 5 lines (worn clothing, textiles and rags) excluded from tariff commitments. Tariffs on all clothing and footwear tariff lines will be eliminated. Most lines have 50% tariffs that will phase to 0% by 2018 or, for a few lines 2019, with the remaining lines having tariffs in the range of 5%-30% that will phase to 0% by 2016 or 2017.

Machinery and Mechanical Appliances

67. Indonesia will bind tariffs on 959 tariff lines at the current level of 0% on EIF, and will phase tariffs on another 423 tariff lines, with tariffs between 5% and 15%, to 0%, mostly by 2013. Twenty-two lines will be excluded from tariff commitments, while tariffs on the remaining 35 lines will phase to 4% or 5%.

68. Malaysia will bind tariffs on 467 tariff lines at the current level of 0% on EIF, and will phase tariffs on the remaining 251 lines to 0% on EIF, or by 2011 for lower tariffs (5%-15%) and mostly by 2020 for higher tariffs (17%-35%).

69. The Philippines will bind 88 tariff lines at 0% on EIF and will phase tariffs on another 1355 tariff lines (with tariffs currently ranging from 1% to 15%) to 0%, most (1224 lines) by 2010. Tariffs on some lines will phase to 0% by 2011, 2012 or 2013. Tariffs on the remaining 6 lines (air conditioners, some refrigerators, clothes dryers) will phase from 10% to 5%, or from 5% to 4%, by 2015.

70. Vietnam's tariffs on its 1436 machinery and mechanical appliance lines range between 0% and 100%. Tariffs on 783 lines will be bound at 0% on EIF, and tariffs on another 588 lines will be eliminated or phase to 0% by 2020 at the latest. Tariffs on the remaining 65 lines (covering certain engines and engine parts) will phase to 5% (or 3% for 1 line) by 2022.

Electrical Machinery and Equipment

71. Indonesia's tariffs on the lines covered by this category range from 0% to 15%. All but 20 of the 768 tariff lines will either be bound on EIF or phased to 0%, with most (743 lines) at 0% by 2013. By 2016 all tariffs will be at 5% or less, with the only remaining tariffs by 2025 being 3 lines at 4% and 17 lines at 5%.

72. Malaysia's tariffs range from 0% to 50%. Current tariffs of 0% on 228 of the 496 lines in this category will be bound on EIF, with tariffs on a further 63 lines also being bound at 0% on EIF. Tariffs on all but 5 lines will phase to 0% by 2013 – these remaining lines, all with current tariffs at 30%, will phase to 0% by 2020.

73. The Philippines' tariffs range from 0% to 15%. Tariffs of 0% (170 tariff lines) will be bound on EIF. Virtually all other tariffs (covering 599 tariff lines) will be phased to 0% by 2013, with tariffs on 8 lines falling to and remaining at 5% by 2016, and 2 lines covering transformers with current tariffs at 10%, remaining at that level until 2020, when they will fall to 8%.

74. Vietnam's tariffs, covering 766 tariff lines, range from 0% to 50%. Tariffs on all but 3 tariff lines will either be bound at 0% on EIF (226 lines) or phased to 0% by 2016, 2017, 2018 or 2020. The 3 remaining lines, covering some lighting equipment and with current tariff rates of 30%, will phase to 5% by 2022.

Gaming Machines

75. Indonesia will phase the current 15% tariffs to 0% by 2013.

76. Malaysia will phase the current 5%-30% tariffs to 0% by 2013 (with the 5% tariff eliminated in 2010).

77. The Philippines will phase the current 7% tariffs to 0% by 2011.

78. Vietnam will phase its tariffs of 50% to 0% by 2017.

ANNEX D

AANZFTA SERVICES: KEY “WTO PLUS” GAINS

Professional services

- In accounting services, Malaysia has committed to aggregate 40 per cent foreign equity participation in locally registered partnerships or Malaysian accounting firms; Laos has committed to allow temporary authorisation of Australian accountants; and the Philippines has bound arrangements under which foreign accountants can practice in the Philippines under temporary permits issued by its Professional Regulation Commission.
- In legal services, Indonesia has made a commitment to permit foreign lawyers to work or take part in Indonesian law firms as employees or experts in international law⁶ and Vietnam has committed to allow foreign lawyer organisations to employ Vietnamese lawyers and for foreign lawyers to practice in Vietnamese law firms to advise on foreign/international law.
- In engineering services, Malaysia has committed to 30 per cent foreign equity participation in multidisciplinary joint ventures; Laos has committed to allowing joint ventures with up to 70 per cent foreign equity participation for the construction of manufacturing, water supply and sanitation turnkey projects; and the Philippines has bound arrangements under which foreign civil, mechanical, metallurgical, and sanitary engineers can practice in the Philippines under temporary permits issued by its Professional Regulation Commission.
- In architectural services, Brunei has committed to allow 40 per cent foreign equity in architectural firms; Malaysia has committed to 30 per cent foreign equity participation in multidisciplinary joint ventures; Laos has committed to allow 100 per cent foreign equity in landscape architectural firms; and the Philippines has bound arrangements under which foreign landscape architects can practice in the Philippines under temporary permits issued by its Professional Regulation Commission.

Education services

2. In higher education:

- Laos has committed to allowing foreign service suppliers to establish a commercial presence with up to 100 per cent foreign equity;

⁶ The share of foreign lawyers in Indonesian law firms must not exceed 20 per cent and must be limited to five foreign lawyers per firm.

- Malaysia has committed to allowing joint ventures with domestic institutions with foreign equity limit of up to 51 per cent (subject to relevance of courses to Malaysia’s education objectives). Malaysia has also made commitments providing for temporary entry and stay of lecturers and experts and professionals (subject to numerical caps) and contractual service suppliers in higher education for periods of stay of up to ten years;
 - The Philippines has committed to allowing 40 per cent foreign equity in establishment of education institutions to engage in twinning programs in the fields of agriculture, industrial, environment, natural resource management, engineering, architecture, science and technology and health-related programs and to allowing temporary entry and stay of experts in these fields for periods of stay of one year, which may be extended;
 - Indonesia has committed to allowing foreign education suppliers, in cooperation with local partners, to establish in the cities of Jakarta, Surabaya, Bandung, Yogyakarta and Medan; and
 - Vietnam has committed to reduce the experience requirement for foreign teachers in higher, secondary (for students that have completed nine years of general education), and other education services from five to three years and to expand the (WTO-committed) “fields of study” that can be delivered by foreign education suppliers⁷. Vietnam has also committed to provide Australian services suppliers with the same treatment afforded to services suppliers from any third country in the event that Vietnam makes commitments in cross-border supply of higher education services, as part of an ASEAN-wide FTA, that go beyond those it has made in AANZFTA.
3. In other education services Thailand has committed to allowing 49 per cent foreign equity in foreign language tuition services and to allowing temporary entry for teachers employed by firms established in the secondary, higher, adult education (professional and short course), and foreign language tuition services sub-sectors (period of stay of one year with possibility of extension). Malaysia has committed to allowing joint ventures with 49 per cent foreign equity in primary, secondary (general and technical/vocational) and other education services.

Financial services

4. In banking services, the Philippines and Indonesia have committed to foreign equity of 55 and 51 per cent respectively for acquisition of an existing domestic

⁷ Agriculture, architecture, building, business administration, management, computer science, construction, information systems, dental services, economics, education, engineering, environmental, surveying, health, community services, land and marine resources, animal husbandry, language studies, law, legal studies, life sciences, manufacturing, mathematics, medical science, medicine, multi-field education, nursing, pharmacy, physical sciences, science, services, culinary and hospitality, transport, veterinary science, visual and performing arts.

bank. Indonesia has also increased by six, the number of cities in which foreign banks and joint venture banks may open offices (Padang, Manado, Balikpapan, Banda Aceh, Jayapura, Ambon). Laos has committed to maintaining no market access or national treatment limitations on the supply of banking services through commercial presence or cross-border supply.

5. In insurance services, Indonesia has committed to allowing foreign equity participation of 80 per cent for foreign services suppliers. In other financial services, Malaysia has made commitments to allow joint venture requirements with foreign equity limits of 49 per cent for financial leasing and financial planning services.

6. All ASEAN countries have agreed to disciplines which promote greater transparency and timely processing of licensing applications from financial services suppliers.

Telecommunications

7. In telecommunications, Laos has committed to allow wholly foreign owned enterprises to supply most services, although joint ventures are required for telex services, electronic mail, voice mail and online information and data base retrieval. Malaysia has committed to allowing foreign equity of 49 per cent for acquisition of shares in existing licensed operators (the option of a locally incorporated joint venture with aggregate foreign equity of 49 per cent is also bound in some sub-sectors, e.g., mobile telephone services and data and message transmission services) and the Philippines has made new commitments in private leased circuit services, data and message transmission services and value-added services, such as electronic mail, with foreign equity limits of 40 per cent.

8. In addition, ASEAN countries have agreed to pro-competitive regulatory disciplines to ensure that foreign suppliers can compete on a level-playing field with major domestic suppliers, which may own or control essential network facilities and infrastructure.

- These provisions build on and go beyond the WTO Telecommunications Reference Paper. The disciplines cover interconnection, competitive safeguards, co-location; leased circuit services; regulatory transparency; resolution of regulatory disputes and review of regulatory decisions.
- Transitional arrangements apply to some countries in relation to some disciplines (Burma, Cambodia, Laos, Thailand, Vietnam).

Construction services

9. In construction services, Indonesia and Malaysia have committed to allowing joint ventures with foreign equity of 55 and 49 per cent respectively. Brunei has committed to allow foreign equity in construction firms of 50 per cent. Laos has

committed to allowing 100 per cent foreign owned firms to operation in its construction sector.

Mining and Energy related services

10. In mining and energy related services, the Philippines made commitments that provide for up to 100 per cent foreign equity, subject to the President's approval, for oil and gas exploration and development and 40 per cent foreign equity for geothermal exploration and development; coal exploration and development; pipeline transport; and services related to energy distribution or power generation (up to 100 per cent foreign equity is allowed for construction of power plants under the "build-operate-transfer" scheme). Thailand has committed to allowing 49 per cent foreign equity for firms providing "related scientific and technical consulting services" in relation to oil and gas exploration (eg., geological and geophysical prospecting and surveys).

11. The Philippines has made commitments that allow up to 100 per cent foreign equity for construction of large scale mining development projects covered by a financial and technical assistance agreement under the Philippine Mining Act. Indonesia and Malaysia have also made commitments that cover construction work for mining. These commitments provide for 55 per cent and 49 per cent foreign equity respectively, subject to joint venture requirements. Laos has committed to allowing 100 per cent foreign owned firms to undertake construction work related to mining.

Environmental services

12. In environmental services, Laos has made commitments that allow for wholly foreign owned firms to provide services through commercial presence. The Philippines has made commitments in relation to sewerage services that provide for foreign equity of 40 per cent.

Computer and related services

13. In computer and related services, Laos and Malaysia's commitments contain no market access or national treatment limitations for the establishment of a commercial presence or cross-border supply of services. Thailand has made new commitments on programming services, systems maintenance and software training services with foreign equity of 49 per cent.

Tourism and travel services

14. The Philippines has no market access or national treatment limitations in relation to accommodation facilities, including hotels and resorts; Malaysia has committed to allowing aggregate foreign equity of 49 per cent in joint ventures in hotel and restaurants; food serving; travel agencies and tour operators; and Brunei

has committed to allowing foreign equity of up to 70 per cent in joint ventures in tourism accommodation facilities.

Other horizontal commitments

15. Some ASEAN countries have made commitments under AANZFTA that improve on that horizontal or cross-cutting commitments that apply to all services sectors listed in their Services schedule. These mainly cover investment-related issues.

16. Malaysia has committed to a higher threshold of RMB10m (WTO level is RMB5m), which will trigger approval requirements for the acquisition, merger or takeover of a Malaysian business by foreign interests.

17. Laos has committed to allowing three forms of commercial presence in the services sectors listed in its schedule: joint venture enterprises; business cooperation by contract; and 100 per cent foreign-invested enterprises. Laos has also committed to allowing foreign natural persons and companies to lease land for up to 75 years and to own premises on the leased land.

ANNEX E

AANZFTA TEMPORARY MOVEMENT OF NATURAL PERSONS (MNP): KEY “WTO PLUS” GAINS

1. AANZFTA provides a framework, through the MNP chapter, for countries to make commitments on temporary business entry that go beyond service suppliers to include goods sellers and investors. There are further disciplines on temporary business entry to promote expeditious processing of formalities and enhanced transparency.
2. At this stage, the commitments of most ASEAN countries in their schedules to the MNP chapter relate only to service suppliers, consistent with the WTO GATS framework. Nevertheless, most ASEAN countries have improved on their GATS commitments as follows.
3. Indonesia has made a general commitment to allow entry and stay of intra-corporate transferees (“directors, managers and technical experts”) for up to six years and business visitors for 60 days, with possible extension to 120 days.
 - There are some sectoral exceptions to these general commitments. For example, the improvement on WTO commitments in relation to “managers” does not apply in relation to computer and related services and insurance services and the improvement on “technical experts” does not apply to banking services.
4. Laos has made provision for business visitors (60 day period of stay) and intra-corporate transferees - executives, managers and specialists (six month period of stay with possibility of renewal for a further period of one year). Malaysia has increased the period of stay for intra-corporate transferees, specialists and other professionals to enter and stay for a maximum of ten years, although there are some exceptions to this commitment, including professional services, telecommunications and banking services. Thailand has clarified that its “business visitor” commitments (90 day period of stay) cover both “service sellers” and “persons responsible for establishing a commercial presence” and has committed to an increased period of stay for intra-corporate transferees (up to four years). Singapore has extended its commitments for intra-corporate transferees to all services sectors, not just those listed in its services schedule (as per its WTO GATS commitments). In addition, it has committed to a longer length of stay for intra-corporate transferee under AANZFTA than under the GATS, namely, a maximum of eight years, as distinct from five under the GATS.
5. The Philippines has made commitments that cover not only services suppliers, but also goods sellers and investors. These include provision for:
 - business visitors (59 days with possible extension of up to one year);

- intra-corporate transferees (one year period of stay, which may be extended) and investors (one year period of stay, which may be extended);
- contractual service suppliers, including persons in technical advisory or supervisory positions and professionals (accountants, landscape architects and certain engineering sub-sectors), subject to the issue of temporary permits by the Filipino Professional Regulation Commission (one year period, which may be extended); and
- specialists under contract as part of a higher education twinning or bridging program, in the fields of nursing, midwifery, library and laboratory enrichment, agriculture, industrial, environment, natural resource management, engineering, architecture, science and technology and health-related programs (one year period, which may be extended).

6. The MNP chapter provides a platform for countries to broaden and deepen their commitments in movement of natural persons in future and thereby facilitate freer movement of skilled labour within the region.

ANNEX F

AANZFTA ECONOMIC COOPERATION

1. The economic cooperation package comprises an Economic Cooperation chapter text and a Work Program which outlines the assistance that will be provided to parties to implement AANZFTA in eight areas of focus (“components”) linked to different aspects of the AANZFTA. The broad activities currently covered by the Work Program are:

- Rules of Origin;
- Sanitary and Phytosanitary Measures;
- Standards Technical Regulations and Conformity Assessment Procedures;
- Services;
- Investment;
- Intellectual property;
- Sectoral integration; and
- Customs.

2. The Work Program does not have Treaty-level status but forms part of the AANZFTA package. The Implementing Arrangement formally integrates the Work Program into the overall FTA package.

3. The Work Program will be implemented over five years after entry into force of AANZFTA and is estimated to cost in the range of \$20 – 25 million. The funding will be borne largely by Australia and New Zealand, with ‘in kind’ contributions from ASEAN member states. This funding reflects proposed Economic Cooperation projects deemed high priority in the initial planning phase. However, the work program provides flexibility for emerging and changing priorities of parties to the FTA to be addressed through an annual planning process. The work program is in addition to Australia’s ongoing economic cooperation assistance to ASEAN and complements the ASEAN Australia Development Cooperation Program Phase II (\$57 million 2008 – 2015).

ANNEX G

AANZFTA –UNDERSTANDING ON ARTICLE 1 OF THE CHAPTER ON TRADE IN GOODS

1. The Understanding affirms that the commitments relating to the reduction or elimination of tariffs under AANZFTA do not prevent Parties from applying measures consistent with the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (the Basel Convention), or other relevant international agreements.

ANNEX H

AANZFTA – CER RELATIONSHIP

1. Australia and New Zealand have exchanged letters setting out an agreement to limit application of the AANZFTA between each other, given the Australia-New Zealand Closer Economic Relations Trade Agreement and its related agreements and understandings (CER).
2. The side-letters confirm that the introductory chapter of AANZFTA and the AANZFTA tariff commitments and associated rules of origin will apply between the two countries (i.e. exporters will be able to take advantage of regional rules of origin under AANZFTA in trans-Tasman trade provided that the AANZFTA Tariff Schedule is used). The general provisions and exceptions chapter of AANZFTA will apply to the extent that AANZFTA is applied between Australia and New Zealand.
3. Australia and New Zealand have further agreed that there will be no trans Tasman application of AANZFTA's chapters on goods safeguards, investment and dispute settlement.
4. Australia and New Zealand will consider the merits of having other chapters of the AANZFTA apply between each other. In the interim, those other chapters will not apply between Australia and New Zealand.

CUSTOMS AMENDMENT (ASEAN-AUSTRALIA-NEW ZEALAND FREE TRADE AGREEMENT IMPLEMENTATION) BILL 2009

NOTES ON CLAUSES

Clause 1 - Short title

1. This clause provides for the Bill, when enacted, to be cited as the *Customs Amendment (ASEAN-Australia-New Zealand Free Trade Agreement Implementation) Act 2009*.

Clause 2 - Commencement

2. Subclause (1) provides that each provision of this Act specified in column 1 of the table in that subclause commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table. This subclause also provides that any other statement in column 2 of the table has effect according to its terms.
3. Item 1 of the table provides that sections 1 to 3 and anything in this Act not elsewhere covered by the table will commence on the day on which the Act receives the Royal Assent.
4. Item 2 of the table provides that Schedule 1 commences on the later of the day this Act receives the Royal Assent or the day the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (the Agreement) done at Thailand on 27 February 2009 comes into force for Australia. However, the provisions in Schedule 1 do not commence at all if the event mentioned in paragraph (b) does not occur.
5. This item also provides that the Minister for Home Affairs must announce by notice in the *Gazette* the day the Agreement enters into force for Australia.
6. Subclause (2) provides that column 3 of the table contains additional information that is not part of the Act.

Clause 3 - Schedule(s)

7. This clause is the formal enabling provision for the Schedule to the Bill, providing that each Act specified in a Schedule is amended in accordance with the applicable items of the Schedule. In this Bill, the Customs Act is being amended.
8. The clause also provides that the other items of the Schedules have effect according to their terms. This is a standard enabling clause for transitional, savings and application items in amending legislation.

SCHEDULE 1 - AMENDMENTS

Customs Act 1901

Item 1 After Division 1F of Part VIII

9. This item amends the *Customs Act 1901* (the Customs Act) by inserting new Division 1G into Part VIII. New Division 1G is headed **ASEAN-Australia-New Zealand (AANZ) originating goods** and sets out the rules for determining whether goods are AANZ originating goods and therefore eligible for a preferential rate of customs duty under the *Customs Tariff Act 1995* (the Customs Tariff Act). These rules are being inserted to give effect to the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (the Agreement), in particular Chapter 3 of the Agreement.
10. New Division 1G contains six Subdivisions which are set out below.

Subdivision A - Preliminary

11. Subdivision A contains a simplified outline of Division 1G and contains the interpretation provision for Division 1G.

Section 153ZKA Simplified outline

12. New section 153ZKA sets out a simplified outline of each of the Subdivisions B to F of new Division 1G.

New section 153ZKB Interpretation

13. New subsection 153ZKB(1) sets out several new definitions for the purposes of Division 1G. These definitions are:

AANZ originating goods which means goods that, under new Division 1G, are AANZ originating goods;

Agreement which means the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area done at Thailand on 27 February 2009, as amended from time to time. The Note to this definition indicates that in 2009, the text of the Agreement was accessible through the Australian Treaties Library on the AustLII Internet site;

aquaculture which has the meaning given by Article 1 of Chapter 3 of the Agreement, which is the farming of aquatic organisms including fish, molluscs, crustaceans, other aquatic invertebrates and aquatic plants, from seedstock such as eggs, fry, fingerlings and larvae, by intervention in the rearing or growth processes to enhance production such as regular stocking, feeding, or protection from predators;

Certificate of Origin which means a certificate that is in force and that complies with the requirements of Rule 7 of the Annex to Chapter 3 of the Agreement. Rule 7 sets out the format of, and the matters that are to be included in, a Certificate of Origin;

Convention which means the International Convention on the Harmonized Commodity Description and Coding System done at Brussels on 14 June 1983, as in force from time to time. The Note to this definition indicates that in 2009, the text of the Agreement was accessible through the Australian Treaties Library on the AustLII Internet site;

customs value, of goods, which has the meaning given by section 159. In most cases it will be the transaction value but there are other methods if this value cannot be ascertained;

exclusive economic zone which has the same meaning as in the *Seas and Submerged Lands Act 1973*. This definition is taken from Articles 55 and 57 of UNCLOS which provide as follows:

The exclusive economic zone is an area beyond and adjacent to the territorial sea, subject to the specific legal regime established in this Part, under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are governed by the relevant provisions of this Convention.

The exclusive economic zone shall not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

Harmonized System which means the Harmonized Commodity Description and Coding System (as in force from time to time) that is established by or under the Convention.

The Harmonized System (HS) is the worldwide classification system that has been adopted by all countries that are members of the World Customs Organization. In Australia, the HS has been adopted in the Customs Tariff Act. The HS organises goods according to the degree of manufacture, and assigns classification numbers to all goods. It is arranged into 96 chapters covering all goods, and each chapter is divided into headings, subheadings, and tariff classifications. Under the HS, the chapter, heading, and subheading numbers (6 digits) for any good are adopted in any country using the HS. The Australian Customs Tariff is an 8 digit classification, with the 4 and 6 digit international classification supplemented for the domestic imposition of customs duty;

in a Party includes:

- a. the territorial sea of a Party;
- b. the exclusive economic zone of a Party over which the Party exercises sovereign rights or jurisdiction in accordance with international law; and

- c. the continental shelf of a Party over which the Party exercises sovereign rights or jurisdiction in accordance with international law.

Under the Agreement, activities are required to take place "in a Party" and this definition ensures that these activities will be eligible activities if they take place in the territorial sea, the EEZ and the continental shelf of a Party as well as on the land mass of a Party;

indirect materials which means:

- a. goods or energy used in the production, testing or inspection of goods, but not physically incorporated in the goods; or
- b. goods or energy used in the maintenance of buildings or the operation of equipment associated with the production of goods;

including:

- c. fuel (within its ordinary meaning); and
- d. tools, dies and moulds; and
- e. spare parts and materials; and
- f. lubricants, greases, compounding materials and other similar goods; and
- g. gloves, glasses, footwear, clothing, safety equipment and supplies; and
- h. catalysts and solvents.

Interpretation Rules which means the General Rules (as in force from time to time) for the Interpretation of the Harmonized System provided for by the Convention;

non-originating materials which means goods that are not originating materials;

originating materials which means:

- a. AANZ originating goods that are used or consumed in the production of other goods;

In some circumstances, in order to determine whether goods imported into Australia are AANZ originating goods, and therefore eligible for a preferential rate of customs duty, it may be necessary to have regard to the goods from which the final goods are produced (see Subdivisions C and D). These goods which are used to produce other goods can be originating or non-originating.

Originating materials are those goods that are used to produce other goods and that are also AANZ originating goods, which means that, in their own right, they satisfy the requirements of new Division 1G. Non-originating materials are goods that are not originating materials because they do not satisfy the requirements of Division 1G in their own right. For example, where frozen crumbed fish fillets are made in New

Zealand from fish caught in New Zealand that is coated with herbs and spices imported from Argentina, the fish would be originating materials and the herbs and spices would be non-originating materials (as Argentina is not a Party to the Agreement); or

b. indirect materials.

Party which means a Party (within the meaning of the Agreement) for which the Agreement has entered into force.

Under Article 3 of Chapter 1 to the Agreement, a Party means an ASEAN Member State or Australia or New Zealand. The ASEAN Member States are Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam.

Under Article 7 of Chapter 20 of the Agreement, the Agreement cannot enter into force until Australia, New Zealand and at least four ASEAN Member States have notified each Party to the Agreement, in writing, that the internal requirements to implement the Agreement have been completed. However, at that point in time, the Agreement will only enter into force for those countries that have completed the internal requirements at that time. If there are any ASEAN Member States that have not completed their internal requirements at the time of the initial entry into force of the Agreement, the Agreement shall only enter into force for these countries after the date these countries notify each Party to the Agreement that they have also completed their internal requirements. (See subsection 153ZKB(7) below for requirement for the Minister to announce in the *Gazette* when the Agreement enters into force for a Party other than Australia.)

If the Agreement is not in force for a Party, new Division 1G will not apply in relation to that Party. For example, goods cannot claim to be wholly obtained goods of a Party for which the Agreement has not entered into force.

produce which means grow, farm, raise, breed, mine, harvest, fish, trap, hunt, capture, gather, collect, extract, manufacture, process or assemble;

territorial sea which has the same meaning as in the *Seas and Submerged Lands Act 1973*. This definition is taken from Articles 3 and 4 of UNCLOS which provide as follows:

Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.

The outer limit of the territorial sea is the line every point of which is at a distance from the nearest point of the baseline equal to the breadth of the territorial sea.

14. New subsection 153ZKB(2) provides that the **regional value content** of goods for the purposes of Division 1G is to be worked out in accordance with the regulations. The regulations may prescribe different regional value content rules for different kinds of goods.
15. New subsection 153ZKB(3) provides that the value of goods for the purposes of Division 1G is to be worked out in accordance with the regulations and that the regulations may prescribe different valuation rules for different kinds of goods. The value of goods is relevant, for example, in determining whether goods satisfy the *de minimis* requirement in subsection 153ZKE(4). The value of goods is to be distinguished from the customs value of goods which is to be worked out under section 159 of the Customs Act.
16. New subsection 153ZKB(4) provides that in specifying tariff classifications for the purposes of Division 1G, the regulations may refer to the Harmonized System. The product specific rules in Annex 2 of the Agreement refer to tariff classifications of the Harmonized System.
17. New subsection 153ZKB(5) provides that subsection 4(3A) of the Customs Act does not apply for the purposes of Division 1G. Subsection 4(3A) provides that reference in the Customs Act to the tariff classification of goods is a reference to Schedule 3 of the Customs Tariff Act, which is not the case in new Division 1G.
18. New subsection 153ZKB(6) provides that for the purposes of Division 1G, the regulations may apply, adopt or incorporate any matter contained in any instrument or other writing as in force or existing from time to time. This provision will override section 14 of the *Legislative Instruments Act 2003* should it be necessary to refer to the laws of a Party to the Agreement (other than Australia) in the *Customs (ASEAN-Australia-New Zealand Rules of Origin) Regulations 2009*.
19. New subsection 153ZKB(7) provides that the Minister (for Home Affairs) must announce by notice in the *Gazette* the day on which the Agreement enters into force for a Party (other than Australia). In this subsection, **Party** means a Party to the Agreement, not necessarily a Party for which the Agreement has entered into force. This means that the Minister will be required to publish a notice in the *Gazette* setting out the date the Agreement enters into force for each ASEAN Member State and New Zealand. New subsection 153ZKB(8) provides that notice referred to in subsection (7) is not a legislative instrument. This means that the notice will not have to be registered on the Federal Register of Legislative Instruments and is consistent with the *Legislative Instruments Regulations 2004*, which provide that a notice published in the *Gazette* that announces the day on which an international agreement comes into force for Australia is not a legislative instrument. Such notices are not legislative instruments within the meaning of section 5 of the *Legislative Instruments Act 2003*.

Subdivision B - Wholly obtained goods of a Party

20. Subdivision B sets out the rules in relation to goods that are wholly obtained goods of a Party.

Section 153ZKC Goods wholly obtained of a Party

21. New subsection 153ZKC(1) provides that goods are **AANZ originating goods**:
- a. if they are wholly obtained goods of a Party; and
 - b. the importer has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.
22. New subsection 153ZKC(2) provides that goods are **wholly obtained of a Party** if, and only if, the goods are:
- a. plants, or goods obtained from plants that are grown, harvested, picked or gathered in a Party. These goods include all fruit, flowers, vegetables, trees, seaweed, fungi and live plants; or
 - b. live animals born and raised in a Party; or
 - c. goods obtained from live animals in a Party; or
 - d. goods obtained from hunting, trapping, fishing, farming, gathering, capturing or aquaculture in a Party; or
 - e. minerals or other naturally occurring substances extracted or taken in a Party; or
 - f. fish, shellfish or other marine goods taken from the high seas in accordance with international law, by ships that are registered or recorded in a Party and are flying, or are entitled to fly, the flag of that Party; or
 - g. goods produced from goods referred to in paragraph (f) on board factory ships that are registered or recorded in a Party and are flying, or are entitled to fly, the flag of that Party; or
 - h. goods taken by a Party, or by a person of a Party, from the seabed, or beneath the seabed, outside:
 - (i) the exclusive economic zone of that Party; or
 - (ii) the continental shelf of that Party; or
 - (ii) an area over which a third party exercises jurisdiction;and taken under exploitation rights granted in accordance with international law; or
 - i. waste and scrap that has been derived from production or consumption in a Party and that is fit only for the recovery of raw materials; or

- j. used goods that are collected in a Party and that are fit only for the recovery of raw materials; or
- k. goods produced or obtained entirely in a Party exclusively from goods referred to in paragraphs (a) to (j) or from their derivatives. Under this provision, all of the relevant activities must take place in the one Party. For example, pork sausages that are made in Vietnam from pigs born and raised in Vietnam and cereals and spices harvested in Vietnam will be AANZ originating goods. It would not be possible to claim that pork sausages made in Vietnam from pigs born in Cambodia and cereals and spices harvested in Vietnam are AANZ originating goods under this provision. However, such sausages could be AANZ originating goods under new section 153ZKD below.

Subdivision C - Goods produced in a Party from originating materials

- 23. Subdivision C sets out the rule in relation to goods that are produced entirely in the territory of a Party from originating materials only under section 153ZKD. Such goods are AANZ originating goods where the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.
- 24. Under this section, it will be possible to combine originating materials from any Party to make AANZ originating goods, as long as the goods are produced entirely in a Party. Therefore, following on from the above example, pork sausages made in Vietnam from pigs born in Cambodia and cereals and spices harvested in Vietnam would be AANZ originating goods under this section.

Subdivision D - Goods produced from non-originating materials

- 25. Subdivision D sets out the rules for determining whether goods that are produced from non-originating materials only, or from non-originating materials and originating materials, are AANZ originating goods.
- 26. Under the Agreement, there are two different sets of rules of origin that apply in relation to goods produced using non-originating materials. Except for goods listed in Annex 2 to the Agreement, the relevant rule of origin is a “general rule” of either a change in tariff heading or a regional value content of at least 40% of the FOB value of the goods. For the goods listed in Annex 2 to the Agreement, the product-specific rules contained in the Annex are applicable.

Section 153ZKE Goods produced from non-originating materials and classified in the tariff table

- 27. New section 153ZKE applies to goods that are classified to a heading or subheading that is specified in the table in Schedule 1 to the *Customs (ASEAN-Australia-New Zealand Rules of Origin) Regulations 2009* (the AANZ Regulations). New subsection 153ZKE(1) provides that goods are AANZ originating goods if:

- a. they are classified to a heading or subheading of the Harmonized System specified in column 1 or 2 of the table in Schedule 1 to the *Customs (ASEAN-Australia-New Zealand Rules of Origin) Regulations 2009*; and
 - b. each requirement that is specified in the regulations to apply in relation to the goods is satisfied; and
 - c. the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.
28. The table in Schedule 1 to the AANZ Regulations will incorporate the product specific rules relating to change in tariff classification, regional value content and other rules that are included in Annex 2 to the Agreement for the purposes of determining whether goods are AANZ originating goods. Columns 1 and 2 of this table will set out the tariff classifications, column 3 will set out the description of the goods and column 4 will set out the product specific rules.
29. New subsection 153ZKE(2) refers to the first of the requirements that may be specified in Schedule 1 to the AANZ Regulations. It provides that the regulations may specify that each non-originating material used or consumed in the production of the goods is required to satisfy a specified change in tariff classification.
30. New subsection 153ZKE(3) provides that the regulations may also specify when a non-originating material used or consumed in the production of the goods is taken to satisfy the change in tariff classification. Regulations made under these heads of power would include provisions that would apply where the non-originating materials that are used or consumed in the production of the good do not satisfy the change in tariff classification.
31. The concept of the change in tariff classification only applies to non-originating materials. Goods that have been sourced from outside any of the Parties and that are used in the production of other goods are non-originating materials. Goods sourced from within a Party that have not fulfilled the requirements of Division 1G and that are used in the production of other goods are also non-originating materials. All non-originating materials used to produce other goods may not have the same classification under the Harmonized System as the final good into which they are produced. This means that the goods must be classified under one tariff classification before the production process and under a different tariff classification after the production process. This approach ensures that sufficient transformation of materials has occurred within a Party, or Parties, to justify the claim that the goods originate in a Party.
32. For example, frozen fish fillets (HS 0304) are produced from fish caught in Thailand (originating materials) and combined with herbs and spices from Argentina (non-originating materials) (HS 0907 - 0910) to make crumbed fish fillets (HS 1604.20). The applicable tariff change for crumbed fish is “a change to subheading 1604.20 from any other chapter”. As the herbs and spices are classified to Chapter 9, these

non-originating materials meet the tariff change requirement. (The fish is the wholly obtained good of a Party and is therefore an originating material and is not required to change its classification.)

33. In order to determine whether goods meet the applicable change in tariff classification requirement, the tariff classification of the final goods and each of the goods that are non-originating materials used in the production of the goods needs to be known.
34. New subsection 153ZKE(4) incorporates the first *de minimis* provision set out in Article 8 of Chapter 3 of the Agreement. This subsection provides that the change in tariff classification is also taken to be satisfied if the total value of all of the non-originating materials used in the production of the goods that do not satisfy the particular change in tariff classification requirement for the goods does not exceed 10% of the customs value of the goods. This provision applies to all goods listed in the table in Schedule 1 to the AANZ Regulations.
35. New subsection 153ZKE(5) incorporates the second *de minimis* provision set out in Article 8 of Chapter 3 of the Agreement. This provision applies only in relation to goods that are classified to Chapters 50 to 63 of the Harmonized System, which apply to textiles and textile articles. This subsection provides that the change in tariff classification is also taken to be satisfied if the total weight of all of the non-originating materials used or consumed in the production of the goods that do not satisfy the particular change in tariff classification of the goods does not exceed 10% of the total weight of the goods
36. Therefore, under these two *de minimis* provisions, even if all the non-originating materials used to produce a final good do not satisfy a particular change in tariff classification, the final goods may still be AANZ originating goods because the change in tariff classification will be taken to be satisfied.
37. The value of non-originating materials for the purposes of this section is to be worked out in accordance with the methods that will be included in the AANZ Regulations.
38. New subsection 153ZKE(6) provides that the regulations may specify that the goods are required to have a regional value content of at least a specified percentage. The methods of calculation to determine the regional value content will be included in the AANZ Regulations.
39. New subsection 153ZKE(7) provides that if:
 - a. the goods are required to have a regional value content of at least a particular percentage; and
 - b. the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and

- c. the accessories, spare parts, tools or instructional or other information materials are not invoiced separately from the goods; and
- d. the quantities and value of the accessories, spare parts or tools are customary for the goods;

then the regulations must require the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account as originating or non-originating materials, as the case may be, for the purposes of working out the regional value content of the goods. Without this provision, the value of accessories, spare parts, tools or instructional or other information materials would not normally form part of the value of materials that are used in the production of the underlying goods.

- 40. The Note to this section indicates that the value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the AANZ Regulations.
- 41. New subsection 153ZKE(8) provides that for the purposes of subsection 153ZKE(7), section 153ZKI is to be disregarded in working out whether the accessories, spare parts, tools or instructional or other information materials are originating or non-originating materials. However, new subsection 153ZKE(9) provides that subsection 153ZKE(7) does not apply if the accessories, spare parts, tools or instructional or other information materials are imported solely for the purpose of artificially raising the regional value content of the goods.
- 42. Subsection 153ZKE(9) and paragraph 153ZKI(c) (see below) are required to ensure that accessories, spare parts, tools, instructional or other information materials that are of a kind customarily provided with other goods are not simply added to ensure one or both of the goods are AANZ originating goods by artificially raising the regional value content of the other goods.

For example, woollen trousers are made in Malaysia, and are to be sold to a buyer in Australia for \$80 each. Amongst other requirements, under the Indirect/Build-down method for calculating regional value content in the Agreement, woollen trousers must have a regional value content of 40% to be AANZ originating goods. Because these trousers include Italian fabric worth \$48 per pair, the regional value content would be worked out as follows:

$$\frac{\$80 - \$48}{\$100} = 32\%$$

The trousers are non-originating, and ineligible for importation into Australia at preferential rates of duty under the Agreement.

To get around this dilemma, the producer arranges for each pair of trousers to be sold with a belt and agrees to buy the belt back later to ensure the buyer ultimately

pays no more than originally intended. On return of the belts to the producer, they could then be used for subsequent shipments under similar arrangements.

The belt is complete with a buckle and is classified to subheading 4203.30 and is sold to the producer for \$12. It is made from a pre-made belt without a buckle imported from a country that is not a Party to the Agreement. The pre-made belt is classified to the same subheading as the complete belt, and is valued at \$2. The belt is non-originating because it did not undergo an appropriate tariff change requirement.

Without subsection 153ZIE(8) and paragraph 153ZIG(c), the addition of the belt to the trousers would mean that the regional value content of the trousers would be worked out as follows:

$$\frac{\$92 \text{ (trousers + belt)} - \$50 \text{ (imported fabric + belt without buckle)}}{\$92} = 45.65\%$$

Therefore, the artificial inclusion of the belt would raise the price of the goods (and to a lesser extent, the value of the imported content) to enable both goods to become AANZ originating goods. Subsection 153ZKE(9) and paragraph 153ZKI(c) are required to deter traders from resorting to artificial arrangements to meet the required regional value content.

43. New subsection 153ZKE(10) provides that subsections (2) and (6) do not limit paragraph (1)(b). It is proposed that the regulations will include other requirements in addition to change in tariff classification and regional value content requirements.
44. For example, in addition to meeting a tariff change requirement, in respect of textile articles classified in the headings of Chapter 63 of the Harmonized System where the starting material is fabric, the fabric must be raw or unbleached and fully finished in one or more of the Parties.

Section 153ZKF Goods produced from non-originating materials and not classified in the tariff table

45. New section 153ZKF sets out the rules of origin that apply to goods that are classified to a heading or subheading that is *not* specified in the table in Schedule 1 to the AANZ Regulations. The reason they are not specified in the table is because their qualification as originating goods is that they need to meet a “general rule” of either a change in tariff heading or a regional value content of at least 40%.
46. There are two different rules of origin that can be applied to goods that are classified to a heading or subheading that is not specified in the table.
47. This first rule is set out in subsection 153ZKF(1), and provides that goods are AANZ originating goods if:

- a. they are classified to a heading or subheading of the Harmonized System that is not specified in column 1 or 2 of the table in Schedule 1 to the *Customs (ASEAN-Australia-New Zealand Rules of Origin) Regulations 2009*; and
- b. the final process in their production was performed in a Party; and
- c. the goods have a regional value content of at least 40%; and
- d. the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.

48. New subsection 153ZKF(2) provides that if:

- a. the goods are imported into Australia with accessories, spare parts, tools or instructional or other information materials; and
- b. the accessories, spare parts, tools or instructional or other information materials are not invoiced separately from the goods; and
- c. the quantities and value of the accessories, spare parts or tools are customary for the goods;

then the regulations must require the value of the accessories, spare parts, tools or instructional or other information materials to be taken into account as originating or non-originating materials, as the case may be, for the purposes of working out the regional value content of the goods. Without this provision, the value of accessories, spare parts, tools or instructional or other information materials would not normally form part of the value of materials that are used in the production of the underlying goods. This provision is identical to the provision that applies under 153ZKE(7) in relation to goods that are classified to a heading or subheading of the Harmonized System that is specified in column 1 or 2 of the table in Schedule 1 to the AANZ Regulations.

49. The Note to this subsection indicates that the value of the accessories, spare parts, tools or instructional or other information materials is to be worked out in accordance with the AANZ Regulations.

50. Similar to new subsection 153ZKE(8), subsection 153ZKF(3) provides that for the purposes of subsection 153ZKF(2), section 153ZKI is to be disregarded in working out whether the accessories, spare parts, tools or instructional or other information materials are originating or non-originating materials. However, new subsection 153ZKF(4) provides that subsection 153ZKF(2) does not apply if the accessories, spare parts, tools or instructional or other information materials are imported solely for the purpose of artificially raising the regional value content of the goods.

51. Subsections 153ZKF(4) and paragraph 153ZKI(c) (see below) are, like subsection 153ZKE(9), required to ensure that accessories, spare parts, tools, instructional or other information materials that are of a kind customarily provided with other goods

are not simply added to ensure one or both of the goods are AANZ originating goods by artificially raising the regional value content of the other goods.

52. New subsection 153ZKF(5) sets out the second rule, and provides that goods are AANZ originating goods if:
- a. they are classified to a heading or subheading of the Harmonized System that is not specified in column 1 or 2 of the table in Schedule 1 to the AANZ Regulations; and
 - b. they are produced entirely in one or more Parties from non-originating materials only, or from non-originating and originating materials; and
 - c. each non-originating material used or consumed in the production of the goods undergoes a change in tariff classification that is a change to a heading of the Harmonized System from any other heading of the Harmonized System; and
 - d. the importer of the goods has, at the time the goods are imported, a Certificate of Origin, or a copy of one, for the goods.
53. New subsections 153ZKF(6) and (7) set out the same *de minimis* provisions in relation to non-originating materials to those that apply to goods that are classified to a heading or subheading of the Harmonized System that is specified in column 1 or 2 of the table in Schedule 1 to the AANZ Regulations (see new subsections 153ZKE(4) and (5) above).

Section 153ZKG Non qualifying operations or processes

54. New subsection 153ZKG(1) provides that new section 153ZKG applies for the purposes of working out if goods are AANZ originating goods under either:
- a. subsection 153ZKE(1), where, in relation to paragraph 153ZKE(1)(b), goods are claimed to be AANZ originating goods solely on the basis that the goods have a regional value content of at least a specified percentage. This means that column 4 of the item in Schedule 1 to the AANZ Regulations that applies to these goods must specify *only* a regional value content requirement - this provision will not apply for example where column 4 specifies a regional value content and a change in tariff classification requirement; or
 - b. subsection 153ZKF(1).
55. New subsection 153ZKG(2) provides that goods are not AANZ originating goods merely because of the following:
- a. operations or processes to preserve goods in good condition for the purpose of transport or storage of the goods;
 - b. operations or processes to facilitate the shipment or transportation of the goods;
 - c. packaging (other than the encapsulation of electronics) for transportation or sale or presenting goods for transportation or sale;

- d. simple processes of sifting, classifying, washing, cutting, slitting, bending, coiling, uncoiling or other similar simple processes;
- e. affixing of marks, labels or other distinguishing signs on goods or on their packaging;
- f. dilution with water or another substance that does not materially alter the characteristics of goods;
- g. any combination of things referred to in paragraphs (a) to (f).

Therefore, if any of these operations are the only operations that take place in a Party in relation to goods (either alone or as a combination), this will not amount to production in relation to the goods. For example, if non-originating goods such as spices from Bolivia are packaged into bottles in Cambodia, this will not confer the status of AANZ originating goods upon the spices.

Section 153ZKH Packaging materials and containers.

56. New subsection 153ZKH(1) provides that if:
- a. goods are packaged for retail sale in packaging material or a container; and
 - b. the packaging material or container is classified with the goods in accordance with Rule 5 of the General Rules for the Interpretation of the Harmonized System provided for by the Convention;

then the packaging material or container is to be disregarded for the purposes of Subdivision D except for the purposes of the exception detailed below. For example, this means that the packaging material or container that are non-originating materials does not need to satisfy the change in tariff classification test that might apply to the goods under the AANZ Regulations.

Exception

57. However, subsection 153ZKH(2) provides one exception, which applies where the goods are required to have a regional value content of at least a particular percentage. Under this exception, the regulations must require the value of the packaging material or container to be taken into account as originating materials or non-originating materials, as the case may be, for the purposes of working out the regional value content of the goods. Without this provision, the value of packaging materials and containers would not normally form part of the value of materials that are used in the production of the goods.
58. The value of packaging materials and containers for the purposes of this section is to be worked out in accordance with the methods that will be included in the AANZ Regulations.

Subdivision E - Goods that are accessories, spare parts, tools or instructional or other information materials

59. Subdivision E sets out a specific rule that applies to goods that are accessories, spare parts, tools or instructional or other information materials.

Section 153ZKI Accessories, spare parts, tools or instructional or other information materials

60. New section 153ZKI provides that goods are **AANZ originating goods** if:
- a. they are accessories, spare parts, tools or instructional or other information materials in relation to other goods; and
 - b. the other goods are imported into Australia with the accessories, spare parts, tools or instructional or other information materials; and
 - c. the accessories, spare parts, tools or instructional or other information materials are not imported solely for the purpose of artificially raising the regional value content of the other goods; and
 - d. the other goods are AANZ originating goods; and
 - e. the accessories, spare parts, tools or instructional or other information materials are not invoiced separately from the other goods; and
 - f. the quantities and value of the accessories, spare parts, tools or instructional or other information materials are customary for the other goods.

Therefore, under the provision, accessories, spare parts, tools or instructional or other information materials will be deemed to be AANZ originating goods even if, in fact, they are non-originating materials, provided all of the requirements of this section are satisfied. However, this deeming section is to be disregarded when performing a regional value calculation on goods under subsections 153ZKE(7) and 153ZKF(2).

Subdivision F - Consignment

61. Subdivision F sets out the consignment requirements that must be satisfied in transporting AANZ originating goods to Australia, including in relation to production in other countries that are not Parties to the Agreement during transportation to Australia.

Section 153ZKJ Consignment

62. New subsection 153ZKJ(1) provides that goods are not AANZ originating goods under Division 1G if:
- a. the goods are transported through a country or place other than a Party; and

- b. at least one of the following applies:
 - (i) the goods undergo subsequent production or any other operation in that country or place (other than unloading, reloading, storing or any operation that is necessary to preserve them in good condition or to transport them to Australia); or
 - (ii) the goods enter the commerce of that country or place; or
 - (ii) the transport through that country or place is not justified by geographical, economic or logistical reasons.
63. Subsection 153ZKJ(2) provides that this section applies despite any other provision of Division 1G. This means that even if goods are AANZ originating goods in accordance with any other provisions of Division 1G, if they do not comply with section 153ZKJ(1), they will not be AANZ originating goods.

Item 2 Application

64. Item 2(1) provides that the amendment made by item 1 applies in relation to:
- a. goods imported into Australia on or after the commencement of item 2; and
 - b. goods imported in Australia before the commencement of item 2, where the time for working out the rate of import duty on the goods had not occurred before the commencement of item 2. This means that if goods are imported from a Party before the commencement date and are still in a warehouse on that date, the new rules set out in item 1 will also apply to them.
65. Item 2(2) applies in relation to a Party for which the Agreement enters into force on a day later than the day on which the Agreement enters into force for Australia (see the definition of **Party** in subsection 153ZKB(1) above). This later day is the **start day** for the purposes of item 2(2). Under this item, the amendment made by item 1 applies in relation to:
- a. goods imported into Australia on or after the start day; and
 - b. goods imported in Australia before that the start day, where the time for working out the rate of import duty on the goods had not occurred before the start day. Again, this means that if goods are imported from a relevant Party before the start day and are still in a warehouse on that day, the new rules set out in item 1 will also apply to them.
66. In this item, **Agreement** means the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area done at Thailand on 27 February 2009, as amended from time to time and **Party** means a Party within the meaning of the Agreement (ie any one of the ten ASEAN Member States, Australia and New Zealand).