

National Interest Analysis 2023 ATNIA 13

with attachments

**Second Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand
Free Trade Area (AANZFTA)**

Semarang, 21 August 2023

2023 ATNIF 13

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NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

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

Semarang, 21 August 2023

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Nature and timing of proposed treaty action

1. The proposed treaty action is to bring the *Second Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area* (the Second Protocol) into force. The Second Protocol was signed by Australia, New Zealand, Brunei Darussalam, Indonesia, Malaysia, and Singapore on 21 August 2023 at Semarang, Indonesia.
2. The Second Protocol amends the *Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area* (AANZFTA),¹ as provided for in Article 6 (Amendments) of Chapter 18 (Final Provisions) of AANZFTA. Article 6 of Chapter 18 states that AANZFTA may be amended by agreement in writing by the Parties, and that such amendments shall come into force on such date or dates as agreed among them.
3. Article 8 (2) (Entry into Force) of the Second Protocol states that it shall enter into force 60 days after the date on which Australia, New Zealand and at least four ASEAN Member States have deposited their instruments of ratification, acceptance or approval with the Depository, who shall promptly notify all other Parties of each deposit. The Parties are aiming for entry into force in 2024.
4. It is proposed that Australia deposit its instrument of ratification as soon as practicable following consideration by the Joint Standing Committee on Treaties (JSCOT) and the Federal Executive Council (ExCo), the passing of any legislative amendments and the enactment of any necessary regulations.

Overview and national interest summary

5. The Association of Southeast Asian Nations (ASEAN), as a bloc, is Australia's second largest trading partner accounting for more than 14.8 per cent of Australia's overall trade (\$178 billion) in 2022. It is in Australia's interest to ensure that opportunities for Australian investors and demand for Australian exports will continue to grow, helping to create Australian jobs and bolster our economy. The Second Protocol will build on the original AANZFTA Agreement and the First Protocol Amendment with greater provisions on services and investments, new

¹ [2010] ATS 1.

digital trade data rules, and cooperation on environment, labour rights, and women's economic empowerment.

6. The Southeast Asia region is expected to continue its strong economic growth (at a forecast compound average growth rate of 4 per cent to 2040). The Second Protocol enhances cooperation and coordination with ASEAN by supporting integration of production processes across borders (cumulation), increasing programs through the Economic Co-operation Chapter, and through the creation of a new Micro, Small, Medium Enterprises (MSME) Chapter. This will help reduce the vulnerability of Australia's trade and investment to future crises.
7. The Second Protocol modernises AANZFTA to ensure that it remains contemporary and keeps pace with Australia's evolving trade policy interests in areas such as electronic commerce, trade and sustainable development, and MSMEs. It maintains AANZFTA's status as ASEAN's highest-quality free trade agreement (FTA), deepens Australia's regional economic engagement and reinforces our region's ASEAN-centred and rules-based economic architecture.
8. The Second Protocol complements our bilateral FTAs with New Zealand and four ASEAN Member States (Indonesia, Malaysia, Singapore and Thailand) and also builds on the outcomes of the Regional Comprehensive Economic Partnership Agreement (RCEP), which entered into force on 1 January 2022.
9. The Second Protocol contributes to the Australian Government's objective to deepen and broaden our economic ties under Australia's Southeast Asia Economic Strategy to 2040. The Second Protocol will enhance Australia's trade relationship with Southeast Asia through greater economic integration and cooperation, particularly as Southeast Asia's middle class expands and seeks higher-value products and services, including education, financial, and professional services. It will also underpin important strategic outcomes, further diversifying Australia's trade and guarding against the risk of discriminatory trade blocs that damage Australia's economic and security interests. Signing the Second Protocol highlights Australia's ongoing commitment to trade liberalisation in Southeast Asia, helping counter protectionism and geostrategic competition by improving supply chain resilience while reinforcing international rules and norms.

Reasons for Australia to take the proposed treaty action

10. The purpose of implementing the Second Protocol is to primarily build on AANZFTA's original services and investment outcomes. Since AANZFTA entered into force over a decade ago, Parties have progressively improved commitments concerning trade in services through the conclusion of new free trade agreements (for example, through the Regional Comprehensive and Economic Partnership Agreement (RCEP)). The Second Protocol will

deliver additional commercial opportunities for Australian businesses, particularly in the services sector – including the digital economy and the green economy.

11. The Second Protocol provides increased certainty to Australian investors through greater investment protection and sector specific commitments that represent substantial improvements over the original AANZFTA agreement. As ASEAN continues to outpace the world's average economic growth rate, ASEAN Member States will need large amounts of capital to keep up with demand. Through the enhanced protections for businesses and investors provided by the Second Protocol, Australia can take advantage of these regional economic opportunities.
12. For the first time in an ASEAN-centred FTA, the Second Protocol includes a chapter on trade and sustainable development, which will facilitate enhanced cooperation on labour standards, environmental protection, and women's economic empowerment, a key objective for the Australian Government.
13. The Second Protocol reaffirms Australia's rights and obligations under the World Trade Organization (WTO) Agreement and Australia's obligations under other international agreements. Chapter 21 (Final Provisions) provides that AANZFTA coexists with AANZFTA Parties' existing international agreements with each other (which include, for example, the WTO Agreement and Australia's bilateral FTAs with other AANZFTA Parties).
14. The key outcomes and impacts of the Second Protocol are set out in detail in Attachment II (Impact Assessment) and Attachment III (Benefits for Australia) to this National Interest Analysis (NIA). Sectoral outcomes are summarised below.

Goods

15. AANZFTA remains ASEAN's most liberalising agreement for goods, with tariff elimination on 96 per cent of Australian exports to the more developed Southeast Asian markets. Therefore, goods *market access* negotiations were not part of the Second Protocol. However, there are improvements in the Trade in Goods Chapter (Chapter 2) through the introduction of new provisions that promote ease of trade. For example, new provisions will benefit exporters who utilise third party shipping hubs by removing import duty or tax obligations, and not prohibit or restrict importation of goods destined for a third party. Further details are in paragraph 33.
16. The Second Protocol establishes new regional rules of origin (ROOs) (Chapter 3) making it easier and less costly for businesses to access AANZFTA's benefits. New cumulation rules give traders more flexibility in sourcing and shipping inputs, promoting greater integration into regional and global supply chains. The amended consignment provision adds a new obligation that provides for transshipment and provides the ability for goods to retain their originating status when transiting through countries outside of AANZFTA.

17. Documentation requirements have been simplified aimed at removing red tape and improving productivity. Certificate of Origin arrangements (Annex 3A) familiar to Australian business will be maintained but the amendment establishes an option for self-declaration (Declarations of Origin), which can be accepted in electronic format. Several AANZFTA Parties are familiar with Declarations of Origin through other FTAs. In addition, third country invoices only require information to be provided on the first (and not subsequent) company issuing the third country invoice, promoting ease of access to FTA benefits. This will reduce costs and streamline how Australian exporters transact with ASEAN Member States, creating more opportunities to expand trade into the region.
18. Customs procedures (Chapter 4) have been enhanced and modernised to promote trade facilitation. A new provision promotes expedited trade during humanitarian crises, epidemics and pandemics, to facilitate rapid responses to emerging global health crises.

Upgrade and transposition of product-specific rules (PSR)

19. The PSRs (which are the detailed ROOs applying to individual products) (Annex 3B) have been upgraded to include specific processes that occur during the production of certain goods (e.g., chemicals) making the determination of origin simpler. The PSR format has also been updated to be consistent with the current version of the Harmonized System (HS)² of goods codes (HS2022, previous HS2012). This will make it easier for business to find HS codes, including new HS2022 product codes, and claim AANZFTA tariff preferences when exporting.

Services and Investment

20. The upgraded Services (Chapter 8) and Investment (Chapter 11) Chapters provide a strong platform to expand trade in services and promote investment throughout the region, building upon AANZFTA's existing rules for investment and the supply of services between Parties. Several Parties make use of the inherently more liberalising, modern, and transparent approach of '**negative listing**' for the first time for services market access. This means that market access to those Parties will include all sectors unless specifically excluded (negative list), rather than a 'positive' list approach, which excludes everything except the sector specified. This is of considerable benefit for Australia as existing and new sectors will be automatically committed as they are not specified in the 'negative list'. The upgraded agreement sees the 'negative list' approach used for services market access in AANZFTA for the first time by Australia, Brunei Darussalam, Indonesia, Malaysia, New Zealand, and Singapore.

² The Harmonized Commodity Description and Coding System (HS) is a globally standardised number for classifying traded products for goods exports.

21. The remaining AANZFTA Parties, being Cambodia, Lao PDR, Myanmar, the Philippines, Thailand and Vietnam, have used a 'positive list' which excludes everything except the sector specified for services commitments; but these countries are required to transition to a negative list. There is no time frame to transition to a negative list and timing will be determined through future negotiations. The more liberalising 'negative list' approach has been used by all AANZFTA Parties in scheduling their commitments on investments.
22. A 'ratchet-mechanism' has been included in the upgrade which applies to both services and investment and locks in future unilateral liberalisation for selected sectors. This means Parties have an obligation not to walk back on commitments but can expand on them and allows significant reduction of barriers to services and investment trade over time.
23. Protections for Australian investors, including existing guarantees against unlawful expropriation and fair and equitable treatment, have been brought closely in line with those contained in RCEP.
24. Under the Investment Chapter (Chapter 11), the Parties will review AANZFTA's existing Investor State Dispute Settlement (ISDS) mechanism through a work program that will commence no later than 18 months after the entry into force of the upgraded AANZFTA (article 17).
25. Australia and New Zealand will continue to disapply Investor-State Dispute Settlement (ISDS), Safeguard Measures (Chapter 7) and Consultations and Dispute Settlement (Chapter 20) via a treaty-level exchange of letters that reflect new chapters added to the original AANZFTA through the upgrade.
26. Further, sector-specific commitments in services under both the negative and positive list approaches by Parties represent substantial improvements over commitments in the original AANZFTA agreement. These improvements provide greater certainty for Australian service suppliers and investors and benefit Australian businesses across a range of sectors. These sectors include professional services; education services; financial services; communications services; healthcare services; construction and related engineering services; tourism, recreational, cultural and sporting services; transport services; and wholesale trade and retailing services.
27. The Movement of Natural Persons Chapter (Chapter 9) builds on the original AANZFTA and RCEP and provide greater certainty on temporary entry and stay for businesspersons to facilitate trade and investment in the region.

28. The upgraded Electronic Commerce Chapter (Chapter 10) modernises AANZFTA to support the growth of the digital economy in Australia and reflect the substantial developments in the digital economy since AANZFTA was originally negotiated. The Chapter promotes greater interoperability of systems across borders, and seeks to protect consumer privacy and build trust in the online environment in the region.

Sustainable Development

29. The new chapter on Trade and Sustainable Development (Chapter 13) is ASEAN's first chapter on sustainable development issues in a trade agreement. For AANZFTA members not party to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), it contains their first commitments in a trade agreement on environment and labour standards. It contains all ASEAN members' first commitment in a trade agreement on women's economic empowerment.

30. In this Chapter (Article 1), Parties recognise the importance of cooperation as a way to strengthen efforts and capacities to protect the environment, and to collaborate on labour protections and women's economic empowerment. Parties also recall their commitment to multilateral environment and labour agreements to which they are individually a party, as well as to the 2030 Agenda for Sustainable Development and its Sustainable Development Goals. Parties additionally recognise that it is inappropriate to weaken or reduce levels of protection in their environmental or labour standards to encourage trade or investment.

31. The Chapter facilitates economic cooperation activities in sustainable development areas, including in climate, green and blue economy, energy and sustainable development broadly. Cooperation under the Chapter is overseen by the FTA Joint Committee (Article 2).

New Obligations

32. The upgraded AANZFTA, incorporating the Second Protocol amendments, consists of 21 chapters with associated annexes, appendices and footnotes.

Goods

33. The Chapter on Trade in Goods (Chapter 2) establishes the basic rules governing trade in goods among Australia, New Zealand and ASEAN. All existing and new provisions contained in the AANZFTA's goods-related chapters (Chapters 2-6) are consistent with existing rights and obligations under the relevant WTO Agreements. New provisions in Chapter 2 align with RCEP, including by improving transparency around quantitative restrictions and non-tariff measures (Article 11), such as quotas, import or export licences. There are also new provisions allowing the temporary admission of goods (Article 4) and temporary admission for containers and pallets that further promote ease of trade (Article 5).

34. New obligations in the Chapter on Rules of Origin (Chapter 3) align this Chapter with RCEP, including by allowing for self-certification (Declarations of Origin) in addition to Certificates of Origin. As referenced above, there is a new provision providing for full cumulation for participating parties, giving traders more flexibility with sourcing. The agreement also facilitates transshipment if goods do not enter into commerce or free circulation in non-Parties – a more flexible condition than goods remaining under customs control (Article 14).
35. The Chapter on Customs Procedures and Trade Facilitation (Chapter 4) contains new commitments for efficient and transparent customs procedures to facilitate increased bilateral trade. The Chapter builds on commitments under the *WTO Agreement on Trade Facilitation* and ensures transparency of rules and procedures. This chapter is an element of all of Australia's FTAs.

Services

36. The Chapter on Trade in Services (Chapter 8), which includes the Annexes on Financial Services (Annex 8A), Telecommunications (Annex 8B), Professional Services (Annex 8C), and Education Services Cooperation (Annex 8D), builds on existing AANZFTA services commitments, giving Australian service suppliers better access to Southeast Asian markets and greater certainty about the rules applicable to them.
37. The Chapter on Trade in Services establishes rules for the supply of services between AANZFTA Parties, including a new obligation to treat foreign suppliers at least as well as suppliers of any other non-AANZFTA country (most-favoured-nation, Article 9). This chapter also includes enhanced denial of benefits (Article 25) and domestic regulation provisions (Article 14) including an obligation to maintain or institute judicial, arbitral or administrative tribunals or procedures to review administrative decisions affecting trade in services, in line with Australia's previous FTAs.

Financial Services

38. The Annex on Financial services (Annex 8A) received a significant upgrade, providing greater market access for Australian financial services companies supplying services to ASEAN economies. Parties committed to extend transparency (Article 6), which will allow financial services businesses to more easily understand and comply with laws and regulations when providing financial services abroad or setting up a commercial presence. Parties also committed to make additional information around licensing, regulation, fees and regulator decision-making publicly available, to the extent practicable, and to endeavour to accept authenticated copies of documents and applications in electronic format.

39. The upgrade aligns AANZFTA electronic payment system rules (Article 14) with elements of the Australia-Singapore Digital Economy Agreement and the Digital Economy Partnership Agreement between Chile, New Zealand and Singapore (DEPA), helping to reinforce a regional consensus on digital trade rules.
40. Parties committed to allow the movement of data and information transfers necessary for the conduct of ordinary business of a financial service supplier (Article 8), balanced with protections for personal data, personal privacy, and the confidentiality of individual records. This provision will lower cost to business of establishing in-market data centres unnecessarily. Innovation has been further supported by commitments to endeavour to permit new financial services supplied by other Parties' financial institutions that the Parties would permit their own financial institutions in like circumstances to supply, subject to relevant licensing, institutional or legal form.

Telecommunication Services

41. The Telecommunications Annex (Annex 8B) sets out rules to support telecommunications services providers to operate in AANZFTA markets. The upgrade commits Parties to safeguard providers' right to resale of public telecommunications services (Article 8), supporting new entrants in the market (Article 4). The upgrade also supports clear domestic regulation to help keep markets competitive (Article 6), and transparency of telecommunications disputes resolution processes (Article 23).

Professional Services

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

Education Services

43. The new Annex on Education Services Co-Operation (Annex 8D) recognises the important role that education services play in enhancing growth and prosperity and deepening institutional and people-to-people links among the Parties. The Annex encourages cooperation in education quality assurance processes and the recognition of qualifications. It also encourages cooperation on the development of training, programs, and staff exchanges. The Annex provides an important signal of the Parties' mutual priorities and interests in particular sectors or fields, and complements the specific, formalised rules contained in the market access schedules.

Movement of Natural Persons

44. The Chapter on Movement of Natural Persons (Chapter 9) builds on existing AANZFTA commitments, providing Australian businesspersons with greater certainty on temporary entry and stay access in the region, as well as the applicable rules.
45. The Chapter establishes rules for the temporary entry and stay of natural persons between AANZFTA Parties, including new obligations to facilitate and streamline immigration formalities (Article 6). These include requirements to accept immigration formalities in electronic format, to accept copies of authenticated documents, and to publish information in English (Articles 6, 7).
46. The Chapter also includes new provisions to distinguish the Movement of Natural Persons Chapter from other chapters of the Agreement, removing ambiguity regarding obligations in other chapters applying to temporary entry and stay, especially as they relate to Trade in Services obligations such as Most-Favoured Nation (Chapter 8, Article 9). This provides additional protections for Australia's and other Parties' immigration systems.
47. Australia's commitments in the Movement of Natural Persons schedule are consistent with its original AANZFTA and RCEP commitment. These include commitments on business visitors, intra-corporate transferees, independent executives, contractual service suppliers, and spouses (Article 2; Annex 4). Consistent with AANZFTA and RCEP, Australia has retained the right to apply labour market testing for contractual service suppliers, to the extent that this is not inconsistent with commitments under the WTO (Annex 4). Consistent with more recent trade agreements, including RCEP, Australia has removed sectoral commitments, allowing Australia to update occupation lists without limiting commitments to certain sectors.

Electronic Commerce

48. The Chapter on Electronic Commerce (Chapter 10) has been substantially upgraded to include new disciplines that take into account developments since AANZFTA was negotiated. A number of new articles have been adapted from RCEP (given its status as a shared precedent for AANZFTA Parties), but the upgraded chapter also extends beyond RCEP by including articles on digital inclusion, electronic invoicing, digital trade standards and open government data.
49. Specifically, the Chapter includes obligations that promote a move towards paperless trading in the digital economy by requiring the acceptance of e-signatures and e-authentication (Article 6), and by encouraging the use of interoperable electronic invoicing systems. The Chapter also includes commitments that promote trust and confidence in the digital economy through rules on the protection of consumers online (Article 9), personal information (Article 10),

transparency (Article 14) and the prevention of unsolicited communications (e.g., spam) (Article 11).

50. The movement of data across borders continues to be a fundamental aspect of electronic commerce between countries, with virtually all transactions involving the creation and transfer of data. The Chapter includes new rules that support the free flow of data across borders and that prevent unjustified data localisation requirements, while maintaining appropriate regulatory space in certain areas, including for the protection of privacy.
51. Significantly, AANZFTA Parties agreed that the dispute settlement mechanism in Chapter 20 apply to the Electronic Commerce Chapter subject to specific transitional periods for certain data rules for Article 17 (Location of Computing Facilities) and Article 18 (Cross-border Transfer of Information by Electronic Means). In addition, Parties agreed that the dispute settlement mechanism in Chapter 20 shall not apply to any matter arising under the Electronic Commerce Chapter for Cambodia, Lao PDR and Myanmar. ASEAN has not previously agreed to apply dispute settlement to an Electronic Commerce Chapter in any of its previous FTAs with other partners.

Investment

52. The upgraded Investment Chapter (Chapter 11) modernises existing protections for Australian investors and aligns most investment commitments with the investment outcomes obtained in RCEP.
53. Three of the four investor protections – treatment of investment (Article 7), transfers (Article 9), and expropriation and compensation (Article 10) — have been updated to largely align with RCEP. Notably, the treatment of investment protection now clarifies that the treatment required is “in accordance with the customary international law minimum standard of treatment” (Article 7). It adds an annex to confirm what Parties understand to contribute to the formation of customary international law (Annex 11A), namely that it “results from a general and consistent practice of States that they follow from a sense of legal obligation”. This responds to inconsistent and unpredictable interpretations of the fair and equitable treatment obligation by ISDS tribunals, particularly since AANZFTA was first agreed. The fourth protection – compensation for losses – was not upgraded.
54. The upgrade activates a previously inactive National Treatment (Article 3) obligation and adds other key “market access” obligations (all subject to country-specific exceptions in the schedules) for the first time. Alongside activating National Treatment, the upgrade updates this obligation by clarifying what should be taken into account in assessing “like circumstances” and clarifying that, in respect of treatment of an investor or investment by a sub-central government, the national treatment obligation applies to treatment of other investors and

investments by the same government. Aligning with RCEP, the upgrade also adds a requirement that parties accord investors and investments treatment no less favourable than that provided to investors and investments of other Parties or non-Parties (Most-Favoured Nation Treatment, Article 4), a prohibition from requiring that a senior manager have a particular nationality or from imposing overly burdensome nationality and residency requirements on the boards of directors if such requirements would materially impair the ability of the investor to exercise control over its investment (Senior Management and Board of Directors, Article 5), as well as an expanded prohibition from imposing or enforcing a series of requirements as a condition for establishing or operating an investment (Prohibition of Performance Requirements, Article 6). The upgrade also introduces a “ratchet” mechanism that will lock in future beneficial reforms for a subset of a Party’s market access commitments – most Parties have taken on this obligation.

55. Australia’s market access commitments align with RCEP with one exception – Australia has retained more flexibility for policies that benefit Indigenous groups (consistent with *Australia-United Kingdom Free Trade Agreement* and *Australia-India Economic Cooperation and Trade Agreement*). Other Parties’ offers range from being: less ambitious than RCEP, broadly equivalent to RCEP, more ambitious than RCEP, or otherwise different in their content. These offerings are often similar to RCEP but have expanded carveouts for additional obligations to enable regulatory flexibility.
56. For the ISDS mechanism, the upgrade sees a work program formed by the Parties to commence a review of the ISDS mechanism no later than 18 months after entry into force of the Upgrade (Article 17). This will conclude within 12 months from the date the review commences, unless the Parties agree otherwise. No details for the work program have been agreed. The Parties have also agreed to suspend the application of ISDS to the National Treatment obligation for breaches that arise within 30 months of the entry into force of the upgrade. These timeframes are not automatically linked. Accordingly, if Parties agree to extend review of the ISDS mechanism beyond 30 months, the timeframe for the suspension of the application of ISDS to the National Treatment obligation will not automatically extend. ISDS will be disappplied between Australia and New Zealand through a treaty-level side letter (noted in paragraph 25).
57. Further, the upgrade includes elements that have the potential to reduce legal risk to Australia of a dispute settlement claim arising (including under ISDS). Examples include exempting decisions relating to foreign investment screening from dispute settlement (including ISDS) (Article 6, Chapter 18); allowing financial services authorities an opportunity to resolve certain ISDS matters relating to financial services in the first instance (Article 12, Annex 8A); expanding the security exception (Article 2, Chapter 18); expanding the list of general

exceptions applicable to the Investment Chapter (Article 1, Chapter 18); and clarifying who is entitled to benefit from the Investment Chapter.

Competition

58. The Chapter on Competition (Chapter 15) contains new obligations requiring AANZFTA Parties to adopt or maintain competition laws and regulations to proscribe anti-competitive activities (Article 3) and enforce those laws accordingly, with transitional periods for compliance for some of the ASEAN Parties. The Chapter obliges AANZFTA Parties to adopt or maintain laws or regulations to proscribe the use in trade of misleading practices or false or misleading deceptions.
59. It also provides for additional cooperation between the AANZFTA Parties on competition law enforcement (Article 4) and consumer protection (Article 7). The Chapter on Competition contains standard provisions that are similar to Australia's previous FTAs and are consistent with the Competition and Consumer Act 2010.

Micro, Small and Medium Enterprises

60. The upgraded AANZFTA's new chapter on Micro, Small and Medium Enterprises (Chapter 16) seeks to promote information sharing (Article 2) and cooperation (Article 3) among AANZFTA Parties to enhance opportunities for their MSMEs to participate in the benefits created by the upgraded Agreement.

Government Procurement

61. The new Chapter on Government Procurement (Chapter 17) recognises the importance of promoting enhanced transparency and integrity in government procurement processes (Article 4); promoting the use of electronic procurement systems (Article 5); promoting the concept of environmental sustainability in government procurement (Article 6); and facilitating Micro, Small and Medium Enterprise participation in government procurement (Article 8). In addition, the Chapter provides for capacity building and the development of cooperation among the AANZFTA Parties (Article 9).
62. The Chapter does not contain commitments to provide access to foreign service suppliers (market access), to accord treatment no less favourable as between local and foreign suppliers and investors (national treatment), or to treat foreign suppliers and investors at least as well as suppliers and investors of any other non-AANZFTA country (most-favoured nation or MFN), and its scope is limited to the central government level (the Commonwealth Government in Australia).

General Provisions and Exceptions

63. The Chapter on General Provisions and Exceptions (Chapter 18) updates provisions on exceptions relating to matters such as essential security (Article 2) and balance of payments (Article 4). The updates to the essential security exception gives Australia discretion to take measures which it considers necessary to protect its essential security interests. Finally, a new provision in the chapter makes clear that decisions relating to foreign investment screening are not subject to dispute settlement (Article 6).

Consultations and Dispute Settlement

64. The Chapter on Consultations and Dispute Settlement (Chapter 20) contains rules and procedures to resolve disputes which may arise between AANZFTA Parties in relation to their obligations under the upgraded Agreement. As set out in Article 3, some provisions continue to be excluded from the scope of dispute settlement, including the chapters on Sanitary and Phytosanitary Measures (Chapter 5), Economic Co-operation (Chapter 12), and Competition (Chapter 15). In addition, the new chapters on Trade and Sustainable Development (Chapter 13), Micro, Small and Medium Enterprises (Chapter 16), and Government Procurement (Chapter 17) are excluded from the scope of dispute settlement. No other provisions in this chapter were amended as part of the upgraded AANZFTA.

Implementation

65. Australia would need to make the following legislative changes in order to implement the new obligations in the Second Protocol:
- a. Amendments to the *Customs Act 1901*, the *Customs (International Obligations) Regulation 2015* and *Customs (ASEAN-Australia-New Zealand Rules of Origin) Regulations 2009* for determining the originating status of goods for the purpose of determining eligibility for preferential rates of customs duty.
 - b. Update the definition of Harmonized System in the *Customs Act 1901* to enable the use of updated Harmonized System codes for product specific ROOs that are adopted, in addition to those that are replaced or amended.
66. The other aspects of the Second Protocol are to be implemented administratively. For example, Declarations of Origin are to be prepared by the exporter or producer in a process known as self-certification.

Costs

67. There are not anticipated to be additional costs to Government administration due to the implementation of the Second Protocol, including as the amendments it contains do not require any change in the implementation of the ROOs and tariff commitments by the Australian Border Force.

68. Under the Regional Trade for Development Initiative, Australia will assist ODA-eligible ASEAN member states implement their AANZFTA commitments to help ensure that the full benefits of the Agreement are realised. Funding will be reallocated from existing administered appropriation.

Impact Analysis (formerly Regulation Impact Statement)

69. An Impact Analysis, which has been assessed by the Office of Impact Analysis as compliant with the Government's requirements, is attached to this NIA (Attachment II).

Future Treaty Action

70. Article 6 (Amendments) of Chapter 21 (Final Provisions) of the upgraded AANZFTA states that AANZFTA may be amended by agreement in writing by the Parties, with such amendments to come into force on such date as the Parties agree. Any future amendments would be subject to Australia's domestic treaty making process.

Withdrawal

71. Article 9 (Withdrawal and Termination) of Chapter 21 (Final Provisions) of AANZFTA states that a Party may withdraw from AANZFTA by giving six months advance notice in writing to the Depositary. It is not possible to withdraw separately from the Second Protocol. AANZFTA would terminate if Australia or New Zealand withdraw from AANZFTA, or if AANZFTA is in force for less than four ASEAN Member States.

Contact Details

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Attachments

Attachment I – Consultation

Attachment II – Impact Analysis

Attachment III – Benefits for Australia

ATTACHMENT I

Consultation

Upgrade to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area

(Semarang, 21 August 2023)

[2023] ATNIF 13

CONSULTATION

72. The public consultation and stakeholder engagement process for AANZFTA upgrade commenced in 2018, ahead of the launch of negotiations in September 2020. Between 2018 and 2022 DFAT welcomed submissions from interested stakeholders as part of the upgrade process, which resulted in 10 public submissions being received.
73. Once negotiations formally commenced, DFAT, in conjunction with other government agencies, consulted widely with industry and other stakeholders in formulating positions. In addition to a call for public submissions in the lead-up to commencement of negotiations and throughout negotiations, negotiators regularly engaged with representatives of the business sector, academia and civil society organisations to provide them with an opportunity to share their views and expectations of the AANZFTA Upgrade negotiations.
74. After every negotiating round, DFAT's Chief Negotiator held consultations for States and Territories, amounting to more than 5 status update meetings over the course of two years. DFAT additionally hosted several peak industry body events updating industry on the AANZFTA Upgrade negotiations, including biannual peak organisation meetings on trade and investment agreement negotiations and implementation as well as with peak bodies such as the Australian Services Roundtable.
75. Meetings of the Ministerial Advisory Council were also convened to add to transparency around FTA negotiations. Participants in these meetings included representatives from peak industry bodies and civil society. A list of businesses and organisations that were consulted on the AANZFTA is set out below, together with a list of submissions received.

DFAT consulted stakeholder list

1. Accord Australasia Limited
2. Almond Board Australia
3. Architects Accreditation Council of Australia
4. Asia Business Trade Association (ABTA)
5. Austmine
6. Australia and New Zealand Banking Group (ANZ)
7. Australia Chamber of Commerce and Industry (ACCI)
8. Australia China Business Council
9. Australia India Business Council
10. Australia India Chamber of Commerce
11. Australian Almonds
12. Australian Banking Association (ABA)
13. Australian Centre for International Trade and Investment (ACITI)
14. Australian Chamber of Commerce and Industry
15. Australian Conservation Foundation
16. Australian Council of Trade Unions
17. Australian Council of Wool Exporters and Processors
18. Australian Education Union
19. Australian Embassy Tokyo
20. Australian Fair Trade and Investment Network (AFTINET)
21. Australian Food and Grocery Council
22. Australian Fresh Produce Alliance
23. Australian Grape and Wine
24. Australian Industry Group (AIG)
25. Australian Logistics Council
26. Australian Macadamia Society
27. Australian Manufacturing Workers Union
28. Australian Meat Industry Council
29. Australian Nut Industry Council
30. Australian Permanent Mission Geneva
31. Australian Pork Limited
32. Australian Prudential Regulation Authority (APRA)
33. Australian States and Territories
34. Australian Sugar Milling Council
35. AUSVEG
36. Black Rock
37. Business Core Associates
38. Business Council for Sustainable Development Australia (BCSDA)
39. Business Council of Australia
40. Canegrowers
41. Chamber of Commerce and Industry of Western Australia
42. Commonwealth Bank
43. Communications Alliance
44. Complementary Medicines Australia
45. Curtin University
46. Dairy Australia
47. Department of Trade and Investment (South Australia)
48. Diplomats for Climate Action
49. Dr Luke Nottage
50. Edith Cowan University

51. Ernest and Young
52. Export Council of Australia
53. Export Finance Australia
54. Financial Services Council (FSC)
55. FinTech Australia
56. Freight and Trade Alliance and the Australian Peak Shippers Association
57. Goldfields Aboriginal Business Chamber (GAB)
58. Grain Trade Australia
59. GrainGrowers
60. Grains Australia
61. Indigenous Network for Investment, Trade and Export
62. International Forwarders & Customs Brokers Association of Australia
63. Lake Macquarie City Council
64. Lismore City Council
65. Macquarie Group
66. MineArc
67. Minerals Council of Australia
68. National Australia Bank
69. National Australia Bank (NAB)
70. National Farmers Federation
71. New South Wales Indigenous Chamber of Commerce
72. Public Health Association of Australia
73. QBE Insurance Group
74. Red Piranha
75. Reserve Bank of Australia
76. Seafood Industry Australia
77. Sheep Producers Australia
78. Simplified Trade System Implementation Taskforce
79. Small Business Organisations of Australia (COSBOA)
80. Standards Australia
81. Summerfruit
82. Supply Nation
83. Technology Council of Australia
84. Telstra
85. The Group of Eight Universities
86. The Treasury
87. UN Global Compact Network Australia
88. Universities Australia
89. University of Adelaide
90. University of Notre Dame
91. University of Queensland
92. Victorian Chamber of Commerce and Industry
93. Visa Global Logistics
94. Vocus

List of submissions related to the AANZFTA upgrade, as on the DFAT website

- Asia Business Trade Association (ABTA)
- Australian Chamber of Commerce and Industry

- Australian Pork Limited
- Chamber of Commerce and Industry of Western Australia
- Dr Luke Nottage
- Export Council of Australia
- Freight and Trade Alliance and the Australian Peak Shippers Association
- Minerals Council of Australia
- Victorian Chamber of Commerce and Industry
- Australian Fair Trade & Investment Network review of the AANZFTA on Investor-State Dispute Settlement Provisions

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

Impact Analysis

Department of Foreign Affairs and Trade



ASEAN-AUSTRALIA-NEW ZEALAND
FREE TRADE AREA (AANZFTA)

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Introduction

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

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

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

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

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

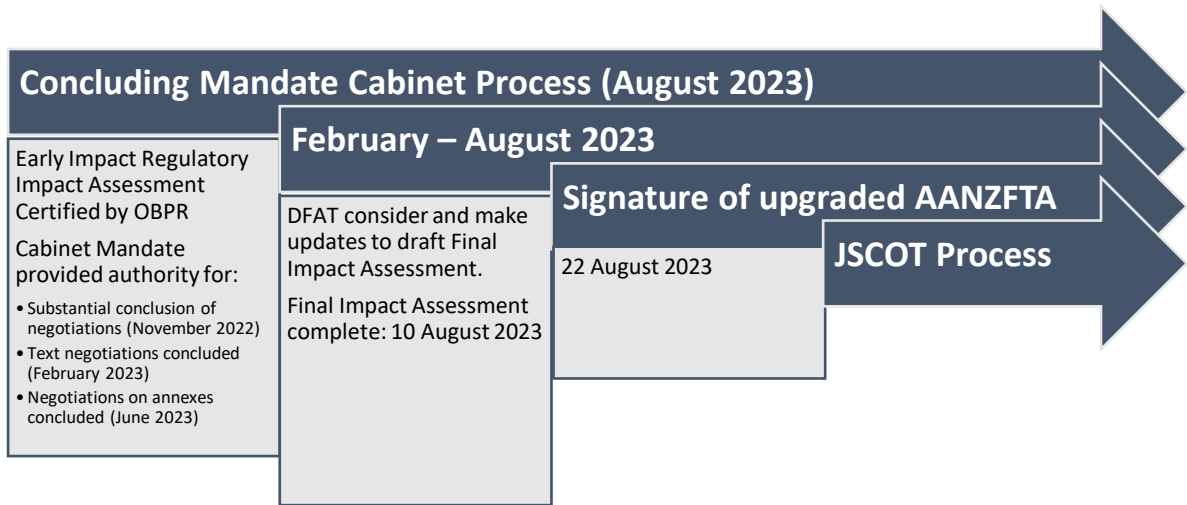
Negotiations on the AANZFTA Amendment were finalised in June 2023. The 2023 ASEAN Chair, Indonesia, alongside other ASEAN member states, intends the AANZFTA Amendment to be signed in the margins of the ASEAN Economic Ministers' Meetings in Semarang, Indonesia, between 20-22 August 2023. This is a Priority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

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

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

Impact Assessment Timeline

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



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

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

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

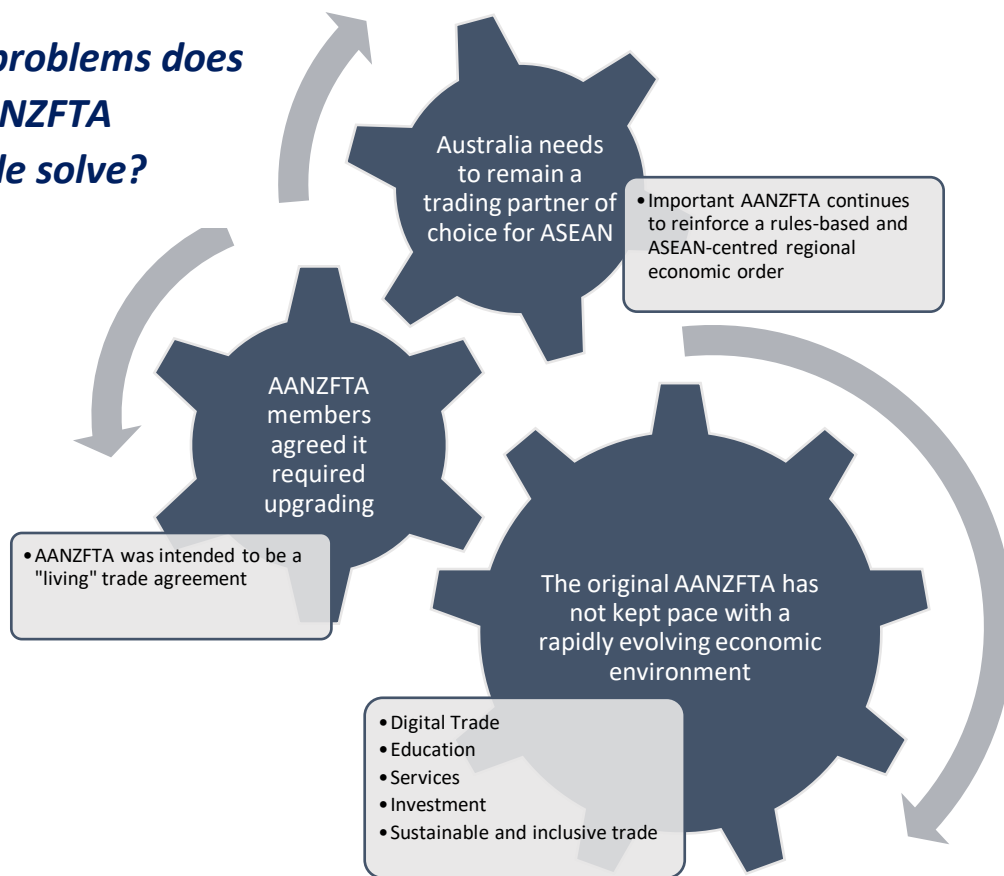
The upgrade to AANZFTA solves the problem of the current version of AANZFTA no longer meeting the consumer and business requirements for a high-quality, contemporary FTA.

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

1.1.1 Australian Stakeholders assessed that AANZFTA required upgrading

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

What problems does the AANZFTA upgrade solve?



1.2 AANZFTA Parties agreed that the original AANZFTA required upgrading

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

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

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

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

1.1.3 Key areas where the original AANZFTA required upgrading

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

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

Box 3.1 – Key issues highlighted by business for future work

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

- **Non-Tariff Measures**
Businesses consider NTMs to be a serious impediment to trade and the ability of companies to provide high quality products to consumers. Some businesses suggested harmonisation of standards as an area for further work in the AANZFTA General Review.
- **Tariffs**
Some exporters continue to face significant tariffs; addressing these is seen as a priority by those businesses affected.
- **Certificates of Origin**
Some exporters, noting that documentation requirements can be burdensome, sought improvements to the certification regime (including self-certification). Exporters also called for implementation of the First Protocol by the remaining AANZFTA Party.
- **Trade facilitation**
Exporters suggested that trade facilitation be addressed further through AANZFTA, including by updating the Agreement to build upon the WTO Trade Facilitation Agreement.
- **SPS and STRACAP**
Businesses suggested strengthening these Chapters of AANZFTA to provide for recognition of equivalence in regulation.
- **Regulatory cooperation**
Given regulatory requirements differ across the region (particularly for labelling, import/export certification and product registration), business is keen to improve regulatory cooperation with a view to streamlining and simplifying requirements across the region.
- **Professional services and qualifications recognition**
Businesses are seized with the benefits of providing for recognition of qualifications across the region.
- **Addressing the 'noodle bowl'**
Some businesses were concerned about the proliferation of overlapping FTAs and the complexity this creates for business. These businesses discouraged further negotiations until the conclusion of RCEP.
- **Outreach**
Respondents reported a knowledge gap when it came to existing trade agreements, including AANZFTA.

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

- **Rules of origin:** to take better account of modern trade practices, address implementation issues encountered by Australian exporters and make rules of origin easier to use and less costly for traders.
- **Customs procedures:** enhance and modernise AANZFTA's provisions on customs procedures to promote trade facilitation, including a new provision that promotes expedited trade during humanitarian crises, epidemics and pandemics.

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

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

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

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

1.1.4 The original AANZFTA was surpassed by RCEP

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

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

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

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

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

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

2. Why is Government action needed?

2.1 Objectives of government action

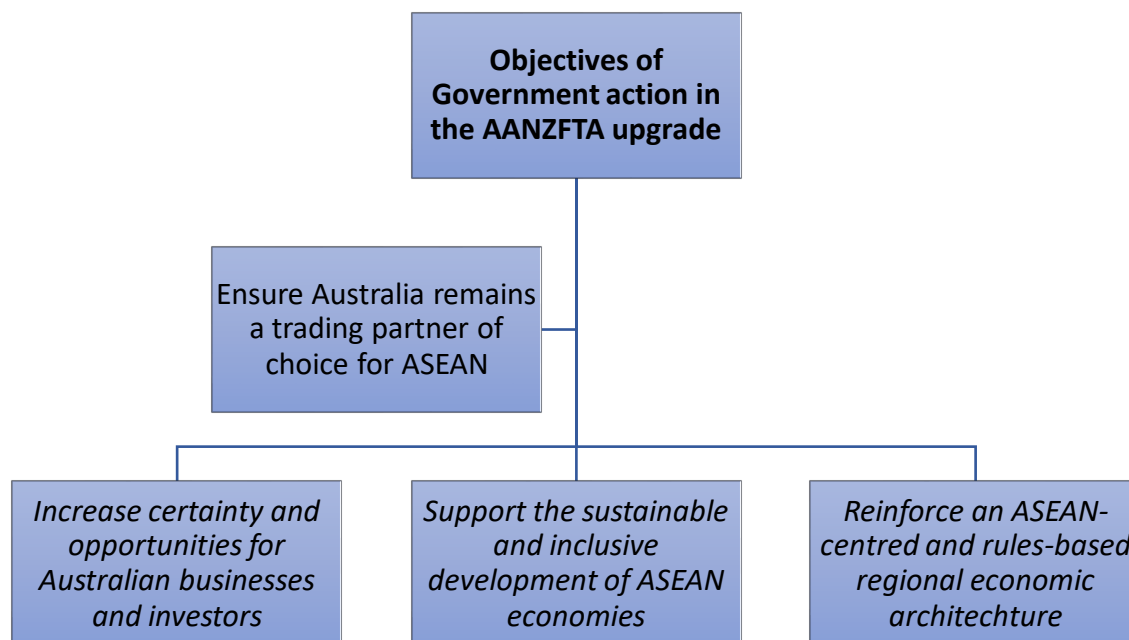
The overall objective of upgrading AANZFTA is to ensure that Australia remains a trading partner of choice for ASEAN member countries. This benefits Australian businesses and investors by ensuring the region is open to trade with Australia, thereby expanding economic opportunities for Australians and,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

Australia's economy relies on a strong and open global trading environment. The Australian Government is strongly committed to the WTO and its framework of rules, which helps promote and protect the open global trading system. Our membership in the WTO means that we benefit from its trade rules and we have a process to settle disputes if other trade partners breach these rules. A key rule of the multilateral trade system is that reductions in trade barriers should be applied, on a most-favoured nation basis, to all WTO members. This means that no WTO member should be discriminated against by another member's trade regime. However, regional trade agreements (RTAs) are an important exception to this rule. Under RTAs reductions in trade barriers apply only to the parties to the agreement. This exception is allowed under Article XXIV of the General Agreement on Tariffs and Trade (GATT) for trade in goods, in Article V of the General Agreement on Trade in Services (GATS) for Trade in Services and in the Enabling Clause for developing countries. There are two major types of regional trade agreements under the WTO - customs unions and free trade areas, with AANZFTA being a free trade area. RTAs must be consistent with the WTO rules governing such agreements, which require that parties to a regional trade agreement must have established free trade on substantially all trade within the

² Source: [Pivot – Parliament of Australia \(aph.gov.au\)](https://aph.gov.au)

regional area, and that the parties cannot raise their tariffs or other barriers against countries outside the agreement.

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



2.1.2 Methods to achieve government action

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

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

- Including a new trade and sustainable development chapter to address identified emerging priorities in sustainable and inclusive trade, including labour rights, environmental protection, and women’s economic empowerment, and to facilitate Australia’s targeted economic cooperation activities under the Regional Trade for Development Program (RT4D).

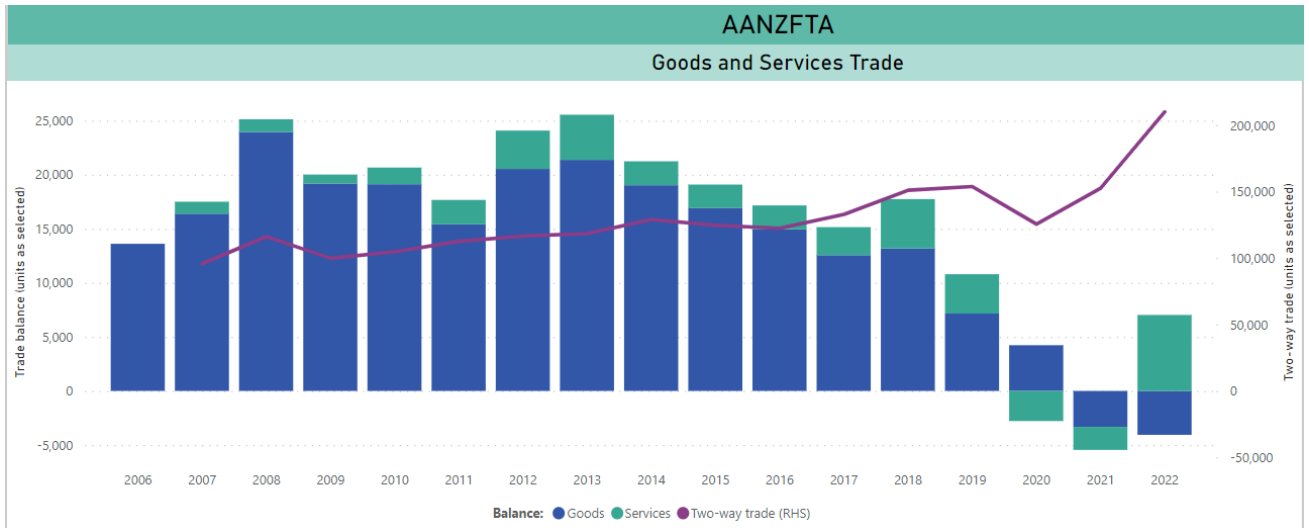


Figure 1: AANZFTA Goods and Services Trade

2.2 Why government action is required

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

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

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

ASEAN								
Key economic indicators								
Source: IMF WED.								
Nominal GDP				Population				
(USD billions)		(share of world)		(People, millions)		(share of world)		
2022	3,657.6		3.6%	2022	672.4		8.5%	
2021	3,378.2		3.5%	2021	666.2		8.5%	
Australia's investment with ASEAN, 2022 (stocks)								
Source: ABS.								
Investment in Australia				Australia's investment abroad				
Total (A\$b)		Direct (A\$b)		Total (A\$b)		Direct (A\$b)		
183.4		58.3		106.3		28.3		
Summary of Australia's trade relationship with ASEAN, 2021-22								
Source: DFAT-adjusted ABS data.								
Exports			Imports			Total trade		
	A\$b	share		A\$b	share	A\$b	share	
Goods	65.5	12.3%	Goods	66.2	17.1%	Goods	131.7	14.3%
Services	8.4	13.8%	Services	10.7	14.8%	Services	19.1	14.4%
Total	74.0	12.4%	Total	76.9	16.7%	Total	150.9	14.3%
Australia's major goods and services trade with ASEAN, 2021-22								
Source: DFAT-adjusted ABS data.								
Exports*			Imports					
	A\$b			A\$b				
Coal	11.1		Refined petroleum	19.0				
Natural gas	10.3		Goods vehicles	5.8				
Wheat	4.8		Crude petroleum	5.6				
Education-related travel services	3.8		Transport services	4.9				
Gold	2.9		Telecom equipment & parts	2.8				
Iron ore & concentrates	2.7		Prof, tech & other business services	2.4				
Crude petroleum	1.9		Passenger motor vehicles	1.7				
Prof, tech & other business services	1.8		Personal travel excl education services	1.6				
Cotton	1.6		Computers	1.4				
Copper	1.6		Edible products & preparations, nes	1.2				
Total	74.0		Total	76.9				
* Includes \$10.9 billion of confidential items (estimated to be mainly crude petroleum, alumina, unwrought nickel & manganese ores), 15% of total exports.								
ASEAN's major global goods trade relationships, 2021								
Source: UN Comtrade (extra-trade).								
Principle export destinations				Principle import sources				
Destination	Share	Rank		Source	Share	Rank		
China	20.9%	1		China	30.0%	1		
United States	19.2%	2		Japan	9.9%	2		
Hong Kong (SAR of China)	8.6%	3		Republic of Korea	9.6%	3		
Japan	8.5%	4		United States	8.9%	4		
Republic of Korea	5.1%	5		Taiwan	8.7%	5		
Australia	3.1%	8		Australia	2.8%	7		
Compiled by the Trade Data Section, DFAT, using the latest data from the ABS, the IMF and various other sources.								
ASEAN members: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Vietnam.								
IMF data may include forecasts or projections for recent years. Merchandise trade data may exclude confidential items of trade.								
Totals may not add up due to rounding. Investment data is stocks as at end December. All data may be subject to future revisions.								
GDP - Gross Domestic Product. na - Data is not available. np - Data is not published. f.c.f. Fresh, chilled or frozen. nes - Not elsewhere specified.								

Figure 2: ASEAN Key Economic Indicators

2.3 Potential Implications of failure to take government action

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

2.4 Alternatives to government action

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

2.5 Barriers to government action

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

3. What policy options are you considering?

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

3.1 Option 1 – Sign the upgraded AANZFTA

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

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

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

3.1.1 Key AANZFTA Upgrade Outcomes

Rules of Origin

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

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

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

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

Customs Procedures

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

Services & Investment

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

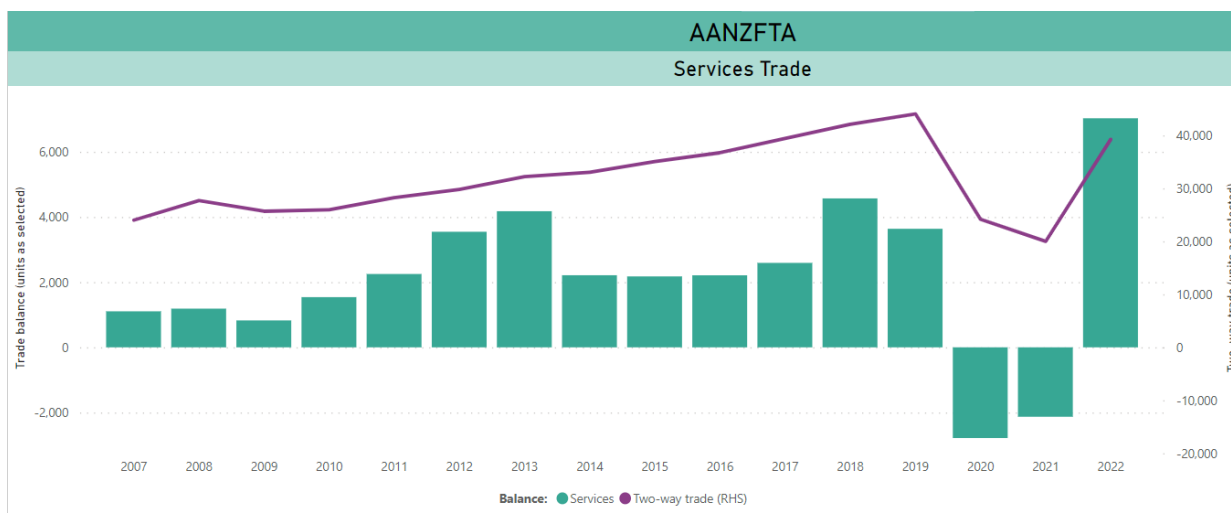


Figure 3: AANZFTA Services Trade

The Investment chapter text has been expanded considering existing built-in agenda items and progress in other relevant FTAs. Key gains include investment outcomes that reflect, or where possible, build on RCEP outcomes, and exploring the inclusion of modern safeguards or other approaches to enhance certainty in the Investor-State Dispute Settlement mechanism.

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

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

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

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

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

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

entry into force. Foreign investment screening under Australia's Foreign Investment Review Board will also be exempt from the application of ISDS and state-to-state dispute settlement.

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

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

The Annex on Education Services Cooperation (Annex 8D) recognises the important role that education services play in enhancing growth and prosperity and deepening institutional and people-to-people links among the Parties. The Annex will encourage cooperation in education quality assurance processes and the recognition of qualifications. It will also encourage cooperation on the development of training, programs, and staff exchanges. The Annex provides an important signal of the Parties' mutual priorities and interests in particular sectors or fields, and complements the specific, formalised rules contained in the market access schedules.

Movement of Natural Persons

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

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

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

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

Electronic Commerce (E-Commerce)

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

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

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

Specifically, the chapter includes obligations that promote a move towards paperless trading in the digital economy by requiring the acceptance of e-signatures and e-authentication, and by encouraging the adoption of interoperable electronic invoicing systems. The chapter also includes commitments that promote trust and confidence in the digital economy through rules on the protection of personal information, consumer protection, transparency and the prevention of unsolicited communications (e.g. spam).

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

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

Competition

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

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

Government Procurement

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

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

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

Trade and Sustainable Development

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

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

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

Micro, Small and Medium Enterprises (MSMEs)

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

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

3.2 Option 2 – No action

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

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

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

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

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

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

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

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

4.1 Option 1 – Sign the upgraded AANZFTA

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

Impacts of key changes to AANZFTA through the upgrade process

4.1.1 Rules of Origin

Benefits

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

Costs

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

4.1.2 Customs Procedures

Benefits

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

Costs

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

4.1.3 Services and Investment

Benefits

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

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

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

Costs

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

4.1.4 Movement of Natural Persons

Benefits

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

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

Figure 4: Movement of persons between AANZFTA members and Australia^[41]



Costs

Nil costs have been identified.

4.1.5 Electronic Commerce

Benefits

The upgraded AANZFTA provides improved certainty for business and consumers engaging in digital trade in the region by promoting interoperability of systems across borders, protecting consumer privacy, and building trust in the online environment. The Electronic Commerce chapter includes key obligations that promote a move

towards paperless trading in the digital economy by requiring the acceptance of e-signatures and e-authentication, and by encouraging the adoption of interoperable electronic invoicing systems. The chapter moreover includes commitments that promote trust and confidence in the digital economy through rules on the protection of personal information, consumer protection, transparency and the prevention of unsolicited communications (e.g. spam), in addition to rules that support the free flow of data across borders

Costs

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

4.1.6 Competition

Benefits

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

Costs

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

4.1.7 Government Procurement

Benefits

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

Costs

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

4.1.8 Trade and Sustainable Development

Benefits

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

Costs

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

4.1.9 Micro, Small and Medium Enterprises (MSMEs)

Benefits

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

Costs

Nil costs are identified, as these are cooperation commitments.

Summary Table :Cost-Benefit Analysis

Key

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

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

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

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

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

Australia in general.’ Demonstrating this, **Figure 5** highlights goods exports to ASEAN since 2017, including that there has been a steady increase in exports, with this increase being anticipated to continue in coming years.

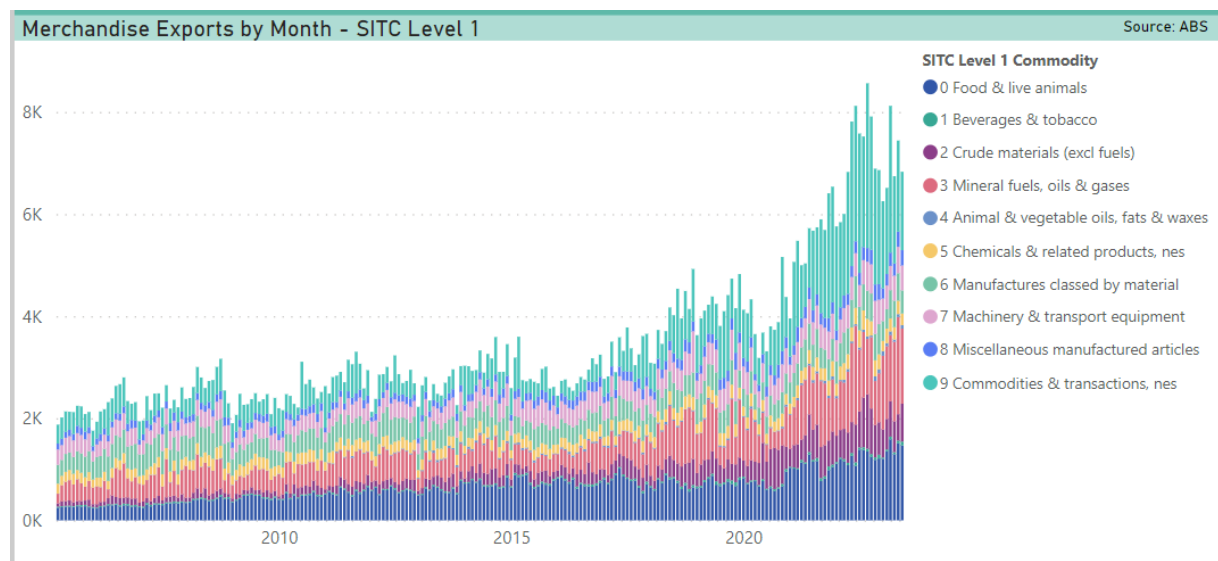


Figure 5: Australia’s Monthly Goods Exports to AANZFTA^[5]

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

Figure 6: Australia’s Goods and Services Trade with AANZFTA (Exports -ve / Imports +ve)^[8]

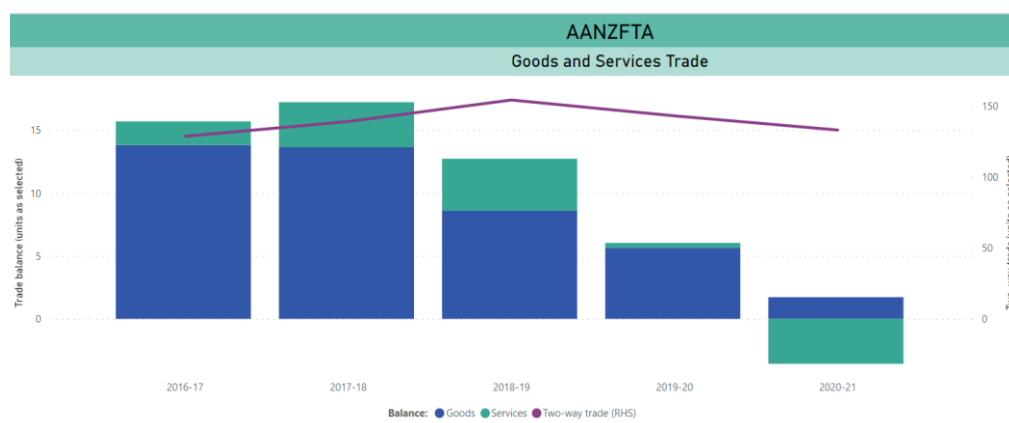


Table 1 below demonstrates the key sectors benefitting from Australia’s services trade under AANZFTA during 2021-22, including A\$11.5 billion in exports and A\$12.6 billion in imports.

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

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

4.2 Option 2 – No action

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

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

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

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

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

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

4.3 Trade Impact Assessment of the AANZFTA Upgrade

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

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

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

The main affected stakeholders in Australia will be:

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

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

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

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

5.1 Submissions Received

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

Table 2: Summary of Stakeholder Submissions

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

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

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

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

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

5.2 Stakeholder Engagement

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

5.3 States and Territories

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

5.4 Whole of Australian Government Engagement

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

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

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

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

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

6.1 Option 1 – Sign the upgraded AANZFTA

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

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

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

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

6.1.1 Regulatory impacts

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

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

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

7.1 Implementation

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

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

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

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

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

7.2 Evaluation

7.2.1 Continued evaluation by DFAT

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

7.2.2 Evaluation in accordance with the Agreement

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

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

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

- each chapter, annex and appendix of AANZFTA;
- any elements of the built-in agenda that have not been completed;
- the role of economic cooperation in the ongoing implementation of the Agreement and negotiation of the built-in agenda, as well as advancing economic integration among the Parties (Annex 1: Economic Cooperation);
- supporting the ASEAN objectives of narrowing development gap, including facilitating the more effective economic integration of least developed ASEAN Member States;
- the outcomes from any reviews of other FTAs that ASEAN, Australia or New Zealand is a member of, and any RCEP outcomes, in assessing any implications for AANZFTA;
- improvements that could be made to areas of commitments already included in AANZFTA;
- options to enhance AANZFTA's role in promoting closer economic integration among the Parties (e.g. regulatory cooperation); and
- the inclusion of any other issues that would ensure AANZFTA remains a high quality and ambitious agreement.

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

ASEAN-Australia- New Zealand Free Trade Agreement



Benefits for Australia

ASEAN is one of Australia's most important trade and economic partners and has supported regional security and prosperity for more than 50 years. Australia has worked closely with ASEAN since becoming its first dialogue partner in 1974.



The Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) entered into force on 1 January 2010 and forms the central pillar of Australia's trade and investment relationship with ASEAN.

AANZFTA is ASEAN's highest quality free trade agreement in market access openings for goods trade. Since entry into force in 2010, it has eliminated tariffs on 96 per cent of Australian exports to the more developed Southeast Asian markets.

In 2022, ASEAN was Australia's second largest trading partner accounting for \$178 billion in two-way trade and ASEAN Member States also represent six of Australia's top 15 export markets. The upgrade further deepens Australia's engagement with Southeast Asia, which is a priority of the Australian Government.



Australian Government



AUSTRALIA

September 2023. More information on the ASEAN-Australia-New Zealand Free Trade Agreement is available at dfat.gov.au/aanzfta



AANZFTA signing ceremony. From left: H.E. Dato Dr Amin Liew Abdullah, H.E. Dr Zulkifli Hasan, the Hon Tim Watts, Hon Rino Tirikatene. Source: ASEAN.org

Since the commencement of upgrade negotiations in 2020, Ministers from Australia, New Zealand and the Association of Southeast Asian Nations (ASEAN) signed the Second Protocol to upgrade AANZFTA on 21 August 2023 in the margins of the ASEAN Economic Ministers' consultations in Semarang, Indonesia.

The Signing of the upgraded AANZFTA means that Australia, New Zealand and ASEAN have agreed to all the new and enhanced commitments the upgrade will provide. Parties will now ratify the agreement via their respective domestic procedures. The upgraded AANZFTA will enter into force when Australia, New Zealand and at least four ASEAN Member States ratify.

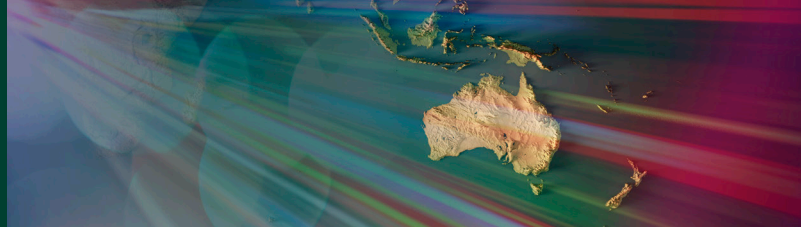
With its focus on improved services and investment outcomes, the AANZFTA upgrade will maintain Australia's competitive edge in Southeast Asia and will be ground-breaking for Australian exporters looking to diversify. It will also boost investor confidence in the region.

Goods

AANZFTA is ASEAN's most liberal agreement for goods, and Australia's third most utilised agreement for goods. The AANZFTA Upgrade now makes trading under AANZFTA even easier.

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

The upgraded AANZFTA will also empower traders when it comes to completing documentation to access its benefits. In addition to maintaining Certificate of Origin arrangements familiar to Australian businesses, the upgrade also establishes an option for self-certification (Declarations of Origin), with scope for proof of origin to be accepted in electronic format. In addition, third party invoices will only require information to be provided where known.



Electronic Commerce

The upgraded AANZFTA will provide certainty for businesses and consumers engaging in digital trade or buying online and support the growth of the digital economy in Australia. Specifically, the chapter includes obligations that will promote a move towards paperless trading in the digital economy through the acceptance of e-signatures and e-authentication, and by encouraging the adoption of interoperable electronic invoicing systems. Rules on the protection of personal information, consumer protection, transparency and the prevention of unsolicited communications will promote trust and confidence in the digital economy (for example spam).

The movement of data across borders is a fundamental aspect of cross border digital trade, with most transactions involving the creation and transfer of data. The upgraded AANZFTA will include rules that support the free flow of data across borders and prevent unjustified data localisation requirements, while maintaining appropriate regulatory space in certain areas, including for the protection of privacy.

Services and Investment

The upgrade will lock in improved business conditions across a range of commercially relevant services and investment sectors. AANZFTA will establish high quality rules for investment and the supply of services between AANZFTA Parties, including obligations to provide access to foreign service suppliers (market access), to treat local and foreign suppliers and investors equally (national treatment) and to treat foreign suppliers and investors at least as well as suppliers and investors of any other non-AANZFTA country (most-favoured-nation or MFN).

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

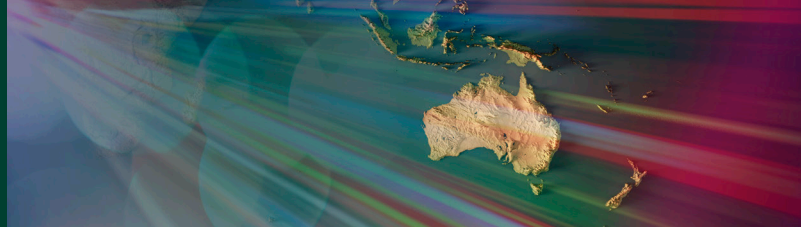
Australian professional service suppliers stand to benefit from stronger rules and legal architecture under the upgraded AANZFTA, including as a platform for the development of mutually acceptable professional standards. Importantly, the upgrade puts industry in the driver's seat to streamline licensing and registration systems that will ease the movement of professionals and reduce costs and time for them and their clients.

An Annex on Education Services already plays an important role in enhancing growth and prosperity for Australia, while deepening institutional and people-to-people links with Southeast Asia. The upgrade will provide an important signal of the Parties' mutual priorities and interests in the education services sector, including to encourage cooperation in education quality assurance processes and the recognition of qualifications, and encourage cooperation on the development of training, programs, and staff exchanges.

In an Annex for Financial Services, the upgrade will enhance transparency to enable financial services exporters to more easily understand and comply with laws and regulations across the region. Financial services suppliers will also benefit from future commitments on electronic documentation and payments, as well as the opening of new markets for the supply of innovative financial services.

New rules on Telecommunication Services commit Parties to safeguard telecommunications service providers' right to resale, supporting new entrants in the market. The upgrade also supports clear domestic regulation to help keep markets competitive, and transparency of telecommunications disputes resolution processes that will help Australia's providers to navigate AANZFTA markets.

Australia and New Zealand will maintain an active and constructive engagement with ASEAN economies on trade and investment issues, including a commitment to review AANZFTA's existing Investor-State Dispute Settlement mechanism.



Movement of Natural Persons

The upgrade builds on existing AANZFTA commitments related to movement of natural persons. It will give Australian businesspersons certainty and clarity on temporary entry and stay access in the region while protecting the integrity of Australia's borders, domestic labour force, and permanent employment. The upgrade establishes rules for the temporary entry and stay of natural persons between AANZFTA Parties, including new obligations to facilitate and streamline immigration formalities. These include obligations to accept immigration formalities in electronic format, accept copies of authenticated documents, and publish relevant information in English.

Competition

The upgrade will include new commitments on consumer protection, including regional cooperation on the development and implementation of competition rules. The upgrade will now contain obligations requiring AANZFTA Parties to adopt or maintain competition laws and regulations to proscribe anti-competitive actions and enforce those laws accordingly. AANZFTA Parties will be obliged to adopt or maintain laws or regulations to proscribe the use in trade of misleading practices or false or misleading deceptions. It also provides for cooperation between the AANZFTA Parties on consumer protection and on competition law enforcement.

Government Procurement

The upgraded AANZFTA agreement includes a new standalone government procurement chapter that will enshrine important, best practice government procurement principles, and lay the groundwork for enhanced engagement with ASEAN and New Zealand. While the upgraded AANZFTA does not include market access obligations, Australian businesses will benefit from enhanced transparency and integrity in the government procurement process when bidding for contracts across the region. Australian suppliers will also have easier access to procurement opportunities through the use of electronic procurement systems.

Trade and Sustainable Development

The upgraded AANZFTA will include a new, ASEAN-first Trade and Sustainable Development chapter in a trade agreement, which will commit Parties to enhanced cooperation on labour rights, women's economic empowerment, and environmental protection. This chapter will also facilitate Australia's targeted economic cooperation activities under the Regional Trade for Development Program (RT4D), to support ASEAN members to implement their commitments.

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

Micro, Small and Medium-sized Enterprises

Australian micro, small and medium-sized enterprises (MSMEs) are key exporters and contributors to employment and economic growth. The AANZFTA upgrade's new dedicated chapter on MSMEs will provide a framework for sharing information on best practice programs and activities to enhance the capability of MSMEs to participate in and benefit from trade, including the opportunities created by the upgraded agreement.