

Proactive Release

Date: 1 September 2023

The following Cabinet papers and related Cabinet minutes have been proactively released by the Minister of State for Trade and Export Growth

Title	Reference
Report of the Cabinet Economic Development Committee: Period Ended 21 July 2023	CAB-23-MIN-0325
AANZFTA Upgrade: Approval of Outcome and Authorisation to Sign	DEV-23-MIN-0141
AANZFTA Upgrade: Approval of Outcome and Authorisation to Sign	

The additional information relevant to this proactive release was published to the Ministry of Foreign Affairs and Trade's (The Ministry's) website and is available via the below links:

Annex 1:

<https://www.mfat.govt.nz/assets/Trade-agreements/AANZFTA/Second-protocol/Text-of-Second-Protocol-to-Amend-AANZFTA.pdf>

Annex 2:

<https://www.mfat.govt.nz/assets/Trade-agreements/AANZFTA/National-Interest-Analysis-Second-Protocol-to-Amend-AANZFTA.pdf>

Annex 3:

www.mfat.govt.nz/assets/OIA/PR-2019-64-AANZFTA-Upgrade-v2.pdf (pages 2-17)

Some parts of this information release would not be appropriate to release and, if requested, would be withheld under the Official Information Act 1982 (the Act). Where this is the case, the relevant sections of the Act that would apply have been identified. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Key to redaction codes:

- 6(a): to avoid prejudicing the security or defence of New Zealand or the international relations of the New Zealand Government; and
- 9(2)(j): to avoid prejudice to negotiations.



Cabinet

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Report of the Cabinet Economic Development Committee: Period Ended 21 July 2023

On 24 July 2023, Cabinet made the following decisions on the work of the Cabinet Economic Development Committee for the period ended 21 July 2023:

DEV-23-MIN-0141

AANZFTA Upgrade: Approval of Outcome and Authorisation to Sign
Portfolio: Trade and Export Growth

CONFIRMED

Rachel Hayward
Secretary of the Cabinet

Proactively Released by the Minister of State for Trade and Export Growth



Cabinet Economic Development Committee

Minute of Decision

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AANZFTA Upgrade: Approval of Outcome and Authorisation to Sign

Portfolio Trade and Export Growth

On 19 July 2023, the Cabinet Economic Development Committee:

- 1 **noted** that in April 2019, the Cabinet Economic Development Committee agreed that officials should negotiate the Second Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) [DEV-19-MIN-0064];
- 2 **noted** that the outcomes of negotiations achieve New Zealand's objectives and are within the Cabinet approved mandate, as updated through supplementary submissions to Ministers;
- 3 **approved** the text of the Second Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (the Second Protocol) and the side letter with Australia, subject to any minor or technical changes, which forms a package of agreed outcomes to upgrade AANZFTA;
- 4 **authorised** the Minister of State for Trade and Export Growth, in consultation with relevant Ministers, to approve any necessary minor or technical amendments to the Second Protocol and the side letter with Australia which do not materially alter their content;
- 5 **agreed** that New Zealand sign the Second Protocol and the side letter with Australia;
- 6 **approved** the National Interest Analysis (NIA), subject to any minor or technical changes required before public release;
- 7 **agreed** that, following signature, the text of the Second Protocol and the NIA be presented to the House for Parliamentary treaty examination, in accordance with Standing Order 405;
- 8 **agreed** that the non-treaty status side letter with Australia also be provided to the House for consideration as part of the overall package of outcomes;
- 9 **authorised** amendments to the Customs and Excise Regulations 1996 to implement the Second Protocol, to be undertaken by New Zealand Customs;
- 10 **authorised** officials to deposit an instrument of ratification to bring the Second Protocol into force after the conclusion of the Parliamentary treaty examination process;
- 11 **authorised** officials to exchange the side letter with Australia;

- 12 **noted** the Second Protocol will 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;
- 13 s6(a)
- 14 **noted** that the side letter with Australia will enter into effect on the date the Second Protocol enters into force; and
- 15 **noted** that the ongoing costs associating with implementing the upgraded FTA will be met from within departmental baselines.

Sam Moffett
Committee Secretary

Present:

Hon Grant Robertson (Chair)
Hon Willie Jackson
Hon Damien O'Connor
Hon Andrew Little
Hon David Parker
Hon Priyanca Radhakrishnan
Hon Kieran McAnulty
Hon Ginny Anderson
Hon Barbara Edmonds
Hon Rino Tirikatene
Hon Rachel Brooking

Officials present from:

Office of the Prime Minister
Officials Committee for DEV

Proactively Released by the Minister of State for Trade and Export Growth

~~RESTRICTED~~

Office of the Minister of State for Trade and Export Growth
Cabinet Economic Development Committee

AANZFTA Upgrade: Approval of Outcome and Authorisation to Sign

Proposal

- 1 This paper proposes Cabinet:
 - Approve the outcome of negotiations to upgrade New Zealand's Free Trade Agreement (FTA) with the Association of South East Asian Nations (ASEAN) Member States and Australia.
 - Authorise the signature of the Second Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) (the Second Protocol), and of a side letter between Australia and New Zealand.
 - Authorise New Zealand to ratify the Second Protocol, following completion of the Parliamentary Treaty Examination Process.

Executive Summary

- 2 AANZFTA has been in force since 2010 and is a central pillar of New Zealand's relationship with ASEAN. Since 2010, New Zealand's goods exports to ASEAN have grown by 44%, and ASEAN as a bloc is now New Zealand's third largest trade partner. To ensure AANZFTA remains a quality, fit-for-purpose FTA the parties agreed to an upgrade process. This took place between 2021 and 2022 and the substantive conclusion of negotiations was announced by Leaders on 13 November 2022 in the margins of the East Asia Summit. The outcomes of the negotiations are set out in a treaty-level instrument – the *Second Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area* (the "Second Protocol").
- 3 The outcomes of the Second Protocol deliver Cabinet's mandate for the negotiation, and will modernise AANZFTA, updating its trade rulebook as well as its market access commitments in services and investment. This will bring AANZFTA's provisions into line with comparable recent FTAs. The benefits include simpler processes at the border for New Zealand goods, exporter's greater certainty and consistency in conditions for New Zealand services exporters and investors, and a modernised approach to e-commerce.
- 4 It is expected that the Second Protocol will be signed in Indonesia in August 2023 in the margins of the ASEAN Economic Ministers' Meetings. Should Cabinet approve the final outcomes and grant authority to sign the agreement, I propose to travel to Indonesia to sign the Second Protocol. Following signature the Second Protocol,

along with the accompanying national interest analysis (NIA), will be submitted to the House of Representatives for Parliamentary Treaty Examination. The Second Protocol will enter into force sixty days after Australia, New Zealand and at least four ASEAN parties have deposited their instruments of ratification. No amendment to primary legislation is required in order to implement the outcomes of the Protocol. Amendment to the Customs and Excise Regulations 1996 is required and will be undertaken by New Zealand Customs.

Background

- 5 AANZFTA is an FTA between the 10 ASEAN member states¹, Australia and New Zealand. The agreement entered into force in 2010. AANZFTA was ASEAN's highest quality FTA with any partner when it was originally negotiated.

Upgrade process

- 6 FTAs require review and revision to ensure they remain fit-for-purpose, align with modern trade practice, and reflect evolving trade policy. AANZFTA, like many FTAs, has a requirement for periodic review. AANZFTA has been amended once before in 2014 to respond to an implementation issue in the area of Rules of Origin (the First Protocol).
- 7 A first review of the agreement took place 2017-2018. It concluded that the agreement should be upgraded. Goods market access (i.e. additional tariff elimination) was not included in the scope of the upgrade given the parallel RCEP negotiations that were occurring at the time. New Zealand also already benefits from tariff free access on most exports into ASEAN.
- 8 In April 2019 the Cabinet Economic Development Committee approved a mandate to guide negotiations of the upgrade [CAB-19-MIN-0064]. The mandate focused on the core issues identified during the General Review: rules of origin, customs procedures, services, investment, digital trade/e-commerce, government procurement, trade and competition, and trade and sustainable development.
- 9 Negotiations were delayed due to the continuing RCEP negotiations and then subsequently due to the COVID-19 pandemic. While negotiations began virtually in April 2021, substantive progress was only made after in-person meetings resumed in June 2022. Substantive conclusion of negotiations was announced by Leaders on 12 November 2022. Signing is planned to take place in late August 2023 in Indonesia at the annual ASEAN Economic Ministers' Meetings. Cambodia, which has an election planned for July 2023, plans to sign at the ASEAN Leaders' Meetings in September 2023 once the outcome of its election has been confirmed.

Economic drivers

- 10 The Government's Trade Recovery Strategy has put strengthening our trade relationships, and the FTAs that underpin them, at the forefront of New Zealand's international economic priorities following the pandemic. Upgrading AANZFTA, one of our most important FTAs, will help deliver on this strategy.

¹ Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines Singapore, Thailand, and Viet Nam.

- 11 ASEAN as a bloc is our third largest trading partner and has huge growth potential as a market for New Zealand. With over 635 million people spread over 10 countries, it is the world's third largest market after China and India, and in 2022 11% of New Zealand's exports were to ASEAN states. AANZFTA and New Zealand's other FTAs in the region² have played and continue to play a critical role in growing New Zealand's trade in the region and building our exporters' resilience and assisting in their ongoing diversification efforts. New Zealand exporters benefit from tariff free access on 99% of goods (99.9%) into ASEAN. Since AANZFTA entered into force, goods exports to the region have grown by over 44%, and in 2022 New Zealand goods exports to ASEAN almost matched those to Australia. Services exports also doubled, albeit from a low base, between 2010 and 2020. Despite dropping due to the impacts of COVID-19, services exports to the region were still worth over \$1 billion in 2022.
- 12 The upgrade focused on improving and modernising the Agreement so that it continues to provide exporters with high quality access and trading conditions to ASEAN. The upgrade will support our efforts to ensure that New Zealand exports remain competitive in the region and our focus on diversification of export opportunities.

Strategic drivers

- 13 AANZFTA is a central pillar in our relationship with ASEAN, and demonstrates our commitment to ASEAN-centred and -led institutions. Strengthening this shared architecture, including in the trade and economic area, is critical for our diversification work and to build resilience in a context where the Indo-Pacific is becoming an increasingly contested region.
- 14 This is also critical at a time when the global rules-based system is under severe strain. New Zealand relies on the effective functioning of this system, and ASEAN is an important ally in supporting open, transparent and inclusive trade. The upgrade reflects our shared commitment to support the multilateral trading system and will continue to reinforce our ambition for greater regional integration in the Indo-Pacific.

Comment

- 15 The Second Protocol is a treaty-level instrument that amends the existing AANZFTA to modernise its commitments while also adding new areas into the Agreement. It will help ensure AANZFTA remains a modern, high-quality FTA that supports New Zealanders to effectively and efficiently export to and invest in the ASEAN region.
- 16 In general terms, the upgrade does not expand the strong market access across goods, services and investment that New Zealand already enjoys as a result of our existing trade agreements. However, it brings AANZFTA into alignment with the more recent RCEP Agreement to deliver stronger trade facilitation and better market access conditions for exporters, and reflect modern trade practice in areas like e-commerce. In this way it improves the coherence across the region's economic architecture and

² The Regional Comprehensive Economic Partnership (RCEP), which includes the 10 ASEAN members; the Malaysia-New Zealand Free Trade Agreement; the New Zealand-Singapore Closer Economic Partnership; and the New Zealand-Thailand Closer Economic Partnership.

therefore facilitates New Zealand export activity. The upgrade also advances the Government's Trade for All agenda, introducing a framework for cooperation on sustainable trade issues.

New Areas and Commitments

17 There are several new areas introduced under the Second Protocol:

- 17.1 A new Trade and Sustainable Development Chapter that recognises the benefits and importance of sustainable trade issues including labour, the environment, and women's economic empowerment. The aim of the chapter – a first for ASEAN - is to promote economic cooperation on these important issues. The chapter also reflects New Zealand's commitment to progressive, inclusive and sustainable trade outcomes that benefit all New Zealanders under the Trade for All agenda.
- 17.2 A new Micro, Small and Medium Enterprises (MSMEs) Chapter, which reflects the significant contribution MSMEs make to the region's economy, while recognising the disproportionate impacts of public emergencies, such as the COVID-19 pandemic, on them. The chapter aims to improve support for MSMEs and promote cooperation between parties to enable MSMEs to utilise and benefit from AANZFTA.
- 17.3 A new Government Procurement Chapter, which focuses on provisions relating to transparency of laws and procurement opportunities for businesses; commitments to have laws and policies in place that address issues that impact on the integrity of government procurement; promotion of green procurement in parties' procurement policies and practices; commitments to use electronic means to the widest extent possible; and mechanisms for cooperation. This will help increase opportunities for New Zealand businesses to bid for government tenders where these are open to international tenders. The new chapter does not include market access commitments into ASEAN's procurement markets. In any case, New Zealand already has market access into Australia and some ASEAN Member States' procurement markets (Malaysia, Singapore, and Viet Nam; and Brunei once it ratifies CPTPP) through existing FTAs.
- 17.4 AANZFTA's Competition Chapter has been significantly expanded. Previously a cooperation-only chapter, it now aligns with other Agreements such as RCEP by creating commitments for Parties in the promotion of competition, economic efficiency, consumer welfare and the curtailment of anti-competitive practices.

Trade Facilitation

18 The Rules of Origin Chapter establishes the rules that determine whether goods traded among the Parties are considered to 'originate' in the FTA area and therefore qualify for the benefits provided in the Agreement, including preferential tariff rates. The upgrade modernises and expands the scope of this Chapter to broaden the range of goods that benefit from AANZFTA trade rules. Most significantly the upgrade

introduces stronger commitments on ‘cumulative rules of origin’, making trade more favourable for exporters that incur production or material costs across different parts of the AANZFTA region. This has been included on an opt-in/opt-out basis, due to reservations from some ASEAN Parties. New Zealand has been pushing for full cumulation since AANZFTA was first negotiated and this is an important step forward that will better meet the needs of our exporters who use inputs from across ASEAN in their production.

- 19 The Customs Procedures and Trade Facilitation Chapter has also been modernised and expanded through the upgrade. The new terms will benefit exporters through increased efficiency at the border, including the expedited release of goods, and greater transparency in customs requirements. Linked to the Trade in Goods outcomes, there is also a new provision to facilitate the flow of essential goods in times of humanitarian crises.

Trade in Goods

- 20 The Second Protocol extensively improves and modernises AANZFTA’s Trade in Goods Chapter. This includes introducing a full section of provisions addressing the application of non-tariff measures (NTMs). NTMs are prevalent in ASEAN and, where they become barriers to trade (such as overly complex licencing requirements, opaque biosecurity processes, etc.) are commonly reported by New Zealand businesses as being the main challenge in trading with the region. The upgraded provisions seek to limit existing and new NTMs, and commit parties to ensuring transparency in the NTMs they do apply. It also contains a mechanism to engage on NTMs with ASEAN when they are adversely affecting trade. The upgraded chapter further promotes the facilitation of trade in essential goods in times of humanitarian crises, including pandemics.
- 21 In the chapter on Standards, Technical Regulations and Conformity Assessment Procedures there is one minor update on technical consultations, where a 60-day consultation period has been introduced. This provides parties with greater certainty that consultations will take place within a set period of time.

Trade in Services

- 22 The Second Protocol will benefit New Zealand’s services exporters by providing greater certainty of treatment when trading in AANZFTA countries, aligning with the commitments created under RCEP. Parties have also agreed to transition to a negative list schedule. Whereas a ‘positive’ list specifies those sectors that are in scope of the obligations of the Trade in Services Chapter, a ‘negative’ list requires a Party to specifically identify those sectors *not* subject to the Chapter’s obligations. This is New Zealand’s preferred approach, as it generally encourages broader application of the obligations. AANZFTA’s domestic regulations provisions have also been upgraded to improve transparency and provide certainty with regards to administrative processes for services authorisation across the region. The collective effect of these changes is to simplify and facilitate trade in services with ASEAN.
- 23 While the upgrade does not expand ASEAN parties’ services market access commitments beyond RCEP (in that it does not make any additional sectors subject to the Agreement’s obligations), the Second Protocol introduces new annexes on

Education Services Cooperation and Professional Services. These sectors are significant services exports for New Zealand. While the Annexes are cooperation-only, they reflect a step forward toward services trade liberalisation for education and professional services in the region. The former recognises the importance of education services and encourages parties to support work on areas such as mutual recognition of qualifications and academic credits, improved flow of digital education, and increased cooperation between educational services providers. The Annex on Professional Services encourages parties to develop systems for mutual recognition of qualifications, licensing, and registration of professionals, which should create increased opportunities for New Zealand professionals to provide their services in the ASEAN region.

- 24 The Second Protocol also amends AANZFTA's Annex on Financial Services, which expands the rules and obligations for Parties in relation to financial services. The obligation relating to portfolio management, which reflects existing New Zealand policy, will also reduce barriers to trade for AANZFTA parties trading in each other's markets. The Annex also now limits the application of investor-state dispute settlement (ISDS) in relation to financial services disputes, allowing parties to invoke the Prudential Measures or Financial Services Exceptions provisions as a defence to prevent an ISDS complaint from being launched.
- 25 The Trade in Services Chapter also has an existing Annex on Telecommunications. The Second Protocol amends the Telecommunications Annex to update and introduce a range of provisions with the aim of improving open, transparent and fair access to telecommunications networks, resources and services. These mirror some of the changes to the Trade in Services Chapter. Improvements include new provisions that will support telecommunications suppliers to compete in ASEAN markets, such as ensuring any service supplier can use public telecommunications networks and services in another Party; requiring major telecommunications suppliers to provide suppliers from another Party the same treatment as domestic suppliers; and ensuring major suppliers offer unbundled options for access to network services.

Investment

- 26 The upgrade modernises the Investment Chapter to better align with more recent agreements, including RCEP, and improve some of the rules that govern investment. For example, the upgrade introduces most favoured nation treatment into AANZFTA for investment, which means ASEAN states must provide New Zealand with any further concessions they provide to another country; and that New Zealand is obliged to do the same. This creates greater consistency across our agreements, and securing these outcomes further embeds the gains we achieved through RCEP into ASEAN's trade policy.
- 27 The original Cabinet mandate for the AANZFTA upgrade included seeking the removal of, or at least limiting the application of, ISDS, while acknowledging this may be challenging to achieve with ASEAN [CAB-19-MIN-0064]. ^{s6(a), s9(2)(i)}

s6(a), s9(2)(j)

- 28 s6(a) New Zealand secured agreement to a review of ISDS in AANZFTA within 18 months of entry into force of the Second Protocol, which must be completed within 12 months; and the temporary suspension of National Treatment as grounds for an investor to take an ISDS claim³. To date, investors have been unable to take an ISDS claim under AANZFTA on National Treatment grounds given the FTA did not include market access schedules to operationalise this investment obligation. The upgrade will introduce National Treatment market access schedules into AANZFTA for the first time. The ISDS compromise we secured agreement to ensures that the scope of New Zealand's ISDS exposure under AANZFTA does not expand as a result of the upgrade, for a 30 month period. This outcome is in line with the revised negotiating mandate agreed by Ministers⁴. Additionally, ASEAN agreed to exclude foreign investment screening regimes, such as New Zealand's Overseas Investment Act, from ISDS and from state-state dispute settlement. This is an additional safeguard to mitigate as far as possible the risk of a successful ISDS claim.

Electronic Commerce

- 29 The upgraded E-Commerce Chapter introduces a range of new and updated provisions to support consumers and businesses to take advantage of the opportunities of digital trade. This includes building trust and confidence for exporters and consumers through more effective legal frameworks, improving trade facilitation through measures to support the wider use of e-invoicing, and removing unnecessary barriers to the cross-border transfer of business information. Most significantly, ASEAN has agreed to the full application of dispute settlement to the E-Commerce Chapter, with delayed application for Data Rules and further delayed application for AANZFTA's least developed country members (Cambodia, Laos and Myanmar). This is the first time New Zealand has achieved legally enforceable E-Commerce rules with ASEAN.
- 30 In November 2021, the Waitangi Tribunal issued its 2522 Report's findings of breach in the CPTPP's E-Commerce Chapter. Given similar provisions were within the scope of the then-ongoing AANZFTA upgrade, New Zealand adapted its approach to the negotiations in response to Wai2522 while continuing to seek effective digital provisions. Ultimately, it was not possible to include obligations on source code in the upgrade thereby narrowing the scope of the potential risks identified by the Tribunal. Furthermore, while the upgrade will introduce data rules for the first time into AANZFTA, given the Parties involved, these provisions replicate RCEP's model of ensuring that governments have the self-judging discretion to apply measures considered necessary to achieve legitimate public policy objectives. Additionally, New Zealand included a new reservation in its services and investment market access schedule in relation to electronically enabled trade to preserve space for more

³ Under National Treatment, a party cannot discriminate between how it treats its own investors and those of other parties.

⁴ Submission to the Minister of State for Trade and Export Growth, 29 September 2022, refers.

favourable treatment for Māori, modelled on a similar reservation secured in the EU FTA negotiations.

Treaty of Waitangi

- 31 The Treaty of Waitangi exception remains unchanged from the existing FTA and states that the Crown will be able to adopt measures considered necessary to accord more favourable treatment to Māori, including under the Treaty of Waitangi. It is designed to work alongside other provisions to ensure that successive governments retain flexibility to implement domestic politics that favour Māori without being obliged to offer equivalent treatment to overseas entities. The exception applies in respect of matters covered by the entire FTA (as amended by the Second Protocol).

Accession clause

- 32 While not covered during the General Review, the Cabinet mandate also included a recommendation to seek the introduction of an accession clause into AANZFTA.

^{s6(a)}

it was agreed that the Second Protocol will not include an accession clause⁵, but Parties agreed that a future accession could take place through a separate accession instrument. This provides a way forward ^{s6(a)}

when Timor-Leste joins ASEAN and thus seeks membership of ASEAN's existing FTAs.

Myanmar

- 33 Following the military coup in Myanmar in 2021, the Prime Minister and Minister of Foreign Affairs agreed that New Zealand should maintain its long-standing policy of not making formal statements on recognition. Rather, New Zealand's position on the legitimacy of the Myanmar military regime is to be inferred from its actions.
- 34 New Zealand is committed to supporting ASEAN centrality, and as an ASEAN member state Myanmar has been involved in the negotiations to upgrade AANZFTA. New Zealand has not, however, directly engaged with Myanmar during the negotiations (for example, we have not undertaken an exchange of market access schedules for Services and Investment with Myanmar).
- 35 Any attempt to exclude Myanmar from the negotiations or a decision that New Zealand will not sign the upgrade would likely cause significant political and commercial damage to our relationship with ASEAN. As such, New Zealand proposes to take a managed approach to signing and ratification of the Second Protocol ^{s6(a), s9(2)(i)}

⁵ Submission to the Minister of State for Trade and Export Growth, 2 November 2022. refers.

Side Letter with Australia on Investment

- 36 When AANZFTA was signed in 2009, New Zealand simultaneously agreed a side letter with Australia to ensure consistency with the Australia-New Zealand Closer Economic Relations Trade Agreement (CER) and its related agreements and understandings. Among other things, the side letter states that three chapters of AANZFTA, including the Investment Chapter and its ISDS provisions, would “not create rights or obligations between New Zealand and Australia”⁸.
- 37 To avoid any ambiguity as to whether this side letter will continue to apply once the Second Protocol enters into force, this paper also seeks agreement to enter into a new side letter with Australia. This side letter will maintain the position in the current side letter, including that ISDS does not apply between New Zealand and Australia. The side letter is attached at Annex 1.

Next Steps

- 38 The text of the Second Protocol and the side letter with Australia are attached as Annex 1. The next steps for the Second Protocol and side letter are:
- Signing the Second Protocol and the side letter with Australia in August 2023 at the ASEAN Economic Ministers Meetings;
 - Public release of the legally verified text of the Second Protocol and the national interest analysis (NIA) as soon as possible following signature;
 - Presenting the Second Protocol, along with the accompanying NIA to the House of Representatives for Parliamentary Treaty Examination; and,
 - Entry into Force of the Second Protocol once the requirements under the Second Protocol have been met (deposit of an instrument of ratification by four ASEAN parties and New Zealand and Australia).

Cost-of-living implications

- 39 It is expected that the entry into force of the AANZFTA Upgrade will have no, or a very small positive, impact in elevating cost of living pressures for New Zealanders. In terms of positive impacts, the provisions that deal with the removal of non-tariff barriers and enhanced trade facilitation could, for example, have an indirect positive

s6(a), s9(2)(i)

⁸ The three chapters are Chapter 7 (Safeguard Measures), Chapter 11 (Investment) and Chapter 17 (Consultations and Dispute Settlement).

impact on wages, through producer gains from improved market access. However, the scale of impact is likely to be very small at best.

Financial Implications

- 40 The implementation of the Second Protocol will have some minor financial implications that are expected to be met from within departmental baselines:
- 40.1 The cost of servicing AANZFTA's Committees will continue to be met from departmental baselines, and will build on and combine with activities that already exist under the FTA and its established structures.
- 40.2 Promotion and outreach activities to explain the key outcomes of the Second Protocol will be undertaken by the Ministry of Foreign Affairs and Trade, funded from baselines.
- 40.3 New Zealand's existing contribution to AANZFTA's Economic Cooperation support programme is funded from departmental baselines. The upgraded AANZFTA includes new focus areas for cooperation support, including MSMEs and sustainable trade issues. No additional funding is expected to be required to service this.

Legislative Implications

- 41 No amendment to primary legislation is required in order to implement the outcomes of the Second Protocol. The following amendments to the Customs and Excise Regulations 1996 are required and will be undertaken by New Zealand Customs:
- Regulation 51ZQ (Accumulation) – updated to allow for full cumulation [paragraph 21] for those AANZFTA Parties that opt-in to this provision;
 - Regulation 51ZX (Direct Consignment) – this article will be re-titled 'Direct consignment, Transit and Transshipment'; and amended to address goods that enter free zones and are not further processed there; and
 - Regulation 51ZM (Products Specific Rules (PSR)) – these rules determine a good's tariff classification, and have been reviewed and amended to align with modern FTAs in line with World Customs Organisation guidelines.

Human Rights

- 42 There are no inconsistencies with the Human Rights Act 1993 and New Zealand Bill of Rights Act 1990.

Impact Analysis

- 43 The Treasury's Regulatory Impact Analysis team has determined that these amendments to the Customs and Excise Regulations 1996 are exempt from the requirement to provide a Regulatory Impact Statement on the grounds that they are the minimum necessary to comply with international obligations that are binding on New Zealand.

- 44 A NIA (attached as Annex 2) has been prepared in accordance with the requirements for treaty instruments. The NIA sets out, among other things, the advantages and disadvantages of the Second Protocol, its costs and benefits, and what it means for New Zealand to implement the Second Protocol.
- 45 The Treasury's Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Consultation

- 46 The following departments and agencies have been consulted: the Ministry of Business, Innovation and Employment, Ministry for Primary Industries, the Treasury, Customs, Te Puni Kōkiri, New Zealand Qualifications Authority, Ministry of Education, the Department of Prime Minister and Cabinet, Ministry for Environment, and the Reserve Bank of New Zealand. The NIA outlines the wider consultation and engagement with Māori and stakeholders during the negotiations process.

Public engagement

- 47 Throughout the negotiations, several engagements were specifically undertaken to inform and engage stakeholders on the upgrade.
- 48 Prior to negotiations starting, the Ministry of Foreign Affairs and Trade opened a "Have Your Say" page on the website for public submissions on how the existing AANZFTA agreement was being utilised and how it could be modernised. The 21 submissions received from industry organisations, business groups, civil society, and private citizens indicated that there was strong support for the upgrade, recognising the importance of the ASEAN market and informed specific areas of interest to be modernised.
- 49 Over the course of 2020-2022, MFAT's planned programme of public information sessions on New Zealand's FTAs was disrupted by the COVID-19 pandemic. Once restrictions eased in 2022, two public engagement events were held to promote New Zealand's FTAs with ASEAN, with a focus on the AANZFTA Upgrade. This includes an event I led in June 2022 attended by a range of business, academic and other groups, as well as a dedicated session with the ASEAN New Zealand Business Council in July.
- 50 These events have been hosted alongside MFAT's regular stakeholder engagement meetings with industry such as the Special Agricultural Trade Envoy (SATE), Dairy Companies Association New Zealand (DCANZ) and the Plant Market Access Council. Updates have also regularly been sent out on the negotiations via MFAT's Economic Weekly Roundup.

Treaty Partner Engagement

- 51 The level of Treaty Partner engagement throughout negotiations has been informed by the interests and capacity of the Treaty Partner groups the Ministry of Foreign Affairs and Trade (MFAT) engages with, including Ngā Toki Whakarururanga, Te Taumata, and the Federation of Māori Authorities (FoMA).

- 52 Due to the slow progress in negotiations throughout 2021 and early 2022, engagement with Treaty Partners was initially limited, both due to lack of substance to discuss and the competing priorities of the groups, which were focused on the EU and UK FTA negotiations. More involved engagement took place once substantive negotiations started from mid-2022.
- 53 Specific areas of trade interest to Treaty Partners include e-commerce, services and investment. Officials have engaged on the approach to negotiations in these areas, and text proposals being considered by New Zealand, particularly in the closing stages of negotiations. Alongside this officials have regularly provided briefings and the opportunity to engage with the Lead Negotiator of the upgrade negotiations.

Publicity

- 54 I propose to release this Cabinet paper, the associated Cabinet minute, and the text of the Second Protocol and the NIA following the public announcement of the signature of the Second Protocol at the latest. Should there be agreement by other AANZFTA countries to publicly release the text of the Second Protocol earlier, I propose to do so in the interests of transparency.
- 55 Prior to and following the announcement of conclusion of negotiations in November 2022, officials notified and connected with Treaty Partner groups and other key stakeholders, including business and industry groups, advising on the concluded negotiations and key outcomes achieved.
- 56 Officials have been undertaking and will continue to undertake a series of stakeholder engagement functions including promotion through public events, social media, updating the Ministry of Foreign Affairs and Trade website with updates and explanatory information, and sending a pānui to those who have signed up to MFAT's FTA Outreach mailing list. These functions are intended to promote the outcomes and encourage awareness and utilisation of the Agreement.

Proactive Release

- 57 This paper will be proactively released within 30 business days of the signing of the Second Protocol, with redactions as necessary, for example to protect New Zealand's leverage in other FTA negotiations.

Recommendations

The Minister of State for Trade and Export Growth recommends that the Committee/Cabinet:

- 1 note that in April 2019, the Cabinet Economic Development Committee agree that officials should negotiate the Second Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) [CAB-19-MIN-0064];
- 2 note the outcomes of negotiations achieve New Zealand's objectives and are within the Cabinet approved mandate, as updated through supplementary submissions to Ministers [CAB-19-MIN-0064; submissions to the Minister of State for Trade and Export Growth of 24 August, 28 September, and 2 November 2022];

- 3 approve the text of the Second Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (the Second Protocol) and the side letter with Australia, subject to any minor or technical changes, which forms a package of agreed outcomes to upgrade AANZFTA;
- 4 authorise the Minister of State for Trade and Export Growth, in consultation with relevant Ministers, to approve any necessary minor or technical amendments to the Second Protocol and the side letter with Australia which do not materially alter their content;
- 5 agree that New Zealand sign the Second Protocol and the side letter with Australia;
- 6 approve the National Interest Analysis (NIA), subject to any minor or technical changes required between now and public release;
- 7 agree that the text of the Second Protocol, along with the NIA, this Cabinet paper and the Cabinet Minute be made public no later than the time of signature with redactions where necessary;
- 8 agree that following signature, the text of the Second Protocol and the NIA be presented to the House of Representatives for Parliamentary Treaty Examination, in accordance with Standing Order 405;
- 9 agree that the non-treaty status side letter with Australia also be provided to Parliament for consideration as part of the overall package of outcomes;
- 10 authorise amendments to the Customs and Excise Regulations 1996 to implement the Second Protocol, to be undertaken by New Zealand Customs;
- 11 authorise officials to deposit an instrument of ratification to bring the Second Protocol into force after the conclusion of the Parliamentary Treaty Examination process;
- 12 authorise officials to exchange the side letter with Australia;
- 13 note the Second Protocol will 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;
- 14 ^{s6(a)}
- 15 note that the side letter with Australia will enter into effect on the date the Second Protocol enters into force; and
- 16 note that the ongoing costs associating with implementing the upgraded FTA will be met from within departmental baselines.

Authorised for lodgement

Hon Rino Tirikatene

Minister of State for Trade and Export Growth

ANNEX 1: Agreed Text

ANNEX 2: NIA

ANNEX 3: Opening Negotiating Mandate

Proactively Released by the Minister of State for Trade and Export Growth