

Proactive Release

Date: 22 May 2019

The following Cabinet paper and related Cabinet minute have been proactively released by the Minister for Trade and Export Growth:

Title of paper:

AANZFTA upgrade: Opening negotiating mandate

Title of minute:

***Agreement Establishing the ASEAN Australia New Zealand Free Trade Area
Upgrade: Opening Negotiating Mandate (CAB-19-MIN-0064 refers)***

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Key to redaction codes:

- 6(a): to avoid prejudicing the international relations of the New Zealand Government;
- 6(b): to protect the passing of information from another government on a confidential basis;
- 9(2)(g)(i): to protect the free and frank expression of opinions by departments;
- 9(2)(j): to avoid prejudice to negotiations.

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Chair,
Cabinet Economic Development Committee (DEV)

AANZFTA upgrade: Opening negotiating mandate

Proposal

1. I propose that Cabinet approve an opening negotiating mandate for the upgrade of our free trade agreement with the Association of Southeast Asian Nations (ASEAN) and Australia – the Agreement establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA).

Executive Summary

2. AANZFTA is a free trade agreement between ASEAN member states; Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Singapore, Thailand, Viet Nam and the Philippines, and New Zealand and Australia. Since 2010, AANZFTA has played a significant role in growing two-way trade between New Zealand and ASEAN, valued at \$17.9 billion in 2018.
3. AANZFTA is a key platform for New Zealand's economic relationship with ASEAN and is a useful 'incubator' for regional cooperation, technical capacity building and policy dialogue. This has contributed to the further development of ASEAN-centred regional economic integration, including the Regional Comprehensive Economic Partnership (RCEP) negotiations, which were launched in November 2012.
4. AANZFTA has been in force for nine years.¹ The agreement now requires upgrading to ensure it remains relevant to changing business and trade practices. The upgrade negotiations also form part of New Zealand's strategy to reaffirm our commitment to the multilateral trading system and to continue to grow and diversify our trade portfolio so we are not overly dependent on any one market.
5. In September 2018, AANZFTA trade Ministers agreed to a broad scope for the upgrade negotiation which aims to build on other recent agreements, including outcomes from the Regional Comprehensive Economic Partnership (RCEP) negotiations.² The upgrade will include rules of origin, customs procedures, trade in services, electronic commerce, investment, competition, and government

¹ Signed in 2009, AANZFTA entered into force for New Zealand, Australia and most of ASEAN in 2010 (with the Agreement entering into force for the remainder in 2012). It was amended in 2015 to address practical issues identified by business related to the rules around how to access preferential tariffs under the FTA.

² RCEP is a proposed free trade agreement between ASEAN and six states with which ASEAN has an existing agreement – Australia, China, India, Japan, South Korea and New Zealand.

procurement. We also have agreement to explore further cooperation in the area of trade and sustainable development, s6(a)

6. The scope explicitly excludes market access for government procurement and is silent on further market access for goods (i.e. tariff liberalisation), s6(a)

7. In the AANZFTA upgrade, the key benefits New Zealand stands to gain are:

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

8. We do not have sufficient information to quantify the economic benefits of the upgrade at this stage. However, we are confident the upgrade will provide both economic and strategic advantages to New Zealand's position in the Asia-Pacific region. Officials will revisit the possibility of quantifying the benefits of the upgrade as part of the National Interest Analysis once negotiations have concluded.

9. For the most part, the issues under negotiation are non-controversial, s9(2)(g)(i)

s9(2)(g)(i)

s9(2)(j)

s9(2)(j)

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

10. The opening mandate that is being sought in this paper addresses all of the eight areas currently identified in the scope of the upgrade. I propose that Cabinet approves a mandate (as set out in Annex two) which seeks outcomes that allow negotiators to modernise AANZFTA consistent with our existing policy settings and to reflect recent international developments.

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

Leaders have committed to concluding RCEP negotiations by the end of 2019.

Background

12. Since AANZFTA was implemented in 2010, two-way trade between New Zealand and ASEAN has grown by almost 30%, an increase of more than \$6 billion. Goods exports to ASEAN alone have grown by over 40% since 2012, making ASEAN our third largest export destination for goods following Australia and China. In addition,

service exports to ASEAN almost doubled between 2012 and 2018 from \$866 million to \$1.6 billion. In 2018, two-way trade was valued at \$17.9 billion, with \$7.2 million exports and \$10.7 million in imports.

13. AANZFTA was envisaged as a 'living' agreement that would need periodic review and updating to ensure it remained high quality and ambitious, as well as relevant for evolving business and trade practices. A review by the Parties in 2017 found that more needed to be done to address a range of outstanding issues that had been set aside as part of the original negotiations (particularly in the areas of customs procedures, services, and investment) as well as further developing rules in areas where policy frameworks are still developing, such as e-commerce.
14. In September 2018, AANZFTA trade ministers agreed (see Annex one) that officials should negotiate a new treaty-level instrument to amend AANZFTA covering:
 - Rules of origin;
 - Customs procedures;
 - Trade in services;
 - Investment;
 - E-commerce;
 - Competition;
 - Government procurement; and
 - Trade and sustainable development.
15. s6(a), s9(2)(j)

Key strategic drivers

16. The international trade environment is increasingly turbulent, as evidenced by trade disputes between major economies and a general rise in trade restrictive measures. Amongst other strategies, New Zealand is responding to this by reaffirming our commitment to the multilateral trading system, enhancing our integration into regional trade architecture and continuing to grow and diversify our trade portfolio. At a domestic level, New Zealand is developing a Trade for All agenda; the aim is a trade policy which works alongside other government policies to support sustainable and inclusive economic development.
17. In this context, ASEAN matters to New Zealand more than ever. With over 635 million people spread over 10 countries, ASEAN is the world's third largest market after China and India. It lies at the heart of key regional architecture of interest to New Zealand, including the ASEAN Regional Forum and the East Asia Summit.
18. New Zealand's strategic economic objectives with ASEAN are twofold: first, to reinforce ASEAN's own economic security and resilience; second, to enhance and diversify New Zealand's economic integration in South East Asia. As the primary

vehicle for our trade and economic relationship with ASEAN, the AANZFTA agreement remains critical to realising both objectives.

19. s6(a)

Approach to the mandate recommendations

20. A discussion of the key negotiation areas for New Zealand is presented in this section. Annex two outlines the high level negotiating parameters for the key areas in the AANZFTA upgrade. The parameters are based the scope of the upgrade, New Zealand's existing policy positions (including in other recent free trade agreements), preliminary engagement with business, and our understanding of ASEAN's likely approach, drawn largely from the initial AANZFTA negotiations and more recently in the RCEP negotiations. Consistent with New Zealand's aspirations for Trade for All, we will also seek to secure provisions aimed at supporting sustainable and inclusive economic development.

Customs provisions

21. New Zealand exporters still face a number of barriers at ASEAN's borders. Feedback from business shows that the biggest challenges exporters face when doing business with ASEAN are in the areas of rules of origin and customs procedures.³ The imposition of non-tariff barriers increases transaction costs where the application of tariff reductions should be reducing them. s6(a), s9(2)(j)
s6(a), s9(2)(j)

22. Since AANZFTA entered into force there has been substantial discussion on **full cumulation** but no move to implement it. The latest endeavours were a series of information sharing workshops delivered earlier this year to 'educate ASEAN trade officials and traders.' s6(b), s9(2)(j)

23. s9(2)(j)
s6(b)

s9(2)(j)

³ Submission by the ASEAN New Zealand Business Council on the AANZFTA upgrade, March 2019.

⁴ Cumulation allows for goods that are produced in one AANZFTA country to be able to be made with inputs from other AANZFTA countries and still qualify for a preferential tariff.

s9(2)(j)

24. AANZFTA currently uses the Certificate of Origin (CoO) approach as documentary evidence when exporters claim an AANZFTA tariff. In this system the assurance of origin is provided by government organisations or government authorised bodies.

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

Most of New Zealand's free trade agreements concluded since AANZFTA have self-declaration components, as the most trade facilitating system.

Services and investment

25. Market access for services and investment remains one of the most significant outstanding areas from the original AANZFTA negotiation.

26.

Investor State Dispute Settlement (ISDS)

27. The current AANZFTA investment chapter contains Investor State Dispute Settlement (ISDS). Under the scope of the upgrade, it has been agreed that the existing chapter text will be reviewed. While the scope does not explicitly mention ISDS, it is captured within the overall review of the chapter. s9(2)(i)

28. s6(a), s9(2)(g)(i), s9(2)(j)

s9(2)(j)

s6(a)

E-commerce

29. Since AANZFTA's entry into force in 2010, the digital trading environment has evolved rapidly, with the sale of goods and services online experiencing exponential growth. As a small trade-dependent country distant from our key markets, this growth offers the opportunity to help New Zealand businesses overcome the challenges of scale and distance, and provide greater choice for consumers.
30. Against this backdrop however the development of corresponding global trade rules on e-commerce has not kept pace. The regulatory environment for cross-border e-commerce remains uncertain and unpredictable. Emerging regulations, including within South East Asia, indicate some interest in pursuing policies that may increase restrictions on the movement of goods and services across borders, posing challenges for New Zealanders buying and selling online. A more comprehensive and modern AANZFTA e-commerce chapter would serve to bolster efforts to establish more consistent and transparent rules on e-commerce, and continue to build confidence among ASEAN members to engage on newer disciplines that support e-commerce trade liberalisation.

31. s9(2)(j)

s9(2)(g)(i)

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

Government procurement

33. s6(a)

The upgrade negotiations will be the first time government procurement will be included in AANZFTA discussions.

34. s6(a), s9(2)(g)(i), s9(2)(j)

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

Competition

35. The AANZFTA upgrade will modernise the current competition chapter. s9(2)(j)
s9(2)(j)

Nothing in the upgrade negotiations will change the way competition law operates in New Zealand.

Trade and sustainable development

36. AANZFTA is one of the few New Zealand trade agreements that does not include provisions on environment or labour. s6(a), s9(2)(g)(i), s9(2)(j)

In lieu of a chapter, New Zealand negotiated non-linked bilateral treaty status side agreements on trade and environment and trade and labour with Indonesia and the Philippines.

37. Taking into account prior and subsequent trade negotiations (Thailand; Brunei and Singapore in P4; Malaysia; and most recently Viet Nam, Malaysia, Brunei and Singapore in CPTPP), New Zealand now has environment and labour instruments with seven of the ten ASEAN countries. Only the least developed countries Myanmar, Cambodia and Laos remain s6(a), s9(2)(g)(i) New Zealand continues to be a strong advocate for addressing these issues in trade agreements. Globally, issues around sustainable development are becoming only more prominent in trade. s9(2)(g)(i)

38. s9(2)(j), s9(2)(g)(i)

Additional issues

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

40. s6(a)

s9(2)(g)(i)

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s9(2)(g)(i)

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

Treaty of Waitangi

42. AANZFTA contains a Treaty of Waitangi exception that explicitly allows the government to adopt any policy it considers necessary to fulfil its obligations to Māori. This will not be changed in the upgrade negotiations. The Treaty of Waitangi exception is just one of a number of exceptions and reservations in the agreement which ensure that the Government retains its right to regulate in the public interest.

Economic cooperation

43. One of AANZFTA's innovations was to incorporate economic cooperation as an integral part of the FTA. New Zealand and Australia both make annual financial contributions to the AANZFTA Economic Cooperation Support Programme which is used by ASEAN members to support the implementation of AANZFTA. Since 2010, this cooperation has produced tangible outcomes in the areas of trade in goods, services, investment, intellectual property and competition policy. As part of the upgrade negotiations, New Zealand and Australia will be reviewing the current programme s6(a), s9(2)(j)

Consultation

44. The following departments have been consulted in the preparation of this paper and concur with its recommendations: Ministry of Business Innovation and Employment, Ministry for Primary Industries, New Zealand Customs and Treasury.

Financial Implications

45. The upgrade negotiations will have fiscal implications. The overall fiscal costs to the government are not clear at this stage but are likely to comprise the following components:

- The costs associated with the negotiations including preparatory work, research, travel, public engagement and the cost of hosting rounds. The costs of negotiating the upgrade will be met from by Ministry of Foreign Affairs and Trade baselines; and

- A revised economic cooperation programme to be negotiated alongside the upgrade. The cost of this programme will be addressed separately through the development of New Zealand's revised Plan of Action with ASEAN.

Legislative Implications

46. There are no legislative implications directly resulting from this paper, however the conclusion of an agreement may require legislative changes. Ministers will be updated if this becomes apparent.

Impact Analysis

47. Not required at this stage. An extended National Interest Analysis (incorporating a Regulatory Impact Analysis) will be presented to Cabinet when negotiations have concluded and the text of the upgrade is submitted for approval.

Gender Implications

48. No gender implications statement is required.

Disability Perspective

49. No disability perspective statement is required.

Publicity

50. Officials intend to undertake domestic public engagement on the AANZFTA upgrade to ensure that all interested New Zealanders have the opportunity to engage on issues of interest. Engagement activities are intended to include a public submissions process targeted at Māori, industry, and the general public. However, this process is unlikely to attract significant public and media interest.

Proactive Release

51. I intend to proactively release this paper and the associated minute following the papers approval by Cabinet. Parts of the paper will be redacted as appropriate under the Official Information Act 1982.

Recommendations

52. The Minister for Trade and Export Growth recommends that the Committee:
1. **Approve** the recommendations outlined in Annex two to guide New Zealand negotiators in the initial phase of the upgrade negotiations;
 2. **Note** that Annex two includes recommendations for the core issues expected to be covered in this upgrade;
 3. **Note** that Annex two includes a recommendation that any issues that Annex two does not address will be dealt with in accordance with New Zealand's existing policy settings, in consultation with relevant agencies;

4. **Note** that the costs of negotiating the agreement will be met by the Ministry of Foreign Affairs and Trade, and that Ministers will have the opportunity to consider at a later date any additional costs that may arise from the content of any agreement, including in economic cooperation;
5. **Note** that a further mandate for services and investment will be sought from the Minister of Trade and Export Growth following substantial conclusion of RCEP negotiations;
6. **Agree** that the Minister for Trade and Export Growth and other relevant Ministers have delegated authority to approve New Zealand market access offers for the negotiations and other proposals where they are in line with, or do not depart significantly, from the parameters outlined in Annex two.

Hon David Parker

Minister for Trade and Export Growth

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Annex one: Agreed scope of the upgrade

AANZFTA General Review: Recommendations for the 23rd AEM-CER Consultations (endorsed by Ministers on 1 September 2018)

Recalling the *Terms of Reference for Conducting the General Review of AANZFTA*, endorsed at the 21st AEM-CER Consultations (4 August 2016, Vientiane), which included the following objective for the General Review, to:

“make recommendations to update, improve, upgrade and unlock the potential of AANZFTA taking into account the AEC [ASEAN Economic Community] Blueprint 2025 and other relevant developments”;

Noting the findings of the joint General Review Stage One Report, presented to Ministers in September 2017, which assessed AANZFTA’s operation and implementation since the Agreement entered into force in 2010;

Further noting the conclusion of the General Review Stage One Report that AANZFTA serves as an important building block in realising regional economic integration and sustainable economic development and seeking to build on its potential in this regard;

Acknowledging that the FTA Joint Committee (FJC) recommendations for the General Review, if endorsed by Ministers, will set a baseline for future negotiations, the outcomes of which should ensure the Agreement retains its relevance to business and adds value to developments in other fora including the Regional Comprehensive Economic Partnership (RCEP) negotiations;

the FJC **proposes** Ministers agree to the recommendations listed below, to guide negotiations to upgrade AANZFTA. The FJC proposes that officials commence implementation of the recommendations at the 11th FJC Meeting and Related Meetings in Australia in the first half of 2019, with a view to concluding text of a second protocol to amend AANZFTA within an expeditious timeframe. The FJC will devise a workplan that takes into account progress in other negotiations in determining the schedule of meetings to implement the recommendations. The FJC may thus prioritise some areas for early discussion before others.

Rules of Origin

- Review ROO text and update as required to take into account modern trade practices and make ROO easier to use by traders, as per Article 18 of Chapter 3 of AANZFTA, including:
 - o a trade facilitating documentary evidence of origin system
 - o transit arrangements that reflect modern hubbing practices

- reach an outcome on built-in agenda issues

Customs Procedures

- Review and expand the Customs Procedures Chapter to include trade facilitation, including consideration of the provisions of the WTO Trade Facilitation Agreement.

Trade in Services

- Review services commitments and Chapter text (including related Annexes) with a view to update and upgrade AANZFTA, taking into account existing built-in agenda items and progress in other relevant free trade agreement processes.

Electronic Commerce

- Review the Electronic Commerce Chapter text to take into account developments at the international, regional and national level, in relation to electronic commerce, including:
 - updating key provisions and
 - discussing inclusion of new disciplines, taking into account developments in e-commerce since negotiation of AANZFTA.

Investment

- Review Chapter text and finalise discussions on schedules of reservation including the scheduling approach using the negative list, with a view to update and upgrade AANZFTA (including considering the adequacy of safeguards for public policy), taking into account existing built-in agenda items and progress in other relevant free trade agreement processes.
- Discuss how investment facilitation and aftercare could contribute to AANZFTA implementation.

Competition

- Review the Competition Chapter text
 - discuss inclusion of new provisions on consumer protection

Government Procurement

Develop a chapter on Government Procurement, to support improved transparency and cooperation in government procurement. The Chapter shall not include any market access obligations.

Trade and Sustainable Development

- Discuss further how economic cooperation on Trade and Sustainable Development issues could be undertaken under the AANZFTA.

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Annex two: Detailed mandate recommendations

General

s9(2)(j)

Rules of origin

s9(2)(j)

Customs procedures

s9(2)(j)

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s9(2)(j)

Services

s9(2)(j)

Investment

s9(2)(j)

Digital Trade / Electronic Commerce

s9(2)(j)

Government procurement

s9(2)(j)

Trade and competition

s9(2)(j)

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s9(2)(j)

Trade and sustainable development

s9(2)(j)

s9(2)(j)

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Cabinet Economic Development Committee

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.

Agreement Establishing the ASEAN Australia New Zealand Free Trade Area Upgrade: Opening Negotiating Mandate

Portfolio **Trade and Export Growth**

On 3 April 2019, the Cabinet Economic Development Committee:

- 1 **noted** that:
 - 1.1 New Zealand is a Party to a free trade agreement with the Association of Southeast Asian Nations (ASEAN) and Australia;
 - 1.2 the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) entered into force for New Zealand in 2010, and now requires upgrading to ensure it remains relevant to changing business and trade practice;
- 2 **approved** the proposals outlined in Annex Two to the paper under DEV-19-SUB-0064 (Annex Two), to guide New Zealand negotiators in the initial phase of the upgrade negotiations;
- 3 **noted** that Annex Two includes proposals for the core issues expected to be covered in this upgrade;
- 4 **noted** that Annex Two includes a proposal that any issues that Annex Two does not address will be dealt with in accordance with New Zealand's existing policy settings, in consultation with relevant agencies;
- 5 **noted** that the costs of negotiating the agreement will be met by the Ministry of Foreign Affairs and Trade, and that Ministers will have the opportunity to consider at a later date any additional costs that may arise from the content of any agreement, including in economic cooperation;

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

- 7 **authorised** the Minister for Trade and Export Growth and other relevant Ministers to approve New Zealand market access offers for the negotiations and other proposals where they are in line with, or do not depart significantly, from the parameters outlined in Annex Two.

Janine Harvey
Committee Secretary

Present:

Hon Kelvin Davis
Hon Grant Robertson (Chair)
Hon Phil Twyford
Hon David Parker
Hon Nanaia Mahuta
Hon Stuart Nash
Hon Iain Lees-Galloway
Hon Jenny Salesa
Hon Damien O'Connor
Hon Julie Anne Genter
Hon Eugenie Sage

Officials present from:

Officials Committee for DEV

Hard-copy distribution:

Minister for Trade and Export Growth

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