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Guide to the Agreement

ASEAN-Australia-New Zealand

Free Trade Agreement

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This Guide outlines the obligations contained in the *Agreement establishing the ASEAN–Australia–New Zealand Free Trade Area*. The Guide was prepared by Australian Government officials and does not form part of the Agreement signed by Australian, New Zealand and ASEAN member governments. This publication is based on the text of the *Agreement establishing the ASEAN–Australia–New Zealand Free Trade Area* as at 27 February 2009.

This publication is a guide intended to provide general background information to the *Agreement establishing the ASEAN–Australia–New Zealand Free Trade Area*. Views offered herein are without prejudice to any legal interpretation of the Agreement by the Australian Government. The information contained in the document does not constitute and is not intended to be legal or commercial advice.

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A Overview

1. The AANZFTA package signed on 27 February 2009 by Australia's Minister for Trade, the Hon. Simon Crean, and his counterpart Ministers from ASEAN and New Zealand, consists of:

- the FTA text, containing commitments on goods, services, investment, temporary movement of natural persons, electronic commerce, intellectual property, economic cooperation and competition policy
- schedules of tariff commitments, containing tariff reduction and elimination commitments, and the associated rules of origin
- schedules of specific services commitments
- schedules of temporary movement of natural persons commitments
- an 'implementing arrangement' containing an agreed work program of economic cooperation projects
- a letter from Australia's Minister for Trade to Vietnam's Minister of Industry and Trade, according recognition of Vietnam's Market Economy Status
- a Memorandum of Understanding on Article 1 (Reduction and/or Elimination of Customs Duties) of the Chapter on Trade in Goods
- an exchange of letters with New Zealand outlining how AANZFTA is to apply between Australia and New Zealand.

2. For further information, see **AANZFTA Fact Sheet – Overview**.

B AANZFTA Preamble and Chapters

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

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

Chapter 2: Trade in Goods

4. The Trade in Goods Chapter contains the key provision for the reduction and/or elimination of tariffs by the Parties. It establishes the framework of rules for trade in goods among the Parties. The Chapter affirms a number of WTO provisions that already govern trade in goods among the Parties and, in some cases, provides for more specific commitments as well as enhanced transparency. This includes provisions covering: national treatment, fees and charges connected with importation and exportation, publication and administration of trade regulations, and import licensing. The Chapter contains a commitment that, consistent with WTO rights and obligations, each Party will eliminate all forms of export subsidies for agricultural goods exported to other Parties. There is also a commitment to review non-tariff measures within two years of entry into force of the Agreement with a view to considering the scope for additional means to increase trade between the Parties.

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

6. With regard to tariffs, the tariff schedules in Annex 1 to the Agreement provide for the reduction and elimination of tariffs over a transition period. Tariffs will be eliminated on a high percentage of tariff lines in all AANZFTA Parties. The tariff elimination commitments will be phased-in from early in the transition period, and many tariffs currently at possibly prohibitive levels will be reduced to levels that should allow trade to flow within a few years. Exclusions from tariff commitments have been kept to a minimum, and generally do not exceed 1% of a country’s national tariff lines. For those tariff lines where tariffs are not eliminated, but which are not in the exclusion category, tariffs will either be bound at the base (i.e. 2005) tariff rate or subject to tariff reductions.

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

8. For further information, see **AANZFTA Fact Sheet – Overview of Tariff Outcomes**.

Chapter 3: Rules of Origin

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

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

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

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

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

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

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

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

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

Chapter 4: Customs Procedures

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

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

20. The Chapter provides for the establishment of inquiry points and publication of all statutory, regulatory and administrative requirements, either on the internet or in print. There is also a requirement for Parties to ensure importers have access to administrative review within customs administrations or, where applicable, access to further administrative or judicial review of determinations.

Chapter 5: Sanitary and Phytosanitary Measures

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

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

Chapter 6: Standards, Technical Regulations and Conformity Assessment Procedures

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

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

Chapter 7: Safeguard Measures

25. The Chapter on Safeguard Measures establishes arrangements for safeguard measures which may be applied during the transitional period, i.e. while tariffs are being reduced and/or eliminated. Safeguard measures may only be applied to the extent and for such time as may be necessary to prevent or remedy serious injury and to facilitate adjustment during the transitional period. The transitional period is defined as the period from entry into force of the Agreement until three years after the customs duty on a particular good is eliminated or reduced to its final commitment, in accordance with a Party's schedule of tariff commitments. There are limits on the length of time for which a safeguard measure may be applied (two years, with a possible extension for one year), and limits in respect of any repeat application of a safeguard measure. In addition, the Chapter sets out procedures and conditions for compensation or the suspension of substantially equivalent concessions by Parties affected by the application of transitional safeguard measures.

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

27. Provisions setting out procedures for notification, investigation, application of provisional safeguard measures, and review of measures mirror relevant provisions of the General Agreement on Tariffs and Trade 1994 (GATT) Article XIX and the WTO Agreement on Safeguards. The Chapter also affirms the Parties' rights and obligations in relation to global safeguard measures applied in accordance with the WTO Agreement.

Chapter 8: Trade in Services

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

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

30. Consistent with the GATS, the market access obligation requires a Party to specify in its Schedule any limitations on market access where it has undertaken commitments in a sector (e.g. limitations on foreign equity, restrictions on the organisational form of commercial presence, number of service suppliers or total value of services transactions or assets). The national treatment obligation requires that, in sectors where commitments have been undertaken, each Party shall accord to services and service suppliers of another Party treatment no less favourable than it accords to its own like services and service suppliers, subject to any specified conditions and qualifications. Like the GATS, there is also provision for a Party to make additional commitments relating to qualifications, standards or licensing matters. A Party may modify its specific commitments, subject to compliance with formal procedures for notification of, and consultation with, other Parties and, if necessary, compensatory adjustments.

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

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

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

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

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

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

36. For further information, see **AANZFTA Annexes: Specific Services Commitments**.

Annex on Financial Services

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

Annex on Telecommunications

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

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

40. For further information, see **AANZFTA Fact Sheet – Telecommunications**.

Chapter 9: Movement of Natural Persons

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

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

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

44. For further information, see **AANZFTA Annexes: Movement of Natural Persons**.

Chapter 10: Electronic Commerce

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

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

Chapter 11: Investment

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

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

- apply fair and equitable treatment and full protection and security (the minimum standard of treatment at customary international law) to investments;
- ensure non-discriminatory treatment in relation to measures for investors that have suffered losses due to armed conflict, civil strife or states of emergency;
- allow funds of an investor relating to an investment to be transferred freely and without delay, subject to specified exceptions;

- ensure that any expropriation or nationalisation of an investment is only for a public purpose, applied in a non-discriminatory manner, is in accordance with due process of law and is accompanied by payment of prompt, adequate and effective compensation (the Chapter includes an Annex to elaborate the nature and scope of “indirect” expropriation).

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

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

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

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

53. For further information, see **AANZFTA Fact Sheet – Investment**.

Chapter 12: Economic Cooperation

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

55. The parties to AANZFTA will contribute to the implementation of the work program taking into account their different levels of development and capacities. The work program is to be reviewed by the FTA Joint Committee to assess its overall effectiveness. The Chapter is not subject to AANZFTA dispute settlement provisions.

56. For further information, see **AANZFTA’s Associated Documents: Implementing Arrangement**.

Chapter 13: Intellectual Property

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

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

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

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

Chapter 14: Competition

61. The Chapter on Competition establishes a framework for cooperation in the promotion of competition, economic efficiency, consumer welfare and the curtailment of anti-competitive practices. The Chapter covers the establishment of contact points, exchange of information and experience on the promotion and enforcement of competition law and policy, and exchanges of officials between Parties for training purposes and to participate in advocacy programs. There is also provision for Australia and New Zealand to assist ASEAN countries with implementation of the Chapter, subject to appropriate identification of competition policy-related needs and availability of resources. The Chapter is not subject to AANZFTA's dispute settlement provisions.

Chapter 15: General Provisions and Exceptions

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

Chapter 16: Institutional Provisions

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

Chapter 17: Consultations and Dispute Settlement

64. The Chapter on Consultations and Dispute Settlement establishes a process for consultations and for settlement of disputes arising under the FTA. The Chapter does not apply to disputes arising under Chapter 5 (Sanitary and Phytosanitary Measures), Chapter 10 (Electronic Commerce), Chapter 12 (Economic Cooperation) and Chapter 14 (Competition). If a dispute arises on a matter under the FTA and under another international agreement to which the disputing parties are party (such as the WTO), the complaining party has a choice of forum. The Chapter sets out procedures and timelines for consultations on disputes arising under the FTA and for establishment, composition, proceedings and reports of arbitral tribunals. Time periods specified in the Chapter may be modified by mutual agreement of the Parties to a dispute.

Chapter 18: Final Provisions

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

C AANZFTA Annexes:

1. Tariff Commitments

66. See **AANZFTA Fact Sheet – Overview of Tariff Outcomes.**

2. Product Specific Rules and Rules of Origin

67. See **AANZFTA Fact Sheet – Rules of Origin.**

3. Specific Services Commitments

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

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

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

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

72. Some examples include "WTO plus" market access improvements in (see below for more details of 'WTO plus' gains in sectors of Australian priority trade interest):

- professional services from Malaysia (accounting, architecture and engineering), Philippines (accounting, engineering) and Vietnam and Indonesia (legal);
- higher education services from Laos, Malaysia, the Philippines, Indonesia and Vietnam (including an MFN commitment from Vietnam in relation to future ASEAN-wide FTAs on the cross-border supply of higher education services);

- telecommunications - all ASEAN countries have agreed, subject to transitional arrangements in some cases, to pro-competitive regulatory disciplines to ensure that foreign suppliers can operate on a level-playing field with major domestic suppliers, which may own or control essential network facilities and infrastructure.
- financial services from the Philippines (banking), Indonesia (insurance and banking) and Malaysia (other financial services)
- construction services from Indonesia, Malaysia and Brunei;
- mining and energy related services from the Philippines and Thailand
- temporary entry of business persons from Indonesia (intra-corporate transferees), Malaysia and Thailand (particularly in the education sector) and the Philippines (particularly in some professional services).

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

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

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

- encourage competent bodies to enter into negotiations for recognition of professional qualifications, licensing and registration requirements and procedures;
- ensure that the use of business names under which service suppliers normally trade in their respective home country markets is not unduly restricted;
- publish measures of general application affecting trade in services on the Internet, to the extent possible;
- endeavour to provide interested persons of other Parties with a reasonable opportunity for comment prior to adoption of new measures;
- provide license applicants with an opportunity to remedy incomplete applications, status reports on the progress of applications on request, and reasons for the denial or termination of applications;

- publish information on temporary entry requirements, process completed applications for temporary entry and stay promptly and to notify applicants, on request, about the status or outcome of the application;
- observe minimum standards of procedural transparency, such as reasonable notice of administrative processes (e.g. licensing and rule-making in specific cases) and opportunities to present facts and arguments before final administrative action;
- afford services suppliers with a commercial presence certain post-establishment investment protections, as set out in the Investment chapter, including investor-state dispute settlement.

Key “WTO plus” gains from ASEAN countries

76. The following is a summary of key gains in services commitments.

Professional services

- In **accounting** services, **Malaysia** has committed to aggregate 40 per cent foreign equity participation in locally registered partnerships or Malaysian accounting firms; **Laos** has committed to allow temporary authorisation of Australian accountants; and the **Philippines** has bound arrangements under which foreign accountants can practice in the Philippines under temporary permits issued by its Professional Regulation Commission.
- In **legal** services, **Indonesia** has made a commitment to permit foreign lawyers to work or take part in Indonesian law firms as employees or experts in international law¹ and **Vietnam** has committed to allow foreign lawyer organisations to employ Vietnamese lawyers and for foreign lawyers to practice in Vietnamese law firms to advise on foreign/international law.
- In **engineering** services, **Malaysia** has committed to 30 per cent foreign equity participation in multidisciplinary joint ventures; **Laos** has committed to allowing joint ventures with up to 70 per cent foreign equity participation for the construction of manufacturing, water supply and sanitation turnkey projects; and the **Philippines** has bound arrangements under which foreign civil, mechanical, metallurgical, and sanitary engineers can practice in the Philippines under temporary permits issued by its Professional Regulation Commission.
- In **architectural** services, **Brunei** has committed to allow 40 per cent foreign equity in architectural firms; **Malaysia** has committed to 30 per cent foreign equity participation in multidisciplinary joint ventures; **Laos** has committed to allow 100 per cent foreign equity in landscape architectural firms; and the **Philippines** has bound arrangements under which foreign landscape architects can practice in the Philippines under temporary permits issued by its Professional Regulation Commission.

¹ The share of foreign lawyers in Indonesian law firms must not exceed 20 per cent and must be limited to five foreign lawyers per firm.

Education services

77. In **higher** education:

- **Laos** has committed to allowing foreign service suppliers to establish a commercial presence with up to 100 per cent foreign equity.
- **Malaysia** has committed to allowing joint ventures with domestic institutions with foreign equity limit of up to 51 per cent (subject to relevance of courses to Malaysia's education objectives). Malaysia has also made commitments providing for temporary entry and stay of lecturers and experts and professionals (subject to numerical caps) and contractual service suppliers in higher education for periods of stay of up to ten years.
- The **Philippines** has committed to allowing 40 per cent foreign equity in establishment of education institutions to engage in twinning programs in the fields of agriculture, industrial, environment, natural resource management, engineering, architecture, science and technology and health-related programs and to allowing temporary entry and stay of experts in these fields for periods of stay of one year, which may be extended.
- **Indonesia** has committed to allowing foreign education suppliers, in cooperation with local partners, to establish in the cities of Jakarta, Surabaya, Bandung, Yogyakarta and Medan; and
- **Vietnam** has committed to reduce the experience requirement for foreign teachers in higher, secondary (for students that have completed nine years of general education), and other education services from five to three years and to expand the (WTO-committed) "fields of study" that can be delivered by foreign education suppliers.² Vietnam has also committed to provide Australian services suppliers with the same treatment afforded to services suppliers from any third country in the event that Vietnam makes commitments in cross-border supply of higher education services, as part of an ASEAN-wide FTA, that go beyond those it has made in AANZFTA.

78. In **other education** services **Thailand** has committed to allowing 49 per cent foreign equity in foreign language tuition services and to allowing temporary entry for teachers employed by firms established in the secondary, higher, adult education (professional and short course), and foreign language tuition services sub-sectors (period of stay of one year with possibility of extension). **Malaysia** has committed to allowing joint ventures with 49 per cent foreign equity in primary, secondary (general and technical/vocational) and other education services.

² Agriculture, architecture, building, business administration, management, computer science, construction, information systems, dental services, economics, education, engineering, environmental, surveying, health, community services, land and marine resources, animal husbandry, language studies, law, legal studies, life sciences, manufacturing, mathematics, medical science, medicine, multi-field education, nursing, pharmacy, physical sciences, science, services, culinary and hospitality, transport, veterinary science, visual and performing arts.

Financial services

79. In **banking** services, the **Philippines** and **Indonesia** have committed to foreign equity of 55 and 51 per cent respectively for acquisition of an existing domestic bank. Indonesia has also increased by six, the number of cities in which foreign banks and joint venture banks may open offices (Padang, Manado, Balikpapan, Banda Aceh, Jayapura, Ambon). **Laos** has committed to maintaining no market access or national treatment limitations on the supply of banking services through commercial presence or cross-border supply.

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

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

Telecommunications

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

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

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

84. For further information, see **AANZFTA Fact Sheet – Telecommunications**.

Construction services

85. In construction services, **Indonesia** and **Malaysia** have committed to allowing joint ventures with foreign equity of 55 and 49 per cent respectively. **Brunei** has committed to allow foreign equity in construction firms of 50 per cent. **Laos** has committed to allowing 100 per cent foreign owned firms to operation in its construction sector.

Mining and Energy related services

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

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

Environmental services

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

Computer and related services

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

Tourism and travel services

90. The **Philippines** has no market access or national treatment limitations in relation to accommodation facilities, including hotels and resorts; **Malaysia** has committed to allowing aggregate foreign equity of 49 per cent in joint ventures in hotel and restaurants; food serving; travel agencies and tour operators; and **Brunei** has committed to allowing foreign equity of up to 70 per cent in joint ventures in tourism accommodation facilities.

Other horizontal commitments

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

- **Malaysia** has committed to a higher threshold of RM10m (WTO level is RM5m), which will trigger approval requirements for the acquisition, merger or takeover of a Malaysian business by foreign interests.

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

Australia's Schedule of Services Commitments under AANZFTA

92. Australia's schedule of services commitments under AANZFTA contains various improvements on its existing WTO commitments. These take the form of new commitments, either at the horizontal or sectoral level, or amendments to existing WTO commitments. Specifically, these "WTO plus" improvements are as follows.

Horizontal commitments

93. The binding of monetary thresholds for notification and approval of foreign investment in new businesses (\$A10 million) and acquisitions of existing businesses (\$A50 million).

Sectoral commitments

- Legal services, including additional commitments on limited licensing for foreign lawyers
- Accounting, auditing and book-keeping services
- Landscape architectural services
- Registered nurses and registered midwives
 - The commitment relates solely to temporary entry and is aimed at ensuring coverage of these occupations under Australia's commitment on "contractual service suppliers" in its Movement of Natural Persons schedule (see section C4 of this Guide for more detail).
- Computer and related services
- Mining related services (services incidental to mining and related scientific and technical consulting services)
- Construction services

- Environmental services
 - Financial services
 - This clarifies, inter alia, that Australia’s existing commitments cover “remittance centres”
 - Freight logistics services
 - This encompasses new or improved commitments in retail services; cargo handling for road, rail and air transport; maritime cargo handling; maritime customs clearance; maritime agency services; road transport and rail transport; storage and warehouse services; freight transport agency services; other supporting and auxiliary transport services.
 - Other education services, covering tuition and testing in English and other languages, and tuition in cuisine and traditional therapies (including massage and acupuncture), music, dance and martial arts.
 - Telecommunications, including “WTO plus” pro-competitive regulatory disciplines (see Section B of Guide for more detail)
 - Health-related and social services
 - This covers minor amendments to existing WTO commitments relating to chiroprodists and podiatrists.
94. For further information, see **AANZFTA Fact Sheet – Services**.

C AANZFTA Annexes:

4. Movement of Natural Persons

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

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

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

Key "WTO Plus" Gains from ASEAN countries

98. At this stage, the commitments of most ASEAN countries in their schedules to the MNP chapter relate only to service suppliers, consistent with the WTO GATS framework. Nevertheless, most ASEAN countries have improved on their GATS commitments as follows.

99. **Indonesia** has made a general commitment to allow entry and stay of intra-corporate transferees (“directors, managers and technical experts”) for up to six years and business visitors for 60 days, with possible extension to 120 days.

- There are some sectoral exceptions to these general commitments. For example, the improvement on WTO commitments in relation to “managers” does not apply in relation to computer and related services and insurance services and the improvement on “technical experts” does not apply to banking services.

100. **Laos** has made provision for business visitors (60 day period of stay) and intra-corporate transferees - executives, managers and specialists (six month period of stay with possibility of renewal for a further period of one year). **Malaysia** has increased the period of stay for intra-corporate transferees, specialists and other professionals to enter and stay for a maximum of ten years, although there are some exceptions to this commitment, including professional services, telecommunications and banking services. **Thailand** has clarified that its “business visitor” commitments (90 day period of stay) cover both “service sellers” and “persons responsible for establishing a commercial presence” and has committed to an increased period of stay for intra-corporate transferees (up to four years). **Singapore** has extended its commitments for intra-corporate transferees to all services sectors, not just those listed in its services schedule (as per its WTO GATS commitments). In addition, it has committed to a longer length of stay for intra-corporate transferees under AANZFTA than under the GATS, namely, a maximum of eight years, as distinct from five under the GATS.

101. The **Philippines** has made commitments that cover not only services suppliers, but also goods sellers and investors. These include provision for:

- business visitors (59 days with possible extension of up to one year);
- intra-corporate transferees (one year period of stay, which may be extended) and investors (one year period of stay, which may be extended);
- contractual service suppliers, including persons in technical advisory or supervisory positions and professionals (accountants, landscape architects and certain engineering sub-sectors), subject to the issue of temporary permits by the Filipino Professional Regulation Commission (one year period, which may be extended); and
- specialists under contract as part of a higher education twinning or bridging program, in the fields of nursing, midwifery, library and laboratory enrichment, agriculture, industrial, environment, natural resource management, engineering, architecture, science and technology and health-related programs (one year period, which may be extended).

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

Australia’s MNP commitments under AANZFTA

103. Australia has made new commitments on MNP under AANZFTA that go beyond its existing WTO commitments on temporary entry for service suppliers. Specifically, these “WTO plus” improvements are as follows:

- longer period of stay for **intra-corporate transferees** (initial period of stay of up to four years, with provision for extension up to a maximum of 14 years).
- new categories of **business visitors**, namely, investors, employees of investors and goods sellers covering all sectors of the economy, not just services sectors (three month maximum period of stay);

- new category of **contractual service suppliers**, defined as natural persons with trade, technical or professional skills
 - entry and stay is subject to employer sponsorship;
 - the person seeking entry must be assessed as having the necessary qualifications, skills and work experience accepted as meeting the Australian standards for the nominated occupation, which must be on the gazetted list. Labour market testing may be required for some occupations;
 - period of stay of up to 12 months, with provision for extension.
- Full **working rights for spouses of long term entrants** (intra-corporate transferees; independent executives; and contractual service suppliers).

104. For further information, see **AANZFTA Fact Sheet – Movement of Natural Persons**.

D AANZFTA's Associated Documents:

1. Implementing Arrangement containing agreed Work Program of Economic Cooperation Projects

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

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

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

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

108. For further information, see **AANZFTA Fact Sheet – Economic Cooperation.**

2. Recognition of Vietnam's Market Economy Status

109. Vietnam is accorded WTO Market Economy Status (MES) as part of the AANZFTA package. This change puts Vietnam on the same footing as other WTO Members in relation to dumping, and subsidy and countervailing, investigations, as Australia agrees to not have recourse to special procedures allowed under Vietnam's terms of accession to the WTO.

3. Memorandum of Understanding on Article 1 (Reduction and/or Elimination of Customs Duties) of the Trade in Goods Chapter

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

4. AANZFTA and the CER Relationship

111. Australia and New Zealand have exchanged letters setting out an agreement to limit application of the AANZFTA between each other, given the Australia-New Zealand Closer Economic Relations Trade Agreement and its related agreements and understandings (CER).

112. The side-letters confirm that the introductory chapter of AANZFTA and the AANZFTA tariff commitments and associated rules of origin will apply between the two countries (i.e. exporters will be able to take advantage of regional rules of origin under AANZFTA in trans-Tasman trade provided that the AANZFTA Tariff Schedule is used). The general provisions and exceptions chapter of AANZFTA will apply to the extent that AANZFTA is applied between Australia and New Zealand.

113. Australia and New Zealand have further agreed that there will be no trans-Tasman application of AANZFTA's chapters on goods safeguards, investment and dispute settlement.

114. Australia and New Zealand will consider the merits of having other chapters of the AANZFTA apply between each other. In the interim, those other chapters will not apply between Australia and New Zealand.

E Background

115. Negotiation of the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) was the first plurilateral free trade agreement (FTA) negotiation embarked upon by Australia. It was also the first time Australia and New Zealand were involved jointly in negotiating an FTA with third countries and the first time ASEAN embarked on comprehensive FTA negotiations covering all sectors simultaneously.

116. The AANZFTA negotiations originated in the suggestion made by the former Thai Deputy Prime Minister, Mr Supachai, at the National Trade and Investment Outlook Conference in Melbourne in November 1993, to explore the prospects for a link between the ASEAN Free Trade Area (AFTA) and the Australia-New Zealand Closer Economic Relations (CER) Trade Agreement. A High Level Task Force report in 2000, entitled 'The Angkor Agenda', argued in favour of the formation of a free trade area between AFTA and CER. The report concluded that establishing an AFTA-CER free trade area was not only feasible but also advisable if both ASEAN and CER were to keep pace with global developments. Economic modelling by the Centre for International Economics at that time indicated gains of US\$48.1 billion of GDP (US\$19.1 billion for Australia). The report was produced against the background of: the 1997-98 East Asian Financial Crisis; the increasing competitive challenge from rapidly emerging economies such as China and India; and the global spread of free trade agreements (FTAs) that accelerated following the failure of the 1999 Seattle World Trade Organization (WTO) Ministerial meeting to launch a new WTO Round.

117. For various reasons, the AFTA-CER FTA proposal was not accepted. Instead, in September 2002, Ministers signed an AFTA-CER Closer Economic Partnership (CEP) agreement. The CEP aimed to deepen the level of economic integration between Australia-New Zealand and the countries of ASEAN through a work program focused on trade facilitation and capacity building.

118. ASEAN's interest in taking the CEP to a higher level was announced in April 2004. The formal decision to launch AANZFTA negotiations was taken by leaders at the ASEAN-Australia-New Zealand Commemorative Summit in November 2004. Leaders agreed to a comprehensive set of 'Guiding Principles' for the negotiations. The Guiding Principles committed countries to negotiate an agreement that covers goods, services and investment; the progressive elimination of all forms of barriers to trade and investment; and full implementation within ten years. The negotiations subsequently concluded at the ASEAN Economic Ministers-CER Trade Ministers meeting in August 2008, although it was also agreed that Australia would continue negotiating bilaterally with Indonesia and Malaysia with a view to improving automotive tariff commitments from those countries and to finalising those negotiations in time for AANZFTA to be ready for signature in December 2008. Although the negotiations were conducted between Australia, New Zealand and ASEAN as an entity, the completed FTA has resulted in separate market access commitments for Australia, New Zealand and each of the ten ASEAN member countries.

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

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

121. AANZFTA has the potential to generate broader benefits than a series of bilateral FTAs, by creating opportunities for Australian products to tap into regional supply chains.

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