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**Department of Foreign Affairs and Trade**

**THE FIRST PROTOCOL TO AMEND THE AGREEMENT  
ESTABLISHING THE ASEAN-AUSTRALIA-NEW ZEALAND  
FREE TRADE AREA (AANZFTA)**

**ISSUES PAPER INVITING PUBLIC COMMENT ON  
IMPLEMENTATION OF THE FIRST PROTOCOL**

**25 AUGUST 2014**

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**I. Introduction**

1. The Minister for Trade and Investment, Mr Andrew Robb, and Ministers from the other eleven Parties to the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA), signed the First Protocol to Amend AANZFTA in Nay Pyi Taw, Burma, on 26 August 2014, at the occasion of the Nineteenth ASEAN Economic Ministers – Closer Economic Relations (AEM-CER) Consultations.
2. The First Protocol will now be subject to each of the AANZFTA Parties' domestic processes for acceptance of treaties and will enter into force only

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once these processes have been concluded for Australia, New Zealand and at least four members of the Association of South East Asian Nations (ASEAN).<sup>1</sup>

3. This issues paper summarises the First Protocol, explains what it means for business, and invites public input to assist the Government in discussions with the other AANZFTA Parties on arrangements for ensuring that the First Protocol is implemented in a manner that is responsive to business needs and facilitates trade.

## **II. The First Protocol**

4. The First Protocol to amend AANZFTA will:
  - a) Reduce the information requirements imposed on business when completing the origin documentation (a certificate of origin (COO)) needed to claim AANZFTA tariff treatment when importing goods into an AANZFTA Party. One of the existing information requirements – the FOB value of the exported goods – has been a problem for some businesses as they regard this information as commercial-in-confidence.
  - b) Simplify the presentation of the Rules of Origin (ROO) by removing the Agreement's existing Annex 2 of Product Specific Rules (PSRs), which only lists the ROO for a sub-set of products, and replacing it with a revised Annex 2 consisting of a consolidated list of PSRs that covers all products.
  - c) Streamline the process by which the Parties make any agreed administrative changes to the list of data requirements to be included on the COO. Future changes will be able to be made without the need for a treaty amendment and this will allow the Parties to respond in a more timely fashion to any future problems identified by business.
  - d) Use the consolidation of the ROO into a single Annex to also implement HS 2012 in AANZFTA's ROO. Once the Protocol is fully implemented, business will only need to refer to the current HS 2012 when making use of AANZFTA to import or export goods.
  - e) Make clear the process for future introduction of an updated HS into AANZFTA's ROO, with the aim of making this more efficient and timely.

<sup>1</sup> The 10 member states of ASEAN are Brunei, Burma, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand and Vietnam.



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- f) Provide for the Parties to work together to agree on methodologies and procedures to ensure timely updating (“transposition”) of each AANZFTA Party’s schedule of tariff commitments from one HS into an updated HS. This is also aimed at making the process more efficient and timely.
- 5. A more detailed summary of the changes to AANZFTA contained in the First Protocol is provided in the Annex to this paper.

### III. What the First Protocol Means for Business

- 6. The amendments to AANZFTA made by the Protocol should assist business usage of the Agreement when trading goods in the region:
  - a) The removal of the FOB value requirement from the COO, for most shipments, will assist businesses which are currently reluctant to use the Agreement because they view this requirement as forcing them to provide commercial-in-confidence information to their customers.
  - b) The consolidation of the ROO into a single PSR Annex should make it easier for businesses to understand the ROO and identify the rules that apply to the products of interest to them. This change will make AANZFTA more consistent with the approach taken in Australia’s other FTAs. It will also simplify the information about the origin of the goods which exporters need to include on the COO form.
  - c) The updating of the ROO into HS 2012 will simplify the trading process and rectify the current situation where AANZFTA’s ROO are still in HS 2007.
    - i. Currently businesses making use of AANZFTA need to be familiar with both the previous version of the Harmonized System (HS), HS 2007, and the present version, HS 2012.<sup>2</sup> Businesses need to use HS 2012 when filling out export and import declarations, but have to determine that goods meet AANZFTA’s ROO requirements using HS 2007 and complete the COO in HS 2007.

<sup>2</sup> The Harmonized Commodity Description and Coding System or HS is an internationally harmonized nomenclature for classifying and differentiating between goods for the purposes of levying tariffs, specifying rules of origin and collecting trade statistics. It is internationally harmonized up to the six-digit level. It is updated by the World Customs Organization (WCO) every five years to maintain its relevance to changes in technology and trade patterns. The current HS used by Australia and most other countries is HS 2012, and the previous HS was HS 2007.



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- ii. Once the Protocol is fully implemented business will only need to refer to the current HS 2012 when importing or exporting goods.
- 7. The amendments to AANZFTA also provide improvements in the administrative arrangements by which the Parties manage the Agreement which should bring ongoing benefits to business:
  - a) Any future problems that business identifies with the data requirements on the COO will be able to be addressed more quickly, without the need for treaty amendments.
  - b) The five yearly updating of the ROO and tariff schedules into an updated HS should be done in a more efficient and timely manner.

#### **IV. Why was the First Protocol Negotiated?**

- 8. AANZFTA is the only one of Australia's FTAs that has required the inclusion of the FOB value in the origin documentation that importers need to have when claiming FTA tariff treatment at the time of importation. During the negotiation of AANZFTA, advice from Australian industry had been to oppose the inclusion of the FOB value. Unfortunately, ASEAN was not prepared to agree to this, and Australia reluctantly agreed to include the FOB value requirement in the final Agreement.
- 9. Following AANZFTA's entry-into-force, both the Department of Foreign Affairs and Trade (DFAT) and the Australian Customs and Border Protection Service began receiving representations from companies expressing concern that they were unable to make use of AANZFTA's tariff commitments because they, or other companies with which they were involved in business arrangements, were not prepared to include the FOB value on the COO as this would provide other companies with information which was commercially sensitive.



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**BOX 1****FOB on the COO – What’s the issue under AANZFTA?**

Retailer *Just Boots*, in Australia, places an order for boots with a distributor *We Deliver*, also located in Australia. *We Deliver* then places an order with his supplier *Boots R Us*, located in another AANZFTA Party. *Boots R Us* confirms the order and raises an invoice for \$10,000, being for the sale of the boots to *We Deliver*.

*We Deliver* requests that the boots be delivered directly to *Just Boots* and arranges with the company that *Just Boots* will be the importer of the goods. *We Deliver* then raises a separate invoice for the sale of the boots to *Just Boots*.

As *Boots R Us* is located in a country which is a Party to AANZFTA, if the goods meet AANZFTA’s rules of origin requirements, the boots are eligible for duty free importation into Australia with a valid AANZFTA Certificate of Origin (COO).

*Boots R Us* sends the COO to *We Deliver*. However, *We Deliver* does not want to forward the COO to *Just Boots* to import the boots using AANZFTA as the FOB value on the COO reveals commercial-in-confidence information to the retailer. Therefore *Just Boots* is unable to claim AANZFTA tariff treatment as it is not in possession of an AANZFTA COO when it imports the boots.

10. ASEAN countries have also been receiving complaints from companies about the FOB value requirements. As a result they have finally agreed with Australia (and New Zealand) to remove the FOB value requirement except in cases where the ROO used by the exporter is an RVC rule.
11. Unfortunately, implementation of this reform has been delayed as it requires an amendment to the treaty. The Parties have agreed to use this amendment process to also address the other issues identified in paragraph 4 above, as experience with AANZFTA’s implementation has highlighted that these issues are also adversely affecting the ease with which business can understand and use the Agreement.



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## **V. Discussions on the Implementation of the First Protocol**

12. AANZFTA Parties are planning to meet in late October 2014 to discuss arrangements to implement the Protocol. The Parties want to ensure that the Protocol is implemented in a manner that facilitates trade and minimises any confusion or complexity for business during the change-over to the revised arrangements.
13. Preliminary discussions by the Parties indicate that the implementation of the Protocol will probably require a revised COO form with text changes to the overleaf notes to reflect:
  - a) that the FOB requirement has been removed except when claiming origin on the basis of an RVC rule; and
  - b) the simplification in the origin indicators required for Box 8 of the COO form due to the use of a consolidated PSR schedule in Annex 2 of the amended Agreement.
14. It is not yet clear whether any changes to the front of the COO form will be needed, although preliminary discussions suggest that this may be unlikely. It will be very important for businesses using AANZFTA to familiarise themselves with the changes, once agreed by AANZFTA Parties, to ensure that they fill out the revised COO form correctly.
15. The Parties are also discussing the timing for introducing the revised COO form, which will coincide with introducing use of the updated PSR in HS 2012. There are clearly advantages if all Parties could make the change to the use of the revised COO form, and the use of the updated PSR in HS 2012, at the same time. However, this will not be possible as:
  - a) Cambodia and Myanmar have a two year transition period, and will not introduce the change to the FOB value requirement on COOs until two years after the Protocol's entry-into-force. This means that businesses importing or exporting goods from Cambodia and Myanmar will still have to include the FOB value on all COOs. However, the volume of trade between Australia and these two countries is relatively small so the number of businesses affected should not be very great.
  - b) It is likely that some Parties could take some time to complete their domestic approval processes.



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16. Waiting for all Parties to complete their domestic approval processes, and for the Protocol to enter into force for all Parties, before implementing the revised COO form could mean a lengthy and uncertain period before the changes were introduced. Therefore, the Parties are unlikely to agree to this. However, one issue the Parties will discuss is whether the changeover to the revised COO forms should be done at the same time by a critical mass of the Parties.
17. DFAT is consulting closely with Australia's two authorized bodies for issuing AANZFTA COOs, the Australian Chamber of Commerce and Industry (ACCI) and the Australian Industry Group (AI Group), on issues that might arise during implementation of the Protocol. The two authorised bodies will have a key role in the implementation of the Protocol and in ensuring that correct COOs are issued to Australian exporters.

## **VI. Issues on which Public Comment is Invited**

18. DFAT would welcome comment from companies or other interested parties on factors which should be taken into account by the Parties when deciding on arrangements to ensure effective implementation of the Protocol. These comments could, for example, address issues such as:
  - a) Changes to the AANZFTA COO form, including to the overleaf notes.
  - b) Implications of the transition period for implementing the First Protocol, including the fact that some countries will still be using the current AANZFTA COO form (using HS 2007) when issuing COOs while other countries will be using the revised AANZFTA COO form (using HS 2012).
  - c) Treatment of goods in transit at the time the revised AANZFTA COO form is initially introduced.
  - d) Suggestions on steps the Parties might take to assist business in implementing the changes provided for in the First Protocol.
  - e) Any other concerns or comments business might have about the issues raised in this paper.



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19. Submissions or other public input on the issues raised in this paper can be sent to:

a) Email address: [asean.fta@dfat.gov.au](mailto:asean.fta@dfat.gov.au)

Please include “AANZFTA Protocol – Public Input” in the subject heading of the email.

b) Mail address:

Coordinator  
South-East Asia Goods Branch  
Free Trade Agreement Division  
Department of Foreign Affairs and Trade  
BARTON ACT 0221

20. To ensure that these public inputs can be taken to account in preparatory discussions by the Parties, any comments should be received no later than 10 October 2014.

21. Questions about the issues discussed in this paper, or requests for further information, can also be sent to email address [asean.fta@dfat.gov.au](mailto:asean.fta@dfat.gov.au)

22. Further information about AANZFTA’s provisions, including its current ROO and COO requirements, can be found in the booklet “Making Use of AANZFTA to Export or Import Goods”, available on the DFAT website at: [www.dfat.gov.au/fta/aanzfta](http://www.dfat.gov.au/fta/aanzfta)



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## ANNEX

## SUMMARY OF THE FIRST PROTOCOL

The First Protocol to amend AANZFTA will:

- A. Remove, for most shipments, the requirement for the FOB value to be included by the exporter on the origin documentation needed to be given to the importer if the latter is to claim AANZFTA tariff treatment when importing goods into an AANZFTA Party.
- Currently, the FOB value needs to be included on the certificate of origin (COO) that is required to claim AANZFTA tariff treatment when importing goods. Exporters<sup>3</sup> from Australia and New Zealand have the option of not including the FOB value on the COO which they need to obtain from an authorised body, but in this case include it in a separate Exporter Declaration which is provided with the COO to the importer of the goods.
  - The First Protocol will amend AANZFTA to provide that the FOB value will only need to be included on the COO, or in a separate Export Declaration in the case of exporters from Australia and New Zealand, in cases where the exporter is claiming AANZFTA originating status on the basis of a value-added rule of origin (i.e. a regional value content (RVC) rule). The FOB value will not need to be provided in cases where origin is claimed on the basis of the wholly obtained rule, or the change in tariff classification (CTC) rule, or a specific process rule.
- B. Simplify the presentation of the Rules of Origin (ROO), which should assist business in understanding them and in completing the COO.
- Currently, AANZFTA's ROO are a combination of:
    - an Annex setting out product specific rules (PSR) that apply to those products listed in the Annex; and
    - a general rule that applies to those products not listed in the Annex. The general rule is an option of meeting either (a) an RVC of 40 per cent, with the final process of production being performed in an AANZFTA Party, or (b) a CTC requirement that all

<sup>3</sup> The manufacturer, producer or exporter of the goods, or an authorised representative, can apply for a COO. For simplicity the Issues Paper refers to “exporters” only.



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non-originating materials used in the production of the good have undergone a change in tariff heading (i.e. at the four-digit level of the Harmonized System (HS)<sup>4</sup> within an AANZFTA Party.

- The First Protocol will amend AANZFTA to make it consistent with Australia’s other FTAs by removing the reference to a general rule and listing the ROO applying to all products in a consolidated PSR Annex.
- C. Provide that in future the Parties will be able to make any agreed administrative changes to the list of data requirements to be included on the COO more expeditiously, and without the need for a treaty amendment. This will allow the Parties to respond in a more timely fashion to any future problems identified by business.
- D. Use the consolidation of the ROO into a single Annex to also implement HS 2012 in AANZFTA’s ROO.
- Currently, exporters need to ensure that goods, which they claim are AANZFTA originating, comply with ROO set out using the previous version of the HS, HS 2007, and the details on the AANZFTA COO also need to be in HS 2007. However, when importing these goods into an AANZFTA Party, importers need to complete the import declaration in the current version of the HS, HS 2012. This introduces unnecessary complexity into the trading process and could lead to traders inadvertently making mistakes when claiming AANZFTA tariff preferences.
  - The Protocol will provide for ROO in HS 2012 so that exporters and importers will only need to use the current HS, and the COO and the import declaration will both be in the same HS.
- E. Make clear the process for future introduction of an updated HS into AANZFTA’s ROO. This introduction (“transposition” of the ROO from one HS into an updated HS) shall be:
- Carried out without impairing existing commitments;

<sup>4</sup> The Harmonized Commodity Description and Coding System or HS is an internationally harmonized nomenclature for classifying and differentiating between goods for the purposes of levying tariffs, specifying rules of origin and collecting trade statistics. It is internationally harmonized up to the six-digit level. It is updated by the World Customs Organization (WCO) every five years to maintain its relevance to changes in technology and trade patterns. The current HS used by Australia and most other countries is HS 2012, and the previous HS was HS 2007.



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- Completed in a timely manner; and
  - Promptly published following its adoption by the FTA Joint Committee.<sup>5</sup>
- F. Provide for the Parties to work together to agree on methodologies and procedures to ensure timely updating (“transposition”) of each AANZFTA Party’s schedule of tariff commitments from one HS into an updated HS.
- The timely updating of the tariff schedules is important in facilitating business use of the Agreement.
  - The Protocol amends the Agreement to provide that the transposition shall be carried out in accordance with procedures adopted by the Committee on Trade in Goods, and sets out some minimum requirements for these procedures.<sup>6</sup> The Protocol also provides that the transposition of each Party’s schedule shall be carried out without impairing existing tariff concessions.

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<sup>5</sup> The FTA Joint Committee consists of representatives of all 12 AANZFTA Parties and meets, usually at least annually, to review and oversee the operation of the Agreement.

<sup>6</sup> The Committee on Trade in Goods consists of representatives of all 12 AANZFTA Parties and meets, usually twice a year, to review and overview the operation of the goods commitments of the Agreement. It reports to the FTA Joint Committee.