

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

National Interest Analysis

Table of Contents

Frequently Used Acronyms and Terms	3
1 Executive summary	5
2 Nature and timing of the proposed treaty action	9
3 Reasons for New Zealand becoming a Party to the treaty	13
4 Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force for New Zealand	16
5 Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms	36
6 Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation	51
7 Economic, social, cultural and environmental costs and effects of the treaty action	52
8 The costs to New Zealand of compliance with the treaty	59
9 Completed or proposed consultation with the community and Parties interested in the treaty action	61
10 Subsequent protocols and/or amendments to the treaty and their likely effects	65
11 Withdrawal or denunciation provision in the treaty	66

Frequently Used Acronyms and Terms

AANZFTA	The Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area
APEC	Organisation for Asia Pacific Economic Cooperation
ASEAN	The Association of South East Asian Nations
B2C	Business-to-consumer electronic commerce transactions
C2C	Consumer-to-consumer electronic commerce transactions
CPC	Central Product Classification system. A classification system based on the physical characteristics of goods or on the nature of the services rendered.
CPTPP	Comprehensive and Progressive Agreement for Trans Pacific Partnership
Customs	The New Zealand Customs Service
CVA	Customs Valuation Agreement
DEPA	The Digital Economy Partnership Agreement
ECA	Environment Cooperation Agreement
EEE MRA	The Mutual Recognition Arrangement on Electrical and Electronic Equipment
FTA	Free Trade Agreement
GATS	Global Agreement on Trade in Services (The WTO Agreement covering trade in services)
GATT	Global Agreement on Tariffs and Trade 1994 (The WTO Agreement covering trade in goods)
GDP	Gross Domestic Product
GPA	WTO Agreement on Government Procurement
HS	The Harmonized Commodity Description and Coding System (Harmonised System, HS), a near-universal method for classifying international trade
ICT	Information and communication technology
INZ	Immigration New Zealand
JEVS	Joint Electronic Verification System
MBIE	The Ministry of Business, Innovation and Employment
MEA	Multilateral Environment Agreement
MFAT	The Ministry of Foreign Affairs and Trade
MPI	The Ministry for Primary Industries
MFN	Most-favoured-nation, a requirement that preferential treatment extended to one country (the “most favoured”) be extended to others.
NIA	National Interest Analysis
NTM	Non-tariff measure
NZTE	New Zealand Trade and Enterprise
OECD	Organisation for Economic Co-operation and Development
RCEP	Regional Comprehensive Economic Partnership Agreement
CEP	The New Zealand-Singapore Closer Economic Partnership
SMEs	Small and medium-sized enterprises
SPAM	Unsolicited commercial electronic messages
TBT (Agreement)	Technical Barriers to Trade (WTO Agreement on Technical Barriers to Trade)

TFA	WTO Agreement on Trade Facilitation
TNF	Trade Negotiations Fund. A New Zealand government inter-agency fund for the negotiation of Free Trade Agreements and to maximize the scope for New Zealand to enter and to gain from these agreements.
TPP	The original Trans Pacific Partnership Agreement
WTO	World Trade Organization
WCO	World Customs Organization

1 Executive summary

Background

The Agreement to Establish the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) is a free trade agreement (FTA) between New Zealand, Australia and the ten members of ASEAN (the Association of South East Asian Nations). AANZFTA has been a successful free trade agreement since its entry-into-force in 2010, supporting the strengthening of trade links between New Zealand and ASEAN. Since 2010 New Zealand's goods exports to ASEAN have almost doubled to over \$8 billion per year¹. Services exports also doubled between 2010 and 2020, and despite dropping due to the impacts of COVID-19, were still worth over \$1 billion in 2022².

Since AANZFTA entered into force, the international trade, economic and strategic landscape has evolved significantly. To respond to this and ensure AANZFTA remains a modern, high-quality FTA, AANZFTA Ministers formally agreed in 2019 to begin negotiations to upgrade the Agreement. The negotiations concluded on 12 November 2022, and substantive conclusion of negotiations was jointly announced by the leaders of ASEAN, Australia and New Zealand on 13 November 2022.

The result of the negotiations is the Second Protocol to Amend AANZFTA. The outcomes of the negotiations will be implemented through a treaty instrument that will amend and update the original Agreement to incorporate outcomes of the negotiations. This treaty instrument is called the *Second Protocol to Amend the Agreement to Establish the ASEAN-Australia-New Zealand Free Trade Area* (The Second Protocol), and is the focus of this NIA.

Reasons for New Zealand to become a Party to the Protocol

The Second Protocol responds to developments in the trade, economic and strategic landscape since AANZFTA was originally negotiated, to help ensure it remains a fit-for-purpose, high-quality FTA that delivers for businesses and strengthens our strategic links into the region.

The principal gains for New Zealand in becoming a Party to the Second Protocol are:

- **Addressing barriers to trade:** the Second Protocol address issues businesses have told us they encounter when trading with the ASEAN region. This includes provisions supporting modern approaches to managing supply chains like direct consignment and third-party invoicing, and introducing commitments to address and reduce non-tariff barriers that add red tape.
- **Improving trade facilitation:** the changes made through the Second Protocol will make trade easier and more efficient, through outcomes such as expedited customs procedures – including measures such as clearing perishable goods at the border within six hours of their arrival - new options for proof of origin of goods, and standardising rules for service providers and investors.

¹ Stats NZ–Tāhūranga Aotearoa (2023)

² Stats NZ–Tāhūranga Aotearoa (2023)

- **Delivering on Trade for All:** the Second Protocol introduces new inclusive and progressive provisions, including a new framework for cooperation on sustainable trade issues like the environment, labour standards and women's economic empowerment.
- **Learning lessons from COVID-19:** parties have committed to measures that will make the trade of essential goods easier and more efficient during times of humanitarian crises, which will help New Zealand respond to future events.
- **Protecting New Zealand's strategic interests:** The Second Protocol will help further boost our trade and economic ties to embed our position as a close economic partner to ASEAN and Australia. It also supports the international rules-based trading system on which New Zealand relies.

The reasons for New Zealand entering into the Second Protocol are further expanded on in Section 3 of this NIA. Detailed commentary on the advantages and disadvantages of specific commitments are outlined in Section 4.

The Second Protocol confers a range of new legal obligations onto New Zealand across all Chapters in scope of the upgrade, detailed in Section 5 of this NIA. These are all consistent with New Zealand's existing policy settings and no changes to primary legislation are required to implement them. Technical amendments to the Customs and Excise Regulations 1996 are required and will be undertaken by New Zealand Customs.

Economic, social, cultural and environmental effects

While the Second Protocol will introduce new treaty level commitments, these are all consistent with New Zealand's existing domestic policy and legislative settings and established FTA practice. Care has been taken to ensure that the flexibilities and safeguards secured in AANZFTA, which preserve the Government's right to regulate for legitimate policy purposes, have not been altered and will continue to apply to the existing FTA and the Second Protocol.

Economic effects

Trade makes a significant contribution to New Zealand's economic performance: one in four jobs depend on exports³. FTAs like AANZFTA help New Zealand exporters to remain competitive by providing access into larger markets, enabling companies to benefit from economies of scale and specialise in the areas in which they have an advantage. They also improve the domestic economy by allowing for access to more knowledge and resources, improved technology and foreign investment, which help boost productivity and income for New Zealand firms.

The primary economic benefits of the Second Protocol will stem primarily from improved trade facilitation measures and reducing the barriers to trade, which help boost trade and support economic growth. The Second Protocol includes a number of outcomes with the potential to reduce trade costs, including:

³ MFAT Working Paper: Estimating employment in New Zealand producing goods and services for export, Peter Bailey and Dean Ford: <https://www.mfat.govt.nz/assets/Trade-General/Trade-stats-and-economic-research/MFAT-working-paper-Estimating-employment-in-NZ-producing-goods-and-services-for-export.pdf>

- Greater transparency of fees and charges, and the periodic review of import/export fees and charges with a view to reducing their number and complexity;
- Greater transparency of customs requirements and of payable duties;
- Measures to support the timely release of goods, including an expectation that perishable goods will be released from Customs control to the extent possible within 6 hours of the arrival; and
- The expanded use of e-invoicing in cross-border trade.

Additionally, the upgrade aims to limit the impact of non-tariff barriers (NTBs) on businesses when trading in the ASEAN region. NTBs have been reported as one of the main challenges for businesses entering into or expanding within the ASEAN region, which has the potential to limit trade and business growth.

Social effects

The Second Protocol is not expected to have an impact on New Zealand's ability to develop social policy. The changes to temporary employment entry conditions are not expected to have a significant impact on domestic employment or immigration levels. No significant other health, immigration or human rights implications have been identified.

Effects on Māori

When drafting and negotiating the Second Protocol, care has been taken to ensure there are no commitments that would impair the Crown's ability to fulfil its obligations to Māori. The existing FTA contains safeguards to ensure there are no adverse effects on New Zealand cultural values, including Māori interests. These safeguards will remain unchanged as a result of the Protocol. The Treaty of Waitangi exception also remains unchanged from the existing FTA and provides clarity that the Crown will be able to continue to meet its obligations to Māori, including under the Treaty of Waitangi.

A high proportion of New Zealand's trade with ASEAN is in significant sectors for the Māori economy. The trade facilitation benefits described in section 7.1.2 will also accrue to Māori businesses. The growing Māori economy is increasingly engaging in international trade, and in 2021 Māori authorities and other Māori enterprises exported around \$1.1 billion of goods – the highest on record⁴.

Environmental effects

The Protocol will not inhibit the New Zealand Government's ability to regulate for environmental protection. The FTA (as amended by the Second Protocol) contains general exceptions that are consistent with those provided for in existing international agreements (GATT and GATS) which are designed to provide policy space for Governments to regulate for legitimate public policy purposes, such as the protection of natural resources and the protection of human, animal or plant life or health.

⁴ Statistics New Zealand, *Tatauranga umanga Māori – Statistics on Māori businesses: 2021*: <https://www.stats.govt.nz/information-releases/tatauranga-umanga-maori-statistics-on-maori-businesses-2021-english>

Costs

The implementation of the Second Protocol will have limited fiscal implications. There are costs associated with promoting its benefits to groups including business and Māori, which is important to support utilisation of its outcomes. Taking into account outreach events during negotiations, and following conclusion, the total estimated cost incurred by MFAT is expected to be approximately \$30,000 across the 2021/22 and 2022/23 financial years.

The costs of implementing the Second Protocol are expected to be modest compared to the implementation of other FTA treaty actions. Because this is an upgrade to an existing FTA there is no significant change expected to agencies' processes in implementing AANZFTA. There may be some resourcing implications from some of the upgrade's new obligations, which will be covered through departmental baselines and will not require additional resourcing.

While the upgrade specifies new areas where Parties have agreed to cooperate (including trade and sustainable development and MSMEs), it does not commit New Zealand to providing additional cooperation funding. No increase is currently planned to cooperation funding, or additional staff to support additional cooperation, which will continue to be met through departmental baselines.

Consultation

MFAT, alongside other government agencies, has undertaken a range of consultation activities with key stakeholders including business, and with Treaty Partners, throughout the negotiation process. Consultation has broadly shown strong support for the upgrade, and has provided useful input into areas where improved and modernised provisions would add the most value. There has been concern raised by Ngā Toki Whakarururanga, a Treaty Partner to the Crown, on some provisions particularly in the E-Commerce Chapter.

Like all bilateral treaties of significance, the Protocol will be scrutinised by a Parliamentary Select Committee and Parliament prior to entry into force.

2 Nature and timing of the proposed treaty action

This NIA considers the *Second Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area* (the Second Protocol). The Second Protocol amends and upgrades the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA), which was signed on 27 February 2009 and entered into force on 1 January 2010⁵.

This NIA deals with the new or amended obligations in AANZFTA and does not discuss in detail the rights and obligations that continue to apply to the Parties under the existing Agreement.

The twelve AANZFTA Parties completed a General Review of the implementation of the FTA in September 2017, as required under the Agreement. In September 2018, AANZFTA Ministers endorsed recommendations to upgrade the Agreement, with the scope of the upgrade based on the findings of this review. In 2019, AANZFTA Ministers agreed to begin negotiations. The first round of negotiations was held in April 2021 due to delays caused by COVID-19. Substantive conclusion of negotiations was jointly announced by the leaders of ASEAN, Australia and New Zealand on 13 November 2022.

The outcome of these negotiations will be implemented through a treaty instrument - the Second Protocol. The structure of the Second Protocol can be summarised as:

1. The Preamble to the Second Protocol, which explains the purpose of the AANZFTA upgrade;
2. The text of the Second Protocol, which explains how it will enter into force; and
3. Appendices to the Second Protocol, where the amended and new AANZFTA chapters are found.

The following table provides an overview of the structure of the updated AANZFTA as set out in the Second Protocol. All but two of AANZFTA's chapters and annexes have been amended, either to implement substantive changes, or to correct small technical issues such as chapter numbering and cross-references. The only sections of AANZFTA that have not changed through the upgrade, and are therefore not included in the Second Protocol, are Annex 1 - Schedule of Tariff Commitments and Annex 5 – Schedules of Goods Tariffs.

⁵ In 2014, the AANZFTA Parties agreed on a Protocol that amended the AANZFTA (the First Protocol). The First Protocol responded to implementation issues associated with Certificates of Origin and Rules of Origin, providing for greater streamlining of the certification for movement of goods throughout AANZFTA Parties. The First Protocol is in force for all AANZFTA countries except Indonesia.

Chapters and Annexes (as updated through the Second Protocol)	Change
Chapter 1: Establishment of Free Trade Area, Objectives and General Definitions	No substantive change
Chapter 2: Trade in Goods	Upgraded
Chapter 3: Rules of Origin	Upgraded
→ Annex 3A: Operational Requirements	Upgraded
→ Appendix 3A.1: Minimum Data Requirements – Application for a Certificate of Origin	Upgraded
→ Appendix 3A.2: Minimum Data Requirements – Certificate of Origin)	Upgraded
→ Appendix 3A.3: List of Data Requirements	Upgraded
→ Annex 3B: Product Specific Rules	Upgraded
→ Appendix 3B.1 (Indicative List of Textile Finishing Processes)	New
Chapter 4: Customs Procedures and Trade Facilitation	Upgraded
Chapter 5: Sanitary and Phytosanitary Measures	No substantive change
Chapter 6: Standards, Technical Regulations and Conformity Assessment Procedures	Upgraded
Chapter 7: Safeguard Measures	No substantive change
Chapter 8: Trade in Services	Upgraded
→ Annex 8A: Financial Services	Upgraded
→ Annex 8B: Telecommunications	Upgraded
→ Annex 8C: Professional Services	New
→ Annex 8D: Education Services Cooperation	New
Chapter 9: Movement of Natural Persons	Upgraded
Chapter 10: Electronic Commerce	Upgraded
Chapter 11: Investment	Upgraded
→ Annex 11A: Customary International Law	New
→ Annex 11B: Expropriation and Compensation	Upgraded
Chapter 12: Economic Cooperation	No substantive change

Chapter 13: Trade and Sustainable Development	New
Chapter 14: Intellectual Property	No substantive change
Chapter 15: Competition	Upgraded
→ Annex 15A: Application of Article 3 (Appropriate Measures against Anti Competitive Activities) and Article 4 (Co-operation) to Brunei Darussalam	New
→ Annex 15B: Application of Article 3 (Appropriate Measures against Anti Competitive Activities) and Article 4 (Co-operation) to Cambodia	New
→ Annex 15C: Application of Article 3 (Appropriate Measures against Anti-Competitive Activities) and Article 4 (Co-operation) to Lao PDR	New
→ Annex 15D: Application of Article 3 (Appropriate Measures against Anti-Competitive Activities) and Article 4 (Co-operation) to Myanmar	New
Chapter 16: Micro, Small and Medium Enterprises	New
Chapter 17: Government Procurement	New
→ Annex 17A: Paper on Electronic Means Utilised by Parties for the Publication of Transparency Information	New
Chapter 18: General Provisions and Exceptions	Upgraded
Chapter 19: Institutional Provisions	No substantive change
Chapter 20: Consultations and Dispute Settlement	No substantive change
→ Annex 20A: Rules of Procedure for Arbitral Tribunal Proceedings	No substantive change
→ Annex 20B: Optional Procedures for Composing Arbitral Tribunals	No substantive change
Chapter 21: Final Provisions	No substantive change
Annexes to AANZFTA	
<i>Annex 1 – Schedule of Tariff Commitments</i>	Not included in Second Protocol – no change
Annex 2 – Schedules of Specific Commitments for Services	Upgraded

Annex 3 – Schedules of Reservations and Non-Conforming Measures for Investment and Service	Upgraded
Annex 4 – Schedules of Specific Commitments on the Movement of Natural Persons	Upgraded
<i>Annex 5 – Schedules of Goods Tariffs</i>	Not included in Second Protocol – no change.

The Second Protocol will enter into force 60 days after Australia, New Zealand, and at least four ASEAN Parties have deposited their instruments of ratification, acceptance or approval. For New Zealand, the required domestic legal procedures include the Parliamentary Treaty Examination process, and amendments to the Customs and Excise Regulations 1996.

AANZFTA does not apply to Tokelau, the Cook Islands or Niue. Therefore, consultation regarding the Second Protocol with Tokelau, the Cook Islands or Niue is not required.

3 Reasons for New Zealand becoming a Party to the treaty

Becoming a Party to the Second Protocol supports New Zealand's strategic, trade and economic objectives in the Indo-Pacific region. We are a trade-dependent economy, and the ASEAN market is one of New Zealand's most important: the bloc is our third largest trading partner, with total two-way trade of \$27 billion in 2022. In 2022, NZ\$9.7 billion of goods and services were exported from New Zealand to ASEAN countries, which accounts for over 10% of New Zealand's total exports⁶.

AANZFTA, as a high-quality FTA, has helped grow New Zealand's trade partnership with ASEAN. Since the Agreement entered into force in 2010, New Zealand's goods exports to ASEAN have almost doubled to over \$8 billion per year⁷. Services exports also doubled between 2010 and 2020, and despite dropping due to the impacts of COVID-19, were still worth over \$1 billion in 2022⁸.

While AANZFTA has delivered significant benefits, the world has changed since it was negotiated. The way businesses trade has transformed; New Zealand's trade policy has evolved, including an increased focus on an inclusive, resilient and sustainable approach to trade; and the global and regional geostrategic landscape in which we operate has become more complex.

The upgrade of AANZFTA responds to changes in the trade, economic and strategic landscape since the Agreement was originally negotiated, to help ensure it remains a fit-for-purpose, high-quality FTA that delivers for businesses and strengthens our links into the region.

3.1 Modernising and strengthening AANZFTA provisions

Trade policy and practice has evolved considerably since AANZFTA negotiations concluded in 2009. The changes to AANZFTA introduced by the Second Protocol will modernise and improve the Agreement to help ensure it continues to make New Zealand a competitive exporter into the ASEAN market across goods, services and investment.

The upgrade will deliver a range of benefits for New Zealanders when they use AANZFTA. This includes outcomes that will improve trade facilitation and reduce barriers to trade such as simpler and quicker customs processes, greater transparency in rules and regulations, and consistency across services trade and investment with other FTAs.

The Second Protocol also introduces a range of new and upgraded provisions across competition, government procurement, e-commerce and trade and sustainable development that bring AANZFTA's provisions into line with comparable modern FTAs. While many of these upgraded provisions do not go beyond commitments New Zealand secured through RCEP (concluded in 2020), AANZFTA is a well-established and widely used FTA and so there is value in reflecting New Zealand's modern FTA practice and ensuring it reflects the gains made through RCEP. This also provides greater

⁶ Stats NZ—Tātauranga Aotearoa (2023)

⁷ Stats NZ—Tātauranga Aotearoa (2023)

⁸ Stats NZ—Tātauranga Aotearoa (2023)

consistency across our FTAs, which should help make trade in the region simpler for businesses to navigate.

3.2 Learning from the COVID-19 pandemic

Commencing in April 2021 - one year after the beginning of the COVID-19 pandemic – the upgrade negotiations provided an opportunity to reflect lessons from the experience of COVID-19 and its significant impacts on international trade. The Second Protocol introduces provisions that will improve trade facilitation in the event of a national crisis, such as a health emergency like a pandemic. This includes commitments for Parties to facilitate the trade of essential goods during emergencies, as well as broader improvements like introducing paperless trading that will support the free flow of trade. These outcomes will help make supply chains more robust and resilient to support an effective health, social and economic response to events like the COVID-19 pandemic.

3.3 Protecting New Zealand's strategic interests

In addition to the trade benefits AANZFTA has delivered, it has also supported stronger economic, strategic and political relations between New Zealand and ASEAN. New Zealand is one of only six countries that has an FTA with ASEAN. AANZFTA has become a central pillar of our engagement with the bloc, providing a platform for regular economic dialogue at official and Minister-level. The successful AANZFTA economic cooperation programme, co-funded by New Zealand and Australia, has also deepened our ties into the region and gives New Zealand a clear value-add as a trade and diplomatic partner.

Upgrading AANZFTA to ensure it remains a modern, relevant FTA has reaffirmed New Zealand's commitment to ASEAN and deepened our partnership. The Second Protocol will help further boost our trade and economic ties to embed our position as a close economic partner to ASEAN and favoured trade destination.

Furthermore, investing in the rules-based trading system, line with the Government's Trade Recovery Strategy, is an important bulwark against the trend of rising global protectionism, in⁹. Delivering the Second Protocol demonstrates on the global stage AANZFTA Parties' shared commitment to open, transparent and inclusive trade.

3.4 Advancing New Zealand's Trade for All objectives

New Zealand has committed to a progressive, inclusive and sustainable approach to trade under the Trade for All agenda¹⁰. This means ensuring New Zealand's trade policy maximises the benefits for *all* New Zealanders, including women, Māori and small and medium sized enterprises, while minimising any harmful impacts. The Second Protocol delivers a range of outcomes that will advance this commitment.

⁹ <https://www.mfat.govt.nz/en/trade/trade-recovery-strategy/trade-recovery-strategy-2-0/>

¹⁰ <https://www.mfat.govt.nz/en/trade/nz-trade-policy/trade-for-all-agenda/>

Most significantly, it introduces a New Zealand-proposed Chapter on Trade and Sustainable Development, which provides a framework for AANZFTA Parties to cooperate on addressing sustainable trade issues including the environment, labour standards, and women's economic empowerment. This is a first for any ASEAN FTA, reflecting the role New Zealand can play as a leader on sustainable trade issues, and as a trusted partner to ASEAN.

The Second Protocol also introduces new provisions that promote cooperation to support micro, small and medium enterprises (MSMEs). Small businesses represent 97% of all New Zealand firms, accounting for 29% of employment¹¹. Cooperation under this Chapter will help MSMEs to utilise and benefit from AANZFTA.

New provisions that reflect New Zealand's Trade for All commitments are also found elsewhere in the Second Protocol, including a new digital inclusion article in the E-Commerce Chapter, and requirements on consumer protection in the Competition Chapter.

¹¹ Ministry of Business, Innovation & Employment, "Small business", <https://www.mbie.govt.nz/business-and-employment/business/support-for-business/small-business/>

4 Advantages and disadvantages to New Zealand of the treaty entering into force and not entering into force for New Zealand

This section of the NIA outlines the advantages and disadvantages for New Zealand adopting the Second Protocol. The sub-sections below cover the specific Chapters and Annexes of AANZFTA that are in scope of the upgrade. The net effect of these different elements on New Zealand is assessed in Section 7 of this NIA.

4.1 Trade in Goods

The Trade in Goods (TIG) Chapter sets out the rules AANZFTA Parties apply to qualifying imports from other Parties. Through AANZFTA, CPTPP, RCEP, and New Zealand's bilateral FTAs with Malaysia, Singapore and Thailand, New Zealand already benefits from tariff free access on 99% of goods exports into ASEAN. Further tariff reduction was not in scope of the AANZFTA upgrade. Instead, the upgrade focused on improving the facilitation of trade in goods, to make moving goods across the border easier, cheaper and more predictable.

4.1.1 Advantages

Addressing non-tariff measures

The Second Protocol sees the introduction of a dedicated set of provisions that address non-tariff measures (NTMs). NTMs are requirements other than tariffs applied to imports and exports such as certification or testing requirements, licencing, and health and safety measures. In some cases, NTMs are an essential part of trade; for example, biosecurity requirements are NTMs put in place to protect human, animal and plant health. NTMs may, however, be implemented in a way that unreasonably hinders or distorts the free and open flow of trade – these are non-tariff *barriers* (NTBs). This could be increased compliance costs (for example, needing an expensive import permit), or exporters not being able to meet the unreasonably high standards applied and therefore being effectively shut out of a market. NTBs were reported as one of New Zealand exporters' main challenges when trading with ASEAN, and a priority issue for the upgrade to address.

Amended and new TIG Chapter provisions on NTMs brings AANZFTA into line with more modern FTAs, reflecting commitments agreed in RCEP. These aim to reduce the prevalence and impact of NTBs, and in turn reduce compliance costs for our exporters. This includes new provisions that seek to limit existing and new NTBs on imported goods, and commits Parties to ensuring the transparency of their NTMs.

The Second Protocol also provides a mechanism within AANZFTA for Parties to engage in technical consultations on measures they consider to be adversely affecting their trade. This includes a fast-track option for perishable goods. This means AANZFTA Parties are obliged to meet and negotiate with New Zealand when requested, to try and get our NTB issues resolved. These consultations will

be notified annually to the Committee on Trade in Goods, which ensures all Parties have visibility of issues being raised.

In addition, the Second Protocol strengthens obligations relating to import licensing, including a prohibition on measures that are inconsistent with the WTO's Import Licensing Agreement, and an obligation on Parties to notify any new or modified import licensing procedures. If a Party denies an import license application, it must provide the applicant with an explanation of the reasons for the denial.

Preparing for future crises

The COVID-19 pandemic created significant costs and disruptions for cross-border trade. Measures like additional border controls and new documentation requirements disrupted and slowed imports and exports. The Second Protocol responds to these challenges by introducing provisions to support the efficient flow of essential goods during times of crisis. New provisions in the TIG Chapter commit Parties to refraining as far as possible from introducing trade-restricting NTMs on essential goods during humanitarian crises, epidemic or pandemic situations, and to sharing information with other Parties on NTMs. This will help New Zealand deliver an effective health, social and economic response to future emergencies.

Reducing costs of exporting goods

The Second Protocol will help to reduce fees and duties when trading goods under AANZFTA. There is now a requirement (Article 2.16) for periodic review of import/export fees and charges, with a view to reducing their number and complexity. Additionally, each Party is now required to not apply or update such fees and charges until information on them has been published, including their reason, the responsible authority, and when and how payment is to be made. AANZFTA also now incorporates RCEP provisions that set out the conditions for the total or partial removal of the application of customs duties in a range of circumstances, for example where the goods are intended for re-exportation within a specific period.

4.1.2 Disadvantages

No disadvantages to New Zealand have been identified as a result of the outcomes in the TIG Chapter.

4.2 Rules of Origin

The Rules of Origin (ROO) Chapter establishes the rules that determine whether goods traded among AANZFTA Parties are considered to 'originate' in the free trade area, and therefore qualify for preferential tariff rates and other benefits provided in the agreement. All FTAs include such rules. Improving rules of origin can help producers, exporters and importers to more easily and effectively make use of the preferential market access provided in an FTA. The Second Protocol introduces several new provisions that will build and improve upon the Rules of Origin to respond to practical challenges faced by New Zealand businesses and further facilitate goods trade.

4.2.1 Advantages

Expanded preferential access

The upgraded ROO Chapter aims to broaden the scope of goods that achieve originating status and therefore benefit from AANZFTA's trade rules. It firstly strengthens the cumulative rules of origin or 'cumulation' provisions – these rules look at the inputs into a good from other countries to calculate whether it counts as originating within the free trade area. Previously AANZFTA's calculation of cumulation did not recognise production cost, and thus was only 'partial' cumulation. The Second Protocol introduces a full cumulation provision that adds the value of materials and production costs incurred in all Parties. This provision does have an opt-out option for Parties. These improvements will increase the number of products that can qualify for tariff preferences under AANZFTA.

As part of the negotiation of the Second Protocol Parties also updated the Product Specific Rules (PSRs), which are rules that apply to a specific product that determine whether it is considered originating. The upgraded Chapter includes chemical and plastic products in the PSRs, which aligns AANZFTA with modern FTAs, further expanding the number of products qualifying for tariff preferences.

Improved trade facilitation

The Second Protocol also introduces a range of practical measures that will help goods exporters. This includes providing the new option of self-declaration of origin for traders. Declaration of origin is the process through which an exporter provides to Customs the necessary documentary evidence to demonstrate the originating status of a good. Under AANZFTA, exporters previously had to get a Certificate of Origin issued by an authorised body (like a Chamber of Commerce), which can add time and cost into the process. We have received feedback that different businesses prefer different types of declaration of origin, depending on factors like the size and market for an exporter. The Second Protocol provides greater flexibility for businesses to choose the option that suits them. Exporters can choose any of the following options:

- (a) a Certificate of Origin issued by an Issuing Authority/Body,
- (b) a Declaration of Origin by an approved exporter (those who have been cleared to self-certify), or
- (c) a Declaration of Origin by an exporter or producer (this provision will be introduced over time).

The Second Protocol also simplifies the transit and transshipment of goods. This concerns goods that are transported through more than one port, in particular transported through non-Parties' ports, which is increasingly common in international trade. While AANZFTA allows for this under certain conditions, New Zealand exporters have encountered problems in the past regarding documentation requirements and customs authorities' interpretations of the rules. The upgraded ROO Chapter includes a new provision that removes ambiguity in interpretation of terminology and simplifies the documentation requirements, to ensure a good remains 'originating' and is therefore eligible for preferential access.

The Second Protocol also introduces a provision to support importers to claim duty paid in excess when an originating good is imported. The new provision will enable importers who have not claimed preferential tariff at the time of importation to apply for refund of duty already paid.

Finally, there are some other small but useful amendments, such as to the definition of 'Back-to-back Certificate of Origin' (which deals with goods that are exported into an AANZFTA Party, then exported onwards to another AANZFTA Party) and 'Minor errors or discrepancies' in origin documents (meaning that minor errors or discrepancies in origin documents do not invalidate those documents).

4.2.2 Disadvantages

While no disadvantages have been identified for New Zealand resulting from the Rules of Origin Chapter, New Zealand did not achieve the full range of outcomes it was seeking from the negotiation. New Zealand had pursued full cumulation applying to all Parties, but this is a complex issue and not all Parties were willing to commit. An opt-out approach was necessary to achieving progress on this issue, as we could not reach agreement from all Parties to commit to full cumulation at this stage. There is still significant benefit to the outcome of the Second Protocol, under which we expect a number of Parties will remain opted-in, which can also have a demonstrative effect for other Parties. New Zealand will continue to pursue this objective through our ongoing policy work with ASEAN.

4.3 Customs Procedures and Trade Facilitation

The Customs Procedures and Trade Facilitation (CPTF) Chapter upgrade modernises and addresses gaps in the existing provisions of the CPTF Chapter. The Second Protocol introduces new provisions and amends several existing provisions. These changes build on the commitments of the WTO Agreement on Trade Facilitation and recommended practices of the World Customs Organisation (WCO).

The outcomes of the upgrade support the facilitation of the movement of goods across borders, particularly facilitating the movement of essential goods during humanitarian crises. The terms also seek to ensure that customs procedures and practices are consistent and transparent, and certain forms of trade are expedited.

4.3.1 Advantages

The upgraded CPTF Chapter will benefit exporters through increased efficiency at the border and the expedited release of goods. This is expected to lead to a lower cost of trade and simplified customs procedures for traders when using AANZFTA.

Improving trade facilitation

The upgraded CPTF Chapter will better facilitate trade through a range of improvements that make customs processes simpler and more efficient, and in turn aims to reduce compliance costs for traders.

This includes introducing processes for expedited customs clearance. The Second Protocol introduces a new provision setting an expectation that, to the extent possible, all goods should be cleared by customs within 48 hours of arrival and lodgement of all necessary information for customs clearance (Article 16). There are also provisions for specific types of goods where expedited clearance is particularly important. Express consignments that enter through air cargo should be released as rapidly as possible, and when possible within 6 hours after arrival. Customs should minimise the documentation required for the release of these goods and to the extent possible, permit through electronic means the single submission of information covering all goods contained in the express consignment. The upgraded Chapter also sets an expectation that perishable goods will be released from customs control to the extent possible within 6 hours of the arrival of the goods, aligning with the outcomes achieved in RCEP. This reflects the need for expedited clearance of perishable goods as specifically provided for in the WTO Agreement on Trade Facilitation. Considering the distance from New Zealand to ASEAN markets, and the high volume of perishable goods New Zealand exports to ASEAN, this is a valuable improvement for New Zealand businesses.

Preparing for future crises

In addition to the new article in the TIG Chapter, the CPTF Chapter also addresses the flow of essential goods during times of humanitarian crisis. The Second Protocol introduces a new provision that commits Parties as far as possible to expedite and facilitate the movement, release and clearance, including the transit, of all essential goods needed to tackle the effects of a crisis. The Parties will also, to the extent permitted by their laws and regulations, allow information about those goods to be provided prior to arrival and accept documentation submitted through electronically.

Increasing transparency and access to information

The upgraded CPTF Chapter delivers a range of outcomes to regularise customs procedures and increase transparency between Parties. This should support New Zealand businesses when exporting by making it easier to access clear and timely information on customs requirements.

The Second Protocol introduces provisions to ensure consistent implementation and application of customs procedures between Parties and throughout a Party's customs territory (eliminating regional or port-specific variations). The upgrade further requires that information related to trade is as transparent as possible, including the opportunity for Parties to comment on potential changes. To provide greater clarity and certainty for traders Parties are required to promptly publish in an easily accessible manner, preferably online, information on a wide range of trade-related areas including import/export procedures, rates of duties, taxes and fees, and procedures for appeal and reviews.

In addition Parties will, to the extent possible, publish proposed new laws or regulations or amendments to existing laws and regulations and provide a reasonable opportunity for interested persons to comment on the proposals. Where a new law or regulation of general application related to movement, release and clearance of goods is to be implemented, Parties must, to the extent possible, publish or make information available about them.

The upgrade also provides clarity on the scope of advance rulings¹². Advanced rulings are important as they can facilitate a more efficient customs clearance process for importers/exporters, but they can be applied inconsistently. The upgraded CPTF Chapter provides a comprehensive advance ruling provision to cover the issuance of tariff classification, origin and the method or criteria for determining the value of the goods. Additionally, the upgraded Chapter expands who is eligible to apply for an advanced ruling to any person who has justifiable cause, and also includes a provision for making information on advanced rulings publicly available. These upgraded terms should provide a more consistent, efficient and transparent process.

4.3.2 Disadvantages

No disadvantages to New Zealand have been identified as a result of the outcomes in the CPTF Chapter. The new and upgraded provisions all sit within New Zealand's established FTA practices.

Not all of New Zealand's negotiating objectives were met due to limitations of some ASEAN Parties in implementing commitments related to the WTO Agreement on Trade Facilitation. As noted above, several of the improved provisions (for example around the flow of goods during times of crisis) are not fully binding, and instead commit Parties to making their best efforts. New Zealand will continue to pursue these objectives through our ongoing policy work with ASEAN.

4.4 Standards, Technical Regulations and Conformity Assessment Procedures

The only change to Chapter 6 is a minor update to Article 9 on technical consultations, where a 60-day consultation period has been introduced.

4.4.1 Advantages

The previous Article 9 text did not define a period within which Parties were required to enter technical consultations, where these are required by the article's provisions. The introduction of a 60-day consultation period provides Parties with greater clarity over the timeframe within which consultation will occur. This amendment also aligns with the expectations set in RCEP.

4.4.2 Disadvantages

No disadvantages to New Zealand have been identified as a result of the update to Article 9.

4.5 Trade in Services

The Trade in Services (TIS) Chapter facilitates cross-border trade in services between AANZFTA Parties. The Chapter text consists of overarching obligations between all Parties, such as National Treatment (non-discrimination between foreign and domestic service providers) and Most-Favoured-Nation (MFN) (non-discrimination between different foreign providers); and market access

¹² An 'advance ruling' is where an importer can apply to a Customs authority for a determination on certain points before importing a good. Under AANZFTA these points are tariff classification, origin status, and value of a good. These rulings help facilitate customs processes, as key assessments on a good have already been made before the good(s) reach Customs.

commitments that define for each Party which sectors are liberalised and open to overseas service providers, and which are still protected.

4.5.1 Advantages

Since AANZFTA was signed in 2009, there has been significant growth in the services sector throughout the region. The upgrade introduces improvements to the rules that govern services trade and modernises the Chapter to better align with New Zealand's more recent FTAs.

Providing greater certainty and transparency for services trade

The upgraded TIS Chapter strengthens the National Treatment and MFN treatment obligations to align with some of New Zealand's more modern FTAs including CPTPP and RCEP, as well as the EU and UK agreements. By adopting similar language to that used in our recent FTAs, stakeholders are more easily able to determine what commitments have been made, and what treatment they can expect when offering services through the upgraded AANZFTA. This consistency, created by aligning language in how obligations are interpreted, provides greater certainty of treatment for services exporters trading in AANZFTA countries.

Provisions regarding Domestic Regulation have also been improved, which provide Parties with greater transparency and certainty regarding the process for authorisation (for example, the granting of a business licence) and provision of a service. Parties have committed to ensure reasonable timeframes and transparent processes for applications for authorisation. Parties also agreed to have further discussions to improve commitments in future, which reflects positive intent.

Additionally, six Parties transitioned from a 'positive list' market access schedule in the original Agreement to a 'negative list' schedule in the upgrade. The remaining positive list Parties have agreed to a work programme to negotiate their transition to a negative list, aligning with the RCEP agreement which all AANZFTA members have signed. A negative list schedule means only sectors *excluded* from the Trade in Services Chapter obligations are included in the schedule. This is New Zealand's preferred approach as it provides transparency, certainty and predictability for New Zealand exporters. While it does not in itself provide additional market access, a negative list is generally much easier to understand for service providers providing greater clarity on Parties' obligations.

Due to the structure of positive list schedules, Local Presence obligations are traditionally not included under that system. With the introduction of negative list Parties, the TIS Chapter also now includes a Local Presence obligation, which prohibits Parties from requiring service providers establish or locate themselves in that Party's territory. Local presence is an important obligation that removes some of the regulatory barriers cross border services providers encounter, making exporting services easier for New Zealand businesses.

Cooperation in priority services sectors

The Second Protocol introduces two additional annexes, on Education Services Cooperation and Professional Services. These sectors are significant services exports for New Zealand, including in the ASEAN region.

The Annex on Education Services Cooperation recognises the importance of education services and encourages Parties to work on areas such as better recognition of qualifications and academic credits, improved flow of digital education, and increased cooperation between educational services providers.

The Annex on Professional Services encourages Parties to develop systems for better recognition of qualifications, licensing and registration of professionals, which create increased opportunities for New Zealand professionals to provide their services in the ASEAN region. Both annexes lay the foundation for possible future liberalisation in the professional and education services sectors in the region.

Protecting Māori interests

New Zealand has included a reservation to preserve the government's right to actively protect and promote Māori rights and interests in respect to trade enabled by electronic means. This reservation was developed in the context of EU FTA negotiations, and in response to the third and final report in the WAI2522 claim. The reservation secures policy space for New Zealand to implement measures that protect or promote Māori interests or rights, and operates in addition to the existing Treaty of Waitangi exception, providing further clarification of the Government's active protection of Māori within the trade in services and investment space.

4.5.2 Disadvantages

The core obligations in the TIS Chapter are consistent with similar commitments New Zealand has made in the WTO (under the GATS) and in our other recent FTAs. There are no disadvantages arising from replicating these obligations in the upgraded AANZFTA agreement.

The upgrade does not include significant new services commitments from ASEAN beyond existing AANZFTA commitments and those in RCEP. Considering RCEP negotiations were concluded in late 2019, shortly before work on upgrading AANZFTA began, the focus of the Second Protocol is instead on introducing the gains achieved through RCEP into AANZFTA. This helps ensure AANZFTA maintains its role as the pre-eminent agreement between ASEAN and New Zealand, and that there is certainty and predictability for services suppliers in the region. Similarly, New Zealand's commitments do not go beyond those already made to ASEAN member states in RCEP, and none of these commitments go beyond existing New Zealand regulatory settings.

There are some limited areas where services market access has expanded; for example, Thailand has committed to allowing foreign nationals to enter Thailand and supply foreign language tuition services (subject to certain conditions).

4.6 Financial Services

Financial Services are addressed in an annex to the TIS Chapter. The Annex establishes a framework of rules governing the cross-border trade in financial services between the Parties. The core obligations of the TIS Chapter flow through to the Financial Services Annex. This includes market access commitments to ensure access for each other's financial service suppliers by, among other

things, not imposing quantitative restrictions on the number of established financial services suppliers; the value of transactions; or by requiring a particular type of legal entity or joint venture to provide the service.

4.6.1 Advantages

Financial services are an important underlying service essential to all international trade and investment. The Second Protocol modernises the Annex, introducing a range of new measures. This includes a commitment to transparency in regulation of financial services, a prohibition on any requirements that financial data be stored locally (subject to the right to protect personal data and relevant exceptions); and a consultation mechanism. However, New Zealand does not have significant demand for exporting financial services to ASEAN at this time.

4.6.2 Disadvantages

New Zealand already has an open and transparent financial services policy regime. This, together with the policy space preserved under the upgrade to regulate for prudential reasons, means there are no disadvantages anticipated for New Zealand from the upgraded commitments under the Annex on Financial Services. Like the WTO and all New Zealand FTAs, the upgraded Agreement preserves the ability to apply any form of prudential regulation, such as laws or regulations to protect investors and depositors, or to ensure the integrity and stability of New Zealand's financial system more broadly. Further exceptions are included in New Zealand's non-conforming measures schedule, including a new reservation for electronically-enabled trade (discussed above).

4.7 Telecommunications

Telecommunications Services are addressed in an annex to the TIS Chapter, covering issues such as use of telecommunications networks and services. The separate Annex on this aspect of trade in services reflects the sensitive nature of the sector.

4.7.1 Advantages

The Second Protocol amends the Telecommunications Annex to update and introduce a range of provisions with the aim of improving open, transparent and fair access to telecommunications networks, resources and services. These mirror some of the changes to the TIS Chapter.

Improvements include new provisions that will support telecommunications suppliers to compete in ASEAN markets, such as ensuring any service supplier can use public telecommunications networks and services in another Party; requiring major telecommunications suppliers to provide suppliers from another Party the same treatment as domestic suppliers; and ensuring major suppliers offer unbundled options for access to network services. Disciplines that ensure telecommunications services are freely available and competitive are valuable not only for telecommunications suppliers, but also for New Zealand businesses operating offshore by helping facilitate operations, enabling service delivery or connecting with customers. These changes to the Chapter are also an important

signal for overseas telecommunication providers that New Zealand has in place a pro-competitive regulatory framework for the sector that is consistent with international practice – making us an attractive destination for investment, thereby helping diversify the market.

At the same time, the Annex includes explicit recognition that different jurisdictions take different approaches to regulation, including the use of ex-ante regulation by some Parties, while others – such as New Zealand – adopt a combination of approaches aimed at maximising efficiency in relation to the size and competitive conditions of our market.

4.7.2 Disadvantages

The obligations in the Telecommunications Annex are consistent with similar commitments New Zealand has made in the WTO (under the GATS) and in other recent FTAs. There are no disadvantages arising from replicating these obligations in the upgraded annex.

4.8 Movement of Natural Persons

The Movement of Natural Persons (MNP) Chapter facilitates people-to-people movements for business purposes across the AANZFTA Parties.

4.8.1 Advantages

The expanded commitments in the MNP Chapter will benefit New Zealand business. In particular, certain ASEAN members have made improved commitments for intra-corporate transferees (ICT) and business visitors (BV). This will better enable New Zealand businesses to send staff to those ASEAN member states for short-term business visits (generally less than 90 days) and senior managers and specialist staff to work in overseas branch offices located in ASEAN member states.

Improvements on MNP outcomes in New Zealand's existing FTAs include: for Thailand, BV's stay may be extended up to one year (in increase of nine months), plus the list of eligible sectors for both BV and ICTs has been expanded to include a number of sectors of interest for New Zealand service providers – for example other education services (including language education) and adult education services, and forestry services. Similarly Malaysia has extended its commitments for ICTs from a two-year period of stay with the potential for another two-year extension, to a commitment of up to a ten-year period of stay. Lao PDR has also extended its duration of stay for BVs from a maximum of 60 days to 90 days, and the period of stay for ICTs from 6 months with possible renewal, to one year with possible renewal.

Conversely, New Zealand exporters will be able to access speciality services and skilled professionals, including through the Installer or Servicer category, which will allow New Zealand firms to access aftersales servicing for specialist equipment and machinery they may have purchased, as well as ICTs and specialist independent professionals who can contribute to the upskilling our labour force.

The Second Protocol also introduces a commitment to transparency, which requires Parties to publish all relevant information regarding temporary entry for business persons in the covered categories, providing businesses with certainty regarding the process for applying for a visa, and of

timeframes for processing.

4.8.2 Disadvantages

No disadvantages to New Zealand have been identified as a result of the upgraded MNP Chapter. While the movement of natural persons is a sensitive area for New Zealand, our commitments contain a number of safeguards to protect the local employment market and ensure the impact of these commitments is manageable. These safeguards include limitations on entry of not more than three months per year for business visitors and installers and servicers, and six months per year, plus the use of economic needs tests, for the Independent Professionals category. The commitments made through the Second Protocol are consistent with standard FTA practice and do not go beyond what we have already committed to in other agreements.

4.9 Electronic Commerce

The Electronic Commerce (E-commerce) Chapter provides rules to facilitate and encourage e-commerce between the Parties, and to create a platform for cooperation. E-commerce can be anything that is enabled by digital technologies, whether or not it is digitally or physically delivered. For example, digital trade would include the purchase and physical delivery of a paper book through an on-line marketplace as well as the purchase and digital delivery of an e-book.

4.9.1 Advantages

E-commerce continues to grow rapidly around the world as a means of doing business and trade. The ASEAN region has one of the world's most dynamic and fastest-growing e-commerce markets, which presents a huge opportunity for New Zealand companies that sell goods and services online. There is significant potential for e-commerce to overcome New Zealand's traditional barriers of scale and distance from markets and generate opportunities for inclusive trade and economic growth. COVID-19 has further demonstrated the importance of e-commerce in building resilience for businesses and accelerated its adoption in New Zealand and worldwide.

The Second Protocol has modernised the Chapter by building on outcomes achieved in RCEP and introducing provisions on novel issues, following the approach taken in the Digital Economy Partnership Agreement (DEPA). It provides rules that both promote trust and confidence among e-commerce users and facilitate the conduct of e-commerce trade by harnessing the efficiencies provided for under e-commerce. Across its provisions, the chapter seeks to promote interoperability across different jurisdictions and foster e-commerce as an inclusive approach development and trade.

Significantly, the AANZFTA Parties agreed to make the entire e-commerce chapter legally binding through the full application of dispute settlement with delayed effect for the data rules and a transition period for the Least Developed Economies (LDCs). This is the first time New Zealand has secured enforceable E-Commerce rules in an FTA with ASEAN.

Building trust for consumers and businesses

The changes introduced through the Second Protocol aim to build trust and confidence for New Zealand consumers and businesses to engage in online trade within the AANZFTA markets. The Second Protocol introduces a range of new requirements around consumer protection, privacy and transparency. This includes requirements for Parties to have legal frameworks to protect online consumers from fraudulent practices and to protect the personal information of e-commerce users. There is also a new requirement for Parties to publish information on how businesses can comply with these legal requirements and how consumers can pursue remedies when things go wrong. In addition, the Parties agree to promote the awareness and ability of consumers to access consumer redress mechanisms in the event of disputes arising from online cross-border transactions.

The Second Protocol also provides rules addressing online spam and ensuring regulatory transparency - in alignment with outcomes secured in RCEP - to reinforce these commitments and ensure regulatory harmonisation.

Enhancing trade facilitation

The Second Protocol outcomes also aim to facilitate trade by enabling all New Zealand businesses to harness the efficiencies of e-commerce. This is particularly helpful for MSMEs and other groups that disproportionately face barriers to participation in trade through traditional channels.

An important outcome is the agreement by Parties to take into account international standards when developing measures on e-invoicing, which would support faster development, adoption, and consistency among measures in the region. E-invoicing can provide substantial reductions to business costs by reducing the need to manually input information and physically deliver paper-based or printable PDF invoices. This is the first time New Zealand has agreed to a provision with ASEAN on e-invoicing. Further efficiencies are expected over time from this provision as many ASEAN economies continue to develop and implement domestic e-commerce systems.

Additionally, the upgraded Chapter includes provisions that promote paperless trading through the acceptance of electronic trade administration documents, which reduce costs and margins for error and increase the efficiency and security of cross-border transactions. A further provision supports the use of electronic authentication and electronic signatures, providing additional certainty for businesses engaging virtually across borders when using these means. These provisions reflect the outcomes secured in RCEP and build on the lessons from the COVID-19 pandemic, where businesses that adopted paperless trading were significantly more resilient.

Expanding data rules

The Second Protocol also introduces rules that support cross-border transfer of information. This includes prohibiting Parties from preventing cross-border transfer of information, which will benefit New Zealand companies operating consistently across different offshore markets.

There is also a data localisation provision that prohibits Parties from requiring computing facilities to be located in their territory. This further helps businesses avoid potentially costly requirements to

establish or use local computer processing facilities to store data in-market, or be physically present in every market they export to.

At the same time, the data rules are subject to exceptions for 'legitimate public policy objectives' that Parties deem necessary, allowing space for the Government to ensure the protection of policy space when judged necessary (e.g. sensitive health data).

Novel issues – inclusion and innovation

The Second Protocol also addresses two novel issues in e-commerce, which go beyond the outcomes secured in RCEP: digital inclusion and open government data. New Zealand advocated for these provisions during the upgrade negotiations, drawing on our experience in DEPA and the UK FTA.

The provision on digital inclusion recognises the unique role that e-commerce can play in promoting inclusive development and trade. Parties agreed to engage in cooperation to promote participation in e-commerce and address barriers, including for MSMEs and individuals and groups who disproportionately face such barriers.

Under the provision on open government data, the Parties must endeavour to publish data and information in an open and machine-readable format when made available to the public. Easier access to public government datasets has the potential to promote economic growth through fostering creativity and innovation, particularly for MSMEs and companies in the technology sector.

Interoperability and common standards

A broad theme across the Chapter's provisions is the promotion of common standards and the principle of interoperability to ensure differences in regulatory systems across Parties do not unnecessarily hinder the conduct of cross border e-commerce trade. The Parties agreed to a new provision to reduce barriers and compliance costs by adopting international regulatory standards that support digital trade, while provisions on e-authentication, e-invoicing, and personal information protection all recognise the importance of interoperability across different systems. Interoperability in e-commerce standards makes it easier and cheaper for exporters by ensuring that the same systems can be used to satisfy requirements in a number of different markets.

The full application of state-to-state dispute settlement makes the E-Commerce Chapter rules enforceable for the first time, ensuring that there is an effective remedy in case of breach. This sends a strong signal about the commitment of AANZFTA Parties towards the implementation of the chapter's provisions. While the substantial obligations remain the same as those of RCEP, the legal certainty arising from the application of dispute settlement across the entire suite of provisions in the chapter is a significant upgrade from outcomes achieved in RCEP, where similar commitments were exempt from dispute settlement.

Protecting Māori rights and interests in digital trade

Māori are increasingly involved in the digital economy, as both exporters and consumers. As such, Māori stand to share in the advantages already described above.

Since the original AANZFTA, the Waitangi Tribunal has issued its third and final report in relation to Wai 2522, which has particular implications for subsequent e-commerce negotiations. In this regard, it should be noted that, as with other parts of the AANZFTA and the Second Protocol, the Treaty of Waitangi exception continues to apply to the entirety of the e-commerce chapter as amended by the Second Protocol. The drafting of the exception is consistent with similar provisions included in all of New Zealand's contemporary FTAs and ensures that nothing in the Second Protocol FTA would prevent the Crown from meeting its obligations to Māori. It also specifies that New Zealand's interpretation of the Treaty of Waitangi will not be subject to dispute settlement.

While the Second Protocol does not contain all the e-commerce obligations considered in the Wai 2522 claim (for example, there is no source code provision), it does include data rules which were not present in the original AANZFTA. Given the Parties involved, these data rules replicate RCEP's model of ensuring that governments can determine what measures they consider necessary to achieve legitimate public policy objectives in their respective jurisdictions. For New Zealand, measures to protect Māori rights, duties, and interests are clearly within the bounds of what the Government would consider legitimate public policy objectives.

Additionally, New Zealand included a new reservation in its services and investment market access schedule in relation to electronically enabled trade to preserve space for more favourable treatment for Māori, modelled on a similar reservation secured in the EU FTA negotiations.

4.9.2 Disadvantages

Concerns have been raised about the potential for e-commerce rules, particularly those relating to data, to impact on the Government's right to regulate in this area. All of the AANZFTA e-commerce obligations sit within New Zealand's current policy settings. New Zealand already meets these obligations through our broader regulatory framework covering privacy and consumer protection.

AANZFTA includes a number of agreement-wide exceptions that preserve the Government's right to regulate in the public interest. Furthermore, the data provisions maintain and contain public policy safeguards so that nothing prevents the Government from adopting measures it considers necessary to achieve legitimate public policy objectives (e.g. ensuring privacy and consumer protection or addressing new uses of technology), provided such measures are not applied in an arbitrary or unjustifiably discriminatory way, and do not constitute a disguised restriction on trade. The Government is also able to implement measures contrary to the rules on data when it is in New Zealand's essential security interests.

4.10 Investment

The Investment Chapter provides a rules-based framework to facilitate free and open flows of investment between AANZFTA Parties. These rules are designed to assist investors to enter the market and compete on an equal footing with domestic investors and other international competitors. The upgrade modernises the Investment Chapter to better align with New Zealand's more recent agreements and provides some improvements on the rules that govern investment.

4.10.1 Advantages

The Second Protocol introduces new obligations into AANZFTA's Investment Chapter that align it with the obligations in RCEP. The alignment of these benefits provide greater certainty and consistency on how obligations are interpreted across agreements, and provides greater certainty as to the standard of treatment New Zealand investors will receive in AANZFTA countries. The alignment will also help to embed these obligations into regional trade practice.

These new obligations are:

- The introduction of a Most-Favoured-Nation Treatment provision which means ASEAN states must provide New Zealand with any further concessions they provide to another country.
- A prohibition on Parties imposing nationality or residency requirements for senior managers and boards of directors.
- A prohibition on performance requirements which prevents Parties requiring investors to meet certain requirements as a condition of investment such as using domestic content, using domestic goods, or to export a certain percentage of goods.

In addition to these new obligations, improvements have been made to the National Treatment obligation, which prevents a Party from discriminating between domestic and foreign investors. While AANZFTA already included a National Treatment obligation through the original negotiations, this never came into effect because there was no exchange of schedules of non-conforming measures.

As a result of the new obligations, Parties have exchanged schedules of non-conforming measures. Schedules of non-conforming measures allow Parties to reserve current and future policy space for regulation. This is a significant milestone for the AANZFTA agreement and brings it into line with New Zealand other modern FTAs. This ensures that the investment chapter can now be fully utilised to ensure maximum benefits from the agreement. While new commitments have been made through schedules of non-conforming measures, all Parties have the right to regulate within the obligations of the agreement, however, where a Party enters a reservation in its schedules of non-conforming measures that Party is able to regulate in a manner that would otherwise breach one or more of the obligations. New Zealand's schedule of non-conforming measures is consistent with other FTAs and preserves the same policy space.

4.10.2 Disadvantages

New Zealand made persistent efforts to secure the removal from AANZFTA of Investor-State Dispute-Settlement (ISDS). ISDS is a dispute resolution mechanism that allows foreign investors to claim directly against a government for breaches of investment provisions agreed to as part of a FTA. ISDS was included in AANZFTA when it was originally negotiated. The Government has committed to excluding ISDS from any new trade deals (such as the UK and EU FTAs), and seeking its removal from existing deals, on the grounds that ISDS can limit the government's right to regulate.

Throughout the negotiation of the Second Protocol New Zealand proposed a range of options, including the removal of ISDS in its entirety from AANZFTA; the exclusion of New Zealand only from the application of ISDS; making participation by a Party in an ISDS process voluntary; and negotiating side agreements to exclude ISDS on a bilateral basis with interested Parties, as was done with several members of the Comprehensive and Progressive Trans-Pacific Partnership (CPTPP). New Zealand pushed strongly on this issue both prior to the negotiation and then through the negotiation itself, but could not get agreement from the other Parties.

While not being able to remove ISDS in its entirety from AANZFTA, New Zealand did secure some improvements. ISDS already does not apply between New Zealand and Australia through an exchange of side-letters to the original AANZFTA. Additionally through the upgrade process, New Zealand was able to secure a series of outcomes in relation to ISDS which help to reduce the risk ISDS presents to New Zealand.

Parties agreed that ISDS will not apply to investment screening regimes, which for New Zealand is the Overseas Investment Act 2005. This exclusion will bolster the protection New Zealand already has for the Overseas Investment Act through existing reservations.

The Second Protocol also includes a review of the ISDS provisions to take place 18 months after its entry into force, to be concluded within 12 months. The Parties have also agreed to suspend the ability of an investor to bring an ISDS claim for a breach of the national treatment obligation for 30 months following entry into force. Through the upgrade, the national treatment obligation will apply for the first time, but the suspension of ISDS for this provision means that the scope of ISDS will not be immediately expanded. This provides time for the review to be conducted and for New Zealand to continue its efforts to remove ISDS.

The Second Protocol also amends the Financial Services Annex to limit the application of ISDS in relation to financial services disputes, allowing parties to invoke the Prudential Measures or Financial Services Exceptions provisions as a defence to prevent an ISDS complaint from being launched.

4.11 Competition

The Competition Chapter provides a framework of rules on Parties' competition regimes, which are put in place to encourage open and competitive markets and protect consumer welfare.

4.11.1 Advantages

Promoting and facilitating competitive markets is important because it helps create more choices for consumers, encourage innovation, and keep prices down. The upgraded Competition Chapter introduces clear objectives to deliver on this through the promotion of competition in markets, adoption and maintenance of competition laws, and increased cooperation on the development and implementation of competition laws and regulations.

Implementation and enforcement

The upgraded Chapter provides greater clarity on Parties' obligations around implementation and enforcement of competition laws and regulations. This aims to promote competition in Parties'

economies and make their competition regimes more robust. Additionally, the Second Protocol introduces a requirement for all Parties to apply their national competition law to all commercial activities. This aims to create a more competitive economy, promoting increased efficiency and enhancing consumer welfare. This obligation does, however, have a mechanism for certain commercial activities of policy or public interest to be carved out, which ensures New Zealand's future policy space in this area is protected.

The Chapter also has been broadened to include consumer protection through the introduction of obligations to prohibit misleading practices and false or misleading descriptions.

Increasing transparency

The Second Protocol strengthens the Chapter's transparency provisions. This aligns the obligations with other FTAs such as RCEP, providing New Zealand businesses with a predictable regulatory environment. This includes a requirement that laws and regulations are publically available, and that decisions on sanctions or remedies concerning the breach of laws and regulations are made public. These provisions are subject to the protection of confidential information.

4.11.2 Disadvantages

No disadvantages to New Zealand have been identified as a result of the outcomes in the Competition Chapter, which aligns with New Zealand's current competition policy and practice.

4.12 Trade and Sustainable Development

The Second Protocol introduces a new Trade and Sustainable Development (TSD) Chapter. The Chapter encourages Parties to cooperate on sustainable trade issues that currently sit outside the traditional AANZFTA Economic Cooperation Work Programme.

4.12.1 Advantages

The new TSD Chapter recognises the need to promote trade and investment in a way that supports this sustainable development. The Chapter's provisions state the importance of cooperating on sustainable trade issues including the environment, labour and women's economic empowerment, and note the Parties' shared aspiration to promote and uphold high standards in these areas. The Chapter further provides scope for these issues to be addressed through Parties' own domestic efforts and also through the AANZFTA economic cooperation work programme, co-funded by Australia and New Zealand.

This Chapter's inclusion, a first for any ASEAN FTA, is an important step forward in embedding sustainability issues into the regional economic agenda. It provides an important platform for New Zealand to encourage ASEAN Parties to take action on sustainable trade issues, through mechanisms such as Parties' regular AANZFTA consultations and by targeting TSD issues under New Zealand and Australia's AANZFTA economic cooperation assistance. The Chapter further reflects New Zealand's commitment to progressive, inclusive and sustainable trade outcomes that benefit all New Zealanders under the Trade for All agenda.

4.12.2 Disadvantages

No disadvantages to New Zealand have been identified from the outcomes in the TSD Chapter. However, the Chapter does not include binding obligations, which makes it less far-reaching than other recent FTAs New Zealand has negotiated such as the UK FTA, which has a binding Environment Chapter.

While the Chapter does not have binding sustainable trade obligations - unlike some of New Zealand's more recently negotiated FTAs – considering this is the first chapter of its kind negotiated with ASEAN, it is an important step forward. In the longer-term, as ASEAN parties build greater confidence and comfort with sustainable trade issues, we will use the platform of the new TSD Chapter to advocate for a more substantive chapter in a future AANZFTA Upgrade, one that includes binding obligations.

The Chapter is not subject to AANZFTA's dispute settlement mechanism.

4.13 Micro, Small and Medium Enterprises

The Second Protocol introduces a new Micro, Small and Medium Enterprises Chapter. The purpose of the Chapter is to support MSMEs to utilise AANZFTA and benefit from international trade. The Chapter includes a limited number of obligations around making information available to MSMEs, but is primarily focused on cooperation.

The Chapter requires each Party to make information related and relevant to MSMEs under this Agreement publicly available with the purpose of exchanging knowledge, experience and best practice. This includes information about the upgrade, as well as information that is useful in supporting MSMEs interested in exporting. The Chapter also promotes cooperation between Parties to support MSMEs to utilise and benefit from AANZFTA.

4.13.1 Advantages

MSMEs are hugely important to the economies of New Zealand, Australia, and ASEAN countries, but can struggle to participate in international trade due to their size, resources, and having less access to technical expertise. Introducing a standalone MSME Chapter into AANZFTA – supported by other MSME-related provisions throughout the upgraded Agreement - provides a focused approach to the issues and concerns related to MSMEs and how Parties can seek to address them. There will be a dedicated Committee on MSMEs to lead the implementation of this work. This dedicated Committee will advance the MSME agenda and provide oversight to cooperation assistance specifically addressing MSME needs.

The Chapter aims to make it easier for MSMEs to access information and resources, introducing a requirement for Parties to publish accessible information and contact points for MSMEs to seek advice. The Chapter further encourages cooperation activities to support MSMEs to participate in regional and global trade, and to address the specific barriers they face. This aligns AANZFTA with existing commitments in other free trade agreements New Zealand is a Party to, including RCEP.

4.13.2 Disadvantages

No disadvantages to New Zealand have been identified as a result of the outcomes in the Micro, Small and Medium Enterprises Chapter. The cooperation provisions are flexible and are subject to the availability of resources and any terms agreed by Parties. The Chapter does not include binding obligations and is focused on cooperation only; however, this is in line with New Zealand's approach to all recently negotiated FTAs (including the UK and EU FTAs).

The Chapter is not subject to AANZFTA's dispute settlement mechanism.

4.14 Government Procurement

The Second Protocol introduces a new Government Procurement Chapter, building on outcomes under RCEP. The Chapter includes a range of provisions that aim to make government procurement more transparent, fair and open among AANZFTA Parties. It also includes mechanisms for cooperation on government procurement practice.

4.14.1 Advantages

The introduction of new transparency commitments in the Government Procurement Chapter will enhance the information available to New Zealand businesses on ASEAN's government procurement laws, regulations and procedures, and include information on where tender opportunities are published. This transparency will help New Zealand businesses to bid for government tenders where those are open to international bidding.

The Chapter also supports wider efforts to reduce greenhouse gas emissions and protect the environment, with commitments on parties to incorporate environmental sustainability procurement policies and practices to the extent possible and where appropriate.

There are forward leaning commitments on the use of electric means in procurement. Parties will endeavour to use them to the widest extent practicable. E-procurement supports procurement processes to be more accessible and transparent and the wider use of technology in procurement improves visibility of opportunities and facilitates participation by suppliers.

Cooperation provisions will also provide an avenue to enhance understanding of Parties' respective government procurement laws, regulations and relevant international agreements; and a mechanism to facilitate consultation and exchange of information on such matters.

4.14.2 Disadvantages

No disadvantages to New Zealand have been identified as a result of the outcomes in the Government Procurement Chapter. The provisions all sit within New Zealand's established government procurement policy frameworks and practice.

The new Chapter does not include market access commitments into ASEAN's procurement markets. New Zealand already has market access into the procurement markets of Australia, Brunei (subject to its ratification of CPTPP), Malaysia, Singapore and Viet Nam through existing FTAs.

5 Legal obligations which would be imposed on New Zealand by the treaty action, the position in respect of reservations to the treaty, and an outline of any dispute settlement mechanisms

This section sets out, by Chapter, the legal obligations that would be imposed on New Zealand under the Second Protocol. This covers only new or amended obligations introduced by the Second Protocol and does not cover the existing legal obligations created by the original AANZFTA.

5.1 Trade in Goods

The upgrade of this Chapter sees the addition of six new articles and the review or upgrade of six existing articles, which introduce a range of new obligations as outlined below.

5.1.1 General Provisions and Market Access for Goods

Application of customs duties

Articles 2.4, 2.5 and 2.6 set out conditions for the total or partial removal of the application of customs duties in a range of circumstances:

- *Temporary admission of goods* (Article 2.4): in accordance with the laws and regulations of each Party, goods entered for a specific purpose, intended for re-exportation within a specific period, and having not undergone any change, should be relieved totally or partially from payment of import duties and taxes. In an addition to the provisions of RCEP, for those Parties that have related domestic laws and regulations, Article 2.4 also exempts liability if at the end of the temporary entry period, the good is destroyed and subsequently not exported.
- *Temporary admission of containers and pallets* (Article 2.5): duty-free temporary admission of containers and pallets will be granted in accordance with the laws and regulations or the provisions of the related international conventions for which the importing Party is a signatory. Definitions of a container and pallet are set out in Articles 2.5.1 (a) and 2.5.1 (b), respectively. The Article requires that Parties allow for the prompt departure of containers, not require any security or impose any penalty by reason of any difference between the port of entry and departure, or condition release of any security on the container's exit through a particular port, and not require that the carrier of the container on entry be the same on exit.
- Article 2.6 ensures the import of samples of no commercial value will be granted duty-free entry, subject to the importing Party's laws and regulations.

Periodic amendments to schedule of tariff commitments

Article 2.8 requires all Parties to ensure that future amendments to the tariff nomenclature do not impair the tariff commitments made under the FTA. The article also sets out the minimum procedures for undertaking future amendments.

5.1.2 Non-Tariff Measures

Application of Non-Tariff Measures

- Article 2.10.1 states that no Party may adopt or maintain a non-tariff measure on an imported good except in accordance with each Party's WTO rights and obligations, and those under AANZFTA.
- Article 2.10.2 requires that each Party ensures the transparency of any non-tariff measures.

Quantitative Restrictions and Non-Tariff Measures

- Article 2.11.1 states that Parties are not permitted to prohibit or restrict the importation of any good of another Party. Further, Parties are not allowed to prohibit or restrict the exportation or sale for export of any good of another Party. The only exception to this is if the prohibition or restriction is in accordance with Article XI of the GATT, which is incorporated into the AANZFTA.
- Notwithstanding this obligation, where a Party adopts a prohibition or restriction consistent with their WTO obligations, the AANZFTA Party must upon request inform the other AANZFTA Parties and provide affected Parties with a reasonable opportunity for consultation (Article 2.11.2).

Technical Consultations on Non-Tariff Measures

- Article 2.13.1 allows that a Party can request in writing technical consultations with another Party on a measure that it considers to be adversely affecting its trade. A requested Party must respond to such requests and a mutually satisfactory solution must be agreed by the consulting Parties (Article 2.13.3). Other AANZFTA Parties may request to join the consultations (Article 2.13.4).
- If the consultations are considered urgent or involve perishable goods, a request can be made within a shorter period (Article 2.13.5).
- Technical consultations under this article must be notified annually to the Committee on Trade in Goods (Article 2.13.6).

Non-Tariff Measures on Essential Goods during Humanitarian Crises, Epidemic or Pandemic Situations

- Article 2.14 creates several obligations regarding NTMs on essential goods during times of crisis. Article 2.14.1 preserves a Party's rights and obligations under the WTO and other international agreements during humanitarian crises, epidemic or pandemic situations.
- In defining essential goods, each Party may refer to guidelines issued by international organisations for disaster relief and urgent medical purposes (2.14.2).
- During a humanitarian crisis, epidemic or pandemic, which adversely impacts Parties on a substantial scale, Parties shall, to the extent possible: facilitate timely information-sharing on NTMs on essential goods; refrain from introducing trade restricting NTMs; and endeavour to ensure the timely notification and publication (2.14.3). The Committee on Trade in Goods may convene to identify and resolve any unnecessary NTMs regarding trade in essential goods during

the time of humanitarian crises, epidemic or pandemic situations. A Party may make requests for essential goods to other Parties, and subject to internal considerations and situation, these should be positively considered (2.14.4).

Import Licensing Procedures

- Article 2.15 contains a number of obligations relating to import licensing including a prohibition on measures that are inconsistent with the Import Licensing Agreement, and an obligation on Parties to notify the other Parties of any new or modified import licensing procedures.
- AANZFTA Parties may enquire about another Party's licensing rules and procedures, and if a Party denies an import license application with respect to the goods of another Party, it must, on request, provide the applicant with an explanation of the reasons for the denial. Improvements in Article 2.15 (import licensing) beyond those in RCEP, includes footnotes on response timeframes (Articles 2.15.7 and 2.15.9) for possible future review.

Fees and Formalities Connected with Importation and Exportation

- In Article 2.16, the Chapter requires each Party to ensure that all fees and charges (other than export taxes, customs duties, charges equivalent to an internal tax or other internal charge applied consistently with GATT Article III:2, and antidumping and countervailing duties) imposed on or in connection with importation or exportation are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation of imports and exports for fiscal purposes.
- Parties are prohibited from requiring consular transactions in connection with the importation of any good of the other Parties and are required to make available online a list of the fees and charges it imposes in connection with importation or exportation (Articles 2.16.2 and 2.16.3).
- Improvements over RCEP text ensures each Party can not apply fees and charges imposed in connection with importation or exportation until information on them including the reason for the fees and charges, the responsible authority, and when and how payment is to be made, has been published, including any updates or changes to those fees and charges (Article 2.16.2). An additional improvement to this Article in AANZFTA states that these fees and charges must be periodically reviewed with a view to reducing their number and diversity, where practicable (Article 2.16.4).

5.1.3 Institutional Arrangements

Sectoral Initiatives

- Improving on a similar RCEP Article, Article 2.17 requires that the Parties make reasonable efforts to initiate a work programme on sector-specific issues which if established will be overseen by the Committee on Trade in Goods. The Committee will endeavour to finalise this work programme no within two years of its initiation.
- In determining the sectors to be included in the work programme all Parties' interests will be taken into consideration, including those sectors proposed by Parties during the course of

negotiation of the AANZFTA upgrade (for example cosmetics, wine and distilled spirits as proposed by New Zealand). Any work programme initiated should be conducted in a manner that enhances the Parties' understanding of the issue; facilitates input from businesses and other stakeholders; and explores possible actions (Article 2.17). The Committee on Trade in Goods may make recommendations to the RCEP Joint Committee based on outcomes from the work programmes (Article 2.17).

Committee on Trade in Goods

- A number of new functions are added to the Committee on Trade in Goods. The Committee will address and minimise unnecessary barriers to trade in goods between the Parties, including those relevant issues in relation to tariff and non-tariff measures (Article 2.19) and discuss any other matter related to Chapter 2 (Trade in Goods). This includes the implementation and promotion of good regulatory practice on measures affecting trade in goods and exploring avenues for enhancing cooperation on the use of good regulatory practice and supply chain connectivity (Article 2.19). The Committee may invite input from businesses, including MSMEs and other stakeholders to the Committee on matters affecting trade in goods (Article 2.19) and make publicly available information on its work programmes (including work on non-tariff measures) (Article 2.19). Finally, the Committee now includes the function of reviewing non-tariff measures covered by this Chapter with a view to considering the scope for additional means to enhance the facilitation of trade in goods between the Parties. This Committee will submit to the FTA Joint Committee an initial report on progress in its work, including any recommendations, within two years of entry into force of the Second Protocol. Any Party may nominate measures for consideration by the Committee on Trade in Goods (Article 2.19).

5.2 Rules of Origin

The upgrade of the ROO Chapter sees 25 articles added or amended, which expand and modernise the obligations. The upgrade also reviewed and updated the 282 Product Specific Rules (PSRs). These changes will be implemented through two amendments to the Customs and Excise Regulations 1996, discussed further in Section 6 of this NIA.

- *Cumulative Rules of Origin*: Article 3.6 now provides for the full cumulation of materials used and production costs incurred in all Parties. The amended article provides opt-in and opt-out options (i.e. a Party can opt to participate in full cumulation or continue to use the existing partial cumulation).
- *Direct Consignment, Transit and Transshipment*: Article 3.14 is amended to remove ambiguity in interpretation of terminology; and to simplify the documentation requirements for goods to qualify for originating status.
- *Proof of Origin*: Article 3.15 allows, in addition to Certificates of Origin issued by certifying bodies, approved exporters and exporters or producers to issue Proof of Origin. Additionally, the Operational Certification Annex, which sets out certain Operational Certification procedures each

Party must apply, has been amended to reflect the upgraded chapter elements (including the new Proof of Origin option).

- *Post-Importation Claims for Preferential Tariff*: The amended Operational Certification Procedures introduce a new origin procedure which allows importers to claim a refund on any costs where the good should have qualified for originating status at the time of import, but was not provided with preferential tariff treatment.
- *Product Specific Rules*: The review required under the Built-in Agenda item of the PSRs has been completed and the PSRs have been updated.

5.3 Customs Procedures and Trade Facilitation

The upgrade of the Customs Procedures and Trade Facilitation Chapter (previously Customs Procedures Chapter) adds a range of new provisions to the original text. The changes add new elements to bring AANZFTA in line with developments in customs administration processes pertaining to the WTO Agreement on Trade Facilitation and the recommended practices of the WCO.

- *Consistency*: Article 4.6 requires that Parties ensure that customs laws and regulations are consistently applied throughout a Party's customs territory (for example at different points of entry), unless discretion is explicitly provided by the Party's laws and regulations.
- *Transparency*: Article 7 requires that information on customs laws and requirements be made easily accessible. A range of information must be published, preferably online, including import/export/transit procedures, rates of duties and taxes, and fees and charges. To the extent possible, new and amended laws and regulations should be published and the opportunity for comment provided.
- *Advance Rulings*: Article 10 strengthens obligations around the provision of advance rulings, what these cover, and the process for undertaking an advance ruling.
- *Release of Goods*: Article 12 addresses the prompt clearance and release of goods. It requires that each Party adopt procedures allowing for the submission of documents and other information prior to the arrival of goods. New Article 16 further requires Parties to adopt or maintain procedures to release goods within a period no greater than that required to ensure compliance with customs laws and regulations, and to the extent possible, for goods to be released within 48 hours of arrival. Articles 17 and 18 require that express consignments and perishable goods should be released by customs within six hours of arrival. Article 22 encourages Parties to conduct periodic time release studies on the time goods are released by customs and publish and share with other Parties the results and experiences identified from such studies.
- *Single Window*: Article 13 requires Parties, to the extent possible, to establish or maintain a single window system for exchanging trade-related electronic documents.
- *Authorised Operators*: Article 15 encourages the development of an authorised operator scheme on the basis of international standards and the provision of additional trade facilitation measures

to operators that meet specified criteria, or alternatively the offer of such trade facilitation measures to all operators.

- *Essential Goods*: Article 19 requires Parties, to the extent permitted by their laws and regulations, to expedite and facilitate the movement of essential goods during humanitarian crises, and to accept documents received through electronic means to clear goods where possible.
- *Risk Management and Audit*: Article 20 has had additional elements added that require the adoption or maintenance of risk management systems for assessment and targeting, which enable customs authorities to focus inspection activities on high-risk consignments, expedite the release of low-risk consignments, and avoid arbitrary or unjustifiable discrimination. Article 21 requires the adoption or maintenance of post-clearance audit processes to ensure compliance with customs laws and regulations.
- *Review and Appeal*: Additional elements added to article 23 require Parties to ensure any person has the ability to seek review and appeal regarding administrative decisions made by Customs authorities, that the procedures for review or appeal are carried out in a non-discriminatory manner, that when a review or appeal is not given within set period as specified in laws and regulation the petitioner has the right to either further appeal to or further review by the appropriate authority.
- *Consultation*: Article 24 allows for Parties to request consultations on significant customs matters, and sets out requirements for how these consultations should be managed.

5.4 Standards, Technical Regulations and Conformity Assessment Procedures

The upgraded Chapter introduces a requirement that technical consultations initiated under the provisions of this Chapter have a 60-day consultation period. This is minor change to the existing obligation under which no period was defined within which Parties were required to enter technical consultations.

5.5 Trade in Services

The Second Protocol introduces or amends 22 Articles under the TIS Chapter, introducing a range of new obligations relating to treatment of services providers that bring AANZFTA largely into line with RCEP.

- *National Treatment*: Article 8.4 introduces a new National Treatment provision which requires that foreign service providers should be treated no less favourably than domestic service providers.
- *Market access*: Article 8.5 prevents Parties from imposing the type of quantitative limitations specified in the article, including quotas.

- *Most-favoured nation*: Article 8.9 requires that service providers of a Party should be treated no less favourably than service suppliers of a non-Party.
- *Local presence*: Article 8.10 prohibits a Party from requiring that a service supplier of another Party establish or maintain a representative office or any form of enterprise, or be resident in its territory to supply a service.
- *Domestic regulation*: A new provision introduced into Article 8.14 aims to ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.
- *Recognition*: Similar to a corresponding GATS provision, Article 8.20 acknowledges that a Party may recognise the education or experience obtained, requirements met or licenses or certification granted by a non-Party as meeting the standards it requires for authorisation, licensing or certification of a services supplier.
- *Payments and Transfers*: Article 8.21 implements similar obligations to the GATS that permit transfers and payments relating to the supply of a service be made freely and in a freely convertible currency. At the same time, the article recognises payments or transfers may be prevented or delayed for purposes of law enforcement, including in relation to bankruptcy and insolvency, financial reporting, and ensuring compliance with judicial orders.

5.6 Financial Services

The upgraded Financial Services Annex includes 15 Articles that have been introduced or amended, which serve to modernise the Annex.

- *Prudential Measures*: Article 8A.3 allows a Party to adopt or maintain prudential measures for prudential reasons including for the protection of investors, depositors, policy-holders, or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system.
- *Transparency*: Article 8A.6 commits Parties to promote regulatory transparency in financial services and to ensure that measures governed by the e-commerce Chapter are administered in a reasonable, objective and impartial manner.
- *Transfers of Information and Processing of Information*: Under Article 8A.8 Parties agree not to impose any requirements that financial data and information be stored locally. This is subject to a number of protections including the right to protect personal data and personal privacy, the prudential exception and other general exceptions including the treaty of Waitangi Exception.
- *Dispute Settlement*: Article 8A.9 sets up a consultation mechanism whereby either Party may request consultations with the other Party regarding any matter under the Agreement that affects financial services and provides for the inclusion of arbitrators with relevant expertise in financial services in any such consultations

- *Investment Disputes in Financial Services*: Article 8A.12 limits the application of Investor State Dispute Settlement in cases that involve the financial services, including the qualifications of arbitrators, timeframes, and the requirement that Parties make a good faith attempt to resolve any dispute before establishing formal arbitration.
- *New Financial Services*: Article 8A.13 requires that each Party endeavour to permit financial services suppliers from another Party to supply any new financial services that it would permit its own financial services suppliers, in like circumstances, to provide.
- *Electronic Payment Systems*: Article 8A.14 requires that Parties allow the supply of electronic payment services for payment transactions into its territory from the territory of the other Party.

5.7 Telecommunications

The upgraded Telecommunications Annex has 23 new or amended provisions.

- *Access and Use*: Article 4 ensures that any service supplier of another Party is able to use public telecommunications networks and services.
- *Number Portability*: Article 5 requires that a supplier of public telecommunications services in its territory provides number portability for mobile services to other Parties of the agreement.
- *Treatment by Major Supplier*: Article 7 requires that major suppliers of telecommunication services accord to suppliers of public telecommunications networks or services of another Party treatment no less favourable than that accorded to domestic public telecommunications networks or services.
- *Resale*: Article 8 ensures that Parties do not prohibit the resale of any public telecommunications service.
- *Interconnection*: Article 9 ensures that suppliers of public telecommunications networks or services provides interconnection to public telecommunications suppliers of another Party
- *Co-location*: Article 11 ensures that major suppliers with control over essential facilities allow suppliers of public telecommunications networks or services of another Party to physically co-locate their equipment.
- *Allocation and Use of Scarce Resources*: Article 15 ensures procedures for the allocation and use of scarce resources related to telecommunications in a transparent and non-discriminatory manner.
- *Unbundling of Network Elements*: Article 19 ensures major suppliers offer access to network elements on an unbundled basis in a non-discriminatory and transparent manner.
- *Resolution of Telecommunications Disputes*: Article 23 ensures that a supplier of public telecommunications networks or services has timely recourse to its telecommunications regulatory body or dispute resolution body to resolve disputes.

5.8 Movement of Natural Persons

New Zealand has expanded its commitments to other Parties as summarised in the following table in respect of Business Visitors, Intra Corporate Transferees, Installers and Servicers, and Independent Professionals. The specific commitments and level of access vary by Party.

Category	Description of Category	Conditions and Limitations
Business Visitors	A business person seeking temporary entry for the purposes specified, ¹³ who is not seeking to enter the labour market and whose principal place of business, actual place of remuneration and predominant place of accrual of profits remains outside New Zealand.	Entry for a period not exceeding in aggregate three months in any calendar year.
Intra-Corporate Transferees	An executive, manager or specialist as defined and who is an employee of a goods supplier, service supplier or investor of a Party with a commercial presence in NZ and whose salary and any related payments are paid entirely by the service supplier or enterprise that employs them.	Entry for a period of initial stay up to a maximum of three years.
Installer or Servicer	A business person who is an installer or servicer of machinery or equipment, if installation or servicing by the supplying company is a condition of the machinery or equipment purchase	Entry for periods not exceeding three months in any 12-month period.
Independent Professionals	A self-employed business person with advanced technical or professional	Entry for a period of stay up to a maximum of 12 months.

¹³ The purposes specified are: (i) to negotiate, take orders and agree contracts for sale of goods or services, or (ii) for an investor, or duly authorised representative of an investor, for the purpose of establishing, expanding, monitoring, or disposing of an investment.

	skills, without the requirement for a commercial presence, working under a valid contract in New Zealand. The Schedule sets out criteria for such persons and specifies that the commitment is only in respect of the services sectors in New Zealand's GATS commitments, together with some additional business and professional services ¹⁴ .	
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5.9 Electronic Commerce

The upgraded e-commerce Chapter introduces 20 new and updated provisions that expand the scope of the chapter to support businesses to take up the opportunities of digital trade.

- *Paperless Trading*: Article 10.5 requires Parties to work towards implementing paperless trading and endeavouring to accept electronic trade administration documents as the legal equivalent of paper versions, and make trade administration documents available to the public in electronic form.
- *Electronic Authentication and Electronic Signature*: Article 10.6 prohibits Parties from denying the legal validity of a signature solely on the basis of it being electronic, except in circumstances where a Party's laws and regulations provide otherwise. Each Party must also permit participants in electronic transactions to determine which electronic authentication models they use, not limit these models, and allow opportunities for participants to prove their e-transactions comply with laws and regulations.
- *Electronic Invoicing*: Article 10.7 requires Parties to recognise the importance of e-invoicing, recognise the benefits of interoperable e-invoicing systems, and take into account international standards where application when developing electronic invoicing measures.
- *Online Consumer Protection*: Article 10.9 requires each Party to have consumer protection laws to protect consumers of electronic commerce against fraudulent and misleading practices. Parties are also required to publish information on the consumer protection it provides to e-commerce users, including how individuals can pursue remedies and how business can comply with any legal requirements.
- *Online Personal Information Protection*: Article 10.10 requires each Party to have a legal framework to ensure the protection of personal information of electronic commerce users, taking into account international standards. Parties also must encourage the development and

¹⁴ An Independent Professional must have a recognised degree or diploma qualification (resulting from at least three years of formal tertiary education) and at least six years of experience in the field in which the services are to be supplied.

adoption of mechanisms to promote compatibility between different legal frameworks. Each Party is required to publish information on the protections it provides, including how individuals can pursue remedies and how business can comply with any legal requirements.

- *Unsolicited Commercial Electronic Messages*: Article 10.11 requires Parties to have measures that require suppliers of unsolicited commercial electronic messages to enable recipients to stop receiving those messages, require recipients' consent to receive those messages, or otherwise provide for the minimisation of SPAM. Parties must also endeavour to ensure that commercial electronic messages are identifiable and contain information for recipients on how to end requests free of charge and at any time.
- *Customs Duties*: Article 10.13 requires Parties to continue their current practice of not imposing customs duties on electronic transmissions. This does not preclude a Party from adjusting its practice in accordance with future WTO Ministerial Decisions on such customs duties.
- *Transparency*: Article 10.14 requires Parties to publish, as promptly as possible, all relevant measures relating to e-commerce. Where that is not practicable, Parties must otherwise make the information publicly available, such as on the internet.
- *Open Government Data*: Under Article 10.15 Parties recognise the benefits of facilitating public access to and use of government information. Parties shall endeavour to ensure information is made available in an open or machine readable format when governments choose to make government data and information available to the public.
- *Location of Computing Facilities*: Article 10.17 prohibits Parties from requiring a 'covered person' to use or locate computing facilities in its territory as a condition for conducting business there (the Chapter defines 'covered person'). However, this does not prevent a Party from having measures inconsistent with the requirement in order to achieve a legitimate public policy objective if the measure is not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination, or a disguised restriction on trade. A Party can also take any contrary measure it considers necessary for the protection of its essential security interests.
- *Cross-Border Transfer of Information by Electronic Means*: Article 10.18 prohibits a Party from preventing cross-border transfer of information by electronic means where such activity is for the conduct of a covered person's business. However, a Party may adopt or maintain measures that affect such transfers to achieve a legitimate public policy objective if the measure is not applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination, or a disguised restriction on trade. A Party can also take any contrary measure it considers necessary for the protection of its essential security interests.
- *Digital Inclusion*: In Article 10.19 Parties recognise the importance of digital inclusion, and the importance of expanding and facilitating e-commerce and digital trade opportunities by addressing barriers to and encouraging participation in e-commerce and digital trade. The Parties must endeavour to cooperate on matters related to digital inclusion, including identifying

barriers, developing programmes, sharing best practices and experience, and other joint areas of cooperation.

5.10 Investment

There are two kinds of obligations that the New Zealand government will owe to investors and investments under AANZFTA: those in respect of which AANZFTA Parties reserve policy space against the obligations in their schedule of non-conforming measures; and those that are derived from obligations owed at customary international law and in respect of which AANZFTA Parties may not enter reservations. The key changes introduced by the Second Protocol are described below.

Australia and New Zealand agreed through a side letter to the original AANZFTA not to apply the Investment Chapter between them, so New Zealand will only owe these obligations to ASEAN Parties. This side letter will be reaffirmed upon ratification of the Second Protocol.

Reservable obligations

The following obligations are subject to specific reservations or exceptions in the services and investment schedules of the Agreement. New Zealand has a schedule of non-conforming measures which specifies sectors where New Zealand does not currently meet, or may regulate in future in a manner that does not meet, the reservable obligations. This ensures New Zealand retains policy space for areas of importance to New Zealand.

- *National Treatment*: Article 11.3 requires that foreign investors and investments are treated the same as domestic investors and investments. National treatment was included in the original AANZFTA and has been modernised in the upgrade.
- *Most-Favoured-Nation (MFN) Treatment*¹⁵: Article 11.4 requires that foreign investors and investments are treated no less favourably than investors and investments from any other country. This means for instance that New Zealand investors will receive benefits of any better treatment an AANZFTA Party provides to other foreign investors under future agreements.
- *Senior Management and Board of Directors*: Article 11.5 prohibits Parties from requiring the appointment of a certain nationality to a senior management position. It further provides that while a Party can require that a majority of the board of directors (or any committee of a board) be of a particular nationality or resident in the territory, it may not do so if this would materially impair the ability of the investor to exercise control over its investment.
- *Prohibition of Performance Requirements*: Article 11.6 prevents Parties from imposing certain requirements on investors or investments, including restrictions on volume or value of imports or exports, and level or percentage of exports or domestic content.

Non-reservable obligations

¹⁵ This Article does not apply to Cambodia, Lao PDR, Myanmar and Viet Nam. The treatment under this Article is therefore not accorded to investors of Cambodia, Lao PDR, Myanmar, and Viet Nam, and does not cover investments of such investors.

These are supplemented by rules designed to protect investors and investments from conduct to which investors in foreign countries can be exposed.

- *Treatment of Investment*: Article 11.7 requires that investments are treated in accordance with the customary international law minimum standard of treatment. This requires fair and equitable treatment and the provision of full protection and security.
- *Compensation for Losses*: Article 11.8 requires that compensation for losses relating to armed conflict, civil strife, or state of emergency is provided no less favourably than that given to investments or investors of another Party, non-Party or their own.
- *Transfers*: Article 11.9 obliges each Party to permit transfers relating to a covered investment freely and without delay into and out of their territory.
- *Expropriation*: Article 11.10 provides that a Party can only expropriate or nationalise a covered investment for a public purpose, in a non-discriminatory manner, on payment of compensation, and in accordance with due process of law. This obligation does not apply to certain actions that comply with and the TRIPS Agreement.

5.11 Competition

The existing Competition Chapter in AANZFTA is limited to promoting cooperation, and so the upgraded chapter introduces a range of new binding obligations.

Measures against Anti-Competitive Activities

- Article 14.3 requires the adoption, maintenance and enforcement of competition laws and regulations that proscribe anti-competitive activities; and the establishment or maintenance of an authority to effectively implement these laws and regulations in an independent manner.
- The enforcement of competition laws and regulations shall be in a manner that does not discriminate on the basis of nationality, and regardless of ownership. Exclusions from competition laws and regulations must be transparent and on the grounds of public policy or interest.
- Competition laws and regulations, and any supporting guidelines (except for internal operational guidelines), must be made public.
- Any final decision to impose sanctions or remedies under competition laws must be made public, subject to reasonable laws and regulations such as the need to safeguard confidential information. Parties must also make the grounds for any final decision to impose sanctions or remedies, and any appeal, available to the subject, and ensure the subject has access to an independent review of or appeal against the sanction or remedy.

Confidentiality of Information

- Article 14.5 governs the sharing of confidential information. The Chapter does not require Parties to share information contrary to their laws, regulations and important interests.

- Where information is shared under Article 14.5, requirements for its use and handling are provided to protect confidentiality of information.

Consumer Protection

- Article 14.7 introduces obligations to strengthen consumer protection. This includes maintaining laws and regulations, and an enforcement authority, for proscribing the use in trade of misleading practices, or false or misleading descriptions.

Consultations

- Where addressing specific matters under this Chapter, Article 14.8 requires Parties to enter into consultations on the request of another Party.

The Chapter is not subject to dispute settlement.

5.12 Trade and Sustainable Development

The Second Protocol introduces a new cooperation-focused Trade and Sustainable Development Chapter. Because the purpose of this Chapter is to provide a framework for economic cooperation on sustainable trade issues, there are no substantive legal obligations imposed on the New Zealand Government in this Chapter.

The only legal obligation created is for Parties to designate a contact point for technical co-operation and information exchange under the Chapter, and to notify the other Parties of the contact point and if it changes (Article 13.3). The Chapter is not subject to dispute settlement.

5.13 Micro, Small and Medium Enterprises

While primarily focused on encouraging cooperation to support MSMEs, this Chapter includes a number of new legal obligations. The Chapter is not subject to dispute settlement.

- *Information Sharing:* Article 16.2 requires that Parties share information on AANZFTA relevant to MSMEs, including the Second Protocol text and other information to support MSMEs. This includes the establishment and maintenance (regular review to ensure information is up to date) of a publicly accessible information platform.
- *Cooperation:* Article 16.3 commits Parties to strengthening cooperation through information sharing, in relation to MSMEs. Cooperation activities are subject to the availability of resource and agreement of Parties.
- *Contact Points:* Article 16.4 requires each Party to notify the other Parties of its MSME contact point, and to further notify Parties of any changes to the contact points.
- *Committee on MSMEs:* Article 16.5 establishes a Committee on MSMEs with the functions of:

- Identifying ways, including through exchanging and sharing information, to assist MSMEs to take advantage of the commercial opportunities under the upgraded agreement and their ability to benefit from these opportunities.
- Reporting to the FTA Joint Committee as required and make recommendations as appropriate, including the coordination of a work programme under AANZFTA
- Convening within one year of the date of entry into force of the Second Protocol, and thereafter determined by the Parties. In undertaking this work, the Committee may seek to collaborate with appropriate experts, international organisations and the private sector.

5.14 Government Procurement

The Second Protocol introduces a new Government Procurement Chapter, which includes a number of legal obligations. The Chapter is not subject to dispute settlement.

- *Transparency*: Article 17.4 requires that Parties publish (electronically and in English, if possible) laws, regulations and procedures relating to government procurement, and indicate where procurement opportunities are published and publish information on preferential treatment for domestic suppliers. It further requires that Parties provide unsuccessful suppliers with reasons why their bid was unsuccessful if requested, to the extent possible and appropriate.
- *Environmentally Sustainable Procurement*: Article 17.6 provides that Parties shall endeavour to include environmental sustainability policies and practices in government procurement.
- *Ensuring Integrity in Procurement Practices*: Article 17.7 requires that Parties maintain policies relating to integrity in government procurement, including addressing corruption and manage conflicts of interest.
- *Cooperation*: Article 17.9 provides that Parties shall endeavour to cooperate on matters relating to government procurement, with a non-exhaustive list of cooperation areas.

6 Measures which the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation

No changes to primary legislation are required to implement the outcomes of the Second Protocol. Three amendments are required to the Customs and Excise Regulations 1996, which will be undertaken by New Zealand Customs:

- Regulation 51ZQ (Accumulation) – updated to allow for full cumulation [see p. 16] for those AANZFTA Parties that opt-in to this provision;
- Regulation 51ZX (Direct Consignment) – this article will be re-titled ‘Direct consignment, Transit and Transshipment; and amended to address goods that enter free zones and are not further processed there; and
- Regulation 51ZM (Products Specific Rules (PSR)) – these rules determine a good’s tariff classification, and have been reviewed and amended to align with modern FTAs in line with World Trade Organisation (WTO) guidelines.

7 Economic, social, cultural and environmental costs and effects of the treaty action

This section of the NIA assesses the overall costs and effects of the Second Protocol for New Zealand. It draws on the advantages and disadvantages outlined in Section 4 above to consider the net effect of the changes. The fiscal costs to New Zealand of ratifying the Protocol are outlined in Section 8.

While the Second Protocol will introduce new treaty level commitments for New Zealand with respect to AANZFTA Parties, these are all consistent with New Zealand's existing domestic policy and legislative settings and established FTA practice. Care has been taken to ensure that the flexibilities and safeguards secured in the existing FTA, which preserve the Government's right to regulate for legitimate public policy purposes, have not been altered and will continue to apply to the commitments in AANZFTA as amended by the Second Protocol.

7.1 Economic effects

Trade makes a significant contribution to New Zealand's economic performance. Prior to COVID-19, exports accounted for 27% of New Zealand's GDP¹⁶. One in four jobs depend on exports¹⁷. FTAs help New Zealand exporters to remain competitive in international markets by providing access into larger markets. This access enables companies to benefit from economies of scale and specialise in the areas in which they have an advantage. New Zealand's connections into international markets also improves the domestic economy by allowing for access to more knowledge and resources, improved technology and foreign investment, which help boost productivity and income for New Zealand firms.

7.1.1 Economic benefits from the existing AANZFTA

AANZFTA has played a significant role in growing New Zealand trade in the ASEAN region. Since AANZFTA entered into force 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 44%, making ASEAN our fourth largest export destination for goods following Australia, China and the US. In addition, service exports to ASEAN almost doubled between 2012 and 2020 from \$866 million to \$1.6 billion.

7.1.2 General economic effects of the AANZFTA Upgrade

The economic effects of the AANZFTA upgrade are likely to be incremental and indirect, and therefore difficult to measure. For example, New Zealand already benefits from tariff free access on 99% of goods exports into ASEAN and further tariff reduction was not in scope of the upgrade negotiations. The Second Protocol does not therefore introduce additional goods market access, which is one metric that can more easily be estimated in terms of direct cost savings to exporters.

¹⁶ World Bank Open Data. Due to border restrictions imposed as a response to COVID-19, this figure fell to 22% in 2020, but is expected to recover.

¹⁷ Statistics New Zealand

The primary economic benefits will stem from improved trade facilitation measures. The OECD notes that the effective implementation of trade facilitation measures can have a range of economic benefits, including reduced costs to businesses, cheaper goods and services for consumers, and an increase in domestic production¹⁸. Although trade facilitation improvements can be hard to estimate, evidence suggests that reducing trade transaction time by 1% could increase trade by 0.64%¹⁹. Further evidence found that a 1% reduction in the time to export increased exports by roughly 0.4%²⁰. The Second Protocol includes a number of outcomes with the potential to reduce trade costs, including:

- Greater transparency of fees and charges, and the periodic review of import/export fees and charges with a view to reducing their number and diversity;
- Greater transparency of customs requirements and of payable duties;
- Measures to support the timely release of goods, including an expectation that perishable goods will be released from Customs control to the extent possible within 6 hours of the arrival; and
- The expanded use of e-invoicing in cross-border trade.

Additionally, the upgrade aims to limit the impact of NTBs on businesses when trading in the ASEAN region. NTBs have been reported as one of the main challenges for businesses entering into or expanding within the ASEAN region, which has the potential to limit growth.

7.1.3 Regional distribution of economic effects

Trade with ASEAN has differing effects across New Zealand due to regional differences in industry composition and relative exposure to particular international markets. Given the primary economic benefits of the AANZFTA upgrade derive from reducing trade costs and providing more certainty for exporters, rather than for example providing access to new markets, the regional distribution of economic effects as a result of the upgrade is expected to broadly follow regional trade patterns under the existing AANZFTA.

Regions such as Taranaki, the West Coast, Waikato, Auckland and Canterbury sell a higher proportion of their exports to ASEAN markets than other regions. This reflects their comparative advantage in producing New Zealand's major goods exports to ASEAN, primarily dairy products that account for around half of our goods exports. As a result, these regions are expected to benefit most from improved trade facilitation outcomes associated with the upgrade.

There is less variability across regions in imports than exports. This reflects the importance of products such as vehicles, transportation services, mineral fuels and oil, and machinery in the composition of New Zealand's imports from ASEAN markets and the fact that these products are relatively evenly consumed across regions. As a result, any indirect import benefits for consumers

¹⁸ OECD, *Trade Facilitation and the Global Economy*, Paris: OECD Publishing, 2018. <http://dx.doi.org/10.1787/9789264277571-en>

¹⁹ Hausman, WH et al. "The Impact of Logistics Performance on Trade", *Production and Operations Management* 22 (2013): pp. 236-252

²⁰ Djankov et al. "Trading on Time", *The Review of Economics and Statistics* 92 (2010): pp. 166-173

and businesses from enhanced trade facilitation with ASEAN due to the AANZFTA upgrade are expected to be relatively evenly distributed across the country.

7.1.4 Opportunities for SMEs

The upgrade has the potential to support SMEs in a number of ways. SMEs make up 99% of New Zealand's businesses, and therefore also account for a large portion of New Zealand's exporting businesses. However, although SMEs represent the majority of New Zealand exporting firms, their share of total exports is small. While SMEs accounted for 96% of the number of exporters in 2018, their exports represented only around 12% of the total value of New Zealand's goods exports. They are also much less likely to participate in exporting than larger firms, with SME export propensity roughly half that of larger firms.

A key reason behind the lower propensity of SMEs to export is their small scale and more limited access to resources to overcome the high costs of exporting. SMEs generally have fewer resources and less capacity to navigate trade barriers and complex trade procedures, including complying with different regulatory frameworks, accessing information necessary to understand foreign markets, and meeting trade regulations.

The Second Protocol introduces a chapter dedicated to supporting MSMEs to participate in international trade and global supply and value chains. There are a range of measures including information sharing to reduce trade barriers, establishing a MSMEs contact point, and cooperation activities to support MSMEs to utilise and benefit from trade agreements.

SMEs are also likely to benefit from the Upgrade's trade facilitation outcomes. Steps such as simplifying customs procedures, reducing fees, and increasing ease of access to information are likely to be of particular benefit to SMEs.

7.2 Social effects

The Second Protocol is not expected to impact on New Zealand's ability to develop social policy. The Second Protocol's preamble reaffirms each Government's right to regulate for legitimate public policy purposes, and preserving flexibility to safeguard the public welfare. The following section examines potential effects on domestic employment, health, social regulation, immigration and human rights.

7.2.1 Employment

FTAs may have both positive and negative employment effects. MFAT has estimated that 8,565 New Zealanders are employed for every \$1 billion of exports²¹. The relationship between employment and exports may not be linear, and employment growth will be constrained by labour supply, but it is likely that employment will expand due to the expansion of exports generated by trade agreements. While in theory highly-protected sectors can experience increased competition following the

²¹ Bailey, P and Ford, D, "Estimating Employment in New Zealand Producing Goods and Services for Export", MFAT Working Paper, December 2018, <https://www.mfat.govt.nz/assets/Trade-General/Trade-stats-and-economic-research/MFAT-working-paper-Estimating-employment-in-NZ-producing-goods-and-services-for-export.pdf>

liberalisation of protective barriers (such as tariffs or other restrictions on imports), New Zealand has very few, if any, such protected sectors.

7.2.2 Health

There are no direct effects on public health arising from the Second Protocol. The Protocol would not change the Government's existing ability to regulate for legitimate public policy purposes, including public health objectives.

The Trade in Goods and the Customs Procedures and Trade Facilitation Chapters include provisions that consider the impacts of COVID-19 on supply chains. These measures seek to reduce disruption of the trade of essential goods in the event of a national crisis, such as an epidemic. This has the potential to support an effective public health response in future.

7.2.3 Social regulation

New Zealand's social regulation frameworks would not be affected by the Protocol. The Protocol was negotiated so as not to impair New Zealand's right to regulate and make legitimate public policy.

7.2.4 Immigration

The upgrade to the Movement of Natural Persons Chapter may have a small effect on immigration, through the expanded commitments New Zealand has provided to other Parties. Business visitors from AANZFTA Parties and installers and servicers may enter into New Zealand for not more than three months per year; and individuals in the Independent Professionals category may enter for not more than six months per year, subject to the use of economic needs tests. The short-term nature of this access, however, means the effect is likely to be negligible on New Zealand's immigration or employment profile.

7.2.5 Human Rights

The Protocol does not include any provisions that are inconsistent with the Human Rights Act 1993 and New Zealand Bill of Rights Act 1990. Its implementation would have no effect on human rights in New Zealand.

7.3 Effects on Māori

7.3.1 Treaty of Waitangi

As the founding document of New Zealand, the Treaty of Waitangi is fundamental to the on-going relationship between the Government and Māori. All of New Zealand's FTAs, including AANZFTA, include a specific provision preserving the pre-eminence of the Treaty of Waitangi in New Zealand. This is designed to ensure that nothing in the NZ-UK FTA would prevent the Crown from meeting its obligations to Maori. It also specifies that New Zealand's interpretation of the Treaty of Waitangi will not be subject to dispute settlement.

As discussed on p. 28, in addition to the Treaty of Waitangi exception, New Zealand introduced an additional reservation to New Zealand's services and investment commitments in the Second Protocol. This preserves the government's right to actively protect and promote Māori rights and interests in respect to trade enabled by electronic means, providing further clarification of the Government's active protection of Māori within the trade in services and investment space.

7.3.2 Mātauranga Māori

The existing FTA contains safeguards to prevent adverse effects on New Zealand cultural values, including Māori interests, and these safeguards will remain unchanged as a result of the Protocol. In particular, the Protocol does not change the Intellectual Property Chapter of the existing FTA, including the provision in the Chapter that allow Parties to establish measures to protect genetic resources, traditional knowledge and folklore consistent with international obligations.

7.3.3 Benefits for Māori business

The trade facilitation benefits described in section 7.1.2 are expected to also accrue to Māori businesses. The growing Māori economy is increasingly engaging in international trade, and in 2021 Māori authorities and other Māori enterprises exported around \$1.1 billion of goods – the highest on record²².

Much of the engagement of Māori business in trade arises from the relatively high share of land and other primary sector assets owned by Māori and the high rate of Māori employment in primary industries.²³ Altogether, Māori enterprises account for 40% of New Zealand's forestry, 50% of the country's fishing quota, 30% of sheep and beef production and 10% of dairy production.²⁴ Māori also make up nearly a quarter of the workforce in goods exporting firms in the agriculture, forestry, and fishing industries²⁵.

A high proportion of New Zealand's trade with ASEAN is in significant sectors for the Māori economy. Dairy products, fruit, meat, and wood comprise almost two thirds of New Zealand's goods exports to ASEAN. These are significant sectors for Māori businesses, with milk powder, butter, and cheese making up around a quarter of all exports by Māori authorities in 2021²⁶. These businesses would be expected to benefit to some extent from trade facilitation improvements introduced by the Second Protocol.

7.4 Effects on Women

The trade facilitation benefits delivered through the AANZFTA upgrade may accrue to women in businesses that export to ASEAN markets slightly more than men on average. Recent research from the OECD has shown that women-owned and women-led exporting businesses in New Zealand, as in

²² Statistics New Zealand

²³ MFAT Working Paper, 'Understanding the linkages between trade and productivity, sustainability and inclusiveness', June 2020

²⁴ Chapman Tripp, Te Ao Māori Trends and Insights Pipiri 2017

²⁵ MFAT Working Paper, 'All for Trade and Trade for All: Inclusive and Productive Characteristics of New Zealand Goods Exporting Firms', February 2022

²⁶ Statistics New Zealand

many developed countries, tend to be smaller than those led by men²⁷. As described in section 7.1.4, administrative processes that are costly, time consuming, and non-transparent increase trade costs of small firms more than large ones that have more resources to better navigate challenging business environments. For this reason, the OECD highlighted the importance of improving trade facilitation as a mechanism to reducing barriers to trade for New Zealand women in exporting.

However, these benefits may be reduced by the large proportion of primary industry products in New Zealand's export profile with ASEAN markets. Women have long been underrepresented as both employees and business owners in agriculture, forestry, and fishing – for example, women make up only a third of employees in goods exporting firms in these industries²⁸. This low representation will reduce the extent to which women will experience the upgrade's economic benefits.

The Second Protocol introduces a new Chapter on Trade and Sustainable Development, which reflects Parties' commitment to cooperate. While this Chapter does not include binding obligations, it promotes cooperation between Parties on sustainable trade issues, including women's economic empowerment.

7.5 Cultural effects

7.5.1 Culture

The Second Protocol does not limit the scope of the existing FTA's incorporation of relevant WTO general exceptions (from GATT and GATS) (and increases the scope in the case of E-commerce and Investment). This includes incorporation of the GATT Article XX(f) exception that Parties may take measures necessary to protect national treasures of artistic, historic or archaeological value, providing that such measures are not used for trade protectionist purposes. New Zealand maintains reservations in relation to the use of government funding for the promotion of Maori language and culture by the Broadcasting Commission and Te Reo Whakapuaki Iriangi (the Maori Broadcasting Funding Agency), as well as assistance for New Zealand films by the New Zealand Film Commission.

7.5.2 Digital economy

The digital economy increasingly affects the way New Zealanders connect economically and socially to the world. Connectivity is also a crucial driver of New Zealand's economic growth, and can have significant cultural effects. The upgrade will encourage the growth of New Zealand's digital economy by putting in place better protections for consumers, and encouraging the use of digital trade tools such as e-invoicing.

7.6 Environmental effects

The Protocol will not inhibit the New Zealand Government's ability to regulate for environmental protection. The FTA (as amended by the Second Protocol) contains general exceptions that are

²⁷ OECD, 'Trade and Gender Review of New Zealand', June 2022

²⁸ MFAT Working Paper, 'All for Trade and Trade for All: Inclusive and Productive Characteristics of New Zealand Goods Exporting Firms', February 2022

consistent with those provided for in existing international agreements (GATT and GATS) which are designed to provide policy space for Governments to regulate for legitimate public policy purposes, such as the protection of natural resources and the protection of human, animal or plant life or health. The Protocol will not restrict New Zealand from applying existing or future environmental laws, policies and regulations, provided they are applied to meet a legitimate objective and are not implemented in a manner which would constitute a disguised restriction on trade.

In terms of the impacts of economic activity on the environment, the AANZFTA upgrade is not expected to have any material effects. In general, trade can generate a mix of positive and negative effects on a country's environment and natural resources.²⁹ Because the global market is much larger than the domestic one, incentives from trade can lead industries with a comparative advantage in production to expand in response to global demand, with associated environmental effects. It can also facilitate cross-border sharing of environmentally sustainable technologies and techniques. However, as the economic benefits of the ANZFTA upgrade are expected to be incremental and indirect, any resulting environmental impacts are expected to be negligible.

New Zealand also has a suite of relevant existing legislation designed to address any potential adverse environmental outcomes of economic activity in a manner consistent with the Government's sustainable development and environmental objectives.³⁰

7.6.1 Trade and Sustainable Development

The Second Protocol introduces a new Chapter on Trade and Sustainable Development, which includes environmental protection as one of the target areas for cooperation, reflecting a commitment to advance Parties' joint and individual efforts and capacities to protect the environment. This is a first for any ASEAN FTA, and is particularly significant because while South East Asia is among the most vulnerable regions in the world to the impacts of climate change, it is also on a trajectory to be one of the largest contributors of emissions. Between 1990 and 2010, South East Asia's carbon emissions increased more rapidly than any other region in the world³¹. The aim of the cooperation Chapter is to encourage action towards mitigating the environmental impacts of trade, and the AANZFTA Upgrade therefore provides a valuable platform for action and advocacy moving forwards.

²⁹ MFAT Working Paper, 'Understanding the linkages between trade and productivity, sustainability and inclusiveness', June 2020

³⁰ Relevant legislation includes the Resource Management Act 1991, the Hazardous Substances and New Organisms Act 1996, the Climate Change Response (Zero Carbon) Amendment Act 2019, the Ozone Layer Protection Act 1996, the Soil Conservation and Rivers Control Act 1941, the Energy Efficiency and Conservation Act 2000, the Climate Change Response Act 2002, the Aquaculture Reform (Repeals and transitional Provisions) Act 2004, the Biosecurity Act 1993, the Conservation Act 1987, the Crown Minerals Act 1991, the Fisheries Act 1949 (amended 1993), the Forests Act 1949 (amended 1993), and the Wildlife Act 1953.

³¹ Asian Development Bank, *Southeast Asia and the Economics of Global Climate Stabilization*, Mandaluyong City: Asian Development Bank, 2015.

8 The costs to New Zealand of compliance with the treaty

8.1 Tariff Revenue

The Second Protocol is not expected to have any on tariff revenue, as the AANZFTA Upgrade does not further alter tariff rates between AANZFTA Parties. The trade facilitation benefits provided by the Upgrade may encourage an increase in overall goods import and export volumes, but this has not been modelled.

8.2 Costs to government agencies of implementing and complying with the Protocol

The implementation of the Second Protocol will have limited fiscal implications.

8.2.1 Promotion and outreach costs

There are costs associated with promoting the upgrade, which is important to support utilisation of its outcomes. These engagements are undertaken as part of MFAT's wider trade policy outreach activities. Taking into account outreach events during negotiations, and following conclusion, the total estimated cost incurred by MFAT is expected to be approximately \$30,000 across the 2021/22 and 2022/23 financial years, funded from the inter-agency Trade Negotiations Fund (TNF) within its budget.

8.2.2 FTA implementation costs

The costs of implementing the Second Protocol are expected to be modest compared to the implementation of other FTA treaty actions. Because this is an upgrade to an existing FTA there are not expected to be significant change to agencies' processes in implementing AANZFTA. Additionally, the institutional structures such as the AANZFTA Joint Commission are already largely in place.

There may be some resourcing implications from some of the upgrade's new obligations, which will be covered through departmental baselines and will not require additional funding. As far as possible resourcing implications will be minimised by looking for efficiencies through combining with existing activities.

MFAT currently funds New Zealand's contribution to the AANZFTA economic cooperation programme. While the upgrade specifies new areas where Parties have agreed to cooperate (including trade and sustainable development and MSMEs), it does not commit New Zealand to providing additional cooperation funding. No increase is currently planned to cooperation funding, or FTEs to support additional cooperation, which will continue to be met through departmental baselines. There is potential for cooperation to grow in some areas in future – for example, as a result of the Education Services Cooperation Annex – and any resourcing implications will need to be considered by relevant Departments as part of their ongoing resource prioritisation activities.

9 Completed or proposed consultation with the community and Parties interested in the treaty action

The Government has engaged with the public, Māori, business and civil society on the Protocol. The focus of the government's engagement has been to:

- Outline the process, scope and timeframes for the negotiation, and update on progress as the negotiations progressed.
- Outline and seek feedback on the reasons why New Zealand pursued an upgrade to the AANZFTA, including the potential benefits, both economic and strategic.
- Provide an opportunity for stakeholders to express their views on the existing AANZFTA and to raise any concerns or suggest any improvements that they would like to see addressed through the Protocol.
- Raise awareness about the outcomes of the negotiations so that stakeholders understand what it means for them and can be ready to take advantage of any opportunities created.

9.1 Public consultation process

With the Government's focus on strengthening outreach and engagement on trade, MFAT organised and conducted a consultation programme to seek stakeholder views on priority interests and potential concerns, so as to shape New Zealand's objectives and approach to the negotiations; and to raise public awareness of the AANZFTA Upgrade negotiations.

9.1.1 Summary of consultations

A range of consultations were undertaken with stakeholders, as outlined below.

- Two submissions processes were run (discussed further in section 9.1.2). An initial call for public submissions was held between October-December 2016, to seek inputs on the upcoming General Review of AANZFTA (which informed the scope and focus of the upgrade). Once the upgrade had been agreed, a further submission process was held between April-July 2019 to seek feedback from stakeholders on New Zealand's priorities in the negotiations. Following this period, an ongoing call for submissions and feedback was posted on the MFAT website throughout the negotiation period.
- Updates on the negotiations process were regularly published on the MFAT website and shared through MFAT and other industry group newsletters and public communications.
- Over the course of 2020-2022, MFAT's planned programme of public information sessions on New Zealand's FTAs was disrupted by the COVID-19 pandemic. Once restrictions eased in 2022, two public engagement events were held to promote New Zealand's FTAs with ASEAN, with a

focus on the AANZFTA Upgrade. This included an event in June 2022 led by the Minister of State for Trade and Export Growth and attended by a range of business, academic and other groups.

- Printed materials were made available at public events and industry engagements, providing further information and resources on the upgrade.
- The MFAT webpage provides detailed information and documents relating existing AANZFTA and the Upgrade process, including information on areas covered by the FTA upgrade negotiations and New Zealand's priorities in the negotiation. This page also provides contact details for the public to share views on the upgrade: FTA_Outreach@mfat.net.
- Consultation with Treaty of Waitangi partners is discussed in section 9.2.

9.1.2 Submissions process

The initial call for public submissions on the General Review received six responses. The further call for submissions in 2019 received 21 responses, from a range of businesses, organisations and individuals including: Zespri; Beef + Lamb NZ, and Meat Industry Association (joint submission); ASEAN New Zealand Business Council; New Zealand Chamber of Commerce and Industry; Fonterra; Transparency International New Zealand; Dairy Companies Association of New Zealand; New Zealand Wine; New Zealand Trade and Enterprise; and Apples and Pears New Zealand.

Further feedback (both written and oral) from a number of individuals, organisations and businesses was also provided throughout the course of the negotiations as part of the stakeholder consultations process.

9.1.3 Issues covered in the consultation process

The key themes that emerged from the consultation process can be summarised as:

- There was strong support for the upgrade across the submissions and throughout the negotiation process. Stakeholders recognise ASEAN as a strong and growing market and attributed AANZFTA to this growth. The value of the upgrade in modernising AANZFTA was well-noted.
- Industry and business highlighted the need to further liberalise access in the region, and many stressed their disappointment that the upgrade would not address goods market access and not directly address non-tariff barriers. A number of submissions highlighted that non-tariff barriers remain a serious issue under AANZFTA, and on the biggest challenges with trading in the region. Examples included the issuing of import permits for primary industry goods. The upgraded TIG Chapter does seek to address non-tariff measures, to limit their volume and impact on businesses.
- Civil society and private citizens reflected concern with a number of issues related to trade policy and trade negotiations more generally. These include the value of public submissions in influencing negotiating mandates, New Zealand's trade imbalance and environmental impacts of trade. MFAT has sought to highlight the linkages between the upgrade outcomes and these issues in information and engagement on the upgrade.

9.2 Engagement with Treaty of Waitangi Partners

Engagement with Treaty Partners is guided by the 2001 Strategy for engagement with Māori on international treaties. The government's approach to engagement has also been influenced by commitments made during the Waitangi Tribunal proceedings relating to the original Trans Pacific Partnership (TPP), to improve the way Government consults and engages with its Treaty Partners. The result is an approach to engagement with Treaty Partners which aims to ensure that issues of relevance to Māori in international treaties are identified early, that engagement with Treaty Partners on a particular treaty is appropriately tailored to the nature, extent and relative strength of the Māori interest and that Treaty Partners have the ability to contribute to the design and implementation of policy.

Due to the slow progress in negotiations throughout 2021 and the beginning of 2022, engagement with Treaty Partners was initially limited, both due to lack of substance to discuss and also the competing priorities of the groups which were focused on the EU and UK FTA negotiations. More involved engagement took place once substantive negotiations started to occur from mid-2022.

The level of Treaty Partner Engagement throughout negotiations has been informed by the interests and capacity of the Treaty Partner groups the Ministry of Foreign Affairs and Trade engages with, including Te Taumata, Ngā Toki Whakarururanga and the Federation of Māori Authorities (FoMA). Specific areas of trade interest to Treaty Partners include e-commerce, financial services and digital trade.

Key engagement activities with Treaty Partners in the course of the negotiations comprised:

- Updates on the negotiations were provided as part of MFAT's regular briefings with Te Taumata, Ngā Toki Whakarururanga and FoMA on New Zealand's FTA programme over 2021-2022.
- A dedicated discussion on the progress and direction of the negotiations were held with each of Te Taumata and Ngā Toki Whakarururanga in July 2022, after negotiations were substantively underway.
- Since mid-2022 more detailed ongoing discussion with Te Taumata and Ngā Toki Whakarururanga has been maintained on their key areas of interest: services, investment, and e-commerce. Regular feedback has been provided by Ngā Toki Whakarururanga in particular on New Zealand's approach to these areas.
- Ngā Toki Whakarururanga is the only group that provided substantive feedback. It has expressed concerns on several areas of the Second Protocol. These include what Ngā Toki Whakarururanga considers the failure to address outstanding matters raised before the Waitangi Tribunal, notably ISDS, the inadequacy of the Treaty of Waitangi Exception and the lack of protections around intellectual property. Ngā Toki Whakarururanga is also concerned that in its view the updated E-Commerce Chapter repeats provisions that the Waitangi Tribunal found in the Wai 2522 claim on the TPPA/CPTPP to breach the Crown's obligations under Te Tiriti o Waitangi obligations. The principal, but not only, concerns in this area are the introduction of rules on data, including rules that restrict the regulation of the cross-border transfer of information, and the application of

dispute settlement to the E-Commerce Chapter which makes these rules legally enforceable, in contrast to the Regional Comprehensive Economic Partnership agreement with ASEAN countries that is not enforceable. Ngā Toki Whakarururanga does not consider the upgraded AANZFTA E-commerce Chapter to provide adequate protection for Māori rights and interests, such as robust safeguards for sensitive data and governance of how Māori data is used.

9.3 Inter-departmental consultation

The negotiation of the Second Protocol was conducted by an inter-agency team led by MFAT. The inter-agency team primarily comprised officials from MFAT, the Ministry of Business, Innovation and Employment (MBIE), and the New Zealand Customs Service. Relevant ministries were consulted throughout the negotiations, including the Ministry for the Environment, the Ministry of Education, and the New Zealand Qualifications Authority.

10 Subsequent protocols and/or amendments to the treaty and their likely effects

The development of the Second Protocol has followed AANZFTA's amendment process, which is described as follows in Article 18.6: "This Agreement may be amended by agreement in writing by the Parties and such amendments shall come into force on such date or dates as may be agreed among them".

The Second Protocol does not amend the provisions on reviews and amendments in the existing AANZFTA, so these continue to apply.

New Zealand would consider any further amendments to the AANZFTA on a case by case basis, and any decision to accept an amendment would be subject to the usual domestic approvals and procedures, including Parliamentary Treaty Examination as applicable.

11 Withdrawal or denunciation provision in the treaty

The existing AANZFTA provides that:

- Any Party may withdraw from the AANZFTA by giving six months advance notice in writing to the other Parties; and
- The AANZFTA shall terminate if Australia or New Zealand withdraws; or the AANZFTA is in force for fewer than four ASEAN member states.

The Protocol only alters the existing withdrawal and termination provisions of the AANZFTA insofar as the notification of withdrawal will be made to a newly-created Depositary instead of directly to the other Parties.



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